

A Dialogue for Change

by Clay Constantinou

In an address to the United Nations General Assembly in September 1998, President Mohammed Khatami of Iran put forth an urgent call for a “dialogue among civilizations,” with the hope that this endeavor would begin a process to replace hostility and confrontation with discourse and understanding.

Following President Khatami’s proposal, the General Assembly unanimously proclaimed 2001 as the UN Year of Dialogue among Civilizations. To further support this dialogue, Secretary-General Kofi Annan has invited an international panel of eminent persons to look closely at issues of identity, diversity, and intergroup relations, and has designated former chief United Nations hostage negotiator and under-secretary-general Giandomenico Picco as his personal representative to lead this effort.

Mr. Picco and the panel of eminent persons are working in close partnership with the School of Diplomacy and International Relations, which was designated as the Secretariat for this initiative. This process of research and international discourse will result in an important publication, which will be presented to Secretary-General Kofi Annan. The secretary-general will then convey this publication to the UN General Assembly at a special session on December 3 and 4, 2001. We are pleased to publish in this issue Mr. Picco’s reflections on the dialogue among civilizations as he leads this historic process forward.

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A Dialogue among Civilizations

by Giandomenico Picco

It took me a very short time to understand why the United Nations membership quickly reached a consensus in Fall 1998 when it declared 2001 the UN Year of Dialogue among Civilizations. Doubtless, my understanding had little to do with the politics of the issue or the reasons behind the General Assembly's consensus. Yet, it all seemed crystal clear when the secretary-general asked for my contribution to this concept, to give it a meaning from a UN perspective. I felt that the idea of a dialogue was an instinctive response to a decade that had witnessed so many indignities justified under false pretenses—a decade that virtually began under the fallacy of “the clash of civilizations.” I find it even more appropriate that the call for a dialogue among civilizations should actually stem from the Islamic world—specifically, Iran, a region and civilization that greatly suffered from the fallacy of the clash theory.

It is very difficult to find anyone who would oppose the concept of dialogue. But even more difficult is the act of transforming the instinctively sound cry for a dialogue into a constructive, practical, and focused approach that would benefit the world organization, and with it, its membership. The challenge to me, therefore, was not *why* a dialogue among civilizations, but rather *how* to achieve it.

Being neither an academic nor a scientist, neither a statesman nor a leading global financier, I thought I would search within my own life experience to make some sense of what dialogue could mean to me. As one of the six billion inhabitants of this planet, I can claim at least as much life experience as any. I have been fortunate to enjoy the opportunity to work, live, and interact in various parts of the world at various depths of human exchange, sometimes so deep as to actually tread the border where life and death meet. It seems to me, looking at the beginning of my life, that we have all moved on this earth in different ways and at different levels, but nevertheless we have moved in the same direction: that of becoming more and more interconnected, more and more affected by each other, and accordingly and simply, closer to each other. No matter what the level of wealth or knowledge we possess, the inhabitants scattered around this globe are more in contact today than we were fifty years ago. Our proximity to one another is destined only to increase, and our ability to affect each other will grow ever greater. Not much else seems necessary to make the call for a dialogue quite compelling.

Almost immediately after uttering the words “dialogue among civilizations,” images came to my mind of a trip I undertook in 1994 as a private citizen across the Balkans at war. I had wanted to go there, like many, I presume, in search of an answer that newspaper commentators and politicians’ statements would not provide. The ques-

Giandomenico Picco is [Author: please provide a sentence or two of biographical information.]

tion I had was “*Why?*” Why would so many seem to need so much “enemy,” and why had so many lies been used to justify it? What was ethnic cleansing if not the ignominious manifestation of a mindset that perceives diversity as a threat? But the simplicity of this answer was hidden behind political explanations, historical accounts, institutional analyses, and religious theories. As it turned out, they were all lies, or, to be kinder, cover-ups for the decisions made by the only entity on earth that can employ rational faculties in support of its choices: the human individual. I walked through the battlefields of the Balkans in 1994, as I had walked for different reasons and in different capacities through the streets of Beirut some years earlier, and the valleys of Afghanistan several years before that. In vain I looked for the “killing hand of history,” “the rapping arm of culture,” the “destructive boot of institutions,” or the “mutilating fist of religion.” They were nowhere to be found. What I did find were the faces and the names of individual killers and individual victims. What I found were the stories of single human beings: their crimes, their failed hopes, and their desperate attempts to justify their guilt under different names, but to no avail. They could not succeed and they will never succeed. The responsibility for what they did was, is, and will remain individual. Had they confessed the truth, they likely would have said that they acted in self-defense. But against what? Against something different, something “other” than themselves. [Author: okay addition?] They were unwilling or unable to see that diversity, even if it existed, could carry not enmity but rather the potential for growth and betterment for all. But they could not see, or did not wish to see, because to see the greatness in one’s own neighbors perhaps requires one to see the potential greatness inside of oneself [Author: or to see the failings inside oneself?]. I asked myself if I could ever see the greatness in my neighbor if I were preaching only his evil. If I am so great, what good to me is the evil of my enemy?

Dialogue is an instinctive response to a decade that had witnessed so many indignities justified under false pretenses.

All these images came to me as the dialogue among civilizations was superimposed in my mind; [Author: the following phrase is unclear to us] as perhaps the response to the unavoidability of the prophecy of clash. It was of course fitting as well that those who justified their deeds under the cover of history, religion, and culture would present their actions as unavoidable; after all, if history, culture, and religion were the real culprits, they were surely too powerful to be stopped by individual actors. Therefore, accepting the unavoidability became a necessary component of the blasphemy of ethnic cleansing or any other crime perpetrated in the name of [Author: better, “against”?] diversity. If it was unavoidable, then the individual had no responsibility; he then was simply a tool manipulated by the great machinery of history or culture or religion, and many believed it. I have too great a faith in human beings to accept such a lie. If we accept unavoidability, I thought, we might as well never get out of bed in the morning, for we claim no authorship of any part of our life.

Yes, I said to the secretary general of the UN, I would take on this assignment

and try to make it a response to the fallacy of ethnic cleansing, to the lies and the blasphemies committed during the 1990s by individuals who perceived and still perceive diversity and “otherness” as a threat to them. No need, therefore, to be deconstructed by a semantic conversation on what is a civilization and what is not; even less to count how many civilizations there are, have been, and will continue to be. The focus of the dialogue, I thought, had to be quite clear, and yet practical; quite touchable, and yet ethical; quite visible, and yet conceptual. To this day, I do not know if this can be achieved or whether the contribution I will try to make through the opportunity offered to me by the secretary-general will actually reach the destination I would like it to. Nevertheless, I will pursue what I believe is the focus and simple objective: the dialogue may well have to be one simply between those who perceive diversity as a threat and those who perceive diversity as an opportunity for betterment and growth.

Is not the United Nations itself fundamentally based on the appreciation and celebration of diversity, on the acceptance that we are—each of us as an individual and as groups—rich because of our own individual identities, and yet profoundly equal in the humanity that is inherent to us all? What, then, of my contribution? I am unable to conduct a dialogue among religions, for I am not a theologian, and indeed because that dialogue is already under way; ill equipped to conduct a dialogue among traditional civilizations, for I do not even know how many the world will claim to have; and unwilling to interpret my task as favoring exclusively a dialogue between Islam and the West, for this will cut out all of the rest. I will try to make my contribution to a dialogue that touches the nerve of our own mindset, which is the way we look at the “other.” Can the dialogue be the seed not only to unmask the fallacy of the dash but also to provide a new paradigm of international relations?

A NEW PARADIGM OF INTERNATIONAL RELATIONS

The Enemy. Millennia of traditions, one could say, have led us to believe that the enemy is an indispensable component of social life. Some may even claim that we never had leaders who could lead without an enemy. Others would argue that it is part of “human nature” to define oneself according to what one is not, and to search out distinctions between others and ourselves. It seems to me in ruling a society, the enemy is a convenient management tool. But is it necessarily an indispensable tool? Perhaps asking the very question raises a challenge to the existing patterns of relationship at both the human and the institutional level [Author: okay? This seems to apply to the way that individuals as well as states relate to one another]. Various philosophies over the centuries have existed based on different presentations of a dichotomy, which is perhaps the consequence of the two existential features of our being: life and death itself. And yet, if it is indeed necessary or at least extremely convenient for leaders and rulers to make use of the concept of enemy, a few questions could legitimately be asked. Why does one need to define and to aggrandize one’s own nemesis to define oneself? Would it not be better for a ruler to present his own

positive and constructive contributions to a vision of society that he wishes to pursue, instead of rushing to profile the other side, the enemy? If the ideas we wish to pursue, the vision we wish to represent, are really so good, so strong, so compelling and worthwhile, why even waste our time in describing their opposites? Is it not logical to assume that the more a ruler demonizes his enemy, the less positive value he seems to possess of his own? Does it not stand to reason to say that the more one needs an enemy, the less one has to offer? The unbearable presence of the enemy is to me an indication of the yet primitive stage of our human development. Can we reasonably aspire to societies led by leaders without enemies? It may be a very idealistic vision, but it is one I am not prepared to give up, even though I accept that few of us will ever see this dream materialize. That should not dissuade us, however, from finding an intermediate step we can take in the meantime in an attempt to create a society where each of us is valued for the positive contribution he can provide, and not for the size of the enemy he can project.

The unbearable presence of the enemy is an indication of the yet primitive stage of our human development.

If we accept that enemy is indeed a managerial tool for societies, I would humbly propose that an intermediate step could be to look for an enemy that is common to us all in today's world. Then we will not have a proliferation of enemies, but a concentration of focus on an enemy that does not discriminate among us, no matter what our location or station in life [Author: okay?]. That enemy, I suggest, is intolerance. It is a different way to describe the mindset of those who perceive diversity as a threat, and unfortunately it is very real. It is so real that it cuts across civilizations, divides and cuts across society vertically as well as horizontally. I cannot think of a bigger enemy, or of a greater threat. How to defy intolerance? I suppose it would require much less ignorance than now exists throughout the world, and a much larger capacity to listen to each other than we now seem to possess. I may be wrong, and I stand to be corrected, but I think that real dialogue has much to contribute to the creation and understanding of the real enemy we all face, and perhaps to the “undemonization” of the smaller enemies to which we have become accustomed.

Individual Responsibility and Accountability. The second element of this new paradigm of international relations stems from my great faith in the ability and grandiosity of the human spirit that resides in each individual. It may well be that institutions have helped us to keep at bay the irrationality of the whims of the king, and to safeguard the will of the majority and the rights of the minority. It may well be true that through said institutions, we have given shape to what we now call the collective decision-making process. It seems to me, however, that even if there are times and places where decisions can be called collective, the responsibility is and must remain individual. If I do not have a stake in a collective decision, I will take it lightly. That is, if the outcome of the decision will neither gain nor lose me anything, that outcome will be of no consequence to me, and I will not take the decision seriously. A collective

decision seems to be more effective if it is considered to be, at its heart, individual. We are moving slowly in that direction as an international society, but we are just at the beginning of the journey.

The justifications “I followed orders” or “the decision was taken by the institution” are all too easy. They should not and do not, in my opinion, take away the responsibility from the individual. Hiding one's own responsibility behind the cover of “collective decisions” is pretty much similar to invoking history or religion as the culprit for action perpetrated by human beings here and now, which in turn sounds very much like the words used by so many as justification in the past: “I was following orders.”

Impartiality was another concept used by many in Europe after World War II that served the purpose of avoiding responsibility and difficult decisions [Author: okay addition?]. An entire political culture has developed to glorify the concept. So successful were its proponents that they have convinced many around the world that impartiality is a quality that organizations like the UN should make their own above all. As I became a practitioner of diplomacy in war situations—and, I should add, bargained for my own life or for that of others—I never found that impartiality was an operative concept; rather, it was another cover-up for something else. It is not impartiality that is demanded; it is, rather, credibility. To keep my word no matter what the cost to me is what made the difference.

Credibility is the consequence of one's own commitment to the declared objective. It appeared to me more and more that impartiality was not only inoperative but furthermore a good [Author: better, “easy” or “convenient”?] escape from making decisions and assuming responsibility. Thus, at times, impartiality is even at odds with accountability, the very basis of credibility. When dealing with life and death, credibility mattered; impartiality was not even called into question. When dealing with life and death, there is no room for those who do not have the courage to make decisions. Perhaps in a new paradigm of international relations, we may need more people who have the courage to make choices and assume their responsibilities, and fewer people who stay “impartial” as a means of avoiding the need to make any decision at all [Author: okay rewording?].

Real dialogue may well suggest that we revisit the concept of enemy and revalue the contribution and the responsibility of the individual in international affairs.

Should accountability increase at the individual level in international affairs—and, for that matter in societal affairs—I would submit that it should reduce corruption, abuse of power, and indeed the lightness with which decisions that affect others are made. I am not so sure that even institutional reforms would really mean much unless we introduce a reform in the mindset of individuals. What could be more effective than to adopt individual accountability, even for institutional decisions, given for collective decisions—for all those decisions, in fact, that have a bearing on the life

and the well-being of others? It is a debatable issue, I know, as debatable as when UN secretary-general Kofi Annan used the terminology “individual sovereignty” as the other side of the coin to national sovereignty. But it seems to me that a new paradigm engendered by a real dialogue may well suggest that on one hand, we revisit the concept of enemy, and on the other, we revalue the contribution and the responsibility of the individual in international affairs. If we believe in the greatness of the individual human spirit and the contribution that each of us individually can provide, then we will unleash the greatness that makes that individual accountable for his achievements as well as for his failures.

When everything is said and done, I, on my account, will consider that our efforts to initiate a dialogue among civilizations will have been successful if only one individual more than today will eventually accept that diversity is not a threat but rather the beginning of life itself.

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Evolving Institutions and Transatlantic Relations
Toward a European Law

by Gil Carlos Rodríguez Iglesias

The institutions of the European Community¹ integrate as well as innovate, incorporating the policies of member states and establishing new policies applicable to them. While much has been made of the great efforts required to establish a common currency, a study of the important task of establishing a community law is also in order. What is most interesting is that this is a legal order that has its roots in international law but also resembles many aspects of the national European legal systems. Moreover, it presents its own very specific features—one of the most striking being its particularly dynamic development.

This evolution is also of significance to the relationship between the United States and Europe. Common Market law plays an ever increasing role in those transatlantic relations. As regards judicial contacts, a delegation that included four members of the U.S. Supreme Court paid a two-day visit to the European Court of Justice in 1998, a visit that was returned two years later in Washington.

This paper explores some of the challenges inherent in the “europeanization” of European national laws and, in particular, the function of European Community law in this process. It explains how the Court of Justice moves from a starting point of national constitutions and general principles, employs comparative law, and then emerges with a legal order befitting a community of states, peoples, and citizens.

DEFINING EUROPEAN LAW

Community law is independent, uniform in all the member states of the community, and separate from, yet superior to, national law. It is built on all the legislation adopted by the European institutions, together with the founding treaties. The term “European law,” however, also includes other meanings that must be considered.

On the one hand, “European law” refers to the legal system of the European Communities. In this sense, it comprises a concept of law that has a real scientific and legal content. Thus, in terms of legal theory, one would define the legal system of the European Communities as a positive legal order with clearly defined rules that have the force of law and that derive from clearly determined sources.

But “European law” can also be used as a means of conceptually categorizing the points common to the different legal systems in Europe. Thus the expression would include the laws common to the national legal systems as well as the laws of the

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supranational legal systems such as the European Convention on Human Rights. In this way, this meaning refers both to a situation and to a process of europeanization of the national European legal systems. These two meanings of “European law” are closely linked since the European Community plays a central role in the process of the europeanization of national laws.

A NEW LEGAL SYSTEM OF STATES AND CITIZENS

Since *Van Gend en Loos* in 1963, the Court of Justice of the European Communities² has defined European Community law as a “new legal order of international law.” In that judgment, the court gave the following reasons to justify the definition of this order as new:

The objective of the EEC Treaty, which is to establish a Common Market . . . implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of the institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. . . . The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields and the subjects of which comprise not only Member States but also their nationals.³

This judgment is of major historical significance since it conceives of the European Community not only as a community of states but also a community of peoples and of citizens. The court made this declaration on the basis of reasoning that refers to the stated purpose of the treaties, the institutional structure of the European Community, and its judicial organization—in particular the system of cooperation between national member-state courts and the Court of Justice provided for in the treaties known as the *preliminary reference procedure*. Presently, this concept constitutes an essential component of the *acquis communautaire*—the expression used to describe the whole range of principles, policies, laws, practices, rights, obligations, remedies, and objectives that have been agreed to or that have developed within the European Community, and that all member states that have joined the European Community since the first enlargement in 1973 are obliged to incorporate into their own law. In 1993, when the European Community Treaty was amended, the concept of the community as one of states, peoples, and citizens was further confirmed and widened by the addition of new provisions on European citizenship.⁴

The three fundamental principles that characterize the community legal system, in particular the principles governing the relationship between the system and the member states, also stem from this concept of the community:

1. *Direct effect*, as defined in the *van Gend en Loos* judgment.
2. *Supremacy*, as defined in the *Costa/Enel*⁵ judgment of 1964.

3. *State liability* for damage caused to individuals as a consequence of a breach of community law, recognized in the court's judgment in 1993 in the *Francovich*⁶ case.

The addition of this third fundamental principle completed the scheme of effective protection of individuals' rights under the community legal system.

The European Community is conceived of as not only a community of states but also a community of peoples and of citizens.

In sum, the rights of individuals protected under the community legal system derive directly from community law without the need for any additional national legislative intervention (direct effect); prevail over any national law found to be contrary to community law (supremacy); and, where these rights have been harmed by acts or omissions of the state, give the holders of these rights a right to reparation (principle of state liability).

SOURCES OF COMMUNITY LAW

On this basis, we next describe in the following order the constitutional principles, legislative instruments, and general principles that form the foundation for European law.

Constitutional Principles. The national constitutions and the constitutional values common to the member states together constitute a source of law for the identification and shaping of the general legal principles of community law—of particular importance in the field of fundamental rights.

As one might expect, the treaties establishing the European Communities laid down the rights and obligations governing the member states and the peoples of the European Communities. They also constitute the fundamental basis for what is called the *constitution* of the European Community. This notion is not a merely rhetorical idea. On the contrary, it is a statement that the court has used to define the community as a community of law, a community in which the principles proper to a state of law are fully applicable. It was with the constitutional nature of the treaties in mind that the court was able to determine the scope of judicial review and review the constitutionality of legislation and other acts of the community institutions. One of the most notable judgments in this regard was in the *Les Verts* case in 1986,⁷ in which the court held that all acts adopted by the community institutions were subject to judicial review even where the treaty itself did not expressly provide for the review of acts of one of those community institutions. The court reasoned that

the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of

the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty. . . . The Treaty established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions.

Again, in its *Opinion 1/91* on the draft agreement on a European Economic Area, the court reaffirmed the idea that “the EEC treaty, albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a community based on the rule of law.”⁸

The constitutional dimension of community law, however, has a wider scope than the treaties establishing the European Communities. In an indirect way, the community legal order also has its constitutional basis in the constitutions of the member states. It suffices to recall in this respect that in order for each state to join the European Community, it must have the national constitutional basis to allow it to do so.

On the other hand, given that the member states retain a constituent power in the community, any substantive modification that is made to the treaties in the process of European integration—in other words, any “constitutional amendment” of the community—first needs the necessary constitutional basis in each member state. For example, in order to be able to ratify the Treaty on European Union of 1992, a number of member states had to make amendments to their national constitutions, which in some cases required national referendums on the proposed amendments. It is worth bearing in mind that while this might seem like a procedural hurdle, in fact these national constitutional amendments have played a substantial part in reinforcing the democratic legitimacy of the community legal order and of the integration process.

Legislative Instruments. The community institutions adopt the basic legislative instruments used to unify the law within the community: regulations, directives, decisions, and so on. These measures are particularly significant since they are in large part immediately applicable in each of the member states by virtue of the principles of community law.

The most common legislative instrument is the *directive*, a framework law that requires the member states to adopt and implement domestic legislation within a specified time. It is designed as a means of achieving a common law in Europe through domestic legislation. Thus, the directive does not have direct effect unless a member state fails to adopt and implement executing legislation or incorrectly implements the directive.

Domestic legislation adopted on the basis of a directive has to be interpreted in conformity with specific principles aimed at achieving the result envisaged by that community measure of legislative harmonization. Since 1984, the relationship between directives and domestic law has been the subject of a number of important judgments from the Court of Justice. Some of the most significant were in connection with the European Council directive on the principle of equal treatment of men and women in the workplace.

The first judgment in this line of case law was in *von Colson*.⁹ In this case, a German court questioned the compatibility of a provision of the German civil code with the directive, and for this reason referred the matter as a preliminary question to the Court of Justice. In its view, the German provision could only be interpreted as providing for a very limited right to damages in a situation where a job applicant had been discriminated against on grounds of sex.

National constitutional amendments have played a substantial part in reinforcing the democratic legitimacy of the community legal order and of the integration process.

The Court of Justice confirmed that, in applying national law and in particular national legislation specifically adopted to implement the directive, the national court had to interpret its national law in the light of the wording and the purpose of the directive in order to achieve the result referred to in the treaty, whereby a “directive shall be binding as to the result to be achieved.”¹⁰ Since the *von Colson* judgment, this dictum has been reiterated many times as constituting the basis for interpreting national law in conformity with community law. The court went on to say that

it is for the national court to interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of Community law in so far as it is given discretion to do so under national law.¹¹

This obligation was strengthened in the *Marleasing*¹² judgment, in which the court held that the national court is required to interpret national legislation *insofar as it is possible* in the light of the wording and purpose of the directive. This obligation also holds in situations such as in the *Wagner Miret*¹³ case, where the state considered that it was not necessary to modify domestic law because it already had fulfilled the requirements of the directive.

Although these cases concerned directives, the obligation of “sympathetic interpretation” applies to any provision of community legislation, including, most importantly, the treaties. Thus the principle of free movement of goods, which is provided for in the treaty, has had quite an impact on the interpretation of domestic provisions on unfair competition. The principle of freedom of establishment, also provided for in the treaty, has had an impact on those aspects of company law and fiscal law that have not been harmonized.

The uniform effect of directives is not confined to the European Community. From a legal point of view, the unification process extends in large measure to the European Economic Area—the area comprising non-European Union (EU) member states Norway, Iceland, and Liechtenstein. Moreover, EU directives also influence the laws of countries belonging to neither the European Economic Area nor the European Community. The obvious examples are those countries in Central and Eastern Europe that are applicants to join the community and that are now in the process of adapting their legislation to meet the requirements of community law (although not

legally bound to the community) and Switzerland, whose legislation has been considerably influenced by the legal models adopted in the community.¹⁴

General Principles. General principles of law represent important basic values such as the respect of fundamental rights and the principle of democracy. Some are found in the treaty itself, such as prohibitions on discrimination on grounds of nationality and gender, as well as the principle of sincere cooperation on the part of the member states. Others are found in the provisions of secondary law.

Nevertheless, the general principles mainly originate in the national legal orders, and the court's case law has played an important role in their integration into the community legal order. Many of these principles have been recognized by the court as having constitutional status and have consequently constituted a parameter of legal control (which is in fact constitutional control).

The protection of fundamental rights has been shaped by the court's case law, which in turn has been formed on the basis of the general principles of the laws common to the legal systems of the member states. In the field of human rights, these general principles usually stem from two sources:

1. the constitutional values provided for in the national constitutions and guaranteed by the respective constitutional courts in the member states; and
2. the European Convention on Human Rights as interpreted by the European Court of Human Rights.

By referring to the European Convention on Human Rights, the Court of Justice bases itself upon an already existing standard of protection of international relevance. This means that the convention will remain a yardstick for the development of fundamental rights within the European Union because those rights are, as the Court of Justice has emphasized, the expression of legal traditions common to all member states

THE ROLE OF COMPARATIVE LAW

The European Community Treaty entrusts the Court of Justice with the task of defining the rules governing the noncontractual liability of the community on the basis of an analysis of comparative law.¹⁵ It goes without saying that this necessarily implies a certain creative law-making role. The court has also used comparative law techniques in other areas of community law. In the field of fundamental rights, for example, the court takes the constitutional traditions of the member states and the international treaties to which the member states are signatories as a first point of departure.

A particularly interesting example of the use of the comparative law method was in the *AM & S*¹⁶ judgment, in which the court conducted considerable research in order to define the scope of the term "legal privilege," whereby correspondence between lawyers and their clients benefits from special protection in antitrust proceedings. There were provisions in neither primary nor secondary law in respect of this

principle, and the court therefore asked the parties to take a position on the law of the different member states on the question. It is interesting to note that the court considered the question of such importance that it reopened the oral proceedings in order to allow the parties to make their arguments on the point. In the hearing, given the importance of the principle for the legal profession, the Consultative Committee of the Bars and Law Societies of the European Communities was granted leave to intervene and made a particularly pertinent contribution. Advocate General Sir Gordon Slynn also made a thorough study of the comparative law considerations in his opinion to the court.¹⁷

In its judgment, the court confirmed that

Community law, which derives from not only the economic but also the legal interpenetration of the Member States, must take into account the principles and concepts common to the laws of those States concerning the observance of confidentiality, in particular, as regards certain communications between lawyer and client. That confidentiality serves the requirements, the importance of which is recognized in all of the Member States, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it.¹⁸

The court found that it was apparent from the legal systems of the member states that, although the principle of such protection was generally recognized, its scope and the criteria for applying it varied. The court concluded that

Apart from these differences, however, there are to be found in the national laws of the Member States common criteria inasmuch as those laws protect, in similar circumstances, the confidentiality of written communications between lawyer and client provided that, on the one hand, such communications are made for the purposes and in the interests of the client's rights of defence and, on the other hand, they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment.¹⁹

Thus the court concluded that given those conditions, the confidentiality of correspondence between lawyer and client is protected by community law.

It is generally the case that the different legal orders provide similar solutions to legal problems, despite the technical and dogmatic variations in the route taken.

As eminent legal writers and former judges of the court have pointed out,²⁰ the use of the comparative law method is especially common when the court is in the process of deliberating the drafting of its judgments, although this is only rarely mentioned in the judgments themselves.

For the judge, a full consideration of the contrast of the different laws of the member states is of extraordinary importance. Interestingly, the differences often are not so great as one might expect. Indeed, it is generally the case that the different legal

orders provide similar solutions to legal problems, despite the technical and dogmatic variations in the route taken. Even within the Court of Justice, the differences in approach of the judges as regards questions of substantive law are rarely attributable to their respective legal traditions. On the contrary, the judges are more conditioned by their national legal background when it comes to questions of procedure.

One can see an increasing process of europeanization in legal thinking and a greater convergence among the national legal orders.

Of course, comparative law research sometimes finds that there is no uniform solution to be found in the law of the member states. In those cases where there is a wide divergence among the solutions provided by the national laws, the court inevitably has to make a decision itself on the scope of the concept in community law. The judgment in the *Puma* case²¹ on trademarks is a good example. This case provided the first opportunity for the court to interpret the concept “risk of confusion” as provided for in the first directive on the harmonization of trademark law. There were two incompatible approaches to this concept. The court, charged with providing a single interpretation applicable throughout the community, had to decide between the German and the Benelux approaches, in the end opting for the German model.

FINAL CONSIDERATIONS

When dealing with a question of European Community law, the most important thing to bear in mind is that in contrast with the national legal orders, the European Community legal order is neither an isolated nor an insulated legal phenomenon. One of its essential features is its integration with the national legal orders. The principles of direct effect, supremacy, and liability precisely refer to the relationship between the community’s legal order and those of its member states.


The creation of a European law does not entail the suppression or substitution of national legal orders but rather the coexistence and joint operation of a plurality of legal orders. The upshot of the development of community law has been intense legal harmonization, brought about in two ways:

1. common community legislation, which prevails over national legislation; and
2. legislation adopted on a national level that in substance constitutes a common law across the different national legal orders.

One can also see an increasing process of europeanization in legal thinking and a greater convergence among the national legal orders. This convergence, which has resulted in a proliferation of common legislative provisions, has been the subject of a number of studies made in the fields of constitutional law as well as in administrative and private law.²²

Insofar as this process of europeanization extends beyond the boundaries of European Community or European Economic Area law, it constitutes more of a phenomenon of culture than of positive law. A two-way process is at work: European Community law has been a determining factor in the europeanization process, which in turn has had an impact on the development of community law itself.

The process of unifying law is not without limits, however. The legal order of the European Communities is based on principles of both conferred powers and subsidiarity, both of which constitute limits on the scope of community laws. Thus, important areas of the law, such as criminal or family law and the law on property and succession, continue to be governed wholly if not exclusively by the domestic law of the member states.

Lastly, it is important to stress that European law does not question in any way national or regional identity or its specific legal features. On the contrary, such specific roots are an essential element to the European legal culture. The European Community and its law derive strength not in spite of the diversity of its members, but because of it. 

Notes

¹ The basic elements of the process of integration are the three European Communities, i.e., the European Coal and Steel community (Treaty of Paris, 1951), the European Economic Community, and the European Community for Atomic Energy (Treaties of Rome, 1957). Because of its general character, the European Economic Community is the most important one. From the entrance into force of the Treaty of Maastricht in 1993, it is simply called the European Community. The same Treaty of Maastricht brings both the above-mentioned communities and the areas of intergovernmental cooperation under the umbrella of the Treaty on European Union. This union has a single institutional framework. The latest amendments to the Treaty on European Union entered into force on May 1, 1999 (Treaty of Amsterdam).

² Case 26/62 [1963], ECR, p. 3.

³ Ibid.

⁴ EC Treaty, Art. 17.

⁵ Case 6/64 [1964], ECR, p. 1253.

⁶ Joined cases 6/90 and 7/90 [1991], ECR, p. I-5357.

⁷ Case 294/83 [1986], ECR, p. 1339.

⁸ Opinion 1/941 [1991], ECR, p. I-6079.

⁹ Case 14/83, [1984] ECR, p. 1891.

¹⁰ EC Treaty, Art. 249.

¹¹ Case 14/83 [1984], ECR 1891, point 28.

¹² Case C-106/89 [1990], ECR p. I-4135.

¹³ Case C-334/92 [1993], p. I-6911.

¹⁴ In a recent case before the U.S. Supreme Court, a reference to European Community law can be found. In *Printz v. United States*, 117 S.Ct. 2365 (1997), Justice Breyer, dissenting, argued that the “federal systems of Switzerland, Germany, and the European Union” provide that “constituent states, not federal bureaucracies, will themselves implement many of the laws, rules, regulations, or decrees enacted by the central ‘federal’ body.” The dissent argued further that constituent states implement many such laws “because they believe that such a system interferes less, not more, with the independent authority of the ‘state,’ member nation, or other subsidiary government, and helps to safeguard individual liberty as well (Id. at 2404).

¹⁵ Art. 288, para. 2.

¹⁶ Case 155/79 [1982], ECR, p. 1575.

¹⁷ [1982], ECR 1642.

¹⁸ [1982], ECR 1610, point 18.

¹⁹ [1982], ECR 1611, point 21.

²⁰ Pierre Pescatore, "Le recours, dans la jurisprudence de la Cour de justice des Communautés européennes, à des normes déduites de la comparaison des droits des États membres" (*Revue internationale de droit comparé*, 1980, p. 337); and Ulrich Everling, "Rechtsvergleichung durch Richterrecht in der Europäischen Gemeinschaft" (Vorträge aus dem Europa-Institut, Nr 151, Saarbrücken 1988; "Zur Begründung der Urteile des Gerichtshofs der Europäischen Gemeinschaften," EuR 1994, p. 127).

²¹ Case C-251/95 [1997], ECR, p. I-6191.

²² For example, see Ulmer, "Vom deutschen zum europäischen Privatrecht," *Juristenzeitung* 1992, p. 1; Müller-Graff, *Privatrecht und Europäisches Gemeinschaftsrecht*, 1991; idem, "Europäisches Gemeinschaftsrecht und Privatrecht" *NJW*, 1993, p. 13; Lutter, "Die Einbindung der nationalen Gesellschaftsrechte in das europäische Recht," Reformbedarf im Aktienrecht, *Zeitschrift für Unternehmens- und Gesellschaftsrecht*, 1994, p. 121; and Van Gerven, *Torts: Common Law of Europe Casebooks* (Oxford: Hart Publishing, 1998).



Evolving Institutions and Transatlantic Relations
Reforming the Global Financial Architecture

by Philippe Maystadt

Financial stress and crises are rarely contained by national borders. Yet, financial regulation remains largely in the domain of the nation-state. The international financial crises of the past decade, in particular, have raised calls for increasing international coordination of financial regulation and supervision.

The world came dangerously close to a global financial meltdown in the autumn of 1998, as the currency crisis in emerging markets spread quickly to developed countries. The mechanics of that crisis, detailed elsewhere,¹ have fuelled a renewed debate on whether the “global financial architecture” needs to be reformed. The focus of this debate has largely been on the need to introduce sufficient checks and balances to avoid financial near-meltdowns in the future. But a revamped global financial architecture can also be justified from a longer historical perspective, not only to reduce the risk of crisis but also as a conduit for global economic growth and prosperity.

Given their dominant positions in the world economy and financial system, the United States and the European Union (EU) will inevitably play leading roles in efforts toward reform. Any agreement on standards, supervision, or regulation reached between these two blocs is likely to create a benchmark for the rest of the world. But there are also a host of problems between the United States and EU in this area. The habit of insisting on national sovereignty in the area of financial regulation and supervision dies hard, even when the benefits of coordination may be obvious.

BALANCING INSTITUTIONAL COMPETITION AND HARMONIZATION

One can interpret the evolution of the international financial architecture and financial organization as the synthesis of two opposing forces: competition for savings and technological innovation. These forces combine to create and refine financial instruments best suited to the needs of end users and to push financial sector productivity upwards. They are at the same time tempered by the regulatory and supervisory constraints that aim to reduce the systemic risks associated with the expansion of the global financial system. The need for balance is paramount. If there is too much regulation, the financial sector will be unable to adjust to a changing world, which will in turn hamper economic growth. If there is too little or inappropriate regulation, systemic risks will threaten financial stability.

The many lessons from the convulsions of the global financial system over the past three decades have gradually led to a reassessment of the financial architecture

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inherited from the Bretton Woods era. In retrospect, it is clear that the heavily regulated financial sectors were largely unsuitable for a world of free capital mobility. Capital markets were rudimentary, which meant that international capital flows were mostly channeled through the banking system. This lack of diversification generated significant systemic risks. Such shortcomings convinced policymakers that financial deregulation was needed to make financial systems more flexible and adaptable. Most countries accept today that capital mobility, financial liberalization, and institutional competition have brought substantial benefits to the functioning of their economies.

A revamped global financial architecture can be justified not only to reduce the risk of crisis but also as a conduit for global economic growth and prosperity.

Excessive regulation of financial sectors during the Bretton Woods era led to static conditions. Government-controlled regulation is slow to adjust to a changing economic environment, and it is not clear that political decisions always result in greater efficiency. Whereas the evolution of financial institutions was largely driven and constrained by the political decision-making process for much of the postwar period, it is now increasingly determined by market forces. “Institutional competition” is the acceptance—very much recognized within the EU—that centralized attempts at harmonizing legal and regulatory frameworks risk undermining the creative and efficiency-enhancing aspects of competition. By allowing competing legal and regulatory regimes to coexist, competition might over time allow the most efficient frameworks to survive at the expense of the less competitive. This has also been referred to as “institutional Darwinism.”² Competition thus introduces a dynamic creative element in the evolution of institutions that is a key driver of efficiency gains that boost economic welfare. The international mobility of skilled labor and capital makes economic growth prospects increasingly sensitive to relatively small differences in institutional competitiveness. In order to avoid a drain of capital and skilled labor, second- or third-tier governments are forced to adopt best practices.

As the EU experience has shown, institutional competition may also be a pragmatic solution to otherwise insurmountable differences in regulation across countries. Rees and Kessner have studied the prospects for harmonizing insurance industry regulation in Europe.³ While in the United Kingdom the insurance industry has been relatively loosely regulated, German regulation has been much more restrictive. Strong national traditions and the opposing characteristics of the two models made swift convergence in national legislation difficult to achieve. Neither country would willingly abandon its model in favor of the other.

Under these circumstances, allowing both regulatory frameworks to coexist became the only feasible way to integrate the different systems. In the end, institutional Darwinism may come up with a winner. Rees and Kessner predict that the tightly regulated markets of Germany will eventually become more like the loosely regulated U.K. market, but *ex ante* a superior model can be extremely difficult for legislators to

determine. In the meantime, international harmonization efforts will focus on establishing a smaller set of minimum standards for all to follow, guarding against systemic risks while not trying to micromanage institutional development.

The above-mentioned example is largely applicable to financial institutional development on a global level. Apart from the likely gains in efficiency to be expected from institutional competition, attempts at detailed harmonization of regulatory and supervisory frameworks are likely to fail on practical grounds. The regulatory frameworks of individual countries largely developed in isolation during the postwar period, since little international harmonization was called for when capital mobility was negligible. This has left the world with large cross-country differences that are deeply ingrained in national traditions and culture. Choosing a single superior model to supersede these national frameworks would require that countries could agree on a single model. In a world of second-best solutions, however, there are usually several equally worthy models. Individual countries may also be deeply convinced of the superiority of their own model, even though they may fail to convince others to follow. A country considering itself to be at the forefront of institutional progress and competitiveness could rightly have a skeptical attitude towards international regulation that would pull it back from best practice and its institutional lead. Such a country would be most likely to adopt the attitude of conforming only to international standards that exactly replicate its own. To the extent that the laggards have reason not to adopt best practice from the leader, they would be the ones pushing hardest for an international standard to be adopted by all, thus softening the leader's competitive edge. Obviously, the leader would never agree to this. Allowing different frameworks to coexist and compete is likely to be the only politically viable solution under these circumstances, hoping that those with inferior models would eventually be forced to adopt the best practice solutions of the leader in order to close the growth gap and stem the drain of capital and skilled labor.

THE ROAD TO REFORM

Some minimal standards may be imposed through agreements by national governments to level the playing field and reduce systemic risks, but following the reasoning above, these are likely to be limited in scope. Therefore, there is a role for both voluntary agreements between financial institutions themselves and governmental regulation.

Private Agreements on Standards and Self-Supervision. A lack of standards may be associated with higher transactions costs for all parties. Entering a new market with unknown and different standards in areas such as accounting involves a steeper learning curve that tends to discourage international transactions. Different uses of financial tools introduce extra transaction costs for anyone crossing a national border to make a financial investment. But just as private manufacturers of electronic equipment often join each other around a common standard to attract a maximum number of customers, financial institutions (and national regulatory authorities) can volun-

tarily agree on standards for their international interaction in order to reduce these transaction costs.

One example of such voluntary agreements was introduced by Goldstein, who suggested that financial institutions could alleviate the problem of asymmetric information by supervising each other in a global club with rigid membership criteria.⁴ Any member willing to make the sacrifices should be allowed to join the club, and thus enjoy the better access to funds. Members have a strong incentive to make sure that others meet the standards, since the value of being a member would be undermined by the failure of any one member. Voluntary clubs among private institutions thus represent a form of regulatory and supervisory development that is not imposed by governments and thus should not undermine gainful institutional competition.

The habit of insisting on national sovereignty in the area of financial regulation and supervision dies hard, even when the benefits of coordination may be obvious.

Government Agreements. Politically generated agreements to set standards on an international level would be the reserve for cases where private agreements cannot be reached. Negative externalities would be the typical situation. Market imperfections such as moral hazard and adverse selection give rise to recurring crises in both the domestic and international arena. To the extent that such crises take on a systemic form, it is unlikely that private agreements can be reached that would reduce these risks sufficiently. This provides a key justification for government intervention in the area of regulation and supervision but would be limited to minimum standards, alleviating the worst risks rather than engaging in detailed micromanagement of the regulatory framework. This suggests that agreements of this kind are more suitably focused on establishing principles of conduct rather than trying to impose long lists of rules for individual situations.

Broadly speaking, national or international regulation can be justified by some form of market failure, such as moral hazards and coordination failures.

Moral hazard is the most commonly cited form of market failure in this context. An example is when expectations of a future bailout of the financial system by developed countries prevent local authorities from taking painful but needed action to avert crisis in its early stages. Financial fragilities can then build up through excessive and poorly allocated lending, resulting in overexposure that raises the risk that one bank failure will spread to the whole banking sector. The grave costs to the domestic economy of a widespread collapse of the banking sector mean that few governments can credibly commit not to bail out banks in such an event. Anticipating that the government will bail out the banks, foreign creditors become confident that their claims on banks can be treated as implicit sovereign claims. This tends to increase capital inflows to banking sectors that on their own merits would not deserve such preferential treatment. The local banks themselves are similarly affected by the dis-

torted incentives created by expected future government bailouts, generating behavior that raises the likelihood that a bailout will indeed be necessary.⁵

This kind of moral hazard cannot be easily averted but can be alleviated through regulation that prevents the imbalances from arising in the first place. Tying the hands of government is one way to change expectations of future bailouts, but since a government may not be able to do so on its own, international agreements can be helpful. The financial sector itself must also be regulated and supervised so that imbalances are discovered at an early stage. Regulation such as a minimum capital ratio can also change the incentive structure of the banking sector by making sure that the owners of banks stand to lose significantly by allowing a crisis to emerge. Moral hazards associated with explicit or implicit guarantees of banks and their depositors might be alleviated by creating narrow banks, where deposit insurance would only apply to banks holding relatively risk-free assets. More risky lending would be conducted by uninsured finance companies. On the other hand, the bailout of Long-Term Capital Management (LTCM), a major U.S. hedge fund with highly leveraged positions across a broad range of markets and linkages to many other financial institutions, showed that once systemic risks are present, governments may be forced to bail out nonbanks as well. Narrow banking alone thus would not eliminate all moral hazard problems.

Coordination failures occur when competitive regulatory policies result in an equilibrium that makes all parties worse off, or one that is associated with substantial systemic risks. For example, if countries were being pushed into weakening their regulatory protection of banks, or if their ability to tax capital were undermined as a result of international competition, international coordination may be justified to “level the playing field.” If used only where coordination failure truly gives rise to inefficient solutions, such coordination could augment rather than undermine the benefits of institutional competition, boosting efficiency and growth.

THE ROLE OF INTERNATIONAL STANDARDS

There are several areas where minimum international standards are likely to be beneficial.

- *Bank Regulation.* The Bank for International Settlements⁶ 1988 Basel Accord—with its 8% minimum capital requirements—and 1997 Core Principles—which added standards for sound supervision and regulation—stand as a high-water mark of the international financial standards process, but rapid progress in this area is impeded by the consensus-based decision process. While providing some protection against insolvency in developed banking systems, the minimum capital requirements are often insufficient in emerging markets, where a higher capital share might be required to offset the weaker regulatory and supervisory capacity.
- *Securities-Market Regulation.* Coordinated action among creditors was easier when most international lending was conducted through

a limited number of large international banks. In recent years, the growing role of bond markets in international lending has undermined the scope for coordination among the now much greater number of creditors in the event of a debt crisis. Attempts by governments and international organizations to impose collective-action clauses on bond markets have been resisted by the private sector.

- *Data Dissemination.* The International Monetary Fund has issued data dissemination standards aimed at making countries seeking to draw on international capital markets provide sufficiently good and timely data for investors to assess the strength of their economy, institutions, and finances.
- *Corporate Bankruptcy Reform.* Adequate bankruptcy procedures are important also within a national context, and thus may not need international coordination. In the international setting, however, coordination and regulation has the additional function of compensating for the lack of a transnational legal system. Indeed, the inability to use the legal system of one's home country to enforce contracts abroad is a key element in what is generally referred to as *country risk*.

Harmonization steps should not be seen in isolation. The overall financial architecture in most developed countries and at the worldwide level should not be seen from the narrow angle of institutional classification only. A clear convergence of financial organization is visible, and various forms for channeling finance from savers to borrowers are in constant competition. This is often described as the "Americanization of finance": the trend for market-based intermediation to gain to the disadvantage of traditional bank intermediation, which has been the mainstay of the continental European and Japanese financial models.⁷

The Financial Stability Forum (FSF) represents an attempt to rectify the notable lack of coordination—or even communication—between national governments and regulators with respect to financial supervision and regulation. It is essentially a semi-independent discussion forum composed of:

- national authorities responsible for financial stability in significant international financial centers, namely, treasuries, central banks, and supervisory agencies;
- sector-specific international groupings of regulators and supervisors engaged in developing standards and codes of good practice;
- international financial institutions charged with surveillance of domestic and international financial systems, as well as monitoring and fostering implementation of standards; and
- committees of central bank experts concerned with market infrastructure and functioning.⁸

The FSF's creation in 1999 followed the LTCM meltdown, which showed that mature markets are not immune to financial crisis originating in emerging markets and that the rapid expansion of nonbank financial institutions is creating new sources of risk to financial stability. Hans Tietmeyer, who played a leading role in the FSF's creation, identified a lack of coordination among national governments, financial regulators, and international institutions as one of the weaknesses threatening the stability of the global financial system.

On major issues, partial agreement on the need for regulation and supervision may be enough to generate action at national levels.

It would be presumptuous, however, to think that the FSF represents the foundation of a global financial regulator. National governments continue to see financial regulation and supervision as their own domain and are extremely reluctant to hand this responsibility over to an international body. Progress in achieving tangible results at the FSF has been slow for similar reasons. Some agreement has been reached in the area of offshore financial centers, which is one of the less contentious issues. Other FSF working groups face greater obstacles to reaching international agreement. The working group on hedge funds recommended greater disclosure and supervision of these institutions in light of their ability to destabilize the entire financial system. Hedge funds are not regulated the way banks are, and their investors are not protected by deposit insurance. Nevertheless, their sheer size and widespread links to other institutions produce notable systemic risks that may warrant their regulation in the future. Another FSF workshop has been looking at international capital flows, an issue where international agreement is likely to be highly contested. But the fact that these areas are not easily subjected to international agreement does not mean that no progress can be made. On major issues, partial agreement on the need for regulation and supervision may be enough to generate action at national levels. Marginal differences in national measures are probably less serious than no action at all. This suggests that an international discussion forum can bring progress in coordination where this is possible and still allow some healthy and necessary institutional competition to continue.

WHO STANDS TO GAIN?

The efficiency gains from having a more developed and competitive global financial system are likely to be substantial, at least for the more advanced countries of the world economy. Based on neoclassical growth theory, however, the greatest benefits from internationally mobile capital should be enjoyed by emerging markets. Free international capital mobility allows the world's savings to seek out the best investment opportunities, that is, the investment projects with the highest rate of return. Since less developed countries should have ample opportunity to adopt existing tech-

nologies, they should be the ones offering the highest rates of return. All other factors equal, persistent current account deficits in developing countries that are financed by net capital inflows should in this context be a way to achieve faster economic convergence across countries. However, this idealized and long-term positive state is not necessarily what is observed in practice.

In the eyes of investors, the United States is apparently the world's greatest "emerging market."

In reality, institutional differences across countries are so large as to often dwarf the excess returns envisioned by neoclassical growth theorists. One of the key lessons of the Asian crisis was that a massive inflow of foreign capital into economies with weak financial systems risks being squandered on projects with low rates of return, sometimes fuelling real-estate bubbles rather than productive investment. The short-term nature of a large portion of that capital also tends to weaken the link to the long-term growth potential of the capital-importing economies. Foreign investors with a relatively short-term investment horizon are more likely to take short-term movements in interest rates and exchange rates into consideration, rather than an economy's long-term growth potential, when determining where to put their savings.

The last few years are particularly illustrative of how different short-term expected rates of return can be from what is predicted by neoclassical growth theory. The sum total of all current account surpluses in the world can be said to represent excess savings in search of investment projects elsewhere. In the late 1990s, the United States absorbed as much as two-thirds of these flows. Its high level of economic development and its role as a technological leader would suggest that the United States should not be able to offer as high a return on investment as emerging markets. Investors have been of a different opinion, pouring capital into the economy on a scale that has put a persistent upward pressure on the dollar and financed an ever widening current account deficit. In the eyes of investors, the United States is apparently the world's greatest "emerging market."

Whether the U.S. economic expansion will eventually turn sour remains to be seen, but the very perception by foreign investors that U.S. assets offer a better rate of return nevertheless suggests that a number of institutional factors—including the effectiveness of the domestic financial sector—play an important role in determining the actual rate of return on investment. This also raises the question of how much emerging markets with weak institutions actually benefit from the globalization of finance. To benefit, emerging markets need long-term capital, rather than the volatile portfolio flows that they have mostly received. But such long-term flows are more sensitive to country risk (for instance, interpreted as the enforceability of contracts with respect to sovereigns also in the presence of systemic financial crisis). In order to make all emerging markets benefit from globalization, efforts to set minimum standards for the international financial architecture need to focus on how such country risk can be reduced and on ways to promote long-term capital flows that are more conducive to development.

CONCLUSIONS

The overall success of the global economy in recent decades is partially the result of increased globalization. However, recurring crises indicate that there is much scope for improving the international financial architecture. Although there is no set rule as to how such progress will be made, one can argue that there is some optimal balance between international regulatory harmonization and institutional competition that will yield the best results. A fine balance must be maintained between the creative forces of institutional competition and excessive transaction costs.

Recurring crises indicate that there is much scope for improving the international financial architecture.

Cooperation and coordination between the United States and the EU is vital. The difficulty in yielding national sovereignty in this area is visible enough within the EU itself, which, despite the creation of a common currency, has refrained from creating a common financial regulatory and supervisory agency. Merger attempts in the financial sector often turn out to be regulatory nightmares, which slow the pace of healthy financial sector consolidation. The increasingly integrated global financial system needs a more consistent approach to how it is to be regulated and supervised, but this realization will need to be more readily accepted by national governments.



Notes

¹ For example, see Bank for International Settlements, *A Review of Financial Market Events in Autumn 1998* (Basel, Switzerland: Committee on the Global Financial System, 1999); and *International Capital Markets* (Washington, DC: International Monetary Fund, 1999).

² For example, see Gordon C. Rausser, "Fueling the Research Engine," *California Monthly*, vol. 109, April 1999 (available: http://www.alumni.berkeley.edu/monthly/monthly_index/apr_99/research.html).

³ R. Rees and E. Kessner, "Regulation and efficiency in European insurance markets," *Economic Policy*, vol. 14, no. 29, 1999.

⁴ M. Goldstein, "The Case for an International Banking Standard," *Policy Analyses in International Economics*, no. 47 (Washington, D.C.: Institute for International Economics, 1997).

⁵ See B. Eichengreen, *Toward a New International Financial Architecture* (Washington, D.C.: Institute for International Economics, 1999), pp. 40–42.

⁶ For more information, see Bank for International Settlements (online: www.bis.org).

⁷ See A. Steinherr, *Derivatives: The Wild Beast of Finance* (New York: Wiley, 2000), ch. 2.

⁸ Financial Stability Forum (online: <http://www.fsforum.org/About/Home.html>).

Evolving Institutions and Transatlantic Relations
**Interview with Thomas R. Pickering:
Preserving Centers of Sovereignty**

Thomas R. Pickering is perhaps the most distinguished and respected career diplomat in the U.S. Department of State. He holds the personal rank of Career Ambassador, the highest in the U.S. Foreign Service. He has served as ambassador to six countries and the United Nations, and is currently Under Secretary of State for Political Affairs. Ambassador Pickering has a distant cousin who was another notable public servant: his ancestor Timothy Pickering served successively as Postmaster General, Secretary of War, and Secretary of State under George Washington and John Adams. Tonya Ugoretz interviewed Ambassador Pickering in his office at the State Department on August 2, 2000.

EUROPEAN UNION

Seton Hall Journal of Diplomacy and International Relations: U.S. officials have been uniform in their praise for the continued integration of Europe. Are there limits, however, to that support? Specifically, should there be some concern that the transatlantic relationship may not always be as rosy as it is today, and that the consolidation and strengthening of Europe might conceivably pose a threat to the United States someday, whether economic, political, or military?

Ambassador Pickering: This is an interesting question because we are a federation ourselves. We look back historically at a close partnership with Europe, and we see long-term advantages in Europe being able to operate on a broad basis as an economy and as a polity which is whole and free.

Clearly, there have always been drawbacks. There's no free lunch in diplomacy, and one of the drawbacks has been that Europe is creating a huge economy and a huge political structure that would be a competitor.

Most of us tend to believe that competition is good, and that competition fairly handled—and that's an important qualification—can generally stimulate more efficiency in production, greater efforts to improve products, lower prices for consumers, and all those benefits that, as believers in competition, we shouldn't be afraid of. We obviously should do everything we can to ensure that it's fair.

Since the 1940s, we've had a view that areas of freer trade, whether they were customs unions or free trade areas, are normally in our interest unless, as a result of increasing trade within the area, the area found ways to become more protectionist. So we have always tried to insist that as Europe becomes increasingly more open with

respect to its trade, it doesn't turn around and become more closed to the outside world. We and the developing countries, under the Lomé agreement that has been renewed for many years, have worked hard with the Europeans to promote a wider expanse of free trade, even as they were moving in the trading area to improve their own activities.

There is a corollary to that: if, in fact, a Europe that is becoming increasingly whole and free becomes more protectionist, more closed off, more hidden from the rest of the world, either in political or in economic terms, then obviously it has disadvantages. The good news is that Europe as a collection of democratic states has followed the opposite course. So I think we have high confidence that Europe *is* on the right track, that European integration makes sense, and that the downsides, which at this point are more potential than real, can be avoided.

We have high confidence that Europe is on the right track.

And, we have always watched those downsides very carefully. It isn't a kind of mindless U.S. support for *anything* that Europe wants to do. After all, we have trade problems with Europe these days—bananas and beef among them. But, it is a set of circumstances which allows us both to negotiate and, within the World Trade Organization, to carry forward our trading relationship on a basis where our relative negotiating leverage is not undermined, where we have an equal standing with the Europeans, and where we can defend our own interests. Our effort should be to resolve trade disputes as early as possible and as creatively as possible—not to perpetuate them or to cascade in measures of retaliation without a solution. The measures of retaliation are designed as temporary to provide a basis for solution.

SHJDIR: You mentioned the United States' history as a federation, and the European Union right now is philosophically going through a state of flux, not sure of what its eventual form will be. Do you have an opinion on what form it might ultimately take?

Pickering: I think it would be a stretch to try to shoehorn Europe into one stereotype or another. That said, Europe has shown an increasing tendency, in my view, to come together in a serious way while preserving centers of sovereignty. It has the hallmarks of a very close federation in some areas. For example, each part of Europe is responsible for the admission of aliens to the whole, and still retains the attributes of real sovereignty in terms of issues of war and peace that are decided in capitals by governments and parliaments rather than by Brussels. But, I think the general direction has been toward greater unity while still according respect for the states involved.

The old issues of sovereignty always play here. In fact, states, as a sovereign act, have turned over certain authority to regional and international bodies or to groups of states. This is in full exercise of sovereignty, and the notion that this is a diminution of sovereignty could only have application if they were forcibly required to enter these arrangements rather than doing so of their own free will. I reject the notion that there

is a kind of inevitable, irrevocable diminution of state sovereignty rather than a continuous exercise of state sovereignty in the better interest of each state's own people through broader cooperation.

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Sovereignty isn't something that is static. It's a concept that is used to promote the interests of the state. And, if the interests of the state are promoted by greater cooperation, then that in itself speaks well of the use of the concept rather than in some way demeaning it.

SHJDIR: The issue of sovereignty and international organizations is a very interesting one.

Pickering: It's a little philosophical, and, in some ways, we are in danger of putting the concept ahead of its meaning.

SHJDIR: Some might say that it's a slippery slope, that you can't give up just a little bit of sovereignty . . .

Pickering: Well, you always have the right to withdraw from treaties; however, you have to pay for it. Going in, you get benefits; coming out, you subtract benefits for the people you made the deal with, and therefore it costs you. But, that's the general deal you have to undertake.

NATO'S ERRANT BOMB

SHJDIR: In June 1999, you had the unenviable task of traveling to a very heated Beijing, standing before the Chinese government, and explaining to them what went wrong in the NATO bombing of the Chinese embassy in Belgrade. What was that like for you?

Pickering: On all of these kinds of occasions, I think it is extremely important that you are as truthful and straightforward as you can be in a discussion, in order to maintain reasonable relations with another country. Obviously, the fact that we had, through a terrible mistake, bombed and destroyed a Chinese embassy was not an enviable arrangement to have to set out. But, we did a lot of research, and I was ably supported by a very strong interagency team. We reviewed all the files, and we all agreed on precisely what had happened. We explained our findings to the Chinese in extensive detail, along with maps and diagrams, to let them know precisely where the mistake had originated and why it had happened. And, of course, we talked to them about what we were going to do to avoid a mistake like that in the future. Then, we discussed the question of compensation, which was later pursued by other people.

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So, it was in that sense straightforward. The Chinese were not pleased to hear what happened, but I believe that despite the fact that they had said we weren't credible—which I think was said for public consumption at home—they responded to the discussion we had with serious questions. That was helpful because we were then engaged in explaining clearly what had happened, and at the end of the day, they had all of their questions answered, even if they didn't want to admit that in public. One of the most interesting things was that within hours of my discussion with them, they published for their own people in their own news agency a very thorough summary of what I had said, very accurate in all of its detail.

IMAGE AND ENGAGEMENT

SHJDIR: Is anti-American sentiment abroad, and particularly in Europe, rising? How does the State Department view reports of this? Is it dismissed as jealousy on the part of other states, or is it considered a real problem that in the long term could affect our standing?

Pickering: I don't think that overall our polling data confirm a strong shift in public opinion in a serious way. Many of these reports are anecdotal, though there is evidence from time to time of individual actions that clearly either smacked of or seemed to be the result of anti-Americanism in a prejudicial sense. But, we do take press statements, public criticisms, and the like as matters of serious concern. It's important to analyze the reasons behind such sentiments, and we've come to a number of conclusions. One is that it's hard to be the biggest fellow on the block. Also, there may be ways in which we can change and improve the tone and content of our diplomacy to deal with these sensitive issues. I don't think anybody is contemplating any fundamental changes in our policies, which are basically reflective of our own interests and how we can best promote them. But, I do think that increasingly, we have tried to adopt a more consultative relationship with foreign countries, talking to them before we make decisions rather than just telling them what our decisions are.

Increasingly, we have tried to adopt a more consultative relationship with foreign countries, talking to them before we make decisions rather than just telling them what our decisions are.

It is interesting that in some countries, running against the United States is somewhat more popular than it used to be. There are any number of reasons why that might be the case. Some of it may have to do with local politics; some with national jealousies and competition; and, some may just be areas where people have significant differences. I don't think that we'll ever see a world where everyone's views are totally harmonized with our own, nor do I think we should expect to. What we should expect is a world in which we can converse extensively with people, many of whom

will have different views; gain an understanding of why they see things differently; and, find areas where it *is* possible to harmonize our views on critical questions—that's what diplomacy is for. We also need to be increasingly able to explain in public what our views are based on and why. That's one of the challenges of the new century and of the changing diplomatic arena, as the subject matter we deal with and the focus of our foreign policy adapts to new developments.

SHJDIR: On the subject of the public, many Americans, including many members of Congress, do not seem to accept the basic premise that U.S. engagement abroad is vital to our interests at home. Why is the State Department losing the public relations war?

Pickering: That is a puzzling and difficult question because it reflects on something that is very important to us, our budgets, and the kind of financial support we dedicate to conduct and support diplomacy. I don't think that the United States as a whole, again in terms of polling data, tends to believe that foreign policy is unimportant, or that people don't agree in the main with the general tenets of U.S. foreign policy. I think that Americans do have a tendency, as citizens of a continental country, to look inward more than they look outward. Americans generally are much more concerned with the politics of their own futures and with so-called pocketbook issues, such as the domestic economy, education, health care, and their children's future. These are sensitive and important issues. Our problem is that we haven't made people aware of an important connection: more new jobs every year are dependent on our ability to conduct foreign trade, and both exports and imports fuel and fund those jobs. We need Americans to be aware that we are in an increasingly interconnected world, not only in security terms, but also in heavily economic terms. And the world of information and ideas, of course, swirls around us.

This is a huge task, and we attempt, particularly under the leadership of this Secretary, to make these views increasingly known. I don't give a speech without, in one way or another, attempting to focus at least in part on this set of issues, and many others do so as well. I also think that, with all due respect, there is a tendency for the Congress—particularly the present Congress, which is often quite conservative in its foreign affairs views—to undervalue the public's foreign policy views. Even though the public may have elected them on the basis of their domestic ideas, members of Congress should take into account the fact that poll after poll reflects that that same public is traditionally supportive of foreign policy engagement and our foreign policy interests. It may be that in terms of the priority placed on those issues, they fall down below number five or number ten on most people's lists, but they're nevertheless there. So, we have to find a way also of getting people to understand that one set of views on domestic issues doesn't necessarily translate to the same set of views in foreign policy terms. I hope we can continue to promote our vital interests abroad and convey to the American people that what we do overseas can have a real and positive impact on their lives.

Obviously, the more the public is interested in these things and talks to the Congress, the greater the opportunity that we may find a reasonable solution to this problem. But at the moment, it seems as if many in the Congress never saw a foreign aid measure they didn't want to cut. We are at a stage where we are six to eight weeks from the end of the fiscal year without a budget, and we're looking at proposals for very significant cuts. Many of them, in my view, are not just irresponsible but disastrous in terms of American interests. The fact that some of these cuts directly affect their own states tells me that we have to do more to get those economic impacts across to members of Congress. The other day I was in touch with a congressman who was about to take action which would have stopped the Visa Waiver pilot program without recognizing that his own state does a half-billion dollars worth of tourism business, that tourism is a \$100 billion industry in the United States, and that a huge number of people in his own state—eighty thousand—are employed in this industry. In fact, the steps he was considering would have cut down seriously on the number of people who visit the United States and spend money in his state.

U.S. FOREIGN POLICY

SHJDIR: What do you believe is at stake in the U.S. presidential election in terms of foreign policy?

Pickering: I think that, in general, presidential elections rarely focus on foreign policy issues. Rather, as I said earlier, their most important questions focus on the continental preoccupations of the pocketbook—education, health, and social issues, and a lot of other frequently discussed issues that are out there, from abortion to gun control. I think that as much as I'd like to see foreign policy issues highlighted, the fact that they are generally not a serious bone of contention in presidential elections helps enormously to establish continuity in foreign policy and to strengthen continued support for the policies that have been put together, from one administration to the next. Most of these policies have a bipartisan history, with the support of successive administrations. As a result, our policies don't change with the vicissitudes of election because neither the problems, nor the bases for making decisions on them, are going to change much from election to election.

Members of Congress should take into account that poll after poll reflects that the public is traditionally supportive of foreign policy engagement and our foreign policy interests.

I think that, as a rule of thumb, each administration probably has up to five significant foreign policy issues over eight years on which it could make a real change. Most administrations rarely if ever do that; I mean real sweeping changes. Jimmy Carter, for instance, introduced human rights as a major consideration. Subsequent

to that you had the introduction of environmental concerns in American foreign policy. Those kinds of changes don't occur with great rapidity.

This continuity helps us to assure foreign governments, who watch elections in the United States very carefully, that they shouldn't expect a cataclysmic shift in American policy. But, we here at the State Department do go through a transition. We do what you might call the government equivalent of spring housecleaning. We review all our policies, we write papers for the incoming administration, and we sort out where we are and how we got here. It's a kind of legacy and educational exercise. It's good in that it gives people a sense not only that they can end one term, begin another, and maintain continuity, but also that they have sat down and looked at the issues.





Evolving Institutions and Transatlantic Relations
America's Economic Partnership with Europe

by Stuart E. Eizenstat

The United States and the European Union (EU) have a long tradition of working together to improve the global economy, ease tension in sensitive regions, and liberalize barriers to trade and investment to the benefit of our economies. The steady growth of our bilateral economic relationship has been one of the great success stories of the last fifty years. Beginning with the Marshall Plan, which protected Western Europe from Soviet aggression by helping it rebuild its industrial base, the relationship has grown into a multifaceted partnership in which the United States and the EU are each other's largest source of trade and investment, as well as close allies in their relationship with the rest of the world. Our markets are compatible, our business people are outward looking, and we feel comfortable selling and investing in each other's markets.

From any perspective, the depth of our economic relationship is impressive. The EU will purchase more than \$250 billion in goods and services from the United States this year, one-fifth of our total exports. For its part, the EU's exports to our country have risen almost 70 percent over the past five years. An ever growing variety of products come to us from the other side of the Atlantic, offering consumers wider choices, quality products, lower prices, and a rising real standard of living.

Nearly 45 percent of U.S. investment overseas is in EU countries. EU investment in the United States has doubled in the past five years. Its firms are an increasingly common part of our economic landscape. One in twelve manufacturing jobs in the United States is in a European-owned factory. Within the last two years, EU companies have acquired the third largest U.S. automaker, the eighth largest U.S. bank, and the number three manufacturer of Internet browsers.

Our growing economic bonds have helped make us close partners in world diplomacy. Repeatedly, it has been shown that when the United States and Europe act in concert, their common challenges can be overcome. We cooperated militarily through NATO in the Gulf War and are cooperating in Kosovo and Bosnia. We joined to help rebuild the Balkans through the Southeast Europe Stability Pact, encouraging the transition to free markets as well as accomplishing postconflict reconstruction and sharing the view that increased trade rather than permanent aid is the best path to sustainable prosperity and stability. The presence of the secretary-general of the European Council at the summit talks at Sharm el-Sheikh, at the height of the recent crisis in the Middle East, was evidence of the EU's heightened visibility on the world scene

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and presaged even greater collaboration between our countries in the future. The continued strength and success of our transatlantic partnership cannot be taken for granted, however, and will require continued attention to the disputes that arise between us.

FOUNDATIONS OF THE RELATIONSHIP

Today's U.S.-EU economic relationship had its genesis in the European integration movement that followed the destruction of World War II. Postwar European statesmen such as Konrad Adenaur of West Germany, Ernest Bevan of the United Kingdom, Paul-Henri Spaak of Belgium, and Alcide de Gasperi of Italy, looking back at the experience of the 1920s and 1930s, recognized how cycles of trade protection and retaliation such as the Smoot-Hawley tariff in the United States and the European colonial preference schemes had cut world trade by nearly 70 percent, contributing greatly to the unemployment and social tensions that fueled a new World War. They agreed that the surest road to permanent peace and security in Europe was through gradual economic union. Practical visionaries such as Jean Monnet and Robert Schuman of France and Ludwig Erhard of West Germany saw that if a modest start could be made pooling national production of coal and steel, it would be possible to build success upon success until Europe one day could have one external tariff, one central bank, one currency, and one market. Their dreams have been realized.

The continued strength and success of our transatlantic partnership cannot be taken for granted.

The reduction of trade barriers was one of the factors in the victory of the free market system over its communist rival. While Western Europe was forming a Common Market of free democracies, the former Soviet Union did little to encourage its satellite nations to trade with one another. When the peoples of Eastern Europe looked west and saw the growing disparity between their living standards and those of people in states that did engage in such trade, it gave them an additional incentive to break free from totalitarian rule. One measure of the success of the EU's model in improving living standards on the Continent is the fact that 13 states, mostly in Eastern and Central Europe and the Balkans, are currently applying to join it.

The United States, looking back on its own history, has always encouraged the economic and strategic integration of Europe. The newest political dimension of our relationship was a deliberate act of strategy on our part. In the early 1990s, as Europe was freeing itself from its cold war burdens, several officials of the Clinton administration, myself included, realized that the foundation of the alliance could no longer be the fight against Soviet communism. We also saw that, just as Europe's integration had proceeded faster and further than predicted, so too were technology and business enterprise quickly creating a single global market for many products and services. We

concluded that the United States had to anchor its relationship with Europe in a new agenda and a broader foreign policy vision, so that the two could pursue multiple goals together.

Out of this change in strategy came the New Transatlantic Agenda, which I helped negotiate with the EU. President Clinton and the leaders of Europe signed it in 1995. The agenda staked out four broad areas for U.S.-EU collaboration:

1. the promotion of stability and democracy throughout the world;
2. the coordination of rapid responses to global challenges such as international terrorism, environmental concerns, and infectious diseases;
3. the expansion of world and bilateral trade; and
4. the promotion of more people-to-people contacts through commerce and education.

Many recent initiatives, such as the response to the Asian financial crisis, debt forgiveness for highly indebted poor countries, and accelerated vaccination programs against HIV, malaria, and tuberculosis are grounded on these goals. The agenda created a Senior Level Group to permit more regular high-level exchange, try to resolve difficult bilateral disputes, and help prepare the biannual EU-U.S. summits.

PARTNERS AND COMPETITORS

It is necessary to recognize that the United States and EU are competitors as well as partners. In every region of the world and in many important sectors—agriculture, steel, and aircraft manufacture, to name just a few—our firms and theirs vie for customers, markets, and contracts. Numerous government-level disputes grow out of this contest, occasionally causing tension. But while some believe that EU growth and prosperity can only come at the expense of American economic progress, the U.S. government's position is quite the opposite. We do not view the relationship as a zero-sum game. We firmly believe that the combined strength of Europe and the United States is great enough to allow both of us to pursue a global agenda that supports democracy and open, competitive markets in all countries. The stronger Europe is, the better a partner she can be. In that spirit, I would like to refer to some of the current issues in the trade area and consider how we might avoid others in the future.

The Framework. Trade disputes are a thorn in the side of the U.S.-EU relationship. Negotiations to liberalize world trade in agricultural goods and services began earlier this year, as mandated at the end of the Uruguay Round; but Washington and Brussels are still trying to reach agreement on an agenda for a broader negotiating round. Clear rulings by World Trade Organization (WTO) dispute panels, designed to free up trade in specific goods such as beef and bananas, have been resisted by the EU, authorizing retaliation measures by the United States. Efforts by the EU to retain special tax treatment for its exporters while challenging similar treatment for U.S. exporters have also led to confrontation.

To understand these developments requires some historical background. Beginning with the founding of the General Agreement on Tariffs and Trade (GATT) and

proceeding through seven subsequent negotiating rounds, the world's states were able to dramatically reduce external tariffs and other restrictions on trade. In the Uruguay Round, which began in the late 1980s, they fundamentally reformed, updated, and modernized the GATT to meet the demands of a more integrated, technologically advanced world. The result was the WTO, which took over from GATT in 1995. The GATT had consisted of a limited set of essentially unenforceable rules that applied differently to different groups of member countries. The WTO has a more comprehensive set of rules, arrived at by consensus, that apply to all members, with a limited number of special rules for less developed countries.

Most observers would agree that the crown jewel of the WTO structure is its dispute-settlement provision. While a procedure for settling disputes existed under the GATT, there were no fixed timetables, rulings were easier to ignore, and cases dragged on for a long time, often inconclusively. The WTO has a more structured process with more clearly defined stages. Panels of independent experts make initial decisions. There is a timetable for settling disputes, with flexible deadlines at various stages of the procedure. Perhaps most significantly, the losing country cannot block adoption of the ruling, as was possible under GATT. WTO rulings are automatically adopted unless there is a consensus to reject them. As a result, in order for a country to block a ruling, it must persuade all the other members—including its adversary in the case—to share its view. If a member state ignores a ruling, there is an allowance for retaliatory tariffs against the offender's trade. The amount is generally determined by the value of trade lost because of the trade-distorting practice.

The United States, looking back on its own history, has always encouraged the economic and strategic integration of Europe.

Areas of Dispute. The dispute over banana imports is a useful illustration of the dispute-settlement provision at work. Europe is the world's largest market for bananas, importing some 4.5 million metric tons a year. In 1993, the EU established an import licensing system for the product that favored producing countries that are former European colonies and excluded a number of developing-country producers whose bananas are marketed by U.S. private enterprise. Under the GATT's pre-Uruguay Round dispute-resolution procedures, the EU ignored two GATT panel reports that recommended changes to the licensing system. A more recent ruling by the WTO's Disputes Settlement Body also has not been implemented. Under the rules of the WTO, if a country persists in enforcing a trade practice that a panel has found to be inconsistent with WTO rules, the state whose trade is adversely affected is entitled to retaliate by suspending existing trade concessions up to the amount by which its trade has been damaged. Availing itself of this right, the United States has imposed steeply higher tariffs on European exports up to \$191 million, the level of damages established by the WTO.

While suspending tariff concessions has not resulted in rapid changes to the EU's banana regime, it has brought about pressure that has focused the EU on resolving this problem and demonstrated that it is in the EU's own interest to do so. In addition, the WTO procedure provided a framework for ultimately achieving a fairer EU banana regime than ever would have been possible absent those procedures.

The combined strength of Europe and the United States is great enough to allow both of us to pursue a global agenda that supports democracy and open, competitive markets in all countries.

I hope this will also be the case with U.S. exports of beef. For the past thirteen years, and again in defiance of GATT and WTO rulings, the EU has banned U.S. beef exports that have been treated with hormones designed to shorten the time in which cattle reach the weight necessary for marketing. The EU justifies its action on safety grounds, even though the World Health Organization, the United Nations, and the Laming Committee, a scientific body convened by the European Economic Community itself, has declared hormone-treated beef safe for human consumption. As a result of the failure of the EU to comply with WTO panel rulings, the United States has been authorized to impose additional retaliatory tariffs of \$117 million.

An especially serious current trade dispute arises from the WTO's ruling concerning the method by which U.S. laws exclude from taxation certain income of subsidiaries of U.S. corporations that engage in foreign sales. The WTO has ruled that this exclusion is prohibited because it is an export subsidy. The United States generally employs a "worldwide" tax system, based on the residence of the taxpayer, whereby income of a firm incorporated in the United States is subject to tax even though it is earned from foreign sources. For foreign sales corporations (FSCs), however, it developed a tax system that emulates certain aspects of the "territorial" system, used by many EU countries, whereby only income earned within each country's borders is subject to tax. It is recognized that the territorial system can result in exports' being taxed more favorably than comparable domestic transactions. The FSC was thus created to level, at least partially, this playing field.

FSC stood without challenge for some fifteen years. Nonetheless, beginning in 1998, the EU successfully challenged it in the WTO, which ruled that it was an illegal export subsidy. Notwithstanding our strong disagreement, the United States has worked hard to respond to this decision by developing bipartisan legislation repealing FSC and creating a new system that meets the main objections lodged by the EU. The legislation was passed in Congress and was signed by President Clinton in November 2000. Under the new system, the general rule is that no income earned from sales of goods abroad is subject to tax, whether or not the income flows through an FSC. Because our government refrains from imposing a tax in the first place, rather than forgoing revenue otherwise due to it, the system is not a subsidy under the test outlined in the WTO decision. The new system is also not contingent upon exporting. It

defines the “extraterritorial income” exempted from taxation without regard to whether a good is manufactured within or without the United States. The European Commission, the arm of the EU with competence for trade matters, has stated that it will challenge our new system on the grounds that it is still an export subsidy. We regret that the European Commission has not accepted this legislation.

Nonetheless, following recent bilateral negotiations, the European Commission agreed to pursue a review of the WTO consistency of this legislation first, and to hold in abeyance the imposition of retaliatory sanctions until the outcome of that review is known. I have been reassured that the commission will adhere to this agreement. The stakes involved in this dispute are very high. As of this writing, the EU has threatened to impose sanctions in excess of \$4 billion a year, an amount that the United States strongly contests. But they will now suspend efforts to retaliate while we seek to persuade the WTO that our new legislation is consistent with its requirements. For this reason, it is critical that we continue working together to resolve our differences in a creative and consultative manner.

In the area of agriculture, EU policies do not fully recognize the fact that the mechanization of farming has made it possible for countries to grow more food with far less labor. Fully half the total EU budget—\$7 billion a year—is used for subsidy payments to the 2 percent of its population engaged in farming. This bloated subsidy protects inefficient farming, hurts farmers who are competitive with foreign producers, drains government budgets, and limits the choices available to European consumers of food and fiber.

While the WTO meeting in Seattle in December 1999 failed to launch a new round of trade talks, negotiations on agriculture matters were already on the table, having been mandated by the Uruguay Round. The agenda proposed by our government last summer would reduce substantial disparities in tariff levels between countries. It would attempt to eliminate export subsidies through annual reduction commitments and to cap trade-distorting domestic price support payments as a percentage of total agricultural production. Our proposal is not Draconian. It would allow governments to provide an adequate income safety net, research funds for new agricultural technology, and disaster relief aid. But it would go a long way toward allowing trade in agricultural goods to be determined not by artificial government payments but by the quality of the product and the efficiency of the producer. Our proposal has the support of most of the food-exporting countries outside the EU.

Another area of dispute concerns hushkits: advanced technology mufflers installed to reduce aircraft noise from jet engines. They have been installed in U.S.-manufactured aircraft to meet internationally recognized noise standards set by the International Civil Aviation Organization (ICAO), a UN specialized agency that establishes uniform international aviation standards so that airlines and aircraft makers do not have to meet different standards in different countries.

In 1999, the EU adopted a regulation restricting the operation within its borders of aircraft modified to meet the most stringent international aircraft noise standards with noise-suppression technology, including hushkits. Because it relies on a carefully

chosen design standard that excludes U.S.-manufactured aircraft engines, rather than a nondiscriminatory performance standard, the regulation not only damages the effectiveness of global standards for aircraft noise established in the ICAO, with serious repercussions for the U.S. and EU aerospace industries, but also does little or nothing to reduce noise around European airports. U.S. industry has estimated the regulation's economic harm to the United States at more than \$2 billion, including depreciation in the value of the U.S. fleet and lost sales of hushkits and replacement engines.

States need to be more creative in how they solve the complex and difficult issues they encounter with their trading partners.

In response to the EU's regulation, and after extensive but unsuccessful diplomatic efforts to resolve the dispute, the United States filed a complaint in the ICAO, charging that the proposed ban was a violation of the International Convention on Civil Aviation. We seek to compel EU member states to honor their international obligations related to ICAO noise standards, and ultimately to indefinitely suspend or withdraw the hushkit regulation.

Sanctions is another area in which the United States and the EU often work together but sometimes have had to reconcile differing views. Properly designed, implemented, and applied as a part of a coherent strategy, economic sanctions are a valuable tool for enforcing international norms of behavior and protecting our national interests. In fashioning sanctions legislation, it is essential that the Congress give our president broad flexibility, including the authority to waive some of its provisions, as accords his role as the constitutional implementer of U.S. foreign policy. For example, the president must be able to trade off sanctions measures to get international consensus for actions that may have a greater impact upon the sanctioned country, or even directly negotiate with that country to modify its behavior.

Unilateral sanctions, although they can be resorted to at times to defend national values, are rarely effective. Especially in an era of globalization, sanctions must have broad multilateral support, as the ability of any one country to unilaterally deny key economic benefits to a particular country is limited. The United States and the EU have often cooperated to make sanctions effective by giving them a multilateral dimension. This approach did much to end the apartheid regime in South Africa at the start of the 1990s and helped bring about democratic change in the Republic of Yugoslavia just this year.

At other times, we have had to reconcile differing views. I was in charge of negotiations with the EU and with Russia over investments in Iran under the Iran and Libya Sanctions Act of 1996. In that case, sanctions, if imposed, could have badly impaired diplomatic and economic relations. But by using the project-by-project waiver authority, which Congress wisely built into that act, we were able to gain agreement from the EU to strengthen controls on high-tech exports to Iran and to aggressively fight terrorism. The Russians agreed to adopt, for the first time, a catch-all export

control system. These actions, which directly furthered the basic goal of the Sanctions Act, would have been impossible without presidential waiver authority.

This authority was also the key to my two extended negotiations with the EU over sanctions on Cuba. The Helms-Burton Act of 1996 requires certain measures with respect to firms that invest in property that was confiscated by the Cuban government. The first negotiation, in 1997, resulted in the EU's taking a common position on Cuba that explicitly tied closer relations to that island to improvement in its record of protecting human rights and extending democracy. It cleared the way for a series of presidential waivers of sanctions under Title III of the Helms-Burton Act, which so far have been exercised every six months by President Clinton as the EU, for its part, has renewed and implemented its common position. In the second negotiation, in 1998, the EU acknowledged for the first time that Cuba had confiscated U.S. property in contravention of international law. It agreed to keep its member governments from officially supporting investments by EU companies in the illegally expropriated property and to refrain from giving export and investment subsidies to companies engaged in making such investments. This could be much more effective in restraining such investments than the provisions of Title IV of Helms-Burton, which deny U.S. entry visas to executives of such companies and their families.

However, implementation of this agreement is contingent on our obtaining waiver authority from the Congress under Title IV. The sanctions bill, which passed the last Congress, does restrict the president's ability to initiate certain new sanctions on agricultural and medical products and to maintain existing ones by requiring congressional approval of such actions. The Agricultural Appropriations Act of 2000 permits exports of U.S. farm and medical products to sanctions countries, including Cuba, but constrains the potential trade opportunities by barring our government and limiting U.S. private banks from providing financial assistance to facilitate such exports.

RECOMMENDATIONS

I do not wish to overemphasize the amount of conflict in our trade with the EU. The vast bulk of our commerce is conflict-free. But given the hundreds of billions of dollars that flow between our two economies each year, friction is inevitable. Moreover, there are continuing good-faith efforts to solve the problems that exist, and some solid agreements have been produced. Last July, for example, the two sides negotiated what is known as the Safe Harbor agreement on privacy laws. The EU had been concerned that the privacy rights of its citizens might be compromised if U.S.-based firms were given access to the consumer data compiled by their European subsidiaries. It argued that privacy protections are not as rigorous on our side of the Atlantic. An example would be patient diagnosis and treatment information that guides research on new pharmaceuticals. U.S. industries argued that this information was necessary to their work and had been collected in compliance with EU regulations. Through negotiation, a compromise was reached allowing U.S. firms to access this data, provided that in using it they adhere to seven important principles that the EU has adopted designed to safeguard data about consumers.

An analysis of these disputes makes it clear that in operating under a rules-based system, states need to be more creative in how they solve the complex and difficult issues they encounter with their trading partners.

First, they should not bring disputes to the WTO that might be better resolved by other means. Tax matters such as FSC, for example, are more suitably handled in the Organization for Economic Cooperation and Development (OECD), which has already launched a useful effort to deal with harmful tax competition issues. Time and again, the OECD has proven itself to be the forum in which these issues can best be addressed.

Secondly, we must make use of existing bilateral and multilateral mechanisms to find an earlier solution to some of these problems. All too often, trade partners take actions that exacerbate tensions that could have been avoided by prior consultation. Our “early warning system” that is supposed to identify such problems before they become full-scale disputes needs to be expanded and improved. We should use the U.S.-EU summit process more effectively to resolve trade disputes that cross into other policy areas. We have already used such mechanisms to mitigate EU concerns over unilateral U.S.-EU sanctions and to try to diffuse tensions regarding trade in genetically modified organisms. The Safe Harbor agreement, discussed above, was reached at last July’s U.S.-EU summit.

We must not lose sight of the overall economic and political relationship that the United States and the EU have worked so hard to build and that has provided such enormous benefits to our economies and our peoples.

Thirdly, we need to involve the private sector to a greater degree in efforts to resolve trade issues. I worked with the late secretary of commerce Ron Brown to develop the Transatlantic Business Dialogue, which brings together both governments and private-sector CEOs to try to reduce obstacles to trade. It has helped to an unprecedented degree to set a common agenda between the EU and the United States. We should also make increased use of other groups such as the Transatlantic Environment, Consumer and Labor Dialogues.

Lastly, we need always to advocate the basic principles by which modern societies should conduct their economic relations: fair and transparent trade rules; respect for international commitments; the protection of core labor standards and the environment; and the reliance on scientific principles, not political considerations, as the basis for environmental, health, and safety decisions. More broadly, we must not lose sight of the overall economic and political relationship that the United States and the EU have worked so hard to build and that has provided such enormous benefits to our economies and our peoples in the past several decades.

Looking to the future, the United States and Europe will have to cooperate even more to strengthen their relationships with the developing world. The labor force in all our countries is aging, and our birth rates are comparatively low. Over the next 25

years, almost all of the world's population growth, as well as most of its productivity growth, will occur in the developing world. In the past, we were interested in development for humanitarian reasons, or to strengthen democratic institutions against foreign threats. It is now also a matter of cultivating customers for our goods and services.

The United States and Europe have made historic strides together. We still have a ways to go in our own relationship and in adjusting to the realities of the new global and demographic era. The continued success of our relationship will require political as well as economic leadership, cooperation and good will, diligent work, and hard bargaining. On a foundation of mutual respect and shared success, I am very hopeful we can meet the challenges that confront us both.



Expanding Europe's Security

Europe's Common Foreign and Security Policy

by Sir David Hannay

The European Union (EU) is making steady if slow progress toward building a common foreign and security policy. It is a work of years, if not of decades. It will remain for the foreseeable future, like the EU itself, an unusual hybrid creature that does many things in common but that does not submerge the member states' separate identities or their ultimate responsibility for their own security.

The creation of a common EU policy in these areas could affect transatlantic relations to an important extent. Whether it will be a source of division and friction within the Western alliance or will significantly strengthen it is as yet unclear. Therefore, it is important to understand what is at stake and what needs to be done if the second, and highly desirable, outcome is to be achieved and the first avoided.

BACKGROUND

Attempts to build a common foreign and security policy for Europe are not new. They began as long ago as 1970 and have, over the years, resulted in a considerable unification of members' diplomatic actions, particularly in multilateral organizations such as the United Nations. But it has not been easy to move on beyond purely declamatory actions—such as the adoption of communiqués and of common positions on UN resolutions—to the concerted use of all the instruments of foreign policy, loosely known as the projection of power. All too often, unity on paper has led to no effective action. Henry Kissinger's well-known jibe, "But whom do I telephone when I want a decision?" is revealing of the divided counsels within the union. Progress toward a common foreign and security policy has been much slower and pursued more hesitantly than the EU's achievements in other fields, such as the establishment of a customs union and then a single market, the creation of a single currency, and the union's emergence as a trade policy superpower. In the security field, attempts to build up the Western European Union, which groups together most of NATO's European members, led to much talk but also to much frustration with the eventual lack of concrete results.

A number of things have changed in the last few years. First, the member states have become conscious of the fact that as they do more things in common, external policies that remain separate are an anomaly. This is even more the case as the capacity

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of any member state, even the larger ones, to pursue effectively a national foreign policy different from that of its partners is steadily eroded. Secondly, the failure to maximize resources and to unify policy instruments is undermining the capacity of member states to protect and to further their external interests and those of their citizens—the object of any foreign policy worthy of the name. The crises in Bosnia and Kosovo brought this reality home all too clearly. Europeans may be spending 60 percent as much as the United States on their security, but they certainly are not getting 60 percent of the latter's punching weight for it.

The failure to maximize resources and to unify policy instruments is undermining the capacity of member states to protect and to further their external interests.

As Europe moves toward enlargement to include most, if not all, of the countries of Central, Eastern, and Southern Europe, these anomalies become more glaring and less tolerable. Moreover, it has become ever clearer that the post-cold war world is not living up to its early promise of peace, security, and prosperity worldwide. There is a need for Europe to work effectively together to achieve these objectives.

STEPS TOWARD A COMMON POLICY

The European response to this challenge came first in the Treaties of Maastricht (1991) and Amsterdam (1997), when the EU's member states considerably strengthened the overall framework for developing common external policies. A particularly important step was taken in 1999 when, following ratifications of the Amsterdam treaty, the EU appointed Javier Solana, a former Spanish foreign minister and the secretary-general of NATO during the Kosovo crisis, to a new post as high representative for common foreign and security policy. Since then, Solana has been building a structure that, while short of a fully fledged foreign ministry, is still well beyond the skeletal secretariat that existed beforehand. At the same time, the British and French governments came together in a new effort to breathe life into the security dimension of the union's work. It is important that their effort is taking place within the overall framework of NATO, which should bury definitively the old feud over whether European security cooperation need in some way be seen as a challenge to NATO solidarity. The target has been set by the European Union of making it possible to muster a force of sixty thousand to carry out tasks that NATO as a whole might choose not to undertake: above all those in the fields of peacekeeping and humanitarian action. All this work is due to come forward for decision at the European Council in Nice, France, in December 2000.

COOPERATION AND COMPETITION

What has all this got to do with U.S. foreign policy? Quite a lot, I would suggest. The end of the cold war was both a triumph for the NATO alliance and a huge relief

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to all its members. But what it was *not* was the end of history predicted by some scholars. In the 1990s, we discovered that the alliance remains as crucial a part of the external policies of NATO members on both sides of the Atlantic as it ever was, even as its purposes have shifted to meet the needs of the times and its operating methods have been adapted to new threats and challenges. We have also discovered that the world is still full of threats to international peace and stability, which have the potential to damage our own security and prosperity. While old familiar threats have receded, there are many new challenges that are global in nature—threats from drugs, terrorism, the degradation of the environment, the spread of weapons of mass destruction—which challenge the capacity of any single state to deal with them and require global action if they are to be mastered. The ability of Europeans and Americans to work together will be a critical determinant of whether the challenges of this continually expanding agenda can be successfully met.

If one looks only at the European region and its periphery, there are a considerable number of cases where the United States and Europe must work together if we are to secure our common objectives. The lesson of the early years in Bosnia is ever present to remind us of the capacity we have to get at cross-purposes, with neither of us achieving our objectives successfully. The foreign policy of the new incumbent in the Kremlin remains something of an enigma. But President Putin's stated aim of reversing the decline in Russia's international standing and influence is one that is bound to give rise to concerns as it develops. In the Balkans, we are heavily engaged in the frustrating but essential task of ensuring that ethnic disputes and nationalist pretensions do not again lead to conflict. In the Middle East, the prospects for peace hang by a thread, and both Americans and Europeans have a vested interest in ensuring that that thread does not break. The chaos in Africa, its poverty, and the threat of AIDS there are matters that cannot and must not simply be swept under the carpet. Neither Europe nor the United States has a particular national agenda to pursue there, but together, we have the potential to make a real difference in the lives of many people.

There are a considerable number of cases where the United States and Europe must work together if we are to secure our common objectives.

If we are to work successfully together, we will need to take full account of changes taking place on both sides of the Atlantic. The first priority is to ensure that we have the machinery to work together, to share information and analyses, and to thrash out differences of view before they break the surface and become matters of public contention. Otherwise, we risk turning what should be a series of joint ventures into a succession of petty squabbles. Do we now have that machinery? I rather doubt it. Of course, much can be achieved by adopting well-tried NATO procedures. But something more than that will be needed, and some direct link is likely to be required between U.S. foreign policy and Europe's emerging common external policies: a link

that enables both sides to take account of the other's views and priorities at every stage in the process.

Naturally, all this will not be achieved without some friction and some open spats. To believe otherwise is to risk appearing naïve and foolish. If one looks only at the field of trade policy, it is obvious that the United States and Europe—which are, and will remain, competitors as well as partners—are not going to see eye to eye on everything. We may settle bananas and Roquefort cheese, but inevitably something else will come along to spoil the party. Here, three points are vital. The first is to sustain the trade policy conflict-resolution mechanisms that emerged from the Uruguay Round¹ by respecting their rulings, however uncomfortable they are for one or the other. The second vital step is to launch without further delay a new Millennium Round of trade negotiations and to ensure that this time, the legitimate concerns of developing countries are not brushed aside. The third is to ensure that however many trade spats there are, we do not allow them to poison the atmosphere to an extent that undermines our shared foreign policy objectives.

No doubt, friction will extend beyond trade. It is no secret that there are deep concerns in Europe over the question of National Missile Defense, which will be high on the agenda of the new U.S. administration. Europeans are worried by developments that could leave them exposed to new threats while their U.S. partners are protected from them and that could trigger new variants of earlier arms races, undermining rather than strengthening international peace and stability. These concerns cannot just be dismissed: they must be addressed and discussed in depth before irreversible decisions are made. Europeans on their side must understand that it is not reasonable to ask the United States simply to accept increasing vulnerability to the missile capacity of a number of states whose intentions are a good deal less easy to predict than were those of old cold war adversaries. Nor is it in Europe's interest that the United States be vulnerable to those threats. The alliance had difficult debates in the early 1980s over the deployment of Pershing missiles and came through united and successful. There is no reason to think it cannot do so again.

The idea that the United States can somehow be left on the side of international instruments and agreements is as much anathema to Europe as it is to the United States.

One major, almost cultural difference will underlie many future discussions between Europe and the United States: our respective attitudes toward multilateral institutions and disciplines. In Washington, there is much hesitation and some hostility, the latter particularly in Congress, toward the UN, toward instruments such as the International Criminal Court, and toward obligations such as the Kyoto agreements on reducing environmental pollution. On the European side, there is no such hesitation and hostility. There is a very strong conviction that, however flawed these organizations and disciplines may be in their present form (we have few illusions about that), they are far better than the alternative of an international free-for-all. The re-

sponse to flaws and weaknesses in these institutions should therefore be to remedy and to strengthen them. But that can only be achieved if they enjoy the willing and active support of the United States and Europe. The idea that the United States can somehow be left on the side is as much anathema to Europe as it is to the United States. No one wishes to relive the experience of the League of Nations and the tragedy of the United States' self-exclusion from it.

CONCLUSION

Successive U.S. administrations since President Truman's have all encouraged Europe to achieve greater unity of purpose and action. The results have been beneficial, I believe, to both Americans and Europeans. U.S. companies benefit from the single market as much as their European counterparts do. The prosperity and stability of Western Europe was a key factor in concluding the cold war successfully. The future enlargement of the European Union to include the countries of Central, Eastern, and Southern Europe will make a vital contribution to healing the wounds of the past and to securing foreign policy objectives that are common to us all. So it should not be beyond us to ensure that a new European common foreign and security policy marks a step along that road of successful partnership. But its continued progress, like that of the transatlantic partnership itself, will need to be worked at, not just taken for granted.



Notes

¹ The trade agreement negotiated under the General Agreement on Tariffs and Trade that, among other things, created the World Trade Organization.

Expanding Europe's Security

Russia's Euro-Atlantic Puzzle

by Sergei Smolnikov

Russia's Vladimir Putin has inherited a complicated set of relations with the majority of European states and leading Western institutions, including the European Union (EU) and the North Atlantic Treaty Organization (NATO). However paradoxical it might seem to Russian politicians shaped by the zero-sum Soviet era, the very existence and extension of NATO is compatible with the long-term security interests of Russia itself. This is the case because those security interests, which are challenged by unconventional and internal rather than conventional and external threats, are unlikely to be secured by Russia without joint European and American assistance.

Russia and the West have serious decisions to make as concerns their future relations. In particular, Russia's instinctive policy to consider the West as threatening and something to be opposed may be of use domestically, but in the long term it will undermine rather than enhance Russia's strategic and economic interests.

CHALLENGES FROM WITHOUT

The extent to which Russia is affected by the policies of ever integrating Europe cannot be underestimated. Moscow's foreign policy must deal with the following four post-cold war realities.

1. The Central and East European (CEE) countries have been distancing themselves from Russia both politically and economically. Many of these states have explicitly identified their desire to join NATO (as some, like Poland, Hungary, and the Czech Republic did in 1999 despite strong Russian opposition) and the European Union.
2. Further enlargement of NATO might eventually reach all the way to the Baltic States and Ukraine.
3. NATO and the European Union are moving forward as the core of a new European order. Since Russia is not a member of either of these organizations, it does not have the right to vote in them. The UN Security Council and the Organization for Security and Cooperation in Europe (OSCE), where Russia does have the right to vote, seem comparatively marginalized.
4. There is a progressive descent of Russia into the Third World in its growing discrepancy with the rest of Europe in terms of average life

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expectancy, rule of law, prosperity, social justice, and economic efficiency. It is conceivable, that, if exacerbated, these trends may multiply the unconventional security challenges in Europe. In fact, it is largely Western assistance that has so far been preventing Russia from becoming a failing state or an international outcast.

The geopolitical implications of the European challenge mean a likely expansion of the West up to the border with the Russian Federation, primarily Christian Orthodox and implicitly anti-Western. In the next several years, some of the former republics of the USSR, such as Estonia, as well as Moscow's former allies through the Warsaw Pact and the Council for Mutual Economic Assistance, like Poland, Hungary, and the Czech Republic, will join the EU.¹ In total, ten CEE countries are scheduled to enter the EU in the forthcoming ten to fifteen years.

Economically, the expansion of the EU is likely to result in much tougher competition for Russian exporters to these markets, "with big contracts going to Western suppliers, not Eastern ones . . . toughening visa regimes and customs services, making it harder for Russians to go and do business there."² This is already the case in the Czech Republic, which introduced a visa regime for Russian tourists and businessmen in June 2000.

The UN Security Council and the OSCE, where Russia has a vote, seem marginalized compared to NATO and the EU.

Politically, CEE countries and the Baltic States are striving to distance themselves from the post-Soviet space, including Russia. This desire rests upon their recent historic experience, national security interests, and deep political transformation. If the Baltic states join the EU, Russian foreign policy will have to adjust to deal with a large number of sensitive issues, particularly given that a large portion of ethnic Russians will become European citizens and given the strategic location of the Kaliningrad region adjacent to the Baltic States.

Moreover, one day the EU's eastern enlargement may bring about the issue of Ukraine's incorporation. This would be a substantial blow to the geopolitical plans of the pan-Slavic imperial protagonists among Russia's elites, who have been enhancing their influence over Moscow's politics for the last two years.

With the Eurounion's plans to obtain independent military-operational functions by 2003, the Moscow-EU rivalry over Ukraine may be transformed into a new, potentially militant challenge to all-European security in the forthcoming years. Ukraine, due to its geostrategic location, occupies a key place in the politics of all states in the subregion, including the adjacent CEE countries and, naturally, Russia. Meanwhile, the policies of Warsaw, Prague, and Budapest, with regard to Ukraine, are targeted at neutralizing factors that might prompt Ukraine's "belarussization," a scenario that would most likely involve Kiev's joining military agreements signed between Moscow and Minsk.

As scholar Margarita Balmaceda points out, "In its turn a strong military pres-

ence by Russia in Ukraine would mean that de facto Russia's military fortified border is shifted closer to the CEE states. This would change their geopolitical status once again.³ Since Poland, Hungary, and the Czech Republic all seek to prevent Russo-Ukrainian relations from developing into a scenario that would be unfavorable for these CEE countries, they have instead attempted to promote Ukraine's engagement in different projects of subregional cooperation, such as the Visegrad Group or the Central European Initiative.

These projects do not involve Russia's participation. It may be assumed that with EU membership the above-mentioned countries, and particularly Poland, will reinforce pressure on their West European partners in order to enhance the EU's influence on Kiev's politics. It is quite possible that a more assertive EU policy aimed at integrating Ukraine into the Euroland may emerge as an important instrument to firmly establish the EU as a regional superpower.

CHALLENGES FROM WITHIN

Vladimir Putin emerged on the political stage at a time when Russia's international role was fading. Judging by his *Strong State Doctrine*,⁴ he is seriously concerned with finding effective means to revitalize Russia's great-power status and regain respect from the West. A more assertive Russian foreign policy appears, therefore, to be considered by the Kremlin as a vital tool to meet these ambitious objectives. The question is: how will the Kremlin's new assertiveness unfold?

When analyzing the possible priorities and nature of Putin's foreign policy, one should not overlook the changes that his election has already brought at home. In sum, Russia's internal policy has been marked by rather backward shifts. What Western politicians call an indiscriminate use of force by the Russian military in Chechnya put Moscow's membership in the Council of Europe in jeopardy. In 1999–2000, with political and societal shifts caused by the second war in Chechnya and Yeltsin fatigue, a noticeable change of elites has taken place in Russia. As a result, a younger generation of bureaucrats, in particular from the security and military establishments, has taken over from the aged communist power-holders.

Some observers, such as the late St. Petersburg mayor Anatoly Sobchak, did link this transfer of power with the necessity for the new Russia to combat corruption, curtail criminality, secure the rule of law, and strengthen state institutions. Others—such as the widow of Andrei Sakharov, Yelena Bonner, and the leader of the liberal Yabloko party, Grigory Yavlinsky—perceive this trend rather as a threat to Russia's fragile democracy. They are afraid that a shift towards a disproportionate reinforcement of the state's police functions is fraught with the risk of suppression of the media and the political opposition. If a rebirth of Andropov-style authoritarianism eventually takes place in Russia, it may result in its ultimate degradation and international isolation.

The Kremlin can be seen to have two options in terms of foreign and security policy, laconically defined as *bandwagoning* and *balancing*.

The *bandwagoning* propensity derives from Russia's impoverished social and economic status, which implies a need for Western investment to modernize the economy and infrastructure. In this context, bandwagoning is a policy of accommodating the West to ensure a comprehensive engagement of its resources in a new round of Russian attempts to catch up with the First World. The proximity of a powerful and enlarging gravity zone of European states, concurrently perceived in Moscow as a counterbalance to the American hegemony, makes bandwagoning a plausible political option.

The *balancing* option stems from NATO's eastern enlargement. Its advancement to Russian borders—which is perceived in Moscow as a threat to Russian security—leads the Kremlin to attempt to contain NATO's enlargement and consolidation by all means possible.

The peculiarity of the challenges facing Moscow comes from the fact that the very Western alliance that Moscow seeks to balance is composed, in essence, of the same countries that the Kremlin seeks to bandwagon.

It is largely Western assistance that has so far been preventing Russia from becoming a failing state or an international outcast.

Given the asymmetry of European security and the distortion of its architecture, previously guaranteed by the concurrent existence of two strategic poles—the North Atlantic Alliance and the Warsaw Treaty Organization—the dissolution of the Warsaw Pact in 1991 prompted NATO to elaborate a new strategy for the alliance. In the meantime, Moscow has had to formulate new policy guidelines in regard to NATO, taking into account the newly emerged geopolitical realities.

NATO'S NEIGHBOR

The North Atlantic Alliance, as Rob de Wijk accurately points out, was initially “established to oppose the Soviet Union and was also intended to discourage a repeat of the German threat. Should NATO be conceived as a classic alliance, the organization can be abolished because it has already achieved its goals.”⁵

The necessity therefore arose for NATO strategists to work out new alliance doctrines and stipulate a new *raison d'être*, which was found in targeting NATO towards conflict prevention and control. Its activity has therefore been targeted toward anticipating potential conflicts and preventing them from breaking out, or striving to suppress conflicts once they have broken out by means of joint international action within the alliance.⁶

The peace reinforcement function of NATO presupposes a fundamental change in international perceptions of intervention for humanitarian reasons, which was not envisaged in the UN Charter half a century ago. This causes serious disagreements between the Kremlin and the West, since Russian politicians are committed to a tra-

ditional interpretation of military intervention. In contrast to this position, Javier Solana, then NATO's secretary-general, insisted that the alliance "has to have the opportunity on a case by case basis to act, if necessary, under their own decision, always with an appropriate legal base, and always within the spirit of the Charter." However, he asserted, "there may be a moment in which it is necessary to act for humanitarian reasons, when a UN Security Council resolution will not be necessary or will not be even appropriate because the UN charter does not contemplate humanitarian acts."⁷

NATO's eastward expansion has important economic and strategic implications for Russia. The focus on geopolitical implications often overlooks the fact that Russia will suffer economically as a result of its complete displacement from the arms market in CEE. It is a question not only of NATO's newcomers but also of other countries in the region that previously were Moscow's military clients. Thus, in March 1999, Slovakia refused Russian deliveries of the S-300 surface-to-air missile systems worth \$140 million to compensate Russia's debt to Bratislava. It will be U.S. and European companies, belonging to NATO member states, that will modernize the weapons of the new members of the alliance.

In addition, the Euro-Atlantic arms market has entered a stage of mega-alliances and internal liberalization. Russia's isolation from these developments means lost profits estimated at billions of dollars. The overall order package of Russia's arms export organization *Rosvooruzheniye* until 2004 is estimated at \$8.4 billion.⁸ These orders are placed primarily with China, India, and some other Third World countries.

Geopolitically, this means a shift of Russia's most advanced technological sector toward the Third World. Since the Russian military industrial complex does not have an opportunity to realize its material interests in the West, it has become NATO's normative adversary. Moreover, Russia's isolation from military-technological integration within the Euro-Atlantic alliance is fraught with the growth of technological backwardness in advanced sectors of Russian industry. This may result in marginalization of Russia's position in one of the few sectors where Russia may legitimately claim great-power status. Therefore, the most rational means to preserve Russia's top international ranking may be found in cohesion with NATO and integration into the Euro-Atlantic space both politically and military-economically.

The most rational means to preserve Russia's international ranking may be found in cohesion with NATO and integration into the Euro-Atlantic space.

While the Yeltsin establishment seemed to neglect this kind of logic, Putin appears to have taken these deliberations into account when making his famous pro-NATO statement⁹ and advancing Moscow's recent initiative to set up a joint Euro-Russian-NATO nonstrategic missile defense.¹⁰ The pragmatist in Putin seems to understand that Russia lacks the resources necessary to confront NATO in every respect dealing with the issues of European security. Therefore, one may expect new accom-

modating initiatives on the Kremlin's part. At the same time, however, Russia attempts to manipulate its role in international events, and in particular the situation in Yugoslavia, in an opportunistic manner.

THE BALKANS

Moscow tried to balance the West by supporting the Milosevic regime, which was not only morally wrong but, in this author's view, badly calculated. These balancing tactics, aimed at containing Western hegemony in the Balkans, took the form of a formal disagreement with the West on the ways and means for settling the Kosovo issue. On the face of it, this disagreement might seem like a dispute caused by Russia's traditionalist support of Serbia, which dates back to the beginning of the nineteenth century and is based on ethnic and confessional solidarity.

But Moscow's officially reserved attitude toward democratic opposition to Milosevic while granting a \$102 million loan to Belgrade's regime, as well as hosting Serb defense minister Dragoljub Ojdanic when having an international obligation to detain him, could not but disclose that the Kremlin supported the Milosevic regime because of its anti-Western stance rather than its Christian Orthodox solidarity. (As an aside, the Serbian Orthodox Church has pronounced itself rather as anti-Milosevic.¹¹)

NATO's de-Americanization would automatically result in a multiplication of risks to Russia's own security.

Moscow's approach in fact turned out to be shortsighted. Investing too much of Russia's international image into support of the international outcast will be counterproductive for its long-term interests in the Balkans. It would have been much better for Russia to demonstrate its solidarity with Serbian democrats, especially since their leaders' visit to Moscow in June 2000 to seek the Kremlin's moral support provided Moscow with such an opportunity.

The Kremlin failed to use another opportunity to up its international clout by acting slowly during the presidential election in Yugoslavia in September 2000. With all its intelligence resources and claimed superb expertise in the Balkans, Moscow failed to objectively assess the political situation in Yugoslavia in advance and was ineffective in catching up with its dynamics.¹²

It is interesting to note that Moscow's lack of solidarity with Washington on the use of military force to settle the Kosovo crisis earlier (autumn 1998–winter 1999) coincided with a temporary wobbling among NATO's European members in their commitment to do what was described as "the risky job of preparing an intervention force to stand by, in nearby Macedonia, should the ceasefire in Kosovo fail and international monitors there need rescuing."¹³

However, this regional conflict highlighted that without U.S. intervention, the Europeans are unable to independently provide for security on the Continent in the case of escalation of ethnic wars and other unconventional threats. Traditionally, since

the Brezhnev era, Moscow's policy occasionally has been aimed at splitting the Euro-Atlantic alliance along that line.

Now it appears that with the coming strategic consolidation of the EU, fueled by European Monetary Union and the Kosovo-reinforced European Security and Defense Identity (ESDI), and particularly with the provisional creation of a European rapid-reaction force outside NATO control, Europe may objectively become "emancipated" from U.S. guardianship. Moreover, Washington's plans to put forward its national missile defense could strategically "decouple" North America and Europe. As a result, in the next ten to fifteen years, Atlanticism (and its institutions) may be seriously diminished.

Many Russian strategic experts are proponents of the speedy de-Americanization of NATO. Conceptually, this idea is quite in line with the balance-of-power pattern, originated in former prime minister Yevgeny Primakov's doctrine of a multipolar world, and reportedly adopted by Putin in his foreign policy. The essence of this doctrine is to encourage the creation of power centers, or coalitions, in opposition to American hegemony. Sergei Ivanov, head of the Russian Security Council under Putin, is by his own words an adherent of the multipolar world concept.

If new Russian power-holders adopt opportunism as a policy concept to deal with NATO, they may in principle increase Russia's clout via skillfully designed war-mongering gestures. The Kosovo conflict definitely provided Russia, as some Western experts assumed, with an opportunity "to humiliate NATO."¹⁴ Thus, the adventurous march of Russian troops into Kosovo on June 12, 1999, to seize Pristina's airport ahead of NATO was primarily designed to take the alliance down a peg or two.

According to some Western analysts, to this end the Kremlin might have chosen among the following options: bringing Yugoslavia into the Russia-Belarus Slavic union; encouraging Russian volunteers to go to Yugoslavia as soldiers or as human shields; or helping Milosevic to bargain with or resist NATO more effectively by sharing Russian intelligence or sending weapons.¹⁵

It is not inconceivable that if the new Russian leadership advances these techniques, they—under similar circumstances—might effectively ruin NATO's solidarity, as Europe would certainly try to avoid the slightest risk of a military confrontation with Russia. Moreover, Russia seems not to suffer from the West's "Mogadishu syndrome," which implies that in genuine democracies public opinion cannot tolerate human losses. Unfortunately, it is in the deep cultural roots of Russian civilization for its power holders not to consider an individual's life as a top value.

THE NEED FOR A NEW PERSPECTIVE

It should be noted that Russia's new military doctrine identifies NATO's expansion as a potential threat to Russian security and lowers the threshold for possible use of nuclear weapons by Russia. This doctrine is intended to deter a new round of NATO expansion, particularly the inclusion of the three Baltic states. At the same time, the doctrine intends to increase Russia's international clout through reinforcement of its military muscle. Strategically, the Kremlin seems to seek to limit U.S.

influence over European politics and thereby cut into what Moscow perceives as U.S. hegemony in international affairs.

This policy at the same time is designed to provide Russia with a more stable zone of geopolitical influence and to deter the expansion of Western culture in Eurasia. However, an anti-American opportunism has some powerful normative limits for its implementation as the sole focus of the Kremlin's new foreign policy.

There are several reasons for this. First, a change in the current balance of power could in principle destabilize the economic situation in Russia and thereby cut short the incumbent regime. Secondly, if Russia ceases to be recognized by Washington as a reliable partner, it risks being deprived of its privileged political and economic status with the West—for example, retaining membership in the G-8, obtaining new IMF loans, re-scheduling Russia's debt to the Paris Club of official creditors, deferring ex-Soviet debt, and gaining Western financial and economic assistance critical for Russia's (and the world's) national security, like loose nukes and civil nuclear safety. Lastly, though it is not publicly recognized by the Kremlin, purposefully contributing to a decrease in U.S. hegemonic power would not necessarily be in the interests of national security: in the past hegemonic decline has led to global war.

Even if not implemented in full, the Kremlin's opportunism during the crisis in Yugoslavia put Russia's relations with the West at their lowest point since the end of the cold war. This policy was a threat to the very existence of Yeltsin's regime. First, it normatively led to a strengthening of the communists' position on the eve of the parliamentary election in Russia. Secondly, it put Russia in danger of crossing the red line in its relations with the West, which could lead to a halt in Western assistance to the Russian regime or even to Russia's being dragged into a war.

Having realized these dangers, Yeltsin pushed aside Primakov and prevented the Primakov-controlled Ministry of Foreign Affairs from negotiating on the Kosovo settlement, and instead appointed former prime minister Victor Chernomyrdin (a moderate representative of peace-prone gas industrialists) as a special envoy. It was this substitution that eventually enabled a more stable Russian involvement in Yugoslavia.

In short, NATO's de-Americanization would automatically result in a multiplication of risks to Russia's own security. The rescue operation by Norway and Britain to save the crew of the Russian submarine *Kursk* in August 2000, against the background of the failure of earlier autonomous efforts by the Russian navy and reluctance to ask for help, has been perhaps the strongest public policy blow to the anti-NATO tactics so far nurtured by the Kremlin. Ordinary Russians were shocked by their government's slow reaction to offers of help from NATO and at the same time appreciated Western assistance.

As Christoph Bluth accurately notes, "the threats that Russia faces to its security and stability derive not from the West but from its own internal problems."¹⁶ In fact, not only is the West *not* the principal threat to Russia, but it is the principal source of stability and security even for Russia itself.¹⁷

One of the lessons that the Russian administration should learn from the *Kursk* accident is that Russian voters in general are no longer inclined to place the super-power ambitions of the Kremlin higher than the lives of their compatriots. However,

it seems almost inconceivable that the incumbent Russian elite, now under the sway of ex-KGB servicemen and the military, would suddenly stop its hackneyed anti-NATO stance and publicly acknowledge that NATO's existence is in the interest of Russian security. This is inconceivable precisely because the existence and expansion of NATO have so far effectively proved a ready justification for strengthening the military-industrial complex in Russia. Portraying NATO as a potential threat may again become a useful diversion if the domestic socioeconomic situation in Russia deteriorates further.

While Russian policy is still a question mark, a kind of bandwagoning with the European Union appears to be of new strategic value. It is interesting to note that the recent trend in Moscow's policy has been to portray NATO and the European Union as completely different "faces" of the West, as if they were composed of entirely different countries. Indeed, economically, the European Union is a major trading partner for Russia and other European countries of the former Soviet Union, accounting for 32 percent of Russia's trade. When combined with the CEE, this number rises to 44 percent.

The recent trend in Moscow's policy has been to portray NATO and the European Union as completely different "faces" of the West.

In both the Soviet and post-Soviet eras, Western Europe has been the primary foreign center of Russia's industrial modernization. It was also the key source of Russia's hard-currency export profits. However, in technical and economic as well as legal terms, the level of Russia's integration into Europe is extremely low and not comparable with indicators in Poland, Hungary, the Czech Republic, and other countries that have made EU membership their top political priority.

The Partnership and Cooperation Agreement signed in June 1994 by Russia and the EU did not set up a free-trade regime in bilateral commerce. Moreover, neither Russia nor the EU is genuinely interested in fully liberalizing their bilateral trade. The former is afraid that liberalization will result in eventual evaporation of Russian mid-tech industry as a result of an inflow of more competitive European goods. The latter fears that such a regime will damage its sensitive traditional industries, steel production in particular.¹⁸

For its part, since the collapse of the Soviet Union, the EU has appeared to be interested in a "limited" isolation of Russia from Europe and has favored a shifting of Moscow's foreign economic and political interests toward the Commonwealth of Independent States. At the same time, mostly as a result of lobbying by Germany under former chancellor Helmut Kohl and most recently by Finland, the EU has pursued a policy of assisting in moderate development of economic and political reforms in Russia. Though the EU seems to consider itself nowadays as a powerful independent player in world affairs, capable of dealing with Russia on its own, one should not overestimate the potential of any political and economic cohesion between Brussels

and Moscow in the future. Presented in some media sources as almost a breakthrough in bilateral relations,¹⁹ the EU-Russia summit held in Paris in October 2000 was focused on an energy deal between the two sides rather than on the creation of a hypothetical strategic nexus.

By all counts, conceptually, the EU seems to perceive Russia mainly as a source of potential danger to European economic, ecological, and military-political security. Therefore, it focuses its relations with Russia on protecting itself from any such damage. Characteristically, only when the risks of antagonizing Russia became apparent (as a result of growing hostility between Russia and the West during the Kosovo crisis) did Brussels approve the EU's Common Strategy for Russia on June 3, 1999. It called for increased cooperation on economic and political issues "from bringing Russia into the World Trade Organization and encouraging development of Russia's pipeline system to creating a stability pack for Kosovo."²⁰

As reasonably observed:

For all their talk of a "missing social dimension," European governments are still likely to take their cue from Washington when it comes to another bail-out for Russia. . . . The EU's own efforts have been mostly unimpressive. The most recent idea, \$500 m in food aid, has been a blatantly self-interested move by Europe's farm lobby. Most other EU aid so far has been technical advice, often not followed, and valuable chiefly to the well-paid Western consulting firms that deliver it.²¹

In the twenty-first century the EU-Russia rivalry may expand well beyond the CEE subregion to include the oil-rich countries of Central Asia and the Caucasus. The latter two regions are likely to be placed in a crosscutting zone of long-term European and Russian geoeconomic interests.

In the midterm, the geopolitical consequences of the Kremlin's balancing tactics through attempts to implicitly play Europe off against America, the ongoing orientation of military buildup against NATO, and strategy-lacking assertiveness might turn out to be counterproductive for Moscow for the purposes of enhancing Russia's international status on the European continent.

By and large, the West currently appears not to have any convincing policy alternative to its current policy of trying to avoid antagonizing its former foe. In the meantime, it looks as though Europe is inclined to react rather favorably to accommodating signs in Russia's new bandwagoning tactics, whereas U.S. policymakers are becoming increasingly alarmed by the Kremlin's domestic political stance and its balancing pattern abroad.

Unsure of how to proceed, the EU and the United States may eventually disagree on how to deal with Putin's Russia. The most dangerous scenario, however, will emerge if Brussels and Washington finally adopt radically different policy options with regard to the Kremlin. A new Western controversy over Russia will hardly contribute to making the entire world a more stable and secure place in the years to come.



Notes

- ¹ See "Bigger When?" *The Economist*, November 11, 2000, p. 75.
- ² See "A Wider European Union," *The Economist*, November 7, 1998, p. 15.
- ³ Margarita Balmaceda, "Rossiya-Ukraina-Vyshegradskaya gruppа: partnerstvo ili sopernichestvo," in *MEiMO*, 1997, no.10, p. 98.
- ⁴ See V. Putin, "Russia at the Turn of the Millennium" (available: http://www.government.gov.ru/english/statVP_engl_1.html).
- ⁵ Rob de Wijk, *NATO on the Brink of the New Millennium: The Battle for Consensus* (London: Brassey's, 1997), p.142.
- ⁶ *Ibid.*, p. 143.
- ⁷ A. Nicoll, "Cracks Still Appear in NATO's Collective Will for Air Strikes," *Financial Times*, October 9, 1998, p. 2.
- ⁸ Russian NTV, "Itogi" program, May 30, 1999.
- ⁹ Patrick E. Tyler, "Putin Sees Possibility of Russia in NATO," *International Herald Tribune*, March 6, 2000.
- ¹⁰ "Putin Proposes European Anti-Missile Shield, Agence France Press (Rome), June 5, 2000.
- ¹¹ CNN International, September 29, 2000.
- ¹² "Vladimir Putin Makes a Statement," *What Papers Say*, October 3, 2000; see also "Moskvu ne tuk ponyaly," *Segodnya*, October 3, 2000.
- ¹³ "NATO's Mid-Life Crisis," *The Economist*, December 12, 1998, p. 15.
- ¹⁴ *The Economist*, April 17, 1999, p. 62.
- ¹⁵ See *Ibid.*
- ¹⁶ Christoph Bluth, "The Post-Soviet Space and Europe," in *Security Dilemmas in Russia and Eurasia*, Roy Allison and Christoph Bluth, Eds. (London: Royal Institute of International Affairs, 1998), p. 332.
- ¹⁷ *Ibid.*
- ¹⁸ The EU implements restrictive import quotas on Russian steel. This policy ensures that the "European market is protected while the American market suffered" because the latter "remained the only place Russian exporters could direct their product in hopes of gaining a return. EU quotas thus played an important role in aggravating US-Russian economic relations on this issue." See Peter J. Stavrakis, *After the Fall: U.S.-Russian Relations in the Next Stage of Post-Soviet History* (Washington, D.C.: The Atlantic Council of the United States, 1998), p. 28.
- ¹⁹ See details in *Segodnya*, October 31, 2000.
- ²⁰ "Russia's Peace Prize: Closer Ties to the West," *Business Week*, July 5, 1999, p. 33.
- ²¹ "Of Commissars and Commissioners," *The Economist*, January 2, 1999, p. 46.

Perils of Presidential Transition

by Glenn P. Hastedt and Anthony J. Eksterowicz

The first months of a new presidency are a unique time in American politics. It is a period of great presidential activism, with appointments and policy initiatives announced on almost a daily basis. It is a “honeymoon” period, when the president’s relationships with Congress and the media are at least cordial if not deferential. It is a period when campaign promises come due and domestic politics are on everyone’s mind. It can also be a period of great frustration as newly elected presidents struggle with recalcitrant staffs and large, unfamiliar bureaucracies.

It is also a period in which foreign policy challenges and opportunities may arise that demand a presidential response. The extent to which a successful response is crafted heavily depends upon the planning and learning that takes place in advance, during the transition from one administration to another. This period, from the first Tuesday in November until January 20, lasts precisely eleven weeks.

The 2000 presidential election represents a unique challenge for transition efforts. Due to the uncertainty of the electoral vote, open transition efforts were highly criticized. For example, George W. Bush sought to create an image of leadership by openly discussing his possible Cabinet choices in the days immediately following the undecided election—discussions criticized by the media as premature.¹ What such criticism did not recognize, however, is that transition efforts in modern presidential campaigns begin well before Election Day.

The concern over presidential transitions is relatively new, and their consequences for the conduct of American foreign policy have gone largely unexamined. Far more attention is given to the impact of presidential personality, bureaucratic politics, and small-group decision-making procedures. To address this void in the literature, we examine the problems and pitfalls associated with modern presidential transitions as they specifically apply to the making of foreign policy. We argue that a three-part transition syndrome exists in the area of foreign policy that has serious consequences for the conduct of American diplomacy. We conclude by presenting lessons aimed at alleviating the problems encountered by modern presidential administrations in transition.

DIAGNOSING THE SYNDROME

Since 1935, when the Twentieth Amendment shortened the presidential transition period from sixteen to eleven weeks, there have been just six interparty transitions: the Eisenhower, Kennedy, Nixon, Carter, Reagan, and Clinton presidencies. If

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we concentrate upon modern administrations, that is, those that have approached this process in a systematic fashion, the number is reduced to four: Carter, Reagan, Bush, and Clinton. Of these, only three represent transitions from one party to another: Carter, Reagan, and Clinton.

What can we expect from a new president as he begins to construct a foreign policy? Richard Neustadt is one of the few scholars who has written on the perils facing incoming presidential administrations in their transition phase. He argues that regardless of their background, most first-term presidents and all interparty presidential successors will be new to the policy process at the presidential level. Thus, the presidents-elect are prone to be caught by surprise by events in the domestic or foreign policy realm. Secondly, presidents may face pressures to act in haste: a new president will be eager to show his capacity to act "presidential." Thirdly, most presidents will face the problem of hubris, or the feeling that they or their administration know best how to organize and respond to policy problems.²

Transition efforts in modern presidential campaigns begin well before Election Day.

These qualities of hubris, haste, and naïveté tend to produce a three-part transition syndrome in the area of foreign policy. First, key policy positions are adopted during the transition period on the basis of broad strategic principles or campaign themes before the realities of governing have a chance to replace the euphoria of victory. Secondly, desiring to separate itself from its predecessor, the incoming administration commits itself to deal with policies before it has established procedures for policy guidance, coordination, or implementation. Thirdly, the tendency to pursue foreign policy options with little regard for how the solution will be viewed in other countries is accentuated because the administration has yet to establish personal or bureaucratic relations with other states.

To see how this syndrome manifests itself in reality, we will examine how Presidents Carter, Reagan, and Clinton set foreign policy priorities and acted on them in the early days of their administrations.

THE CARTER ADMINISTRATION

The Mandate. Jimmy Carter did not have a strong claim to a presidential mandate. He received approximately 50 percent of the vote to Gerald Ford's 48 percent, and 297 electoral votes to Ford's 241. But he did have a Democratic majority in both houses of Congress. In addition, he had an 80 percent public approval rating at the time of his inauguration.³ Carter campaigned as a Washington outsider pledging to clean up the mess in the nation's capital. Yet, to be effective in terms of policy, he had to work within the confines of Washington's political culture.

The Transition. Carter was the first modern president to think systematically about his transition. As early as the summer of 1976, he diverted financial resources from

his campaign to a transition effort under the direction of Jack Watson, who then assembled a staff of approximately fifty people. One of Watson's responsibilities was to compile inventories on personnel, known as the Talent Inventory Program.⁴ There was a downside to this early action, however: it created tension between the transition organization and the campaign organization under the direction of Hamilton Jordan. As the power struggle ensued, Jordan began to win and the effort that Watson oversaw, namely, the systematic search for personnel, suffered. In the end, Carter appointed campaign people to White House positions. The recognition of the importance of advanced planning came into conflict with the need to win a presidential campaign.⁵

Hubris, haste, and naïveté tend to produce a three-part transition syndrome in the area of foreign policy.

The relationship between the incoming and outgoing presidents was, at the outset, quite cold. When the Ford staff attempted to give their counterparts advice and information, it fell on deaf ears.⁶ The hubris that Neustadt identifies was probably at work here. There was also the problem of naïveté in the Carter administration. This Georgian who had campaigned as an outsider had no prior understanding of the inner workings of Congress, and his staff had problems dealing with the modern reform-minded Congress in particular. Executive/legislative relationships were strained, and as a result, there was a considerable learning curve.⁷ This was attributable in part to the new president's propensity to appoint young and inexperienced Georgian outsiders and campaign workers to White House staff positions.

Policy Priority: The Panama Canal Treaty. Carter's first foreign policy initiative, and the subject of his National Security Council's initial Presidential Review Memorandum,⁸ was the decision to conclude a Panama Canal Treaty. Just days after the inauguration, on January 27, 1977, the Policy Review Committee met and recommended that a new treaty be negotiated "in good faith and rapidly."⁹ In the campaign, the status of the Panama Canal had not been a major point in Carter's foreign policy critiques of the Nixon/Ford administrations. Instead, Carter had sounded a bipartisan theme, indicating that did not foresee relinquishing practical control of the Panama Canal Zone while at the same time endorsing the 1974 Kissinger framework for the future of the canal.

What changed Carter's position by the time he became president-elect? Zbigniew Brzezinski, his national security advisor, notes that during the transition, Carter decided that negotiating a new treaty would be an early priority of his new administration. The primary conceptual force behind this turnabout was the Commission on U.S.-Latin American Relations, which called for a new U.S. foreign policy toward the region that recognized Latin American states as active and independent participants in an interdependent world.¹⁰ The commission was quite persuasive: Robert Pastor notes that twenty-seven of its twenty-eight recommendations became administration policy.¹¹

In January, the report's chief architect, Sol Linowitz, was designated as Carter's special representative to the treaty negotiations, joining Ellsworth Bunker, who had been given this assignment in 1973. Linowitz was designated as a temporary ambassador with an appointment not to exceed six months. As such, his appointment was not put before the Senate for confirmation. This action, while legal and fitting given the speed with which the Carter administration wished to proceed, was politically naïve and created problems for the administration with the Senate. Some members objected to Linowitz's appointment because of his close ties with the Marine Midland bank. Senator Jesse Helms (R-NC), for example, argued that a major purpose of a new Panama Canal Treaty was to bail out American banks, which were concerned about Panama's willingness to repay loans.¹² Others were concerned that the six-month limit on Linowitz's tenure placed unwarranted pressure on American negotiators to conclude a treaty and would result in the United States' paying too high a price for a new agreement.¹³

The speed with which an agreement was reached created a serious problem for the Carter administration.

Also contributing to Carter's sudden embrace of a new Panama Canal treaty were personality factors and the worldviews of key appointees. Pastor, who served in the Carter administration as director of Latin American and Caribbean Affairs on the National Security Council (NSC), notes that Carter was "a man who delighted in trying to accomplish more than anyone thought possible."¹⁴ With respect to the Panama Canal treaties, Robert Strong adds that Carter was fully aware of the unpopularity of the initiative and that it was fully in keeping with his character to "take on the Panama treaties early in his administration, even though conventional wisdom in Washington had it that Panama was a second-term issue."¹⁵ Still other scholars, such as Richard Melanson, note that Carter deliberately took on hard issues and that for him, the Panama Canal treaties "symbolized not retreat or surrender but the generosity of a strong, confident nation."¹⁶

Negotiations with Panama stretched through the winter, spring, and summer of 1977. According to participants, Carter did not involve himself heavily in the negotiations. Bunker and Linowitz were given the authority to use their own judgment in resolving U.S.-Panamanian differences so long as the final treaty was "generous, fair, and appropriate."¹⁷ On August 9, one day before his appointment expired, Linowitz announced that an agreement had been reached on two new treaties.

One might expect that Linowitz's limited tenure would have prepared the Carter administration for a speedy resolution of the negotiations. It did not. In fact, the speed with which an agreement was reached created a serious problem for the Carter administration, as a disjuncture arose between process and product. Simply put, the administration was not prepared to engage Congress in a treaty ratification battle. Strong notes that once presented with the agreements, the administration's first move was to lobby for time. The prospect of defeat was very real, and senators were asked

not to commit themselves until the administration had a chance to lay out all of the facts.¹⁸

The Carter administration's lobbying effort was described as badly handled. Meetings with legislators and staffers were described as "one-way communications" with no effort to solicit advice on how to handle specific treaty issues. Rumors of deal making and vote buying were rampant, and in the end, one of the most powerful arguments put forward to support the treaty was the need to protect the president from an embarrassing defeat.

Panamanian politics also complicated the ratification process. The proposed new treaties met with opposition in Panama, where a national referendum on their acceptance was held. In an effort to garner additional support and minimize some of the unpalatable compromises that negotiators made, government officials publicly put forward interpretations of controversial treaty provisions that were at odds with those given by Bunker and Linowitz. Matters degenerated to the point that a meeting between Carter and Panama's military leader, General Omar Torrijos, was hastily arranged so that a common interpretation could be announced.

In its handling of the Panama Canal treaties, one can see the mutually reinforcing influence of haste, hubris, and naïveté. Carter moved with such speed that his administration was unprepared politically to put the treaty before Congress. Full of self-confidence and a sense of purpose after his electoral victory, he elevated to highest priority an issue that had received little press during the campaign, and in the process raised suspicions both in Washington and throughout the Americas over his intentions.

THE REAGAN ADMINISTRATION

The Mandate. Ronald Reagan won a three-way presidential race in 1980 with 51 percent of the popular vote and an impressive 489 electoral votes. The 97th Congress was split, however, with Democrats controlling the House 243 to 192 and Republicans controlling the Senate 53 to 47. President Reagan quickly claimed a mandate for governmental reform. Like his predecessor, he campaigned as a Washington outsider attacking "big government" entrenched in the nation's capital.

The Transition. The Reagan transition effort was distinguished by its willingness to learn from the Carter team's mistakes. Reagan's pretransition planning occurred earlier than Carter's and was systematically organized. In April 1980, candidate Reagan initiated an ambitious set of task forces to advise him on budget and foreign policies. What began as an operation of seventy quickly grew to 132. Think tanks like The Heritage Foundation also contributed to policy recommendations. To finance such a grand effort, Reagan campaign associates gathered contributions to a "Presidential Transition Trust." This trust raised \$1 million in addition to the monies obtained under the Presidential Transition Act, which specifically provides for presidential transition funding. All told, it was the most aggressive, early, and expensive transition effort, aimed at allowing the new president to hit the ground running. In the

end, approximately 1,500 people were involved in the Reagan transition,¹⁹ including pre- and postelection efforts.

During the transition, the relationship between Reagan and Carter was strained. When the two met after the election, Carter is said to have thought Reagan to be detached and uninterested in the issues that were discussed.²⁰ However, the relationship between Reagan's transition team and the Carter administration was generally positive. Advice was given, some of which was even taken. However, the Reagan team was, as a whole, more experienced in federal government than the Carter people had been.

Though its rhetoric was heated, the Reagan administration adopted a less activist foreign policy stance in its first months in office than had the Carter administration. Still, the influence of the transition was evident in its handling of two major inherited issues: the sale of the Airborne Warning and Control System (AWACS) to Saudi Arabia and U.S. policy toward El Salvador.

Policy Priority 1: AWACS. The first major foreign policy crisis for the new Reagan administration was a self-inflicted blow that had its roots in the transition process. At issue was an \$8.5 million arms sale to Saudi Arabia that involved tanker planes, fuel tanks, and sophisticated air-to-air missiles for 60 F-15 fighters, whose transfer Congress had already approved, and AWACS reconnaissance aircraft.

The basis for the arms deal had been laid in the last half of the Carter administration. In 1978, to overcome congressional opposition to the sale, the Carter administration agreed to place operational restrictions on the aircraft. Secretary of Defense Harold Brown told Congress in May 1978 that "Saudi Arabia has not requested nor do we intend to sell any other systems that would increase the range or enhance the ground attack capability of the F-15s."²¹

The fall of the shah of Iran and the Soviet invasion of Afghanistan changed the strategic picture in the Middle East and led to a new round of negotiations over arms sales between the Carter administration and Saudi Arabia. Saudi Arabia now requested that the F-15s be upgraded, and the Carter administration indicated that it was sympathetic to the plan.²² Locked in a tight reelection campaign and with sixty-eight senators urging him to reject the proposed arms sales, Carter got Saudi officials to withdraw their request until after the election.

One of Reagan's complaints about Carter's foreign policy had been its moralizing quality. That administration's arms sales policy very much fit this profile. By presidential directive, arms sales were not to be a normal part of American foreign policy, and dollar limits were set.²³ During the campaign, Reagan had opposed placing constraints on arms sales, and once elected, he directed the State Department to come up with a different policy. He placed Under Secretary of State James Buckley in charge of this task. Buckley presented the outlines in a May 1981 speech, and it became official policy in July, when the Reagan administration rescinded Carter's Presidential Directive 13 and put its own guidelines in place.²⁴

In its haste to act, and perhaps overconfident of the merits of its proposed change in policy, the Reagan administration did not wait for Buckley's review to be com-

pleted or for its findings to be approved before making decisions on specific arms sales. It approved several sales that the Carter administration had not acted upon, among them the proposed Saudi arms sale. During the transition, incoming secretary of state Alexander Haig met with Carter administration officials to talk about the Saudi sale. Press reports indicate that the latter offered to put the sale before a post-election lame duck session of Congress in order to save the new Reagan administration from having to deal with what was known to be an unpopular proposal.²⁵

Reagan's was the most aggressive, early, and expensive transition effort, aimed at allowing the new president to hit the ground running.

Nothing came of the Carter administration's offer, and on February 25, 1981, Reagan announced that he had approved the sale of additional weapons systems and refinements to Saudi Arabia. Michael Klare states that Reagan was surprised by the opposition with which his announcement was met.²⁶ Under pressure from lobbyists who argued that the proposed arms sale would provide Saudi Arabia with an offensive capability that threatened Israeli security, Reagan first scaled back the package and then announced on March 2 that he would put it on hold while his advisors took a closer look at the proposed sale.

In April, with Buckley's review still incomplete, the Reagan administration announced that it would supply Saudi Arabia not only with the requested upgrades but also with five AWACS, seven tankers, and twenty-two ground radar stations. Once again, Klare states, Reagan was caught off guard by the opposition to his proposal.²⁷ This view was echoed by many in the Senate, including supporters of the sale, who acknowledged that "the administration failed from the outset to recognize its repercussions."²⁸ So intense was the opposition that Reagan did not formally notify Congress of the arms sale until October.

Visible here are two hallmarks that we have identified of a foreign policy in transition: the new administration's haste to put its own stamp on policy and its unfamiliarity with the legislative environment. These factors exacted a toll on the administration's lobbying effort. Senator John Glenn, who voted against the arms sale, characterized the effort by remarking, "I know of no one on either side who does not think this has been grossly mishandled."²⁹ Ultimately, Congress approved the sale by a vote of 52 to 48. The argument was similar to that during the Panama Canal Treaty debate: to defeat Reagan on his first major foreign policy initiative could cripple U.S. foreign policy for the remainder of his term.

Reagan's embrace of the Saudi arms sale appears largely to have been based on two factors consistent with the transition syndrome. First, as mentioned above, was the new administration's desire to separate itself from the previous administration by quick action. Secondly, the Reagan administration's strategic outlook gave primacy to the need to bolster key U.S. allies and reestablish American leadership. Trying to explain the Reagan administration's position, Henry Kissinger argued that for it to

reject the AWACS sale “would have involved unacceptable costs in the relationship to Saudi Arabia.” Larry Speaks, Reagan’s press spokesman, stated that Reagan felt the sale was crucial given the “serious deterioration over the last year or so of security conditions in the Middle East and Persian Gulf region and the growing threats to our friends from the Soviets and other pressures.”³⁰

The emphasis on strategic principles as a guide to action came at the expense of attention to the political realities of the proposed arms sale. J. Brian Atwood, who lobbied Congress on behalf of the State Department during the Carter administration, observed that Reagan might not have realized the political costs of letting the opposition become so organized. Moreover, he observed, “a lot of those senators who reversed themselves under great pressure [to support the sale] have been embarrassed by this whole thing and they’re going to suffer the political consequences of it.”³¹ He predicted that in the future, they would be less willing to take risks for Reagan.³² At least as far as Middle East arms sales were concerned, Atwood’s prediction was more accurate than those that saw the foundation for a new foreign policy consensus: between 1983 and 1985, three arms sales packages to Lebanon had to be withdrawn due to congressional opposition, and a 1985 arms sale to Saudi Arabia was voted down in the House.

Lastly, it can be noted that the strategic arguments put forward in support of the arms sales failed to materialize in large part because the administration did not consider how the policy would be received abroad. U.S.-Israeli relations became strained. Prime Minister Menachem Begin told the State Department that the arms sale was a “serious threat” to his country’s security. Israel’s June 1981 raid on an Iraqi nuclear reactor and July 1981 raid on PLO headquarters in Beirut were described as undertaken in part to demonstrate Israel’s frustration with the Reagan administration’s efforts to attract the support of Arab states.³³ The arms sale did not have the intended effect of increasing U.S. influence with Saudi Arabia. In 1982, the Saudis rejected Secretary of Defense Casper Weinberger’s proposal that Saudi Arabia actively join in support of Reagan’s Middle East policy of promoting regional consensus opposed to the expansion of Soviet influence in the area. Moreover, Saudi leaders refused to enter into discussions on placing limits on how the AWACS might be used.³⁴

Policy Priority 2: El Salvador. Central America had gradually worked its way up the Carter administration’s foreign policy agenda. The NSC met five times between September 1978 and July 1979 to deal with the growing influence of the Sandinistas in Nicaragua. Relations between the new Sandinista government and the Carter administration had soured to the point that in his final days in office, Carter suspended the final installment of a \$75 million aid package and authorized a secret intelligence finding that permitted the CIA to support anti-Sandinista forces within Nicaragua.

Melanson observes that “presidential candidate Ronald Reagan may have lacked foreign policy experience but he surely did not lack opinions about America’s role in the world.”³⁵ And one area where Reagan had definite opinions was Latin America. As Pastor notes, “to Reagan, the Monroe Doctrine was a living guide of almost spiritual importance.”³⁶ One of the most important aspects of the transition syndrome is

that it allows such opinions to become the basis of policy without subjecting them to the usual give-and-take of the policymaking process.

Reagan's personal views were reinforced by a report issued by the Committee of Santa Fe in July 1980.³⁷ Formed to correct what it saw as the leftist bias of the Commission on U.S.-Latin American Relations, the group warned that the Caribbean was becoming a "Marxist-Leninist lake" and that developments throughout the region constituted a threat to U.S. security interests. The 1980 Republican platform endorsed the committee's analysis, using similar language to criticize Carter's Latin American policies. All five of its leading authors would join the new administration.

According to Rowland Evans and Robert Novak, Reagan "wanted an immediate plan on the disastrous unraveling of central authority in Central America."³⁸ El Salvador became the first test case for reversing the course of American foreign policy in the region. In February 1981, the State Department issued a White Paper based on documents that it considered authoritative, which indicated that in late 1980 the Soviet Union and Cuba had agreed to deliver tons of weapons to the Marxist-led guerrillas in El Salvador.

Spearheading the administration's new approach to Latin America was Secretary of State Haig, who saw the "morning of administrations" as the best time to send foreign policy signals, particularly to the Soviet Union.³⁹ Haig remarked on the risk taken by the Soviet Union in support of the revolutionaries. Describing the problem as one of "externally-managed and orchestrated interventionism," he promised to "deal with it at its source."⁴⁰

The White Paper sparked much controversy. On March 6, 1981, *New York Times* columnist Flora Lewis reported on the existence of a twenty-nine-page dissent paper drawn up in November 1980 by the NSC, State Department, Defense Department, and CIA personnel. In June, *The Washington Post* and *The Wall Street Journal* published articles criticizing the White Paper for questionable translations and misidentifying authorship on various articles. Most serious were questions about the Soviet Union's true role in supporting the guerrillas. Eventually, U.S. officials acknowledged that the administration had "overreacted" to the evidence in blaming the Soviet Union, but they defended the correctness of the White Paper's central conclusion: Cuba and Nicaragua did give aid to El Salvadoran guerrillas in November and December 1980.⁴¹

Congress also reacted with skepticism to the Reagan administration's attempt to redirect American foreign policy in Central America. The House Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs approved Reagan's request to shift additional military funding to El Salvador by a vote of eight to seven. The vote was a harbinger of the strained relationship that would settle in between the Reagan White House and Congress over Nicaragua. As Bruce Jentleson notes, the "virtual war between the branches" on Nicaragua was not typical of congressional-executive interactions during the Reagan administration, nor was it inevitable.⁴² It was the product of "highly counterproductive strategies both sides opted for."

Lastly, this attempt to reverse American foreign policy did not reflect the full reality of what was transpiring in El Salvador. The problem was not simply that of a

government challenged by left-wing guerrillas, but of an authoritarian government under siege from both the Left and the Right. From a military point of view, the greater threat came from the Right, with the leftist guerrillas' having been defeated in a January 1981 offensive. Rightist forces interpreted the singular focus on the leftist challenge as a statement of support for their position. Roberto D'Aubuisson, a right-wing leader, told the press that based on his conversations with Reagan administration officials, the United States "would not be bothered by a takeover." The State Department quickly moved to counter this interpretation of U.S. foreign policy but the White House was less firm, stating, "We don't have a view on that."⁴³

One can see all the aspects of the foreign policy transition syndrome at work here. Spurred by Haig's conviction that time was of the essence, the newly formed Reagan administration moved so quickly on El Salvador that it disregarded facts and confidently expected that its word would carry the day. When this did not happen, the administration found itself locked in the first phase of a long-running battle with Congress over control of U.S. policy toward Latin America.

THE CLINTON ADMINISTRATION

The Mandate. President Clinton received 43.3 percent of the popular vote to George Bush's 37.7 percent and Ross Perot's 19 percent. The electoral victory was larger, with Clinton's receiving 370 electoral votes to Bush's 168. This was an election with a disillusioned electorate, and while Clinton claimed a mandate for change, the numbers belied much of that claim, as did his relatively low personal popularity ratings for a new president. The Clinton congressional coattails were nonexistent. Ten House seats were lost in the 1992 election, leaving the new president with 258 Democrats in the House and 57 in the Senate, the lowest margin of congressional Democratic support since 1966.

The Transition. The Clinton-Gore Pre-Transition Planning Foundation took action during the fall campaign to assess Carter's mistakes and Reagan's successes.⁴⁴ Even earlier, during the summer of 1992, Democrats with experience in previous White Houses organized to help Clinton with his potential transition to the presidency. James Pfiffner notes that the Clinton campaign was not actively involved in these efforts but did establish a low-level effort of its own.⁴⁵ Overall, however, very little work was accomplished on crucial personnel issues during the pre-election period.

Even after the Clinton victory, a transition team was slow in forming. The effort was composed of three levels or branches. The *policy* branch consisted of four "cluster" coordinators for economic, domestic, health, and national security policy.⁴⁶ An *operations* branch was composed of ten cluster coordinators overseeing work on such areas as economics and international trade, science and space, justice and civil rights, etc.⁴⁷ Third was a *personnel* group under the direction of Richard Riley. These cluster teams were slow to organize. For example, with only thirty-two working days left in the transition, most of the ten operations clusters had not yet initiated their status reviews of government agencies and departments.⁴⁸

The appointment process was also slow, due, in large part, to Clinton's insistence on being directly involved in the appointments and his agonizingly slow and methodical deliberations over his own candidates.⁴⁹ Further complicating the transition process was the decision to conduct it from Little Rock, Arkansas, a move that some in the administration retrospectively regretted.⁵⁰

There was an effort by members the Clinton transition team to meet with their departing counterparts shortly after the election while President-Elect Clinton met with President Bush. The Bush people presented a brief primer on personnel issues. One of the Bush participants noted that the Clinton people asked little and made no demands.⁵¹

Policy Priority 1: Gays in the Military. While conventionally treated as a domestic policy issue, the question of gays in the military was also very much a foreign policy problem. It cut to the heart of questions about military effectiveness and spilled over into a broader debate over Clinton's capability to serve as commander-in-chief.

At a 1991 campaign stop at Harvard University's John F. Kennedy School of Government, presidential candidate Bill Clinton indicated that if elected, he would lift the ban on homosexuals in the military. Clinton's statement was made in response to a student's question and, according to Clinton, was offered without prior consultation with campaign aides or consideration of the broader issues involved. Nevertheless, that promise soon became a staple on the campaign trail. In responding to a January 1992 questionnaire, the candidate indicated his intention to sign an executive order lifting the ban and his belief that "patriotic Americans should have the right to serve the country as a member of the armed forces, without regard to sexual or affectional orientation."⁵² His first formal written statement on the subject came in February 1992, when he wrote, "People should be free to pursue their personal lives without government interference."⁵³ A campaign position paper called for "an immediate repeal of the ban on gays and lesbians serving in the United States Armed Forces."⁵⁴

Instead of circumventing the opposition, the Clinton administration's efforts to act quickly only served to reinforce congressional fear.

Clinton's potentially explosive campaign promise generated remarkably little negative publicity during the postconvention phase of the campaign. All of that changed shortly after the election. Members of the Joint Chiefs of Staff (JCS) voiced their dissent through retired Admiral William J. Crowe, who publicly supported Clinton during the campaign but opposed lifting the ban, and Rep. Dave McCurdy (D-OK). Reportedly, they urged Clinton to appoint a presidential commission to examine the issue over a one- or two-year period.⁵⁵

The tone of these discussions was not conducive to compromise. Clinton's transition team placed John Holum, a Washington lawyer, in charge of preparing a plan for lifting the ban. He met with General Colin Powell, the JCS, and other military

leaders; Chairman of the Senate Armed Services Committee Sam Nunn (D-GA); and gay rights groups. Holum's position was that he "wasn't there to ask whether it should be done . . . [but] how it could be done to minimize the impact on combat effectiveness."⁵⁶ Such a stance highlights the new administration's hubris and inflexibility. Holum's report was finished in early January and sent to Little Rock for Clinton to read. It contained warnings of the danger ahead by two of Secretary of Defense Les Aspin's advisors. They urged the new administration to develop a strategy for heading off the impending conflict with the Congress.

Early legislative action on this issue will be detrimental . . . to the president's long-term relations with Congress, his relationship with the military as commander-in-chief and may hinder the intended policy of change.⁵⁷

The incoming administration's early efforts to lift the ban on gays in the military were also hampered by its naïveté about the nature of governing. Concerned primarily with keeping its campaign promise, the Clinton administration felt compelled to move quickly out of a fear that conservative Republicans and Democrats in Congress would write the existing administrative ban on gays into law by attaching it as an amendment to an early piece of legislation. Instead of circumventing the opposition, the Clinton administration's efforts to act quickly only served to reinforce congressional fear about the consequences of this move. The new administration's reassurances to gay rights groups of Clinton's continued support further reduced the room for compromise with Congress.

Aspin's aides recommended a meeting among President Clinton, Senator Nunn, Senate Majority Leader George Mitchell, and Senator Ted Kennedy to plot out a strategy. No such meeting took place. In fact, Clinton did not meet face-to-face with the JCS on this issue until January 18, a delay that angered the chiefs and their supporters in Congress, who felt that they should have been consulted from the outset about a major change in military policy. Aspin himself urged Clinton to approach this meeting not as a negotiation but "as the first step in the consultation that you have promised."⁵⁸

Senator Nunn, without whose support the administration had no chance of succeeding, was reportedly angered by Clinton's failure to consult Congress; and Senator Dan Coats (R-IN), who led the Republican opposition to lifting the ban on gays in the military, complained about the new administration's "in-your-face" approach:

During Aspin's confirmation they said they would consult and hold hearing . . . it was really a surprise when the president simply announced he was going to do it immediately.⁵⁹

The need for compromise was not lost on all members of the new administration. The voice of Secretary Aspin, a veteran of Capitol Hill, is conspicuous. He noted on January 18 that

the votes in Congress, if it comes to it, are overwhelmingly against it. . . . The point you've got to understand is that as a practical matter we are not going to

be able to force this down the throat of the Congress. . . . If Congress does not like it, it isn't going to happen.⁶⁰

In the end, Clinton compromised and set July 15 as the date for a formal executive order lifting the ban on gays in the military. His action allowed Majority Leader Mitchell to postpone any votes on the subject with the argument that the administration's position was not yet in place. The six-month breather also allowed for congressional hearings and for continued negotiations between Aspin and the JCS. These tense meetings produced the "don't ask, don't tell" policy, an agreement under which soldiers are not asked about their sexual orientation but would be dismissed for homosexual conduct.

The foreign policy issue that offered the most openings to criticize the Bush record was Bosnia.

Clinton's naïveté about the process of governing and building a consensus in Washington and his highly developed sense of confidence in his own political abilities were very much in evidence in the handling of this issue. Clinton proceeded initially as if campaign promises would automatically and painlessly translate into policy by virtue of his electoral victory.

Policy Priority 2: Bosnia. Vacillation is a common critique of the Clinton administration's foreign policy, and its policy toward Bosnia was no exception. However, Clinton's early Bosnia policy shows the influence of electoral politics and the transition. In fact, the Clinton transition can be read as a missed opportunity to control and channel the influence of Clinton's personality on foreign policy.

Sandy Berger, candidate Clinton's advisor on national security affairs, correctly predicted that President Bush would try to portray Clinton as inexperienced and unqualified to deal with foreign policy problems. To counteract this argument, Clinton brought together a small group to work on national security issues. Its core consisted of Berger, Anthony Lake, and Richard Holbrooke. They agreed that Clinton should follow a two-pronged strategy: criticize the Bush record where it was weak and adopt a more forward-looking position on some foreign policy issues than did Bush.⁶¹ Holbrooke notes that in the summer of 1992, the issue that offered the most openings on both counts was Bosnia.⁶²

Clinton proceeded to attack the Bush administration on Bosnia for "turning its back on violations of basic human rights" and "being slow on the uptake," and he promised to "make the United States the catalyst for a collective stand against aggression."⁶³ Fearing that the actions of a Clinton presidency might not match its campaign rhetoric, in August 1992 Holbrooke wrote a memo to Clinton urging him to adopt a more vigorous policy against Serb aggression and counselling him that the choice was not between "Vietnam and doing nothing."⁶⁴

Holbrooke notes that after the election he had little contact with his campaign colleagues, who were now deep in the transition process. Returning from a December trip to Sarajevo and Zagreb, Holbrooke wrote another memo, this time to the soon-

to-be National Security Advisor Lake and Secretary of State Warren Christopher, one week before inauguration. He was told by associates that the Clinton team was deeply immersed in its own discussions over Bosnia and did not want to hear anyone else's views.⁶⁵ As predicted, no one responded. Weeks into the new administration, Holbrooke contacted Lake to find out if the memo had been received. He was told that it was "useful" but that some of his recommendations "undercut us at the U.N."⁶⁶

On Bosnia, the subject that preoccupied the president-elect's foreign policy team was whether or not to support the Vance-Owen peace plan. Bush had supported the plan, and in an interview on January 13, 1993, Clinton indicated that he did as well.⁶⁷ Lake also voiced support for the plan just prior to his taking office.⁶⁸ Yet, beneath these public pronouncements of support, disunity existed.

Internal conflict over what to do about Bosnia came from three sources. The first can be found in the outlooks of the key members of Clinton's foreign policy team. Secretary Aspin wanted to do as little as possible on Bosnia; Lake favored strong action; and Christopher "was on different sides at different times."⁶⁹ Secondly, there was a desire on the part of many people surrounding Clinton to distance the new administration as far as possible from the Carter administration, of which Cyrus Vance was a part. Elizabeth Drew notes that "generally speaking, people who served in the Carter administration were not held in high regard" when it came to filling cabinet posts.⁷⁰ David Owen writes that Vance was seen as an "old-style Democrat," something the "new-style Clinton Democrats" wanted to put behind them:

Clinton, himself, and the people in the White House closest to him, unlike Christopher, Tony Lake, and Les Aspin, barely knew Cy Vance. They were from the South and West, were not influenced by the East Coast foreign affairs establishment and were determined not to be labelled a Carter Mark II administration.⁷¹

The third source of internal discord on Bosnia was the general sense of hubris that is so common following victory. A senior White House official noted:

There was a legend developing from the fact that we won . . . and it carried over into the administration. It suggested that we were more masters of our own fate than reality allows. . . . We weren't ready—emotionally, intellectually, organizationally, or substantively.⁷²

That the emerging Bosnia policy would be driven by general strategic principles and personal beliefs with little attention paid to the ongoing diplomatic initiatives surfaced in a February 1, 1993, meeting between Owen and Christopher in New York—a meeting that Owen describes as "disillusioning." He comments that as the discussion progressed it became "painfully apparent" that in spite of the administration's criticisms of the Vance-Owen peace plan, Christopher knew "very little about the details."⁷³ Owen attributes part of Christopher's ignorance to the time demands of running the transition operation in Little Rock following the election.⁷⁴

The Clinton administration's first major decision on Bosnia was made on February 5, 1993, and was arrived at in a rather casual fashion.⁷⁵ Policymaking on Bosnia

was the province of the Principals Committee, whose core members were Lake, Aspin, Christopher, Powell, CIA Director James Woolsey, and UN ambassador Madeline Albright. On that day, at the conclusion of the third principals meeting on Bosnia, Clinton joined the discussion and indicated that the United States must take the lead in the humanitarian effort. He then made a number of decisions, including becoming directly involved in humanitarian action; asking the UN to authorize a no-fly zone, and trying to get economic sanctions tightened.⁷⁶

The impact of decisions did not match the rhetoric surrounding them.

The impact of these decisions did not match the rhetoric surrounding them, and so a series of meetings were held through April in which more options were formulated. Clinton, however, kept postponing a decision. At the same time, the president's public pronouncements about the moral need for strong action were creating pressures to act.

The two primary options to emerge were 1) a combination of lifting the embargo and launching bombing strikes against the Serbs and 2) a ceasefire and protection of the Muslim enclaves. A five-hour May 1 meeting at which Clinton had committed himself to making a decision led to the selection of the "lift and strike" option. The decision apparently was made with little regard for the difficulty of selling this policy to U.S. allies. Christopher was immediately dispatched to Europe to try to do so. He had been warned by British and French leaders not to arrive with a *fait accompli*, especially if it was the lift-and-strike option, and his mission met with little success. The newly minted U.S. policy already was unraveling in the White House itself, as Clinton began having second thoughts.⁷⁷ With little support for lift-and-strike at home or abroad, after his return from Europe Christopher "moved methodically to shut down the Bosnia policy."⁷⁸

LESSONS

Transition. All three transitions under scrutiny here are of the interparty type and are similar in many respects. All three presidents were outsiders campaigning against the Washington establishment and claiming a mandate for change. All three presidents had trouble, to varying degrees, assimilating to the Washington political culture and in particular dealing with an aggressive Congress. All three were unfamiliar with the process of forming policy on a national scale. All suffered setbacks and mistakes in foreign policy during their first year. While the causes of these mistakes can be found in many quarters, for each of these administrations, the manner in which the transition was handled proved to be an important contributing factor.

Foreign Policy Similarities. The cases examined here represent a cross section of the foreign policy issues facing recent presidents. They include relations with Third World states (Panama, Saudi Arabia, and El Salvador), a foreign policy problem laden with domestic overtones (gays in the military), and a post-cold war dilemma over

intervention (Bosnia). In spite of the considerable variation that can be found in the details of each case, similarities emerge.

As suggested at the outset, interparty transitions are at particular risk for the foreign policy transition syndrome. Key decisions are made during the campaign and transition period. Personality plays a role here, but it is also clear that the transition is a time when nongovernmental organizations can be particularly influential. The Commission on U.S.-Latin American Relations influenced Carter's Panama Canal decision; during Reagan's transition, the Committee of Santa Fe played a similar role. Clinton's decision to reform the policy on gays in the military was made with little forethought during the campaign, and his Bosnia policy was formed largely with an eye toward distancing himself from the Bush and Carter administrations.

Secondly, key decisions were made before the foreign policy team and decision-making process were in place. Reagan, for example, made key decisions on arms sales before the Buckley review was completed. Clinton acted on gays in the military without consulting leading military officers who opposed the move, and his transition team in Washington had soured on the Vance-Owen peace plan even as top appointees continued to voice their support for it.

Time and again, new presidents have sought delays in order to allow process to catch up with policy.

New administrations, perhaps heady with victory, are often surprised by the opposition their initiatives encounter in Congress. Neither Reagan nor Clinton appeared prepared for the hostile response with which their policy initiatives were met. Carter appeared to realize that a new Panama Canal treaty would be unpopular, but he was no more prepared than other presidents to deal with Congress. Time and again, new presidents have sought delays in order to allow process to catch up with policy.

Lastly, when crucial decisions were being made, scant attention was paid to how the new policy would be received in the affected state or whether the policy made sense in terms of the realities of the situation. Power and size did not make a difference here. The views of the Soviet Union and major European allies were no more considered than were those of Panama, and the realities of politics in El Salvador were ignored just as easily as those in the Middle East.


RECOMMENDATIONS

Future presidents-elect, including the one preparing to take office as this issue goes to press, must acknowledge that the transition period is becoming more important. It should no longer be taken for granted as a honeymoon; it must be managed well. The United States is the sole remaining superpower, and other countries look to it for leadership on many matters, whether the government is in a transition period or not.

It is clear from this review that there exists a clear dichotomy between policy and process. As such, any efforts to avoid the perils associated with early foreign policy

initiatives must address both sides of the problem. Even prior to the election, the candidates should devote time to learning the foreign policy process. Those persons who have been involved in transitions or who have written about them suggest that candidates' advisers and staff members are much more willing to discuss process rather than policy at this early stage.⁷⁹ These efforts must be bipartisan in nature and include experts and current representatives from the Congress. They should be available to both presidential candidates and to their transition teams (if in place) and campaign staffs.

It is only after the election that the focus should shift to specific foreign policy problems and detailed programs. Transition teams should be formalized early and begin work on appointments quickly. During this time, a foreign policy summit should be held on the model of Clinton's economic summit, which explored various options for the president's economic agenda. The intent would be to garner knowledge for policy options that would later be submitted for legislative action. During the post-election transition phase, the number of participants must be enlarged to include members of interest groups, experts, and the people writ large. These meetings would provide an important pre-governing forum for reviewing and critiquing the policies advocated by the various foreign policy advisory groups that inevitably emerge during the campaign.

Presidential transitions are very fragile periods. The time frame of eleven weeks is simply inadequate for extensive planning in the policy or process areas. Presidential candidates need to do all they can to ensure an orderly, organized, and politically profitable transition. They should strive to begin the process early and focus on issues of political process. The emphasis in this early phase should be upon learning the Washington policy process. If presidential candidates are successful, then their presidencies can begin on a confident note. If they are unsuccessful, foreign policy issues may overwhelm them and their presidencies. 

Notes

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- ²² *Ibid.*, p. 150.
- ²³ *Ibid.*, p. 3, 42.
- ²⁴ *Ibid.*, p. 97.
- ²⁵ *Ibid.*, 150
- ²⁶ *Ibid.*, p. 151.
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- ²⁸ *Reagan's First Year* (Washington, D.C.: Congressional Quarterly Press, 1982), p. 20.
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- ³¹ *Ibid.*, pp. 153–154.
- ³² *Reagan's First Year*, p. 20.
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- ³⁴ Klare, *American Arms Supermarket*, p. 154.
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Addressing the Future

The Holy See's Presence in International Affairs

by Angelo Cardinal Sodano

Angelo Cardinal Sodano was born in Isola d'Asti, Italy, in 1927. In 1988, Pope John Paul II named him Secretary of the Section for Relations with States of the Secretariat of State, the equivalent of Minister for Foreign Affairs of the Holy See. After his appointment to the College of Cardinals in 1991, he became the Vatican's Secretary of State, a position equivalent to Prime Minister of the Holy See. As such, he oversees the Vatican's relations with states and international organizations. He also directs the activities of the various offices of the Roman Curia, the body that assists the Pope in the pastoral care of the church. We are pleased to present the following excerpt from Cardinal Sodano's address to the Seton Hall University community on September 5, 2000.

The Great Jubilee of the Year 2000 marks a significant date for the world as a whole. We commemorate the incarnation of Jesus Christ and the dawn of a new era of human history. At the beginning of the third millennium, Christians feel impelled to bear clearer witness to their faith in the Lord and the Church, which has continued his work in the world for two thousand years.

The great event of the incarnation of the Son of God divides the history of mankind into two parts: before and after Christ. In these past twenty centuries, humanity has embarked upon a great journey, and the light of Christ's Gospel has guided its not always sure steps. It is appropriate, then, that this extraordinary event should be commemorated by the United Nations. In the days to come, I will join heads of state and government from throughout the world in celebrating the dawn of the third millennium. To all present, I will bring the greetings of Pope John Paul II, together with his appeal to world leaders to respect the primacy of spiritual values in the lives of individuals and peoples. I will also assure those present of the Catholic Church's desire to cooperate in the transformation and ennobling of humanity in the light of the saving message of Christ.

On the occasion of my visit to the United States and to Seton Hall University, I have chosen to offer some thoughts on a topic of current concern that is close to my heart: the rationale for the Holy See's presence in the international community. I will limit myself to a few aspects of the Church's involvement in international life. I will not speak of the outstanding work done by individual members of the Church—clergy, religious, and laity. Rather my reflections will be restricted to the work of evangelization carried out by the Holy See in the international community.

THE MANDATE FROM CHRIST

“Go and make disciples of all nations . . . teaching them to observe all that I have commanded you” (Mt 28:19). *Docete omnes gentes*, as the sharp Latin text of Saint Matthew’s Gospel puts it.

This command expresses the universal missionary mandate that Christ entrusted to his Apostles at the conclusion of his earthly mission. It is a command which the Church cannot shirk: “Go and teach!” The Apostles and their successors are charged with this duty with regard not only to individuals but also to the world’s peoples.

THE CONTRIBUTION OF THE HOLY SEE

Let me first make it clear that when I speak of “the Holy See” and “the Apostolic See,” I am referring to the See of Rome, where according to God’s plan St. Peter established his “chair” as a teacher of truth. Every Episcopal See is holy, because it is sanctified by the grace of Christ and is constantly engaged in raising up holy men and women. Similarly, every Episcopal See is apostolic, since every bishop is linked to the Apostolic College, to the Twelve Apostles sent by Christ to preach the Gospel to the whole world. But the See of Rome has always been called “the Holy See” or “the Apostolic See” *par excellence*, because of the primacy that Christ conferred upon St. Peter and his successors.

Having made this point, it can now be said that throughout history, the Holy See has always been at the forefront of the church’s efforts to proclaim the Gospel of Christ. All Christians are reminded of the call to work and pray for the spread of the Gospel when they recite the Lord’s Prayer, imploring our heavenly Father: “Thy kingdom come! *Adveniat regnum tuum!*” In my position as secretary of state, I can assure you that this is also the whole purpose of our work in Rome. All the offices of the Roman Curia, all the papal nuncios in the different countries of the world, all the agencies working for the See of Peter, share this one goal: *to bring Christ’s Gospel to the lives of individuals and nations.*

TODAY’S CHALLENGES

Recently, Belgian theologian Michel Schooyans wrote a book with the significant title *L’Evangile face au desordre mondial—The Gospel in a Disordered World*.¹ In a world faced with the “disorder” created by ideologies old and new, Christians must constantly proclaim the Gospel of Christ. In a particular way, this is the thrust of the work carried out by the pope, the pastor of the universal Church: the papal ministry is one of service to Christ’s Gospel, which still needs to be proclaimed to the furthest ends of the earth.

Service to the Gospel is also the context for understanding the activity of the Roman Curia, the complex of agencies which assist the Pope in his pastoral ministry. The present Holy Father, Pope John Paul II, made this point very clearly in the Apostolic Constitution *Pastor Bonus*,² by which he reorganized the Roman Curia.

The Activity of the Roman Curia. Article 15 of *Pastor Bonus* states that the various departments of the Roman Curia are to approach all issues “with pastoral criteria and with concern for the salvation of souls.” Pope Paul VI once described the Roman Curia as “a permanent Upper Room” of apostles totally dedicated to the spread of the Kingdom of God.³ As one who has spent forty years in the service of the Holy See, I can testify that this is the spirit with which we work, at all levels, and in our efforts to make the Christian message heard in today’s world.

Papal nuncios are in a position to give Caesar what is Caesar’s and to ask that God be given what is God’s.

An Expression of the Apostolate. Likewise, the activity of papal nuncios accredited to states and international organizations also must be seen as a form of apostolate. If not, we will fail to perceive clearly the higher goals of the Holy See’s involvement in the international community. The Church is not only a *community* of salvation; she is also an *institution* of salvation. The Church is a people redeemed, but also a people which redeems. The Second Vatican Council pointed to the close link between the notion of communion (*koinonia*) and the notion of service (*diakonia*), understood as the active face of communion. This is emphasized especially in the pastoral constitution *Gaudium et Spes*, which states that the Church’s specific service to the human family is “to introduce the light which comes from the Gospel and to make available to men and women the saving power which the Church, guided by the Holy Spirit, receives from her Founder.”⁴

Institutional Means. If the Church is both a community of those who have been saved and an institution through which salvation is offered to others, it is obvious that she needs to employ certain institutional means to achieve her goal. These means include papal representation. In the course of centuries, the Roman pontiffs gradually began to send out personal legates in order to maintain contact with the particular Churches in different parts of the world and to engage in continuous dialogue with the civil authorities responsible for the destiny of nations.

During the early centuries of the Church, it was in relation to councils and synods that papal representation first appeared. It eventually came to be seen as an expression of ecclesial communion and as a means for promoting the Christian life.

In this regard, we might recall the example of Pope Gregory the Great, who, before his election to the See of Peter in 590, had served for several years as the papal envoy to the emperor of Constantinople. A Benedictine monk living in Rome, he had formerly been prefect of the City of Rome and thus had a vast knowledge of people and human affairs. For this reason Pope Benedict I sent him to the East in order to improve relations with the Church of Constantinople and to maintain dialogue with the emperor.

Gregory did not refuse this mission. Accompanied by some of his Benedictine brothers, he set out for the Bosphorus, knowing that this activity too was a means of serving the Church and of encouraging missionary fervor in those distant lands.

Diplomatic Missions. With the rise of modern states in the fifteenth century, international relations took on certain set forms, including the establishment of permanent diplomatic missions. The popes too began to use these missions as a means of ensuring permanent contact with heads of the various nations. Thus the first Apostolic Nunciatures sprang up—in Spain, France, the Republic of Venice, and the various states that are now Germany and Austria.

Today the Holy See continues to maintain nunciatures for its diplomatic relations with states, precisely so that it can maintain contact with the local Churches and facilitate dialogue with the civil authorities, especially regarding freedom of religion and conscience, so as to ensure freedom for the Church to pursue her spiritual and humanitarian mission of service.

At present the Holy See, as the central government of the Catholic Church, has diplomatic relations with the governments of 174 states. The most recent government to establish relations with the Holy See, just a few months ago, was that of Djibouti. Present on every continent, papal nuncios are thus in a position to give Caesar what is Caesar's and to ask that God be given what is God's.

An Example of a Nuncio: Angelo Giuseppe Roncalli. One of the great papal representatives of our times was Archbishop Angelo Giuseppe Roncalli. Before he was appointed patriarch of Venice and then elected pope in 1958, taking the name of John XXIII, Archbishop Roncalli was for many years a papal nuncio, first in Bulgaria (1925–1934), then in Turkey and Greece (1935–1944), and finally in France (1945–1953).

His diary, published after his death and entitled *Journal of a Soul*, contains entries of great depth, which reflect the profound sense of the supernatural outlook which guided his whole life. In Roncalli's mind, every ministry in the church is meant to have a higher supernatural goal and employ virtue as a method: generosity, patience, sacrifice, and perseverance.

When, in 1953, Pope Pius XII asked him to leave Paris and go to Venice, Archbishop Roncalli wrote in his diary:

Now I find myself engaged in direct ministry to souls. In fact I have always believed that where priests are concerned, what passes for diplomacy must be imbued with a pastoral spirit; otherwise it is of no account and a sacred mission becomes something ridiculous.⁵

As you know, Pope John XXIII was beatified just a few days ago, on September 3, and so he can now serve as a heavenly patron for Apostolic Nuncios.

THE HOLY SEE IN INTERNATIONAL ORGANIZATIONS

In recent decades, especially during the papacy of Pope John Paul II, the presence of papal representations in international organizations has become much more evident. The goal is always the same: to bring the leaven of the Gospel to all the complex reality of international relations and to international debates about social problems,

human rights, and the rights of peoples; questions of justice and peace; and issues of cooperation for the development of peoples.

The goal of papal representations in international organizations is always the same: to bring the leaven of the Gospel to all the complex reality of international relations and to international debates.

As a consequence, the work of the Papal Mission to the United Nations in New York has become more demanding, as has that of the Missions to the specialized institutions of the United Nations based in Geneva and Vienna. The same may be said of the Papal Missions to UNESCO in Paris and to the UN Food and Agriculture Organization in Rome, as well as the Holy See's involvement in European institutions, such as the European Union in Brussels, the Council of Europe in Strasbourg, and the Organization for Security and Cooperation in Europe, in Vienna.

The speeches delivered in New York before the General Assembly of the United Nations by Pope Paul VI in 1965 and by Pope John Paul II in 1979 and 1995 provide an eloquent illustration of the lofty religious aim that inspires the Holy See's involvement in the international community, namely, that world affairs be imbued with the Gospel of the dignity of the person and the family, the gospel of harmony and peace, and, moreover, the Gospel of truth, justice, and love.



Notes

¹ Paris: Fayard, 1997.

² June 28, 1988.

³ See *Insegnamenti di Paolo VI*, XI, 1973, p.257.

⁴ *Gaudium et Spes*, no. 3.

⁵ *Journal of a Soul* (Rome: 1965), p. 336.