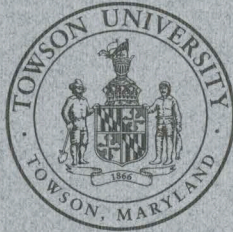


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# Global Affairs and Population Issues in the Twenty-First Century

By: James M. Smith\*

## INTRODUCTION

The purpose of this study is to analyze the effects of population change, specifically a global decrease in fertility rates on the short-term and long-term prospects for a more peaceful and equitable global system. The study first reviews global demographic history, and how population has influenced changes in agriculture, technology and politics. The section on geopolitics looks at the current distribution of power in the emerging multipolar system, the possible implications of changes in relative regional populations, and the instabilities which could arise due to increased population pressures on food supplies. The continuing dilemma posed by refugees is also considered. The third section assesses the evolution and current situation of the global economy, and the continuing struggle to raise agricultural productivity in the face of environmental stresses. Likewise, the problems associated with the aging of societies in the MDC's, and possible policy implications are considered. Finally, analysis on the short-term (to 2010) and distant (to 2050) prospects for the global system and international affairs concludes this study.

The study is not primarily concerned with a review of demographic methods or statistics. The purpose is to use Eberstadt's demographic analysis of lowered fertility as a given, and to examine the effects of population change on the global system.<sup>1</sup> Thus, this is primarily an analysis of the global system and its relationship to population change, historically and in the new century.

Clearly, any study of global scale changes will contain inherent limitations. This effort is no exception. The realities of local, national and regional scale change could, and often will, differ from the view of these issues from a global perspective. Nevertheless, the fundamental value of a holistic approach to the geography of global political and economic shifts, and the fundamental importance of human population patterns in driving such changes, is justification enough for such a project.

## Global Demographic History

Throughout most of its demographic history, the human race experienced a slow propagation of its species. Yet over the past 200 years, major revolutionary shifts in human culture—food production, social organization and technology—resulted in exponential increases in population growth.

The Cultural Revolution in tool making and the use of fire began about one million years B.P., with the hominid ancestor, homo erectus. From this point to the evolution of Homo sapiens at the end of the Paleolithic era, human population grew to about 5.32 million by 10,000 B.P. At about this time, the Agricultural Revolution began, perhaps

\* James M. Smith is a graduate of Towson University.

<sup>1</sup> Nicholas Eberstadt, "World Population Implosion," *The Public Interest* 12 (1997): 3-22.



first in the highland rim of the Fertile Crescent in Southwest Asia, then either diffused from this hearth or developed independently in other culture hearths of the world, notably Egypt, the Indus River Valley, China and Southeast Asia. The demographic ramifications of these developments were profound. By about 2000 B.P., global population had increased to about 250 million. At this time, more sophisticated techniques of food production such as wet-rice agriculture and improved socio-political organization of society and the landscape resulted in an expansion of carrying capacities. Agricultural civilization also spread to areas previously inhabited by hunter-gatherer groups. This also expanded the numbers of the human family. Nevertheless, growth was slow by today's standards, at barely 0.05 percent, annually.<sup>2</sup>

It was the third social shift, the Scientific-Industrial Revolution, that led to the dramatic lowering of death rates characteristic of societies experiencing rapid population growth. Thus, by the 1820s world population attained the one billion mark. The addition of the second billion took a mere 110 years, and the 1930 population of two billion doubled in only 45 years to four billion people in 1975. Only 17 years were needed to top the five billion mark. These logarithmic patterns of growth are represented in the table below.<sup>3</sup>

Table 1: World Population Growth, 1820-2000

<u>Population</u>	<u>Year</u>
1 billion	1820
2 billion	1930
4 billion	1975
5 billion	1987
6 billion	2000 (estimated)

As some societies experienced rapid industrialization the dynamics of their fertility, mortality and migration also changed. Crude death rates fell due to improvements in sanitation and medicine, yet fertility rates remained high. This resulted in accelerated population growth. In time, however, due to increased migration to urban areas, changes in social values and the availability of birth control devices, fertility rates decreased and population growth slowed in the industrialized countries, though a few countries such as Australia and the USA maintained population growth rates that were relatively high due to immigration. This decrease was particularly noticeable by the postwar period, with some European states and Japan recording fertility rates at sub-replacement level by the 1990s.<sup>4</sup>

2 Gary L. Peters and Robert P. Larkin, *Population Geography* (Dubuque, Iowa: Kendall/Hunt Publishers, 1997), 4-7; Massimo Livi-Bacci, *A Concise History of World Population* (Oxford: Blackwell Publishers, 1997), 37-38.

3 Peters and Larkin, 4-7.

4 Peters and Larkin, 9, 108-110, 136-140.



## The Demographic Transition Model

The transition to lower rates of natural increase is given a theoretical structure in the four-stage Demographic Transition Model. Stage one reflects the fact that for most of human history high birth rates were balanced by high rates of mortality due to disease, warfare, poor hygiene and inadequate diet. A region or country in stage one experiences modest rates of population growth. However, a gradual process began in England and Wales in about 1750 in which lower death rates, yet unchanged high birth rates, produced a subsequent explosion in population. This stage two pattern was evident during the early years of European urbanization, when infant mortality rates dropped sharply but fertility rates remained high. As industrialism diffused to other European societies, and the USA and Japan by the late nineteenth century, higher rates of natural increase became the rule in these countries. Moreover, the USA absorbed large numbers of immigrants from Eastern and Southern Europe during this period.<sup>5</sup>

Eventually, population growth slows as urbanization imposes increased costs on raising children. Changing social values initiates a redefinition of the role of women, and the development of social welfare systems reduces the necessity to have large families. In a four-stage model, Stage Three is characterized by even lower crude death rates and rapidly falling crude birth rates. Total fertility rates are greatly lowered, although birth rates decrease less rapidly due to the large numbers of women in their child-bearing years, a legacy of previously high fertility rates. In Stage Four, the industrializing societies experience low CDR's and CBR's, and fertility may drop to sub-replacement levels. This has already occurred in high cost of living societies such as Italy and Japan. There is at least one major caution for employing this theory as a paradigm to view population growth in changing societies: those countries which industrialized later, such as the USA and Japan, moved through the four stages more rapidly than the earliest industrialized societies such as England, which had a two-century pattern of demographic evolution. This was even more apparent in the late twentieth century for new industrialized countries (NIC's). Some societies such as China apparently experienced dramatic decreases in both CDR's and TFR's due to the ideological commitment of the ruling party to improved health care and lowered rates of population growth. Most areas of China are now well into Stage Three of the demographic transition, with urban areas in Stage Four. This pattern is also emerging in some Southeast Asian societies, though generally without intensive government coercion.<sup>6</sup> Thus, the Demographic Transition Model does help us to begin to understand the differing geographical patterns of population growth by country and region. It helps us to disaggregate the overall global population figures and to see particular changes at a more local geographic scale.

Despite these changes, global rates of population growth in the last several decades, particularly within the LDC's, have given rise to considerable pessimism among many demographers, particularly neo-Malthusians.<sup>7</sup> Most demographers and biologists in this school of thought believe that the biosphere's ecological fragility will not sustain continued long-term increases in human population, and that massive natural checks on population growth are imminent. The environmental problems of deforestation and accompanying soil erosion and desertification are seen as limiting humanity's ability to increase agricultural output, then bringing about a demographic crash. Moreover, the rapid indus-

5 Peters and Larkin, 9, 90-93.

6 Peters and Larkin, 90-94, 136-145; Hou Wenrou, "Population Policy in China." *China's Population: Problems and Prospects*. Ed. Liu Zheng, Song Jian, et.al (Beijing: New World Press, 1981).

7 Paul Ehrlich, *The Population Bomb* (New York: Ballantine Books, Inc., 1968).



trialization of societies with huge populations, such as China and India, will dramatically increase the emission of CO<sub>2</sub> and greenhouse gases into the atmosphere, thereby exacerbating the effects of global warming. This could lead to coastal flooding that will decrease the amount of land available for agricultural use in the vital lowlands and alluvial floodplains upon which humans are so dependent for food production and living space. In addition, increased temperatures might decrease agricultural yields in the continental grasslands of North America and Eurasia, due to increased drought. Clearly, the issue of population growth is intimately connected with food production, living space and ecological sustainability.<sup>8</sup>

## **Geopolitics, Population and the Current Global System**

The rapid decline of communism and the end of the bipolar world order has allowed policy makers to focus on the most fundamental divide in today's world, that between the northern core and southern periphery. In addition, the USA remains the world's most significant power, though this situation may gradually change toward a system of greater multi-polarity. Concurrently, the changing relative population size of different regions and the crises of global ecology are strongly affecting the short-term and long-term prospects for a successful human-environment relationship.

The current system is still largely dominated by the USA. This is hardly surprising, given that its main opposition during the Cold War, the USSR devolved into fifteen separate political entities in the early 1990s. Consequently, the U.S. finds itself at the apex of world politics, the only state that can be classified as a comprehensive global power. In equipment, quality of training, and leadership, the U.S. Armed Forces are unmatched. The panoply of airlift and seaborne logistical assets at the disposal of its military allows the USA to project power to distant points on the globe more rapidly and effectively than any other state by far. Moreover, American capabilities in computer software and other information technologies have been applied to create military hardware of unprecedented sophistication and lethality. The smart systems displayed during the Gulf War are the fruits of these efforts. Finally, the U.S. lead in space and satellite technology provides its leaders with an electronic intelligence capability that is invaluable in assessing the strengths and weaknesses of other states.<sup>9</sup>

Likewise, the depth, breadth and multi-faceted nature of the U.S. economy are the foundation for the country's military strength and overall power. The critical mass of large territory, a multitude of climates and soils, and the world's third largest population are combined with a cultural-economic commitment to creativity, wealth-creation and technological innovation. Despite earlier predictions of decline, the USA continues to be the major player in the global economy, accounting for approximately thirty percent of world manufacturing output. American transnational corporations are entrenched in every region of the world, in virtually every conceivable industry. The American dollar is the currency of choice for the world financial markets, providing a monetary refuge during periods of market uncertainty. Indeed, the current crisis in the emerging markets of Southeast Asia and Russia, combined with the economic malaise in Japan, only serve to highlight the primacy of the American economy, and its role in sustaining U.S. status as a comprehensive global power.<sup>10</sup>

8 Peters and Larkin, 88-89.

9 Zbigniew Brzezinski, *The Grand Chessboard* (New York: Basic Books, 1997), 23-24; Paul Kennedy, *Preparing for the Twenty-First Century* (New York: Vintage Publishers, 1993), 291-292.

10 Brzezinski, 23-27.



Given these realities, some scholars view the current system as being characterized by unipolarity.<sup>11</sup> Yet, this conclusion is highly problematic, as the fluid process of international affairs is already evolving into a more multi-polar order. Particularly notable is the continuing diplomatic rapprochement between the two Eurasian giants, Russia and China. Both states are trying to develop strategies to counteract what they see as an American effort to dominate the global system. Though some scholars believe that the USA can achieve this status, most treat such statements with alarm, believing that other key powers in the global order will not tolerate an effort by one power toward hegemony. Rather than devising strategies using the outdated approach of a static geopolitics, foreign policies should be devised which encourage equilibrium in the global system, and reflect an understanding of spatial processes, which is the key to creating a geography of peace.<sup>12</sup> Current trends in geopolitics indicate that such an equilibrium could emerge much sooner than some analysts previously expected.

### **Key Power Centers in the Current Global System**

The European Union has emerged as a single unit on the world stage, certainly in economic terms, and increasingly in political affairs as well. Since the signing of the Maastricht Treaty that created the EU from the earlier European Community, the economies of the region have continued their march toward monetary union. With the formal introduction of the common currency or ECU by eleven countries in 1999, the EU will finally place the capstone on its efforts to build an internally coherent and truly European economy.<sup>13</sup>

Likewise, 375 million consumers of the European Union form the world's largest single economic bloc, with the highest levels of human development in the world. The European concern for human rights and economic justice gives these societies a balance between freedom and equality that no other region can match.<sup>14</sup> Despite these admirable qualities, the EU does face real challenges. Not the least of these is the aging of the population. Germany and Italy already have the highest median ages of any society in the world, at about 40. By 2050, Germany will have a median age of 55, and Italy an incredible 58 years. About 40% of Italy's population will be 65 years of age or older. By mid-century, this will result in dependency ratios of 60 for Germany and 80 for Italy, due to the huge elderly population.<sup>15</sup> The burden of caring for this gray population will severely test the financial resources and ingenuity of these states, and the EU as a whole. For example, the social benefits of the states of the EU might have to be diminished, or taxes on the working population increased to potentially intolerable levels. Either way, governments have a task that is politically unenviable. One possible solution is to increase the percentage of the working population in the EU countries by allowing a steady level of legal immigration from the other regions, notably North Africa and Eastern Europe. However, such a policy is likely to meet fierce opposition from the political Right, particularly in Germany and France. Thus far, the Germans have not succeeded in constructing a culturally-based, non-racial definition of citizenship. If such cultural chauvinism and ethnic pride prevail

11 Brzezinski, 23.

12 Saul B. Cohen, "Geopolitics in the New World Era: A New Perspective on an Old Discipline," *Reordering the World: Geopolitical Perspectives on the Twenty-First Century*, eds. George J. Demko and William B. Wood (Boulder CO: Westview Press, 1994), 1-31.

13 Paul Knox and John Agnew, *The Geography of the World Economy* (London: Edward Arnold, 1994), 389-398.

14 Kennedy, 255-259.

15 Eberstadt, 11, 17-18.



in the EU states, then Europe's bright future could be jeopardized. Finally, European economic strength still tends to be spatially concentrated in the southern UK, northern France, the Rhine valley of Germany and northern Italy. This has necessitated intensive investment in the economically peripheral areas such as Ireland, Spain, Portugal and Greece. Nevertheless, these efforts to bring greater spatial cohesion to Europe will strengthen its future prospects.<sup>16</sup>

Japan, the world's second largest economy, is a traditional, yet modern society facing difficult, interconnected demographic, economic and cultural challenges. The Japanese are currently grappling with the same issue of a graying population that bedevils Germany and Italy. The current median age of Japan is now 40, about the highest in the world. By 2050, the median age could reach 53 years, with a dependency ratio of 64, even higher than that projected for Germany.<sup>17</sup> Japan's difficulties are discussed in more detail below.

The Russian Federation will eventually emerge from its current tortured efforts to build a more viable political economy as an important global player, if for no other reason than the fact of its territorial size and population. The essential geopolitical reality is that Russia covers most of northern Eurasia, and borders more states than any other political entity. The diversity and amount of its mineral and fossil fuel resources make it a crucial player in Europe's economic geography, and potentially to the economies of Japan, China and Korea as well.<sup>18</sup> Moreover, it is a nuclear weapons state, and a permanent member of the Security Council of the United Nations. Interestingly, Russia has recently been guided by leaders such as Yevgeny Primakov, a Soviet-era geopolitician, and currently by President Vladimir Putin, who seems determined to restore Russia's power and influence in Eurasia. Therefore, it is difficult to agree with those who believe that Russia can be cajoled and intimidated into accepting the dominance of another state on the Eurasian landmass.

Nevertheless, this is not to say that Russia is not facing severe socio-economic challenges. An increase in infant mortality and a decrease in life expectancy, notably among males, is indicative of the continuing stresses inherent in post-Soviet Russia.

China, occupying the southeastern quadrant of Eurasia, is a state facing extreme challenges as it strives to maintain a sustainable balance between population, environment and resources. However, like Russia, China also possesses territorial size, an educated corps of technocrats and nuclear capability. Like Russia, it is also a permanent member of the UN Security Council. Although China's myriad socio-economic and environmental difficulties will prevent Beijing from attaining the status of a true global power, China is a dominant regional military presence in East Asia. Likewise, the PRC is now a global player in diplomacy, and its disapproval of what it perceives to be U.S. efforts at "hegemony" make China's presence on the UN Security Council all the more important. In the 1990s, the Chinese have continued their efforts at a strategic rapprochement with the Russian Federation. It is fascinating to note that unlike the connection between the two communist powers in the 1950s, in the current relationship, China is the senior partner. Beijing hopes that this diplomatic initiative will help to provide greater balance in international relations, and prevent a recurrence of the dilemma of the late 1960s, when the PRC was strategically and ideologically isolated, and came close to war with its northern neighbor. Thus, the current policy can best be understood as an effort to avoid the unfavorable systemic conditions of the past. China is, therefore, working steadily to enhance

16 Kennedy 273-276; Knox and Agnew, 389-398.

17 Eberstadt, 11, 17-18.

18 D.Yergin and T.Gustafson, *Russia 2010* (New York: Vintage Books, 1994), 238-264.



its status as a global power in the military, economic and political spheres.

By maintaining a stable relationship with Russia, China is able to concentrate the energies and resources of the state on achieving regional military and political predominance on the mainland of southeastern Eurasia, and potentially, the adjacent seas. These geopolitical goals have been the traditional concerns of China's rulers since the Han dynasty (208 B.C.-220 A.D.). Nevertheless, some recent commentaries have actually argued for a new policy of containment toward China, seeing that state's efforts as a drive to superpower status.<sup>19</sup> Other observers believe that China is essentially a regional power with limited geopolitical aspirations, based largely on historically-based geographical and cultural factors.<sup>20</sup> Whatever the true intentions and capabilities of China, there seems to be little doubt that the future direction of the PRC, and the response of the global community toward it, will play a large role in determining whether the next century will witness systemic political turbulence, or greater political cooperation.

## The Geopolitics of Population and Environment

Despite the attention on the emerging multipolar order by think tanks and foreign policy institutes, a more fundamental global fissure threatens peace, security and the human relationship to the biosphere. This is the "geopolinomic" division of the earth into a developed core and an underdeveloped periphery. Within this context, population issues are a key dynamic in global affairs. Although fertility rates in developing countries are falling, the elevated rates of recent decades result in a "demographic momentum," and consequent continuation of population increase.<sup>21</sup> Given these demographic verities, the first decade of the twenty-first century will witness an intensification of population pressures in the following areas: 1) regional population ratio changes and geopolitical power, 2) the crises of population, food and global ecology, 3) an increase in migration at all scales, at least in the next several decades.

The most notable spatial change related to fertility rates is the increasing imbalance in regional population ratios. The pattern of very low fertility in the MDC's at 1.7 in the early 1990s and the continued higher relative fertility rates of the LDC's of about 3.3, have resulted in increasing regional population imbalances. Some of the regional implications are quite striking, especially in terms of population ratios. For example, in 1995, the ratio of population between the LDC's and MDC's was 4 to 1. By 2050, the ratio will be 7 to 1. An excellent regional scale example is that of Africa (in total) and Europe (including Russia). The 1995 demographic ratio was about even. By 2050, the African population will outnumber Europe by 3 to 1. Viewed by rank order, in 1950, six of the twelve largest countries by population were in the developed regions. By 1995, the number had dropped to four, and by 2050, only the United States will make the top demographic twelve. Societies such as Iran, Ethiopia and Congo-Zaire will be more populous than any single European country. Moreover, Nigerians will outnumber Americans and no European country will be as populated as the Philippines.<sup>22</sup>

What are the implications of these imbalances? In light of the ecological frailties of many ecosystems in the developing world, these changes cannot be positive. Consider the plight of the Sahel and the Horn of Africa. In these regions, a combination of inter-related human and physical factors, such as climatic change, civil war and population

19 Richard Bernstein and Ross Munro, "The Coming Conflict with America," *Foreign Affairs*, 76n2, 1997, 18-32.

20 Robert Ross, "Beijing as a Conservative Power," *Foreign Affairs*, 76, no 2 (1997): 33-44.

21 Eberstadt, 9.

22 Eberstadt, 10-11.



pressure cause great stresses, which too often lead to famine and misery.<sup>23</sup>

Another implication of these altered regional ratios is the possible shift of geopolitical power southward to the LDC's. States such as China, India, Nigeria and Brazil are dominant in their respective regions. However, these large, populated states are now buffeted by the intense pressures of decreasing arable land, pollution, hyper-urbanization, and consequent problems of economic stress and political unrest. These pressures will continue to intensify in the near future, due to demographic momentum and the increasing use of technology, and the higher rates of consumption, which accompany modernization. Yet, despite these problems, India, Nigeria and Brazil are future candidates for permanent seats on the UN Security Council. China, already a permanent member, is playing an increasingly assertive role in world affairs.

A related question is whether the aging of populations in the MDC's will lead to a possible erosion of their geopolitical power relative to each other and the LDC's. All of the developed states are likely to maintain their status as wealthy societies. But countries that experience extremes in demographic aging, such as Germany, Italy and Japan, will face a serious threat to their current status within the global system. In 1995, the global median age was 25, but for these prosperous societies, median age was about 40. Providing care for large elderly populations will tax the ingenuity of policy makers in these countries.<sup>24</sup>

Japan is likely to experience a decline in its relative power status, in no small part due to demographic aging. The male-centered corporate culture and the reluctance of women to marry into traditional homemaker roles has led to a precipitous decline in birthrates in a society with an extremely high cost of living. Consequently, the population of those who are 65 and older exceeds the figure for children under age 15. Given the ineffective response of a male-dominated government to enact public policies more friendly to working mothers, and a culture that frowns upon a career and child raising, this trend is unlikely to change. By 2007, the population will begin to decline in absolute terms. Thus, a combination of a larger aged population and high dependency ratios will likely transform Japan into a state preoccupied with domestic welfare issues. The Japanese will likely maintain a role in the global community, in foreign aid, and development issues. Its manufacturing power is still considerable, and with the size of their economy, the Japanese will retain a voice in economic issues. But Japan is unlikely to ever evolve into a comprehensive global power.<sup>25</sup>

In the next decade, the crisis of population and food production will intensify in certain sub-regions of the world. This is a certainty in the Sahel and the Horn of Africa, where drought and population pressures induce soil erosion from overgrazing, deforestation and subsequent desertification. Where these specific issues interface with intra-state ethnic and religious violence, famine will often result, as in southern Sudan in 1998. If states in vulnerable regions suffer disintegration, as in Somalia in 1993, then the peoples of these states also will experience localized or sub-regional famines. Sub-Saharan Africa is the macro-region most vulnerable to these threats, given its fragmented political geographies and local population pressures on marginally productive lands.<sup>26</sup>

23 Demko, 179-180; Timothy Weiskel, "Vicious Circle: African Demographic History as a Warning," *Harvard International Review*, Reprinted in *Global Issues 95/96*, ed. Robert M. Jackson (Guilford Connecticut: Dushkin Publishing Group).

24 Eberstadt, 11.

25 Akiko Doi and Kim Willenson, "The Birthrate and the Bust: How Career Choices and Fewer Babies are Undermining Japan's Future," *The Washington Post*, 26 July, 1998: C1-2.

26 Demko, 179-180; Weiskel, 12-16.



Many other locales in the LDC's are also experiencing chronic hunger, which could worsen with continued population growth and economic decline in the near future. Rural areas of Java and Sumatra, among the most densely populated areas of the world, are experiencing renewed hunger due to the meltdown in that country's economy. Indeed, throughout the LDC's, the most vulnerable sectors of these societies will face the challenge of securing adequate food.

During the 1990's, international refugee flows have been greater than at any other time since World War II. In 1993, an estimated 18 million refugees were living outside of their country of birth, with an equal number displaced within their country of birth. The head of the United Nations High Commission for Refugees has identified this crisis as a threat to global stability, and few governments would disagree. The list of regional areas and countries is predictable, based on ecological devastation, political strife and famine: the Sahel, the Horn of Africa, Afghanistan, Angola and Mozambique have all been prominent crisis localities. As system entropy increases early in this new century, the multiple crises of the "hunger belt" will command the attention of the global community. The vicious circle of intra-LDC refugee flows will strain the apparatus of humanitarian aid to its limits, thereby increasing the strains on the global system.<sup>27</sup>

Thus, even the most optimistic projections for the decline in global fertility rates will not be enough to forestall an increase in global scale suffering in the first decade of the twenty-first century. Likewise, the large number of females giving birth in many developing countries is currently resulting in demographic momentum, i.e. a continued increase in population growth, and associated pressures on vulnerable ecologies and societies.

All of this is not to say that the entire developing world is threatened by demographic momentum, and the neo-Malthusian vision of famine and ecological destruction. As George Demko reminds us, one of the hazards of global-scale studies is the lack of insight into local variations in balances between population and arable land, and the discrepancies in patterns of land ownership and government commitment to social and economic rights. Clearly, some developing societies will adapt to the challenges ahead and achieve certain levels of sustainability in the next century (e.g. Botswana, Chile). Just as clearly, others will fail to meet these challenges (Sudan, Afghanistan). What is necessary is a regional and sub-regional approach, which closely analyzes local conditions of population and ecological balance, as well as political economy.<sup>28</sup>

An estimated 500 million people are victims of chronic malnourishment, or "silent hunger," which weakens immune systems and contributes to deaths from disease. In addition, child development is stunted, affecting the ability of people to contribute to their societies in a productive manner. These are the people who will challenge the resources and ingenuity of Oxfam, UNICEF, the World Bank and all of the IGO's and NGO's of goodwill concerned with those who are struggling to build livable, sustainable societies. Although enough food reserves exist to feed the planet's population, the spatial economic and political barriers to the distribution of food to those most in need is formidable. Thus, in the short-term, greater coordination between states (where viable governments exist) UN agencies and NGO's will be necessary to alleviate suffering and in the long run to preserve or create a stable balance between arable land and population.<sup>29</sup>

27 Demko, 183-185.

28 Demko, 179-180.

29 Demko, 185-186.



The increasing short-term (to 2010) entropy could lessen considerably by mid-century, for several population related reasons. First, according to the low variant model, global population will reach its apogee at 7.7 billion people, by 2040. Thereafter, population levels will decline for good, according to this reasoning. Of course, population growth has declined greatly in most MDC's, so about 90% of the increase in world population will be in the LDC's. Most of these societies can ill afford increases in population, but if population-related challenges can be overcome, the LDC's should also see a drop in population growth before mid-century.<sup>30</sup>

Another crucial trend is the greater regional and global-scale cooperation on population and environmental issues. This is manifest from the greater success achieved at the United Nations Conference on Environment and Development (UNCED) in 1992, in which population issues played a key role. Likewise, the International Conference on Population and Development (ICPD) in Cairo in September 1994, agreed on a Programme of Action which, like UNCED, recognized the inseparability of population, environmental issues and sustainable development, and placed a particular emphasis on the rights of women in matters of reproduction, compared to the previous conferences in Bucharest in 1974, and Mexico City in 1984. Thus, these important international gatherings provide a foundation on which future efforts to tackle population-related issues can build. In the twenty-first century, the ability of states, IGO's and NGO's to work in concert to alleviate short-term entropy will yield the fruits of longer-term sustainability and a more peaceful global order.

A third factor in promoting longer-term stability is a future narrowing of the base of the population pyramids in most LDC's, due to the aging trends now so evident in Western Europe, North America and Japan. By 2050, the median age of the global population will be over 42 years, a great increase from the 25-year median age in 1995. Moreover, the percentage of world population 65 and above was about 6.5% in 1995. By 2050, this figure will be more than 18%.<sup>31</sup> As for the LDC's, the median age will almost double from 23 years to 41 years, a greater degree of aging than the grayest societies today. Thus, by 2050, the LDC's will deal with the problems associated with high dependency ratios, but due to a large concentration of people in the senior cohorts, rather than a huge burden of children with which they now struggle. Moreover, they will face these issues of aging with far fewer resources than the MDC's. These trends will likely mean decreased levels of migration, thus easing pressures on the developed societies to absorb greater numbers of immigrants. But the aging of the global population will test the ability of all societies to cope with large numbers of seniors, people who presumably will want to contribute to their societies and be assured of the same dignity and full humanity expected by those who are young. A grayer world should be less turbulent, but will still present challenges that will test human ingenuity in economics, health and public policy.<sup>32</sup>

Thus, a greater level of global cooperation at all scales, a demographic decline in the next century, and a more sustainable civilization could yield a better future for humanity. However, much will depend on the nature of the global economic system, the next topic of concern.

30 Eberstadt, 19-22.

31 Eberstadt, 11-12.

32 Eberstadt, 18-22.



## The Global Economy and Population

The contemporary global economic system is the product of a set of processes initiated in the sixteenth century with the commencement of European expansion. To gain a more holistic perspective on the problems associated with population growth and future trends, it is necessary to assess the impact of the evolution of the global economy on the current world spatial distribution of wealth and poverty.

From the late fifteenth century, a wave of European dynamism and power swept over the globe. This movement began with Portuguese and Spanish efforts to outflank the Islamic hold on trade with India and China, and the subsequent expansion of these two Iberian powers into the tropical regions. The use of slavery as a way to acquire cheap labor and develop colonies, and the search for gold and other mineral wealth, gave birth to the European mercantilist system. These two powers, soon joined by the Dutch, French and British, laid the foundations for a world economy of colonial commerce, built on superior military technology, corporate organization (e.g. Dutch, French and British East India Companies), and political ruthlessness. The spatial patterns and flows of wealth out of Asia, Africa, Middle and South America and the Caribbean imposed a pattern of dependency and poverty over most peoples in the non-European world.<sup>33</sup>

The Industrial Revolution, which began in Britain in the late eighteenth century, enabled the European states to widen the technological and military gap between themselves and the colonial peoples. European colonial powers strengthened their hold in areas already under their control, and expanded farther into the interior of Asia and Africa during the nineteenth century. In the first half of the twentieth century, railroads, steamships, autos and aircraft all accelerated the process by which wealth flowed from the colonized regions to Europe. The linkage of global financial markets was made possible by trans-oceanic telegraph cables, and the telephone. A truly global-scale economic structure was in the making. However, the closed economic colonial systems had to be transformed to complete the globalization process. The empires of the European states and Japan were fatally weakened in the First and Second World Wars. Consequently, two emerging giants, the USA and the USSR established a bipolar order over much of Eurasia in 1945. This development and subsequent Cold War put intra-European and world tensions into an ideological deep-freeze.

Unfortunately, the Cold War also obscured the deepening of the North-South dichotomy. In the capitalist First World, the creation of international economic coordinating agencies at the Bretton Woods conference in 1944 hastened the creation of the more highly articulated global economy. The International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) have played a key role in financial regulation and development policy ever since. Moreover, Bretton Woods also established the General Agreement on Tariffs and Trade (GATT), which successfully reduced barriers to expanded world trade. Yet, despite these laudable efforts, and the decolonization of the Third World in the post-1945 period, patterns of wealth distribution established during the colonial period were maintained and expanded by a system of dependency. In what some scholars termed "neo-colonialism," former colonies in Asia, Africa and Latin America were designated the role of resource-providing, geoeconomic peripheries for the mass consuming cores in the North.<sup>34</sup>

33 Knox and Agnew, 389-398.

34 Knox and Agnew, 389-398.



In the context of the Cold War, the regions of the South were geostrategic prizes to be valued only for their natural resources or as sites for military bases to secure access to richer areas, sea-lanes or chokepoints. Developing societies were merely “dominoes,” ideological chess pieces to be manipulated at will by the superpowers. The use of proxy warfare combined with massive influxes of arms and advisers to areas of regional conflict, created entire sub-regions of death through battle and famine (e.g. Horn of Africa, Mozambique, and Indochina). These policies were implemented by both superpowers, and the effects continue to be felt today.<sup>35</sup>

With the end of the Cold War, the North-South division has surfaced as the key global-scale division of humanity, and it is now the main concern of those trying to create a more sustainable global system.

## Population and Agriculture

The physical map of the world provides a sobering picture of the limitations facing humanity in its efforts to feed and sustain itself. A careful look at the map reveals a land surface that is dominated by physical regions inhospitable to human habitation, either too cold, dry, wet, rugged or a combination of these limiting factors. These areas represent nearly 90% of the earth's land surface; land that cannot be used for intensive, sustained and profitable food production. Likewise, a global population density map displays patterns that reflect the suitability of specific climates, soils and topography for agriculture. Humans seek plains close to the sea. About 67% of the human population lives within 500 kilometers of the ocean, and 80% lives below 500 meters of altitude. Overall, 90% of the world's people lives on 10% of the earth's land area.<sup>36</sup>

Given these facts, it is not surprising that population pressures have been associated with global hunger, as well as increasing stress on societies which are not facing outright starvation. It is important to bear in mind that a large percentage of the world's grain is produced by relatively few countries, notably the USA, Canada, Australia, Argentina and the EU. China and Russia are also great producers, but they consume what they produce, and still must import to meet their needs. These surplus countries often use food as a weapon of political power and influence. Moreover, if China is removed from calculations for grain production, then the LDC's fail to produce enough grain to keep pace with population growth. This reinforces the patterns of dependence noted earlier. Since 1984, grain production per capita has decreased, most notably in sub-Saharan Africa, the hungriest of all regions. Finally, the patterns of land ownership and commercial plantation agriculture aggravate poverty and hunger in some regions, such as West Africa and Central America.<sup>37</sup>

The core-periphery perspective provides us with a paradigm to understand global hunger. Current patterns of global agriculture, in terms of land use and type of food production, reflect human adaptation to local and regional conditions of rainfall and soils, and land ownership. In the LDC's, these patterns were greatly influenced by the colonial experience. In the late nineteenth century, during the latter stage of European expansion into Africa and Asia, large tracts of the best agricultural lands were expropriated for commercial plantation agriculture for the purpose of supplying the colonial

35 Wayne C. McWilliams and Harry Piotrowski. *The World Since 1945: A History of International Relations* (Boulder Colorado: Lynne Rienner Publishers, 1993), 1-3; 163-165.

36 Peters and Larkin, 53; 250-251.

37 Peters and Larkin, 250-252.



core with coffee, tea, sugar and other products. The desire to acquire land in colonial areas for profitable commercial agriculture led to the forcible alienation of colonial peoples from desirable lands, as was the case with the Kikuyu in the Kenyan highlands.<sup>38</sup>

Today, the agricultural land use in the LDC's is characterized by various regimes of subsistence agriculture (i.e. intensive and extensive, tropical and dry), as well as commercial agriculture. In some regions, high yield varieties of grain, such as wheat in the Punjab, and rice in Java, have allowed dense populations to feed themselves, and even export surpluses. The Green Revolution, which began in the mid-1960s, resulted in the development of high yield varieties, due to genetic research and discoveries. The crops mature more rapidly than previous strains, thus allowing for multiple cropping. More than any other single factor, the Green Revolution enabled global scale food production to keep pace with population growth. But these gains were spatially concentrated within a few LDC's, and within these few countries, the benefits of increased fertilizer use, high-yield seeds, irrigation equipment and mechanization went to the better-off farmers, not to the rural poor. In the poorest region, sub-Saharan Africa, only 1% of the peasantry used high-yield seeds, while 22% used them in Latin America, and 36% in Asia.<sup>39</sup>

While the Green Revolution has allowed most regions to prevent large-scale famine by increasing yields per hectare, efforts to expand the area of arable lands face great difficulty. The UN Food and Agriculture Organization (FAO) estimated in 1987 that humanity had to increase cultivated land by more than 10% over the contemporary figure to achieve a balance between food and population. Although some societies (e.g. Brazil) are increasing land under cultivation, they are doing so at the expense of rainforests and other ecologically sensitive areas. There is doubt that such marginal lands can tolerate sustained agricultural use. In addition, those countries which rely heavily on irrigation (e.g. China and India) as a tool for increasing yields in arid regions face the prospect of falling water tables and what the FAO has termed the three "silent enemies," alkalization, salinization and waterlogging. These features of soil degradation are decreasing the amount of arable lands in sensitive areas.<sup>40</sup> Finally, societies that were densely populated before rapid industrialization, such as Japan, Taiwan and South Korea inevitably lose large amounts of arable land to the construction of roads, factories, warehouses, housing and other infrastructure. The processes of industrialization and hyper-urbanization, so much in evidence today in China, could result in that country losing as much as half of its arable land. If this occurs, China will be compelled to import massive amounts of grain, thus driving up prices in the world market above and beyond what the poorest of the LDC's can pay for desperately needed food. This issue is of great concern to regional specialists of Africa South of the Sahara, as well as China.<sup>41</sup>

Thus, global agriculture faces great challenges in feeding a world population that will continue to expand until at least the middle of the twenty-first century. The increasing strains on local and regional societies and ecosystems will result in continued crises in the most vulnerable areas, and a consequent increase in entropy levels in the global system. Nevertheless, the United Nations, other IGO's, and NGO's continue to develop strategies designed to alleviate famine and malnutrition, by increasing per capita food production through sustainable agricultural methods. These strategies are the linchpins in a noble effort to greatly reduce human misery in the years to come.

38 Knox and Agnew, 270-274.

39 Knox and Agnew, 316-317; Peters and Larkin, 260-261.

40 Peters and Larkin, 253-256.

41 Lester Brown, *Who Will Feed China?* (Washington D.C.: Worldwatch Institute Publications, 1994).



## The Demographic Future, Industry and Policy

The aging of the populations in the MDC's and the spatial flows of capital, factories and investments, all have a profound effect on the present and future of manufacturing location, economic policy and social planning.

MDC's have experienced a fundamental change in economic structure during this century. Viewed through the perspective of the Kondratieff long waves, developed economies were characterized by Fordism, a rigid structure of industrial organization and management, in which factories were located in MDC's near necessary sources of raw material inputs. These Fordist economies were basically national in character, particularly in the United States, and reached their zenith in the 1950s. However, this system began to decline in the late 1960s, as transnational corporations (TNC's) began to reorient themselves toward a more global approach to manufacturing and marketing. As TNC's gained greater profits and influence in political systems, the ability of the State to regulate and oversee these economic behemoths weakened, to the detriment of organized labor and environmental protection. The next Kondratieff wave has seen the emergence of a more chaotic, decentralized global economy through a process known as "flexible accumulation." Under this system, global finance has become a key regulator of governments, punishing those who depart from the free market orthodoxy that forms the ideological framework for global financiers and speculators. The State has found itself in an increasingly difficult position in attempting to regulate financial markets, which are often unstable and sensitive to political shocks. Likewise, multi-industry TNC's enjoy greater power, taking full advantage of the new international division of labor (NIDL) by moving manufacturing operations to Southeast Asian societies where labor is skilled, but much less expensive than comparable labor in the MDC's. Attempts to organize labor for better working conditions and pay are often crushed by authoritarian regimes in such countries as Malaysia and Indonesia.

Finally, the public policy implications of aging populations in a TNC-dominated economy of flexible accumulation are quite troubling. The rapidly graying populations of the EU and Japan must be cared for by a smaller percentage of the overall population (i.e. those who remain active, employed workers). Governments appear to have three alternatives, none of them politically appealing. They can raise taxes on the shrinking percentage of working people, reduce benefits, or restrict eligibility. John Maynard Keynes, the great British economist, wrote during the 1930s that a drop in fertility translates economically into decline because of stagnating demand and consumption. Keynes believed a healthy, expanding economy depended on a strong level of demand. If Keynes and his modern day followers are correct, countries such as Italy and Japan will experience stagnation and decline. The question of how to maintain economic prosperity and geopolitical power with an aging population is perhaps the most difficult dilemma facing the MDC's today. By the middle of the century, all societies on earth will have to deal with this issue.



## **Conclusion**

In the twenty-first century, the continuing crises of population, ecological stress and the North-South division will continue to be the gravest challenges for humanity. The comprehensive nature of these geopolinomic challenges demands a global perspective and multi-disciplinary approach from scholars. Based on the analyses presented in this study, and the trajectory of current geopolinomic trends, the following outcomes are likely:

### **To 2010:**

- An increase in entropy and system instability due to continued population pressures and associated effects of chronic underdevelopment, especially famine, intra-state warfare, conflict over fresh water (e.g. Sahel, Israel-Palestine).
- Greater North-South tensions due to the struggle of the LDC's for a greater voice in global affairs, particularly in IGO's such as the UN; also migration of laborers and refugees from South to North.
- Greater tensions between rapidly industrializing LDC's (esp. China and India) and MDC's concerned about the global commons; upheaval due to possible breakup of large states with restless, geographically concentrated minorities (e.g. China and India).
- Greater "South-South" cooperation, as LDC's seek to augment their voice by uniting on certain issues (e.g. international development).

Thus, the short-term prospects appear to be bleak, due in no small part to population growth and the subsequent effects on the global political-economy and the biosphere.

### **To 2050:**

- A halt to global population growth, accompanied by the aging of populations in the LDC's; this should greatly decrease the burden of South-North migration.
- Increasing systemic stability, as dialogue between MDC's and LDC's improves; continuing environmental crises (e.g. deforestation, soil erosion, global warming) will compel greater cooperation on the global stage to protect the biosphere.
- Gradual creation of a more sustainable global economy (i.e. use of renewable energy resources such as solar, wind and hydro power; reuse/recycle economics).

Thus, by mid-century, the earth's population will likely begin a long decline. Combined with the invention and deployment of environmentally sound technologies in the public and private sectors, this bodes well for the relationship of the human species with the biosphere. However, such optimism is dependent upon humanity taking the necessary measures to avoid the ecocide that could result from our current, unsustainable global system. The question of how to transform our way of life toward sustainability is the core issue facing the human family in the twenty-first century.



# **NATO Enlargement: Implications For European Security**

By: Ngozi Caleb Kamalu\*

## **Introduction**

The North Atlantic Treaty Organization (NATO) was established by the Washington Treaty in April 1949, during the beginning of the Cold War. NATO was founded in order to counter the power and influence of the Soviet Union. One of the events that triggered the formation of the Alliance was the Soviet blockade of Berlin in 1948 and the consequent imposition of Soviet hegemony on the central European countries. The formation of the Transatlantic Alliance began with twelve founding members: Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, the United Kingdom, and the United States. In 1952, NATO became institutionalized as a permanent defense and security apparatus of the European and American Alliance.

The ushering in of the new world order after the break up of the Soviet Union in the early 1990s set the stage for a new set of realities in the international system. Hence, NATO, like any other global actor, was faced with the challenge: "change or die." Enlargement, as an option, became a new realistic policy of adaptation and survival for NATO in the post-Cold War world.

NATO officially declared its intent to admit new members at the Madrid Summit in July 8-9, 1997. At the Madrid Summit, the 16 member Heads of State of NATO invited select states among the new democracies of eastern and central Europe to start accession talks to join the NATO Alliance. The full range of issues addressed by this body included:

- To invite the Czech Republic, Hungary and Poland to start accession negotiations with the Alliance.
- To conclude the analysis of the resource implications of the forthcoming enlargement.
- To commit NATO to an "open door" policy regarding further accession, and to continue intensive dialogue with nations aspiring to join the Alliance.
- To enhance the Partnership for Peace (PfP) by strengthening political consultation and increasing the role partners play in decision-making.
- To examine the strategic concept, adopted in 1991, to ensure consistency with the new security issues and challenges confronting Europe.

The United States and its NATO allies believed that the admission of the first group of new states by 1999 was part of a broader plan to foster a peaceful, undivided and democratic Europe.

Since the end of the Cold War, NATO has taken several steps to reorient its Cold War structures, goals and strategies. These adaptation strategies are designed to enable the international organization to adapt to the new challenges of the twenty-first century. Thus, NATO has taken three main steps to advance this adaptation: Partnership for Peace (PfP), Combined Joint Task Force (CJTF) and Enlargement (Expansion).

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## Partnership for Peace (PfP)

The purpose of the Partnership for Peace (PfP) was to expand and intensify political and military cooperation among European states. It was also intended to help increase stability, reduce the threat of war and strengthen relationships by promoting mutual cooperation and commitment to democratic principles on which the Alliance stands. The PfP membership was open to all European states with no membership in NATO. Consequently, it aimed to extend participation through cooperation and strengthened relationships with NATO only to those states that embraced democratic principles. Those principals are civilian control of the armed forces, adherence to both the Charter of the United Nations and the Universal Declaration of Human Rights, recognition of existing borders, and commitment to settle disputes by peaceful means. With PfP's offer of bilateral agreements between NATO and each partner state, each individual partnership program is thus provided with varied levels of cooperation. However, PfP attempted to provide consultation with any partner country which considers itself threatened, even though it is not expected to provide security guarantees to them. While about twenty-seven countries have signed the PfP agreements, many still regarded their participation as a first step to full membership in NATO.

The PfP policy enables intensive political and military-to-military cooperation with the new democracies in Europe as well as its former neutrals. With respect to the approximate twenty-seven nations that had joined PfP earlier, the program proved worthwhile in the Bosnian crisis where thirteen PfP partner states substantially contributed to the NATO peacekeeping efforts in the Balkans.

Historically, the PfP was an expansion of the North Atlantic Cooperation Council (NACC), which began in 1990 after the fall of the Berlin Wall. Thereafter, NATO, in its London Summit declaration, enunciated a new set of goals for the Alliance, including changes in its military structure. Also announced was the fact that Russia was no longer an adversary to NATO. The declaration at the London Summit was later reaffirmed by the Alliance's statement in Copenhagen in June 1991, which stated that NATO's main objective was to help create a Europe whole and free.

Consequently, in November 1991, at a summit in Rome, NATO advanced a new strategic concept that reinforced the continuing importance of collective Alliance defense with a strong commitment and orientation toward new security challenges like peacekeeping operations and crisis management. At the summit, NATO launched a new initiative called the North Atlantic Cooperation Council (NACC); which provided an institutional structure or framework for political and security cooperation between NATO and the former communist states. It was not until December 1991 that NATO invited all the former Warsaw Treaty Organization (WTO) states and all the former Soviet republics to join NACC, whose purpose was to help establish relations between NATO and these countries. Other goals of NACC included the offering of cooperation and dialogue in such functional areas as peace keeping, security aspects of economic development and regional security issues for the sole purpose of projecting security eastwards without offering any collective security guarantees. In May 1997, the NACC held its final meeting, which culminated in the inauguration of a successor organization, the Euro-Atlantic Partnership Council (EAPC).



By that time, the NACC membership had grown to embody forty-one states, which incorporated the original sixteen NATO member countries. Other new members included:<sup>1</sup> Albania, Kazakhstan, Slovenia, Armenia, Austria, Kyrgyz Republic, Tajikistan, Azerbaijan, Latvia, Belarus, Lithuania, Bulgaria, Moldova, Czech Republic, Poland, Estonia, Romania, Turkmenistan, Georgia, Russia, Turkmenistan, Ukraine, Hungary, Slovakia and Uzbekistan. Other participants however—Australia, Switzerland, Sweden and Finland—maintained their observer status.

## **Combined Joint Task Forces (CJTF)**

This initiative, launched in Brussels, Belgium in 1994, was intended to enable NATO forces and military assets to be deployed sparingly in theaters of regional military conflicts, crisis management and peacekeeping operations. It would require all NATO members to provide military assistance whenever necessary to its members under the auspices of the Western European Union.

## **NATO Enlargement**

This third element of NATO adaptation is the central focus of this discussion. The Alliance members embraced this in January 1994, in Brussels, as the basis of admitting new members to the Alliance. It should be noted that the PfP program was also introduced in this forum. This program aimed at enhancing stability and security throughout Europe by focusing on defense related cooperation. It addressed this to all Organization for Security and Cooperation in Europe (OSCE) members able and willing to contribute to this program. Also, the PfP goes beyond ordinary dialogue and cooperation to forge a new partnership, which constitutes a permanent feature of the European Security architecture. The Partnership serves a number of functions, among which are:

- To expand and intensify political and military cooperation throughout Europe.
- Increase stability and diminish threats to peace.
- Strengthen relationship by promoting the spirit of practical cooperation and commitment to democratic principles that underpin the Alliance.

NATO leaders also stated that the Washington Treaty remained open to membership for other European states in a way to further the principles of the treaty. The treaty was ratified in Washington on April 4, 1949. There, the states that accepted the invitation to the partnership for Peace, which was signed by the Heads of State and Government of the member states of NATO in Brussels on January 10, 1994, acted to subscribe to the PfP framework document. This document reflected the agreement among the state parties to NATO and the other states participating in the PfP regarding the status of their forces. The basic text of the agreement declares that the Brussels convention:<sup>2</sup>

1 "The NATO Fact Sheet on North Atlantic Cooperation Council", NR 2, March 1997.; see also, Ronald D. Asmus, Richard L. Kugler, F. Stephen Larrabee, *Survival*, vol. 38, no. 3, Autumn 1996.

2 "NATO Basic Document: PfP SOFA," 19 June 1995, 1-6. ; see also Stephen Camborne, "Will the Senate Endorse NATO's Enlargement?," *Nato Review*, Nov/Dec, 1997.



- Together, constitute the states participating in the Partnership for Peace.
- Considers that the forces of one state party to the present agreement may be sent and received by arrangement into the territory of another state party.
- Bears in mind that the decision to send and to receive forces will continue to be the subject of separate arrangements between the states or parties concerned.
- Aims to define the status of such forces while in the territory of another state party.
- Recalls the agreement between state parties to the North Atlantic Treaty, concerning status of their forces signed in London on June 19, 1951.
- NATO advanced its adaptation goal by commissioning a study published in September 1995 that set forth the Alliance's rationale and process of enlargement of its membership.

The study concludes that:<sup>3</sup>

- NATO remains a defensive alliance whose fundamental purpose is to preserve peace in the Euro-Atlantic and provide security for its members.
- The purpose of enlargement is to integrate more countries into existing community of values and institutions that will enhance security and stability for all the countries in the Euro-Atlantic region.
- New NATO allies would be full members of the Alliance, with rights and responsibilities equal to those of existing allies.
- Decisions on which nations to admit to NATO would be made exclusively by Alliance members by consensus and on case-by-case basis, with no non-NATO states holding a veto.
- In order to join the Alliance, new members would have to demonstrate support for NATO's principles and policies, adherence to market democracy and civilian control of the military, minimum standards of military interoperability and willingness to meet the full responsibilities of Alliance membership.
- The process of considering and admitting new members would be steady and transparent in order to build confidence in the broader European region and beyond.
- No PfP state would be automatically precluded from consideration for membership, and the Alliance intends to keep its door open to new members in the future.
- The peacetime stationing of forces on the territory of the new states is neither a condition of membership nor foreclosed as an option. All allies must be prepared in principle to deploy their forces outside their territory in the treaty area as part of their contribution to collective defense.
- While new members will enjoy NATO's full security guarantees, NATO countries have no intention, plan or reason to deploy nuclear weapons on the territory of new members.

Pursuant to the principles laid down in the December 1995 NATO study, the Alliance began a series of intensive dialogue to induct select countries that had expressed interest in joining. At the time, eleven countries had submitted their letters of intent: Albania, the Czech Republic, Estonia, the former Yugoslav Republic of Macedonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. At a Madrid, Spain summit that

<sup>3</sup> Alain Pellerin, "NATO Enlargement: The Way Ahead", Canadian Council for International Peace and Security (CCIPS), February 14, 1998, 1-8.



included the Heads of State of Alliance members, in July of 1997, a number of states from among the group of eleven interested states were invited to begin accession talks for induction into NATO. However, the strategic intent of NATO was to admit one or more new members by 1999.

## Arguments In Support Of NATO Expansion

The work of Michael MccGwire shows that NATO enlargement has many credits: <sup>4</sup>

- Enlargement will promote stability in Europe, secure an environment for new members to consolidate their democracies and help to solidify the end of the Cold War in Europe by bringing new members to the Euro-Atlantic community.
- With Collective Defense at the core of NATO strategy, NATO enlargement sustains American leadership in Europe and will help secure the transatlantic link that many European states pray for.
- Inclusion of European members into NATO will help to deter aggression in the volatile European theater.
- NATO's enlargement as a defensive alliance will not threaten Russia since it has no plan or need to deploy conventional forces or nuclear weapons on the territories of its new members.
- NATO's arrangement under the NATO-Russia Founding Act of May 1997 guarantees consultations with Russia on select issues of enlargement. While it does not give Russia veto power, it does enable the country a voice.
- While enlargement helps to diffuse a potential Russian threat, it provides the Alliance with the much needed strategic presence in the areas surrounding Russia, thereby limiting its sphere of influence.
- Enlargement will guard against the "re-nationalization" of defense in central Europe, as each member of the Alliance pursues a narrow military purpose that serves its strategic goals under the NATO military and collective defense infrastructure.
- The cost of enlargement will be modest in the face of diminished threat. Failure to expand will encourage a new wave of arms race as many central European states, out of fear of potential border disputes and irredentistic sentiments rearm in order to withstand potential stronger enemies.
- The U.S. and Western defense industries will benefit from enlargement as they secure larger markets for their armaments in the newly admitted allied states.

## Arguments Against NATO Expansion

The disadvantages of NATO expansion include:<sup>5</sup>

- There is no need for NATO expansion, as it threatens no state. However, enlargement will create new divisions between NATO and Russia as the Alliance creeps into Russia's traditional zone of influence. Also, failure to invite the Baltic States and Romania into the Alliance would not only isolate them, but also push them into the Russian orbit.

<sup>4</sup> Michael MccGwire, "NATO Expansion and European Security," London Defence Study, no. 37, January 1997.; see also Jane M.O. Sharp, "A Dayton Report Card," *International Security*, Winter 1997/98.

<sup>5</sup> Ibid.



- The overriding American interest in Europe is to ensure Russia's continued democratization and integration, both economically and politically into the new international system. Enlargement will humiliate Russia and create a "Weimar Russia," vulnerable to Russian nationalist intentions and influences.
- The security of European states in the post-Cold war era will be enhanced, while the economic and democratic institutions of the European States should remain the obligation of the European Union (EU), not NATO.
- The price tag for NATO enlargement is unbearable. In addition, the European allies are not willing to share the cost. The Congressional Budget Office (CBO) of the United States estimates the cost of enlargement to be between \$60 billion and \$125 billion over 15 years, depending upon threat levels.
- The American populace, being aware of the threat posed by the Soviet Union during the Cold War, supported the costs and goals of collective defense. Recently, in the post-Cold War era, with pressing economic and social needs, they are not willing to assume the costs and unnecessary risk of defending central Europe.
- Enlargement is bound to threaten the Alliance by complicating decision-making. Also, the new states for admission into the Alliance have not been able to establish the tradition of democracy or the maturity of civilian control of the military. Even the three candidate states are not capable of contributing meaningfully to the Alliance missions, and particularly on the question of collective defense.
- Enlargement will weaken the Alliance's true mission of collective defense. Its preoccupation with crisis management and peacekeeping will shift its focus away from military to political issues.
- If instability ever develops in central Europe, the United States will have to shoulder the financial and military costs of bringing peace. As the Bosnia crisis has demonstrated, European states are not committed to bearing the cost of bringing peace, even in their own backyard

## **NATO Expansion And European Security**

The enlargement of NATO membership is at the core of the American and European strategic foreign policy goal of achieving a peaceful, democratic, and united Europe. The strategy in its entirety is consistent with an American foreign policy goal since World War II: to safe guard the security of Europe. The end of the Cold War gave impetus to the pursuit of this goal by engendering a new opportunity of transforming the bipolar relations between the United States and the Soviet Union in Europe into a new relationship marked by new security and economic relations built on mutual relationship. By so doing, the United States and its traditional European allies have helped to shape a new Europe that includes Russia and other former Soviet states, turning a number of new democracies in Europe into prosperous nations congenial to the United States' political and economic values: trade and diplomacy.

According to a report released by the US Department of State's Bureau of European and Canadian Affairs, the United States and its NATO allies have since the end of the Cold War pursued a number of initiatives to advance the American enlargement policy by way of:<sup>6</sup>

<sup>6</sup> Bureau of European and Canadian Affairs; US Department of State: "Report to Congress on Enlargement of North Atlantic Treaty Organization: Rational, Benefits, Costs and Implications," February 24, 1997.



- Throwing support behind the unification of Germany.
- Providing massive bilateral assistance to support democratic and market reforms in Russia, Ukraine, and other states from Central and Eastern Europe and the former Soviet Union.
- Negotiation and implementation of the 1990 Conventional Armed Forces in Europe Treaty (CFE) that has resulted in the elimination of vast amounts of weaponry.
- Negotiation and ratification of the START II Strategic Arms Control Treaty that would achieve two-thirds reduction in American and Russian Nuclear arsenals.
- Program to help dismantle nuclear stockpiles and secure nuclear materials in Russia and the newly independent states.
- Support for European efforts to develop a European Security and Defense identity and a stronger European military capability within NATO.
- Efforts to strengthen the capabilities and the roles of the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the Organization for Economic Cooperation and Development (OECD), the Western European Union and other European regional organizations.
- Active American diplomatic involvement and deployment of American troops as part of NATO-led force to secure peace in former Yugoslavia.
- Cooperation with the European Union in the negotiation of multilateral trade liberalization accords, such as the Uruguay Round of the General Agreements on Tariffs and Trade (GATT).

NATO enlargement has had both short and long term impacts on the security of the European States and on the United States. European Security has so far been preserved and maintained by NATO's continued commitment to its stability since World War II. In central and east European states and the Baltic, many of the states have begun to restructure their defense and foreign policy to stay congruent with Alliance values and norms. This process of openness and democratization is being accelerated by the strict requirement for NATO enlargement. Case in point is the requirement for the applicant nation to the Alliance to demonstrate, in good faith, operational signs of a democratic system. This must be based on a functioning market economy; absence of entangling territorial or ethnic disputes; an evident respect for the rights of national minorities, geographical contiguity to the Alliance; constitutionally grounded civilian control over the military; and transparency in defense budgets and policy.<sup>7</sup>

Another benefit of NATO Expansion to European security is the guarantee of democratic reforms and stability. This is achieved by the fact that involvement of new members in the Alliance will induct them into a NATO security umbrella that would integrate them into NATO political norms that eventually provide them with the moral, military and economic incentives to preserve and maintain their democratic achievements. On the issue of stronger collective defense and the ability to address new security challenges, the dissolution of the Soviet Union and the Warsaw Pact, while eliminating Cold war problems such as balance of power questions and ideological issues, has engendered new problems and threats. These include weapons proliferation, ethnic conflicts, and terrorism. These factors threaten regional security in Europe and beyond. The NATO expansion therefore brings together the interaction and cooperation of like-minded nations committed to the mutual defense of each other's security and territorial integrity, including a commitment to work together to build and maintain a stable and undivided Europe.

7 Zbigniew Brzezinski, "A Plan for Europe," *Foreign Affairs*, Jan./Feb, 1975. For opposing views on NATO, see Michael E. Brown, "A The Flawed Logic of NATO Expansion," *The International Institute for Strategic Studies (IISS) Quarterly*, Spring 1995.



Since the exercises to enlarge NATO in the post Cold War period, a number of new and aspiring entrants to the Alliance have entered into mutual security arrangements and in many instances, concluded and signed agreements. These commitments would eventually help to ensure their stable borders and promote interstate cooperation. The agreements have included the Polish-Lithuanian Treaty of 1994, Hungarian-Slovakia Treaty of 1996, and Czech Republic and Germany on the question of Sudeten in 1996. NATO membership has also been promising in the management of the Greek-Turkish problem; a trend NATO enlargement is bound to enhance in terms of improving relations among central and eastern European states.

Pursuant to the goal of burden sharing and contribution to NATO mission, the enlargement program has involved new members to participation in the NATO-led Implementation Force (IFOR), a major enforcer of the Dayton Peace Accords in Bosnia and Herzegovina. This effort has helped to bring relative peace and stability to the Balkans. Through enlargement the alliance is able to recruit new allies willing to share the burdens of protecting Alliance interests, and thus help halt fears of uncertainty about the place of central and east European states in an integrated Europe. This level of stability insurance will eventually foster a more stable climate congenial to economic and political reforms, trade and investment within the European States. Thus, NATO members will be able to further downsize their resources and pursue Alliance goals without diminishing their respective national security.

Furthermore, NATO's open-door policy is helping to promote cooperation between the sixteen Alliance members and the new recruits (new democracies) through the Partnership for Peace (PfP) and other European Security Institutions like the Atlantic Partnership Council, which continues to play an immense role in the European security scheme, in terms of expanding the Alliance and strengthening Alliance relations with newly inducted democracies that are either absorbed into the Alliance or on the waiting list. This is an important NATO security strategy in Europe because non-NATO members in the region are neither threatened nor alienated. Thus, the Alliance is able to preserve, at worst, the neutrality of those states, which pose no security threat to its members in the interim, as future and potential hostile alliances and actors are at best rendered powerless.

NATO expansion also promotes the security of Europe and the United States through its enhancement of the security interests of Russia. This goal is achieved by the Alliance, by way of fostering democratic reforms in order to restore stability in central and eastern Europe. To further this goal, the Alliance embarked on a long term strategic partnership with Russia, for the purpose of integrating it as a full and constructive participant in Europe's new security architecture, the Partnership for Peace, a proposal to create associated membership for eastern European countries. While this plan falls short of triggering the full obligations of an alliance, it nonetheless, encouraged defense consultation and planning. After long, reluctant and initial negative reactions,

Russia agreed to join the PfP scheme in mid 1994. Early Russian fears came, as it perceived the Alliance moves as an attempt to isolate it and ring its border with hostile neighbors, thereby threatening its national security. The bitter Russian suspicions of American and Allied intentions did not come to light until President Bill Clinton proposed to integrate Poland and other select Eastern European countries into NATO in December 1994. With Russia's loose participation in the PfP arrangement, its potential threat to European security has been compromised, if not co-opted.



## Conclusion

In the Post-Cold War world, NATO has pursued three initiatives for its adaptation. These are: Partnership for Peace (PfP), Combined Joint Task Forces (CJTF), and Enlargement. The enlargement strategy is intended to transform the bipolar relations of the Cold War between the United States and the Soviet Union into a new relation that is marked by security and economic relations. Essentially, the goal is to shape a new Europe that includes Russia, other former Soviet states and a number of new European democracies that embraces the American political and economic way of life.

With the induction of a new set of countries into NATO, many uncertainties surrounding this enlargement exercise still linger. They include the problems associated with coordination, sovereignty, cultural differences, consensus building, and disparate political and economic development levels between prospective and old members of the Alliance, differences in military readiness, and Russian fears of American and NATO military and political intentions.

The challenge of allaying Russian fears and suspicion about NATO enlargement is the primary way the United States and the Alliance could guarantee long lasting peace and security to Europe. The Alliance has indeed made NATO expansion less threatening to Russia through the pursuit of many policies. One of the policies is that NATO has made the accession process of new entrants a peaceful and incremental one. For example, the "Visegrad Four"- Poland, Hungary, Czech Republic and Slovakia- are being considered to be the first group of entrants into NATO.

Next, NATO's policy is not to allow new members to join its integrated military command structure; and more importantly, its refusal to deploy Alliance forces and weapons in their territories. Also, NATO agreed to make membership into the European Union (EU) available to Russia. It was agreed that Russia would be fully integrated politically and economically into the European politico-economic affairs. By so doing, NATO believed that these steps would help to maintain and sustain the political and economic stability in Russia at a time when democratic and reform movements in Russia are active.

Moreover, by lowering trade barriers and extending more economic assistance to Russia, NATO is able to equally stimulate economic development with the direct effect of dampening ethnic tensions in Eastern Europe. By also using accession conditions into NATO as a bargaining tool with the many non-NATO members for admission, east European states are attracted to EU membership. Thus, they are equally more prone to embrace not just democracy, but international norms that require protection for the rights of their ethnic minorities as well.

Furthermore, the treatment of Moscow as a valued and respected partner helps to strengthen the consultative and planning role of Russia in the Enlargement process. This privilege is embodied in the North Atlantic Cooperation Council (NACC) and the Partnership for Peace (PfP) program documents. In the absence of a non-aggressive treaty, these instruments would reassure Russia with respect to NATO's benign and perceived hostile intentions.

The cogent question is whether there is greater utility to expand or not to expand NATO, given the fact that enlargement is intended to provide stability and security for the entire European continent. It should also be noted that NATO might run more risks if its enlargement exercise is brought to a grinding halt. The reasons are not far fetched. One factor is the fact that much political capital and financial resources have been



committed to the program, making it unwise to consider a withdrawal. Finally, it should be noted that instability in central Europe was greatly attributed to the cause of World Wars I and II, proving that there is great wisdom to suggest that the NATO expansion strategy is a goal worth pursuing to its logical conclusion.



# The ICC and the United States: Arguments in Favor of Ratification of the Rome Treaty

By: Jon S. Stefanuca\*

In the summer of 1998, the United States, while in pursuit of Osama bin Laden, decided to bomb a pharmaceutical plant in the African country of Sudan, thinking that the plant was used to produce biological weapons. The events following the bombing have revealed that the United States was wrong in its prediction, and that the plant was producing much needed medicines under a contract with the United Nations. The government of Sudan attempted to pursue an international investigation and a prosecution of the U.S. army personnel that was involved in the air strike. The U.S. refused to cooperate with Sudan and continued to argue that the plant was used to produce weapons. This situation provides for the rudimentary reason that prevents the United States from supporting an International Criminal Court (ICC). The concern is to not have U.S. nationals be subject to a court that would be in the position of prosecuting American soldiers involved in the bombing without the U.S. approval.<sup>1</sup>

While the U.S. reasons against the ICC have become increasingly more complex, at the core of all of its objections is the unwillingness to have its nationals be subject to the jurisdiction of the International Criminal Court without its consent. To show the illegitimacy of ICC jurisdiction when applied over nationals of non-party states, the U.S. focused on demonstrating that the jurisdiction of the court cannot be universal. The U.S. Ambassador-at-Large for War Crimes, David Scheffer, is the most prominent advocate of the U.S. argument. While testifying before the U.S. Senate Foreign Relations Committee, Mr. Scheffer stated that the applicability of the court's jurisdiction to non-party states was "the single most fundamental flaw in the Rome Treaty that makes it impossible for the United States to sign the current text."<sup>2</sup>

Furthermore, Mr. Scheffer spoke before the American Society of International Law, presenting in detail the argument of why the United States should not ratify the Rome Treaty. The arguments presented in his speech are also the ones presented by the United States at the international negotiations of the Rome Treaty. Mr. Scheffer argued that it is illegitimate to exercise jurisdiction over non-party states based on the principle of universality for three reasons. First, the reason that the ICC has rejected universal jurisdiction is because it requires the consent of the state where the crimes occurred or the state of the perpetrator's nationality. Second, the argument is that some crimes under the ICC jurisdiction are not universal according to the principles of customary international law. The third argument is that the jurisdiction of the court is illegitimate because universal jurisdiction cannot be delegated to a treaty-based court without the consent of the state of nationality.<sup>3</sup> Besides claiming that universal jurisdiction can not be applied over non-party states, Mr. Scheffer argued that the ICC jurisdiction would be abusive since territorial jurisdiction would be delegated to a treaty based court without the consent of the perpetrator's state of nationality. In a nutshell, these are the main reasons against

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1 Michael Scharf, Professor of Law and Director of the Center for International Law & Policy, New England School of Law, "The United States and the International Criminal Court: The ICC Jurisdiction Over the Nationals of Non-party Members: A Critique of the U.S. Position," *Journal of Law and Contemporary Problems* (Winter 2001): 64, 67. Downloaded from Lexis-Nexis Academic Universe, Law Reviews on 20 April 2001.

2 Scharf.

3 Scharf.



the legitimacy of the ICC jurisdiction over non-party states.

While it may appear that these objections to an International Criminal Court have substantive warrants, there are a multitude of reasons why the U.S. has an incorrect assessment about the essence of the court and its implications. This discussion will further concern itself with the examination of the reasons the United States government presented for not ratifying the Rome Treaty and argue that it is only in the best interest of the United States to sign the treaty and approve of the court since its arguments are not legally persuasive. Many of the arguments in this discussion are strongly supported by Michael Scharf, writing for the *Journal of Law and Contemporary Problems*, whose ideas are extensively used in this analysis.

Now that we have been introduced to the general idea behind the U.S. argument, let's examine its specifics. One of the arguments presented by the United States is that the ICC would not be in the position to prosecute nationals of non-party states based on the principles of universality because it rejects such principles when it requires the consent of the state in which the crime occurred or the consent of the state of the perpetrator's nationality. It is because of this reason that the U.S. argues that the jurisdiction of the ICC is rooted in principles of territorial and not universal jurisdiction.

However, there are important elements of the ICC jurisdiction that the U.S. fails to take into account. It is true that the jurisdiction of the court is rooted in principles of territorial jurisdiction and requires approval to prosecute from the UN Security Council, the state where the crime occurred, and/or the consent of the state of nationality of the perpetrator. But such jurisdiction cannot be exclusively territorial considering the nature of the crimes that fall under the ICC jurisdiction (i.e. war crimes, genocide, and crimes against humanity). The types of crimes that the ICC would prosecute were considered universal long before the Rome Treaty. Such crimes were considered universal in numerous treaties and legal documents since the Second World War. Furthermore, they continued to be treated as universal in the tribunals for Rwanda and Yugoslavia.<sup>4</sup> It is the nature and the magnitude of the crimes that calls for universal jurisdiction regardless of how the ICC goes about prosecuting them. Due to the types of crimes it covers, the ICC is in the position of exercising territorial and universal jurisdiction concurrently.<sup>5</sup> It is for this reason that the court is empowered to prosecute nationals of non-party states under universal jurisdiction. Furthermore, the very fact that the jurisdiction of the court, although applicable for universal crimes, requires the consent of either the Security Council, the states where the crime occurred, or the state of nationality, was purposely constructed in such a way as to provide some kind of checks and balances on how universal jurisdiction is applied. This is an attempt to make sure that the court cannot simply prosecute members of non-party states without any international approval. This type of jurisdiction trigger was meant to be a safeguard against abusive jurisdiction and not to encourage abuse.<sup>6</sup>

According to customary international law, universal jurisdiction mandates that every state possess a limited but inalienable amount of jurisdiction over a limited number of crimes considered universal.<sup>7</sup> If there were no international courts at all, this would mean that states have the empiric right to prosecute war crimes, genocide, and crimes of aggression. In a hypothetical world, when a state decides to prosecute one of such crimes,

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this state, as a sovereign, would be exercising its territorial jurisdiction. However, since the state also possess a limited amount of universal jurisdiction regarding a limited number of universal crimes, a state prosecuting crimes under the ICC jurisdiction would be exercising territorial and universal jurisdiction at the same time. Therefore, if a state can justifiably exercise universal jurisdiction over nationals of other states (without the consent of the other states) as a right under the status of a sovereign state, and if the state chooses to delegate that jurisdiction to a court such as the ICC, then the ICC should be able to use universal jurisdiction if a vast number of states delegate this jurisdiction through ratifying the Rome Treaty.

Furthermore, it is important to mention that at the Rome Diplomatic Conference, none of the participating countries that were involved in formulating the articles of the court had any objections about the universality of the crimes that fall under the ICC. Thus, it is the universal consensus among the lawmakers that expresses an intent to consider crimes prosecuted under the ICC as universal.<sup>8</sup> Additionally, the reason why it was agreed to have the consensus of either the state where the crime took place or the perpetrator's state of nationality was to assure that the ICC would be structured to limit "the exercise of the court's inherent jurisdiction as a politically expedient concession to the sovereignty of the states."<sup>9</sup> Therefore, such structure was meant to assure the states that the proceedings of the court will not be politically motivated.

The ability of the ICC to exercise universal jurisdiction provides very unique benefits to individual states. First, it allows states that may find it in their national interest, and for security reasons, plausible not to prosecute an individual in its courts, to try that individual in more neutral surroundings. We can envision countless scenarios in which the prosecution of certain individuals could lead to internal political instability. To illustrate this, suppose that the international community did not have a mechanism in which they could prosecute individuals like Slobodan Miloshevich. Some can reasonably argue that if he were tried under the Serbian legal system, that he most probably would not have a fair trial. A different but equally unfair scenario can be argued if he were tried in Kosovo or Bosnia. But a permanent international criminal court provides a comprehensive solution to such problems by removing the trial from a politically charged environment to a more neutral and impartial setting.

Another benefit to having an international criminal court is that it allows states that are strongly interested in prosecuting certain individuals to be able to do so even if they do not have a strong legal infrastructure. There are scenarios in which states committed to establishing justice cannot do so due to civil war, revolutions, corruption or other forms of social distress. A good example of such a scenario is Rwanda after the massacres of 1996 where thousands of people, innocent and guilty, were awaiting their trials for months and even years. A permanent court such as the ICC can provide an expedient solution to such situations by its mere ability to provide immediate technical and professional legal assistance to trials involving universal crimes.

Last but not least, the principle of jurisdictional complementarity, which mandates that national courts would try criminals unless unable or unwilling to do so, indicates that the states would in most cases conduct the trials. The principle of complementarity was included in the ICC jurisdiction with the intent to make it clear that it is the state that

<sup>8</sup> Scharf.

<sup>9</sup> Scharf.



will be the most active part of the court. Also, complementarity establishes a very high burden of proof to show that a domestic legal system is inept in dealing with certain trials.<sup>10</sup> This too is an indicator that most cases will stay in the realm of domestic courts.

By trying most cases, states would not only empower their own legal systems but also start to play a more conscious and prominent role in international law. The representatives at the Rome Diplomatic Conference believed that the effectiveness of the court does not lie in a very large and sophisticated central court if individual states are not fully committed to enforce the laws. Rather, they envisioned the ICC as a “catalyst, and then as a monitoring and supporting institution” for individual states.<sup>11</sup> The creation of a centralized criminal court that requires dedication on the part of individual states is purposed to induce a “stakeholder effect,” meaning that states will inevitably become more interested and involved in international law by their mere contributions to the law by having most cases tried in national courts. The diplomats at the Rome conference had the attitude that to be successful the world needs to “eliminate impunity for international crimes,” and that could be done when “aversion to impunity is internalized by domestic legal systems of all states.”<sup>12</sup>

So far, we have seen that, while the jurisdiction of the proposed court is in many instances justified based on the principles of territoriality, the court can reasonably claim universal jurisdiction due to the universal nature of the crimes and exercise such jurisdiction concurrently with territorial jurisdiction. Furthermore, it can be argued that there are unique benefits to including universal jurisdiction as part of the ICC. They range from the idea that it allows individual states more flexibility when deciding on whether to conduct trials domestically or abroad to the idea that universal jurisdiction would only empower states to enforce international law.

The U.S. argument that the ICC rejects universal jurisdiction if it is requiring the consent of the state where the crime occurred, or the perpetrator’s state of nationality is outweighed by the need to prosecute crimes of such magnitude, as those covered by the proposed jurisdiction of the court and by all the benefits resulting from the participation of individual states in the ICC trials.

The second argument that the United States presented during the diplomatic negotiations of the Rome Treaty was that not all crimes under the ICC jurisdiction are universal and that because of this reason it should not exercise universal jurisdiction over those crimes. The source of the crimes included under article eight of the Rome Treaty is found in the Geneva Convention of 1949, the two additional protocols to the Geneva Convention of 1977 and the Hague Regulations of 1907.<sup>13</sup> The U.S. claimed that based on those documents, only “grave breaches” of the Geneva Convention can trigger universal jurisdiction. It did so in order to argue that some crimes under the ICC are not universal or that the U.S. is not legally bound to obey the norms specified under article eight of the Rome Treaty. Specifically, the U.S. stated that only grave breaches of the Geneva Convention require individual criminal responsibility and that Hague Regulations cannot constitute grave violations of the Geneva Convention. Then, the U.S. argued that the additional protocols of 1977 to the Geneva Convention are not customary international law.<sup>14</sup>

10 Jonathan Charney, “International Criminal Law and the Role of Domestic Courts,” *American Journal of International Law* (January, 2001), 95, 120. Specific qualifications not available. Downloaded from Lexis-Nexis Academic Universe, Law Reviews, 20 April 2002.

11 Charney.

12 Charney.

13 Scharf.

14 Scharf.



These claims fail to consider numerous instances in the last thirty years in which the U.S. had views pertaining to these documents diametrically opposed to what it argues against the ICC. For instance, the U.S. argues that Hague Regulations do not constitute grave violations of the Geneva Convention. It is for this reason that crimes described in The Hague Regulations and included under article eight of the Rome Treaty are not enough to trigger individual criminal responsibility through universal jurisdiction. What the U.S. forgets to account for is the fact that it was a great advocate for the inclusion of the Hague Regulations to be applicable during the Nuremburg trials. The U.S. argued that the violations of the Hague Regulations were in fact significant and sufficient to trigger individual criminal responsibility. Indeed, the Nuremburg trials did include the Hague Regulations to trigger individual criminal responsibility.<sup>15</sup>

Also, the United States claims that only “grave breaches” of the Geneva Convention should trigger individual criminal responsibility. The reasoning for this claim is that the Geneva Convention mandates an obligation to prosecute “grave breaches” of the Geneva Convention. Here, the U.S. commits a fallacy in thinking that what is true of a part of the convention is true of all that the convention advocated. It is true that the convention claims that all states have the obligation to prosecute some universal crimes but it doesn’t mandate that states should be limited to what they are obliged to do. In fact, many “law of war experts have pointed out the distinction between grave breaches and other violations of the Geneva Convention in that there is a universal obligation to prosecute those accused of grave breaches and a universal right to prosecute those who have committed other violations.”<sup>16</sup> Thus, the U.S. is wrong in assuming that only the grave breaches should trigger individual criminal responsibility. Furthermore, the U.S. passed the Expanded War Crimes Act that applies to U.S. service persons charged with war crimes. This act mandates that not only grave violations of the Geneva Convention but also violations of the Hague Regulations be sufficient to trigger criminal responsibility. Thus we see that in 1997 when the act was passed, the U.S. voluntarily declared that non-grave violations of the Geneva Convention are also unique reasons that may trigger individual criminal responsibility even when applied to its own nationals.<sup>17</sup>

Furthermore, another reason why the U.S. claims that some of the ICC jurisdiction is not universal is that it makes additional use of protocol one of the Geneva Convention. The reasoning for this argument is that the United States has never ratified protocol one. In a sense, the U.S. feels that supporting the Rome Treaty would mean supporting protocol one, which it never ratified. Even if this is true, there are many reasons why not having ratified protocol one of the Geneva Convention should not constitute a real obstacle for the U.S. to support the ICC. First, the U.S. is already extensively using the provisions of protocol one under its rules and regulations dealing with extradition, prosecution and indictment of U.S. servicemen/servicewomen abroad. Second, the primary function of protocol one was not to create new law but to provide more specific explanations to the provisions agreed upon at the Geneva Convention. Finally, even if the U.S. considers that protocol one created new law and thus expanded the ICC jurisdiction beyond the initial jurisdiction agreed upon at the Geneva Convention, it’s very reasonable to argue that even without the ratification of the protocol by the U.S. that its provisions are currently considered customary international law. Such is true because protocol one became one

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of the most popular documents that ever existed in international law, having been ratified by one hundred and fifty nation states, most NATO members and three Security Council members.<sup>18</sup>

Another argument that the United States had regarding the fact that some of the ICC jurisdiction is not universal was the claim that the ICC jurisdiction violated protocol two of the Geneva convention which concerns itself with defining what constitutes war crimes in internal armed conflict. Much of the reasoning for this argument was fueled by a speech given by the U.N. Secretary General on this topic. Some of the speech contained rhetoric that could be interpreted to mean “a more expansive approach to the choice of the applicable law.”<sup>19</sup> The U.S. misinterpreted the speech to mean that it was alright to accede customary international law in dealing with the prosecution of individuals within internal armed conflicts. On this basis, the U.S. argued that war crimes committed in internal conflicts are not covered by universal jurisdiction. But the international community has affirmed on numerous occasions that individuals can have a criminal responsibility in situations of internal armed conflicts as a matter of customary international law. In commenting on the genocide in Rwanda, the General Assembly, the Security Council and the Human Rights Commission have made it very clear that individuals have a criminal responsibility for crimes in internal armed conflicts.<sup>20</sup> Furthermore, there are international tribunal rulings that indicate that such a responsibility exists. For example, the Yugoslavia tribunal ruled in the 1995 Tadic Case that there is a definite individual criminal responsibility when there are gross violations of international humanitarian law in internal armed conflicts.<sup>21</sup>

Yet another reason presented by the U.S. regarding the supposed inability of the ICC to exercise universal jurisdiction, is that universal jurisdiction cannot be delegated to a treaty-based international court without the consent of the perpetrator’s state of nationality. The U.S. explained this argument to mean that the applicability of the courts jurisdiction over nationals of non-party states will constitute a violation of the Vienna Convention on the Law of Treaties because the court puts certain obligations on the states that are not members of the ICC. However, it is evident that the only obligations that the ICC imposes (i.e. obligation to provide funding, to extradite, to provide evidence) pertain exclusively to members of the ICC.<sup>22</sup>

The U.S. seems to believe that because the ICC can exercise its jurisdiction over nationals of non-party states, it can impose obligations on non-party states and thus violate the Vienna Convention on the Law of Treaties. However, a strong case can be made that some U.S. policies contradict this argument. The U.S. is member to numerous treaties that bind nationals of non-member states without the consent of the state of nationality of the perpetrator. Some of these treaties include the Geneva Convention of 1949, Law of the Sea Convention of 1958, Hijacking Convention of 1970, Aircraft Sabotage of 1971, the Internationally Protected Persons Convention of 1973 and many others.<sup>23</sup> All of these treaties ratified by the U.S. use a similar logic to that of the ICC as to why the jurisdiction should be applicable to nationals of non-member states.

Furthermore, professor Malvina Hallberstam raised an important question about the actual meaning of International Treaties. In examining the treaties pertaining to combating

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terrorism, she makes the argument that treaties regarding terrorism will never be fully efficient if the states that sponsor or host terrorists are never going to ratify such treaties.<sup>24</sup> This common sense argument only proves the necessity to be able to confer universal jurisdiction to a treaty-based court to allow for the applicability of that jurisdiction over parties who are not members of the court, but whose nationals are charged with universal crimes.

According to Mr. Scharf, the U.S. had a very similar attitude and expressed it in two trials held in the United States. First, was the case of *United States vs. Yunis* in which the United States Court of Appeals for the D.C. Circuit tried a Lebanese national for hijacking a Jordanian airliner. The United States legitimized its actions by stating that it was member of a treaty against taking hostages. The United States was member to the treaty and did ratify it but Lebanon never did. The United States continued and finalized the trial never obtaining any consent from Lebanon. The second case is the *United States vs. Rezaq*. This case provides a similar scenario in which the United States tried a Palestinian national for hijacking an airliner. Here too, the Palestinian authority claimed that it was never a member of the Hague Hijacking Convention. Both cases exemplify that the U.S. is a nation that considers making the applicability of a certain international treaties universal if that is a condition for making the treaty efficient. Thus, the U.S. should abide by its own principles and recognize that the efficiency of ICC depends on the applicability of universal jurisdiction to persons accused of atrocities even if the criminal's state of nationality is not a member of the court.

Mr. Scharf states that the claim about the jurisdiction of the ICC not being applicable to nationals of non-members states is not only contradictory to the position of the U.S. before the Rome Treaty but it also has potential to damage the efficiency of the U.S. law enforcement in regard to narcotics and terrorism. The international nature of drug trafficking and terrorism are good illustrations of crimes greatly affecting the U.S. that involve foreign nationals. The United States must come to the realization that to win the war on terrorism and drug trafficking, it must have a legitimate mechanism to bring foreign nationals to justice. It only seems reasonable that the United States must support the idea that, in customary international law, there are crimes of such a great magnitude that the international community does not need the participation or the support of the perpetrator's state of nationality in order to prosecute a criminal. Not supporting this idea will only hurt the U.S. because, as such, this argument that the jurisdiction of the court should not apply to non-member states is exactly what can be used against the U.S. in a court when the U.S. tries to prosecute a terrorist or a drug lord from a foreign nation.

So far, we analyzed some of the arguments that the United States presented as justification for not supporting the ICC. The U.S. argued the ICC jurisdiction couldn't be justified on the principles of universality, because requiring the consent of at least one party involved in a conflict constitutes a rejection of universal jurisdiction. Second, the U.S. argued that not all crimes covered by the ICC are subject to universal jurisdiction. Third, it argued that universal jurisdiction couldn't be delegated to a treaty-based collective international court.

<sup>24</sup> Malvina Hallberstam, writing for the *Journal of Law and Contemporary Problems*. Specific qualifications not available. *Law and Contemporary Problems*. "The United States and the International Criminal Court: The ICC Jurisdiction Over the Nationals of Non-party Members: A Critique of the U.S. Position," by Michael Scharf, Winter 2001, *Law and Contemporary Problems*, 64, 67. Downloaded from Lexis-Nexis Academic Universe, Law Reviews on 20 April 2001.



In addition to the above reasons, the U.S. argued that the jurisdiction of the court would not be legitimate if applied to nationals of non-party states because territorial jurisdiction cannot be delegated to a treaty-based collective international court without permission from the perpetrator's state of nationality. Mr. Scharf argues that this argument is not consistent with the foreign policy of the U.S. There is no doubt that all states consider territorial jurisdiction to be supreme in the sense that no other jurisdiction can supersede territorial jurisdiction when it is applied to prosecute crimes that occurred in the realm of that jurisdiction. The United States and other nation states support the idea that a state may freely exercise its territorial jurisdiction over foreign persons who have committed crimes within the territory of its state. Furthermore, it may do so without having to consult with the state of perpetrator's nationality, unless otherwise specified by a bilateral document between the two states. Then, the only difference between the Status Quo and a world with the ICC is that states that would normally have the right to apply territorial jurisdiction to prosecute a foreign person will have the option to delegate this jurisdiction to another party such as the ICC.

The United States argued that there are no precedents demonstrating that states may choose to delegate their territorial jurisdiction to an international body similar to the ICC. However, according to Mr. Scharf, the Nuremberg trials are the best example of the manner in which states did and can delegate their jurisdiction to a treaty based international court. All of the allied forces, each of which could individually exercise territorial jurisdiction to prosecute German military persons, instead convened to an international tribunal. According to Professor Egon Schwelb, the Nuremberg trials were not merely "an occupation court applying national law, but rather an international judicial body applying universal jurisdiction."<sup>25</sup> He gives several reasons why this is true. First, the signatories of the tribunal were acting on behalf of the United Nations. Second, Article Ten of the Charter provided that the jurisdiction of the tribunal is applicable not only to German war criminals, but war criminals all over Europe. Professor Schwelb argued that the Nuremberg trials used universal jurisdiction because of the granted consent and the delegation of territorial jurisdiction by all allied states to an international court.

In trying to refute to the idea that the Nuremberg trials are similar to the ICC, Mr. Scheffer argued that in the case of the Nuremberg trials the territorial jurisdiction was justifiably delegated because Germany and Japan had given their approval to such a jurisdiction. But Mr. Scharf claims that the U.S. argument is flawed for two reasons. First, none of the judicial opinions written during and after the Nuremberg trials provide the argument that the basis of universal jurisdiction is the consent of Germany and Japan. In fact, such consent is not even mentioned in the judge's opinions. Second, as Professor Henry King has stated, the reason why Germany did give an actual approval to the tribunal's jurisdiction is because Germany constituted a defeated nation not in the position of putting demands or objection on the allied forces. Furthermore, in the years following the war, Germany did not actually have a government and was thus not a sovereign state.<sup>26</sup>

25 Egon Schwelb, writing for the *Journal of Law and Contemporary Problems*. Specific qualifications not available. *Law and Contemporary Problems*. "The United States and the International Criminal Court: The ICC Jurisdiction Over the Nationals of Non-party Members: A Critique of the U.S. Position," by Michael Scharf, Winter 2001, *Law and Contemporary Problems*, 64, 67. Downloaded from Lexis-Nexis Academic Universe, Law Reviews on 20 April 2001.

26 Henry King, writing for the *Journal of Law and Contemporary Problems*. Specific qualifications not available. *Law and Contemporary Problems*. "The United States and the International Criminal Court: The ICC Jurisdiction Over the Nationals of Non-party Members: A Critique of the U.S. Position," Winter 2001, *Law and Contemporary Problems*, 64, 67. Downloaded from Lexis-Nexis Academic Universe, law reviews on 20 April 2001.



Another ramification of the above argument was that territorial jurisdiction should not be delegated to an international organization such as the ICC because it would undermine the nature of territorial jurisdiction. According to professor Madeline Morris of Duke Law School, this would happen by undermining “the pride of place among internationally recognized bases for jurisdiction including the presumed involvement of the interests of the state where the crime occurred and, secondarily, the convenience of the forum for witnesses and evidence and alike.”<sup>27</sup>

But in the *Journal of Law and Contemporary Problems*, Mr. Scharf argues that this claim is not at all representative of the actual attitude of the U.S. toward the value of territorial jurisdiction described above. He argues that the U.S. undermines this argument by asserting, in many cases, territorial jurisdiction based on the principles of the “effects theory.” When the U.S. makes use of the “effects theory,” it is often in cases involving one or more foreign states. A simple scenario will illustrate what the “effects theory” entails. This theory is especially popular when dealing with cases of drug trafficking. Due to the “effects theory,” the U.S. can claim that it will try foreign owners of drug plantations in its legal system because of the fact that, although the drugs were produced abroad, they were sold in the U.S. On these grounds; the U.S. often does prosecute foreign criminals. In light of such U.S. policies, it is clear that the U.S. is not extremely supportive of the territorial forum that allows for the convenience of evidence and witnesses as described by professor Morris. If it did, it would allow the state of nationality to prosecute the crime, and not claim special circumstances to try foreign nationals in the U.S.

Mr. Scharf continues this argument by stating that the United States has never recognized the exclusive primacy of jurisdiction based on nationality. This is especially true regarding the manner in which the U.S. conducts its extradition practices. In a hypothetical example, if the state of the perpetrator’s nationality places a request for the extradition of its national located in the U.S. and another state also places a request for extradition, then the U.S. would normally extradite the person to the state who placed the request first. Thus, the U.S. does not necessarily support the accused being extradited to the state of nationality where he/she would be tried under territorial jurisdiction (which would allow for forum described by professor Morris). This further proves the point that the U.S. does not support territorial jurisdiction for the reason presented by professor Morris.

Mr. Scharf finalized his argument by stating that a forum convenient for the availability of witnesses and evidence is not exclusively territorial. He states that in today’s world, the lack of the territorial forum is no longer a “handicap.” States have realized that sometimes there needs to be a basis for jurisdiction other than territoriality, and in order to satisfy this need many states have engaged in bilateral and multilateral agreements to facilitate the exchange of witnesses and evidence in an international forum.

As we noted earlier, the primary cause of the U.S. lack of support for the ICC is the concern that the jurisdiction of the ICC would apply to nationals of the U.S. even if the United States were not a member of the court. Because this is the primary concern, the argument about the inability to delegate territorial jurisdiction to the ICC without the consent of the state of nationality is a mute point. The key to this understanding is that even in a world in which there are no international courts, U.S. nationals can still be pros-

<sup>27</sup> Madeline Morris, Duke Law School. *Law and Contemporary Problems*. Specific qualifications not available. *Law and Contemporary Problems*. “The United States and the International Criminal Court: The ICC Jurisdiction Over the Nationals of Non-party Members: A critique of the U.S. Position,” by Michael Scharf. Winter 2001, *Law and Contemporary Problems*, 64, 67. Downloaded from Lexis-Nexis Academic Universe, law reviews on 20 April 2001.



ecuted (for the type of crimes that the ICC would prosecute) due to the unquestionable existence of territorial jurisdiction. So even if territorial jurisdiction is not delegated to the ICC, it still fully applies to potential war criminals from the U.S. when they commit crimes in the realm of the jurisdiction of another state.

A memo addressed to the U.S. House Committee on International Relations and signed by eight former presidents of the American Society of International Law supports this point. The memo states that the actions taken by the U.S. in preventing the ICC from becoming a reality is a non-sense, if the only reason to reject the ICC is the applicability of the jurisdiction without the consent of the state of nationality. But U.S. nationals are subject to legal jurisdictions even without the ICC. For instance, any serviceman who is incarcerated in another state would be a subject to the territorial jurisdiction of that state.

In fact, a strong case can be made that the best thing the U.S. could do in preventing this unconditional applicability of territorial jurisdiction is to support the idea that territorial jurisdiction can be delegated to an international court such as the ICC. Mr. Scharf states that this would be beneficial if U.S. nationals were tried in nations that according to President Bush are the “axes of evil”. In such a scenario the U.S. could greatly benefit from the existence of an ICC that could claim jurisdiction over the particular cases and thus potentially provide a more fair trial. In addition, the U.S. would have a greater voice in the proceedings of the trial (through U.S. lawyers and judges) if it were member to the court. Therefore, a better way to insure that the U.S. has more control over what happens to its nationals abroad is not a move away from the ICC but an effort to move closer to its implementation.

Furthermore, the principle of complementarity as described by Mr. Scharf provides that most cases that would fall under the jurisdiction of the ICC would be tried in a domestic court of the perpetrator’s nationality, unless the domestic legal system is inept or unwilling to deal with the trial. Under such circumstances, if the U.S. was member of the court it could ascertain its right to prosecute its own nationals for the crimes specified in the statutes of the ICC as long as it is able and willing to conduct the trial. We can further conclude that this is exactly what will happen in most cases, as it is very difficult to envision a situation in which the U.S. legal system could be proven inept to deal with certain trials. In cases when the U.S. is unwilling to conduct the trials, the ICC becomes beneficial as well. The ICC can be a beneficial alternative court to try the cases if needed.

The ICC would be particularly beneficial to states that experience political transitions or internal turmoil. Such states may consider some cases to be too politically dangerous to be conducted in their legal system.<sup>28</sup> Scenarios of such kind could come about because of an inadequate legal infrastructure, corruption, or political pressure. These are all reasons why a state may wish to have the ability to prosecute a particular case in a “distant court” such as the ICC.

Because U.S. nationals are still subject to territorial jurisdiction when charged with crimes against humanity, war, and genocide, the U.S. argument about protecting its nationals from the ICC becomes in vain. However, it is reasonable to assume that if the ICC is established, regardless of the U.S. membership, we can foresee the U.S. expressing an interest to participate in the affairs of the court and in the proceedings of some trials (possibly provide witnesses and/or evidence). We should not forget that despite the refusal to ratify the Rome Treaty, the U.S. still remains a great leader and an advocate of human rights around the world. It is even more likely that the United States may want to contribute

28 Charney.



to ICC trials if the subject of the trial is a U.S. national(s). The question then becomes whether or not the U.S. can participate as a non-member. Fortunately, due to Article 17 of the Rome Treaty, non-member states are not obligated but can willingly participate in an ICC trial by providing witnesses and evidence.<sup>29</sup> Therefore, one conclusion can be deduced with certainty. Since U.S. nationals can be prosecuted in international courts or foreign courts even without the consent of the U.S. and since the U.S. can willingly participate in trials as a non-member (and it probably will if one of its nationals is on trial) under Article 17 of the Rome Treaty, the relationship between the U.S. and the ICC will not be greatly altered if the U.S. ratifies or not. As a member or as a non-member the U.S. will participate in the ICC trials and its nationals will be subject to its jurisdiction.

However, the U.S. is certain to send a message of disregard about the court to the entire international community. Sending this message of disregard to all nations who find guidance and inspiration in the example of the U.S. is a dangerous action. The ICC is a court that was formulated to depend on the participation of individual states (to handle most cases as provided by the principle of complementarity). It envisions a world in which individual states constitute the backbone of the struggle to prevent genocide, crimes against humanity, and war crimes. The Rome Treaty did not envision that the success of the ICC lies in a central court somewhere in a distant state. It envisioned the success of the ICC arising from the participation of individual states that will lead to cooperation among them and ultimately to a greater awareness and sensitivity to crimes covered by the ICC. It envisions a court that encourages individual state action, which will lead to the development of a legal culture and infrastructure among states to enable them to deal with atrocious crimes without having to always rely on an international organization. Thus, it could be absolutely detrimental to the international legal system when the U.S. sends a message of disapproval to creating such legal awareness regarding genocide, war crimes and crimes against humanity.

According to Monroe Leigh, writing for the American Journal of International Law, not being part of the court has far reaching implications. As a non-member, the U.S. will be left out from the process of actually building and defining the jurisdiction of the court. The United States will not have a voice in the establishment of the court's rules and procedures. The non-involvement of the U.S. will surely prevent it from influencing who will be the first set of judges, naming a U.S. national to be a judge, or defining the type of relationship that the ICC may have with the UN (General Assembly but most importantly the Security Council of which the U.S. is a member).<sup>30</sup>

Mr. Leigh stated that the United States tried to pursue the argument that, as a non-party state, its nationals should be exempt from the jurisdiction of the court as long as such nationals are acting in accordance "with the overall direction of the non-party state." According to him, such a provision presents the court with the possibility to establish a very dangerous rule. We should not forget that the U.S. is member of a very small group of states who does not support the ICC and that aside from Israel; the U.S. is in the company of rogue states. By default, if such an exemption is permitted, then it must also apply to non-member rogue states as well. This exemption secures a right of the rogue states to continue violating international law and be exempt from its applicability.

<sup>29</sup> United Nations. <http://www.un.org/law/icc/statute/romefra.htm>. United Nations website. Downloaded on 1 May 2002.

<sup>30</sup> Monroe Leigh, "The United States and the Statute of Rome," *The American Society of International Law; The American Journal of International Law* (January 2001). A leading figure of the American Society of International Law and a leading influence in the interpretation and application of international law in the United States, Leigh died on November 27, 2001 at the age of 82 at his Washington office. He served as the legal adviser of the Department of State from 1975 to 1977, as president of the Society from 1980 to 1982, and as a member of this Journal's Board of Editors from 1981 to 2001.



Furthermore, he argues that according to customary interventional law, territorial jurisdiction will always precede the jurisdiction based on nationality. This can put the U.S. in a disadvantaged situation when its nationals are tried by a state with which the U.S. may have unfriendly relations. The ICC presents a potential escape for states that are displeased with the primacy of territorial jurisdiction. If the ICC existed and if there was a conflict between the U.S. and another state over what jurisdiction should prevail (territorial or national), the ICC would claim that jurisdiction. However, the ICC would have to allow the state of nationality to try the case, if that state argued the applicability of complementarity. Again, the U.S. could benefit from being a member of the ICC. Therefore, under the principle of complementarity, a U.S. national who committed a crime (i.e. war crime) would be more likely to be tried in his/her own country under the jurisdiction of the ICC.

Also, the U.S. argued that it is possible for the ICC prosecutors to be politically motivated against the interests of the United States. Mr. Leigh states that while this is a credible concern, it is not substantiated and is a mere speculation. It is more realistic to argue that this will not be the case with the ICC because of the very conservative statutes imposing numerous limitations on the abilities of the ICC prosecutors to be politically motivated. For instance, the prosecutors cannot subject any person to ICC jurisdiction before it formally notifies the state of nationality about doing so. It cannot subject a person to its jurisdiction without some approval from the chamber of judges or if the state of nationality asserted primary jurisdiction. If the state of nationality did so, the prosecutor must stop his/her own investigation. In addition, there is a very high threshold to what cases are actually tried by the ICC. This is an indicator that the ICC will not try minor or trivial cases. Finally, Mr. Leigh argues that a case may be suspended if the five permanent members of the Security Council vote to suspend it. These few of the many restrictions provide a reasonable forecast that the prosecution of the court will not be politically motivated.

The fear that U.S. persons will be subject to the jurisdiction of the court went beyond the mere objections presented in regard to specific articles of the ICC. The U.S. has taken real steps to prevent the ICC from coming into existence, even though the U.S. is not allowed to act against the ICC if it signed the treaty (the U.S. signed the treaty under the Clinton administration). More specifically, before leaving office, former U.S. Senator Jesse Helms introduced a bill called the American Service Members Protection Act. This act would make it illegal for U.S. federal agencies to cooperate with the new court and it would not give military assistance to states that are member of the court (the only exception to this rule are NATO members).<sup>31</sup> According to Mr. Leigh, the justifications presented for the necessity of this act are rooted in the belief that the ICC will lack “(1) trial by jury, (2) the right not to be compelled to provide self-incriminating testimony, (3) the right to confront and cross-examine witnesses.”

However, he provides a substantial rebuttal of the reasons justifying this act. In regard to the right to a trial by jury, it is reasonable to claim that the U.S. service members do not have an explicit right to such trial under the Fifth Amendment. The Sixth Amendment further reinforces the fact that the military personnel can be exempt from a trial by jury. In regard to the other two concerns, we can claim with certainty that they are fully granted under the Rome Treaty. Furthermore, they are elaborated in much more detail in the Rome Treaty than they are in the U.S. Bill of Rights.

31 United Nations Association of the United States of America, <http://www.unausa.org/>. Downloaded on 1 May 2002.



In the end, it is evident that the U.S. objections to the ICC are not sufficient or substantiated to reject the ICC. The U.S. objections presented in this analysis indicate to rudimentary misunderstandings of the Rome Treaty, its jurisdiction, and the nature of the relationship between the U.S. and the ICC. In addition, the objections presented by the U.S. come out of a logic that is contradictory to many of the policies and approaches to international law that the U.S. utilizes today. The U.S. could realize that the ICC will be beneficial for its foreign policy and could use this opportunity to make the very first permanent court of such kind to fight the most detrimental crimes that can ever be committed against humanity a reality. Unfortunately, in May of 2002, the Bush Administration officially declared that the United States will not ratify the Rome Treaty and will not support the International Criminal Court.



# Terrorist Threat to the United States: A Risk Assessment of Libya and Algeria

By: Jeffrey A. Kidder\*

## Introduction

The national security of the United States, the sole remaining world superpower, has never been so vulnerable. On September 11, 2001, the façade of dominance and superiority the U.S. had enjoyed for over a decade was broken by what may be considered one of the most cunning and menacing foes the modern world has encountered in many years. Terrorism threatens many countries across the globe, but possibly none more than the United States. This discussion seeks to examine and understand the potential threat that terror organizations pose to the United States and its global interests. After addressing some theoretical considerations, I will analyze the terrorist phenomenon in Libya and Algeria and offer a logical and concise risk assessment that these countries present to the United States.

## Theoretical Framework

Terrorism dates back at least to the Bible. Stories of political murder are found throughout the Old Testament and, according to Walter Laqueur, have provided “inspiration to painters as well as to theologians and moral philosophers for ages.”<sup>1</sup> Zealots, both religious and political, have for centuries resorted to terrorism to bring about change. “A direct cause of terrorism is the existence of concrete grievances among an identifiable subgroup of a larger population,” who in their quest for change, lack the opportunity for political participation.<sup>2</sup>

Terrorism is often motivated by religion. Recently however, “sacred terror” has been dominating the global scene.<sup>3</sup> According to Walter Reich, Christianity, Judaism, and Hinduism have all at some point been linked to terrorism. However, the most prevalent and dangerous religious groups of the modern era have been radical Islamists. “Islam is intrinsically linked to terrorism,” often because terrorism is developed in the Middle East amongst “regimes or groups professing allegiance to Islamic interests, especially in recent years.”<sup>4</sup> Laqueur agrees that radical Islam has become a dominating terrorist motivation in recent years: “The real innovation in the late twentieth century is the appearance of radical religious nationalist groups adopting terrorism as their main form of struggle within the framework of an established religion.”<sup>5</sup>

Terror networks like Al-Qa’ida and Palestinian Islamic Jihad have adopted these exact principles to wage war against the West. This war is considered “Jihad.” According to Reich, “the ultimate object of Jihad (Spiritual struggle against one’s own evil nature) is a world governed by the shar’ia.”<sup>6</sup> Shar’ia simply means Islamic law, which has been present in the Middle East since the seventh century A.D. Fanatical religious terrorism, especially

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1 Walter Laqueur, *The New Terrorism* (Oxford University Press, 1999), 10.

2 David Widdaker, *The Terrorism Reader* (Routledge, 2001), 14-16.

3 Walter Reich, *Origins of Terrorism* (Woodrow Wilson International Center for Scholars, 1998), 108.

4 Reich, 103.

5 Laqueur, 80.

6 Reich, 108-111



associated with Islam, represents the largest challenge for the modern world today. At the present time, eighty percent of war and violence in the world occurs within Muslim countries, and Laqueur believes that the end to religious terror is not yet in sight. “Is a decline in Muslim violence at all likely? ‘All that one can say is maybe,’ ‘the miserable political, social, and economic situation in many of these countries are significant factors, and there is no sign of improvement on the horizon.’”<sup>7</sup>

Terrorism is a unique form of warfare that seeks to disrupt the security, prosperity, liberty, and stability of modern states. Essentially, terrorism can be viewed as a weapon that aims at repressing modernity. The US Department of Defense defines terrorism as “the calculated use of violence or the threat of violence to inculcate fear, intended to coerce or intimidate governments or societies as to the pursuit of goals that are generally political, religious or ideological.”<sup>8</sup> The difference between a terrorist and a traditional criminal is that the terrorist has motivations other than purely personal, as is often the case with civilian criminals. The terrorist “believes that he is serving a ‘good’ cause designed to achieve a greater good for a wider constituency – which the terrorist and his organization purport to represent.”<sup>9</sup> Every act of terrorism involves violence designed to affect a wider audience than just the immediate victim or victims. The audience is most often the government of the country against whom the action or violence takes place. This creates a stage on which a terrorist seeks to publicize his or her cause and promote political change.

Who sponsors terrorism? In the twenty-first century, terrorism is often sponsored and conducted by separate organizations with an identifiable chain of command or cell structure, and is often motivated by radical fundamental religious ideas, as we have seen. These groups operate independently and are financed through elaborate private networks. Organizations like Al-Qa’ida, Armed Islamic Group, Hamas and Hizballah are all pre-eminent terror networks actively operating in the Middle East. Each of these groups has an individual motivation and goal. They, however, present the most danger to the United States simply because they are so mobilized and counter-terror measures are so extremely limited.

It has been said that state sponsored terror “is as old as the history of military conflict.”<sup>10</sup> It is often an effective way for a country to express its political and ideological opinions without engaging in traditional military conflict. States without the stability and economic means to participate in the international arena often provide sanctuary and support for terrorist organizations with similar ideological, religious, or political goals. States that are acknowledged by the State Department as sponsors of international terror include Iran, Lebanon, Libya, Sudan, and Syria.<sup>11</sup>

The structural organization of many Islamic terrorist groups is very complex. These networks have an identifiable chain of command and often divide members into small, individual “cells,” to ensure that the fate of the organization never lies with one single group. This organizational pattern is strikingly similar to one that Vladimir Lenin wrote about in 1901. His work, *What Is To Be Done* outlines the theory that modern terrorist groups have replicated. “The organization of the revolutionaries must consist first and foremost of people who make revolutionary activity their profession.”<sup>12</sup> Lenin

7 Laqueur, 277-278.

8 Wittaker, 3.

9 Wittaker, 9.

10 Laqueur, 156.

11 Wittaker, 37.

12 Vladimir Lenin, *What Is To Be Done*, [www.marxists.org/archive/lenin/works/1901/what-itd/index.htm](http://www.marxists.org/archive/lenin/works/1901/what-itd/index.htm), Retrieved 7 February 2002, 8.



describes the organization as “very extensive and must be as secret as possible” with “stable leaders.”<sup>13</sup> The most unique assertion made by Lenin and utilized by terror organizations is the “cellular theory.” Lenin describes the various groups infiltrating different societies, while remaining coherent and secret at all times. “The relations between the ‘groups’ will naturally vary in each country according to historical, legal, and other conditions; they may be more or less close, secret, complex, etc.”<sup>14</sup> According to Lenin, it takes a professional revolutionary operating in a delicate, well run system, to accomplish desired goals. “In his own professional art – the art of combating the political police – one must conceive of a broad and bold plan that would command the respect even of opponents.”<sup>15</sup> These ideas, conceived by Lenin over one hundred years ago, are continuously utilized by terrorist organizations throughout the world today.

## **Libya: Political Instability**

Over the past thirty years, “Libyans and their leader Colonel Quadhafi have been regarded as the pre-eminent exponents of state terrorism.”<sup>16</sup> Although dormant for the past several years, Libya continues to remain on U.S. intelligence lists as a terrorist country. Is this justified? If so, why and to what extent does Libya threaten the national security of the United States? What has been done to prevent Libyan terror, and what can we look for in the future from the U.S.?

The history of Libya is very similar to many of its neighboring Middle Eastern countries. Foreign powers such as the Turks, French, British and Italians have all dominated the small country for centuries. These imperialist nations were unable to provide prosperity to the people, eventually leading to much political instability and resistance within society. Years of oppression and exploitation by foreign powers ended on December 24, 1951, when the UN declared Libya an independent, sovereign nation. Libya was proclaimed a constitutional monarchy and would be ruled by King Idris. This decision was extremely significant not only for the Libyan people, but also for the United Nations. Libya was the first country to be granted independence by the UN.<sup>17</sup>

Following independence, Libya experienced much economic prosperity, due in large part to massive petroleum export. Despite the enormous profit from oil export, the Libyans’ quest for stability continued. Financial growth did little to curb the political instability and uneasiness. Popular resentment grew among the lower classes because the wealth was concentrated within society’s elite.<sup>18</sup> Even with independence and oil wealth, Libya continued to experience popular unrest. All the ingredients were in place for a revolution.

On September 1, 1969, possibly the most significant event in Libyan political history took place. A small group of military officers staged a coup against the King, abolished the monarchy, and proclaimed the country as the new Libyan Arab Republic.<sup>19</sup> This revolution against the state set the foundation for Libya’s future, both domestically and internationally. The new leader of the Republic, Mu’ammar Abu al-Quadhafi, at the

13 Lenin, 16-18.

14 Lenin, 21.

15 Lenin, 21.

16 Wittaker, 54.

17 Wittaker, 58-60.

18 United States Department of State, [www.state.gov](http://www.state.gov), Libya, Retrieved 7 April 2002 at [www.state.gov/r/pa/ei/bgn/5425pf.htm](http://www.state.gov/r/pa/ei/bgn/5425pf.htm) (Henceforth noted as USDOS, Libya).

19 USDOS, Libya, 2.



time a twenty-eight-year-old army officer, pledged to remedy society's backwardness by promoting "freedom, socialism, and unity." Qadhafi spent several years in Egypt soaking up the themes of Arab nationalism from the famous revolutionary, Gamal Abdul Nasser. These feelings, along with his own ideas, "produced a potent cocktail of revolution and Islamic fundamentalism."<sup>20</sup> Qadhafi and his Revolutionary Command Council (RCC) have remained in power, despite thirty years of erratic rule.

## State Sponsored Terror

In order to understand Libyan politics and their role in the international community, one has to understand Colonel Qadhafi. He pushed his way to the front of the Libyan political picture at a time when the Middle East was thirsting for stability. Qadhafi, along with many other leaders, believed that a fundamental Islamic ideology was the principle ingredient in forming a secure and prosperous region of the world. "As there were no elections, unions, free newspapers or even opinion polls, what 'the people' thought was entirely dependent on what Qadhafi decided they would think."<sup>21</sup> This tyrannical form of government allowed for Libya to pursue radical interests.

Under the rule of Qadhafi, Libya announced several drastic policy changes that isolated the country from traditional imperial powers. The new government demanded that all outside military installations, including those of the U.S. and British, be withdrawn, Italian residents were ousted, and libraries and cultural centers operated by foreign governments were ordered closed.<sup>22</sup> Without foreign intervention, Qadhafi had much greater control over the Libyan people and military.

It is not clear what drove the Libyan ruler to embrace terrorism. However, Qadhafi's foreign policy failures and inability to gain any power or prestige through traditional diplomacy certainly could be considered the primary factor. Qadhafi's fierce hatred of Israel may have influenced the direction of his initial terrorist sponsorship. He desired to assist the Palestinian population in their quest for a sovereign state. The Palestinian terror groups he supported were very unsuccessful in their attempt to disrupt Israel. This was one of Qadhafi's most significant policy "failures." He also tried to utilize Libya's oil wealth as a bargaining tool against other nations in the region. However, the gulf oil producing nations pushed Qadhafi's opinion aside when deciding production policies during the mid-1970s. Despite these international setbacks, Qadhafi's appetite for power did not cease. "Rebuffed in a humiliating way, he turned all the more wholeheartedly to the dark sides of power and politics and clung to his ambitions and expectations."<sup>23</sup>

Libyan sponsored terrorism began in the mid-1970s, when Qadhafi began to support revolutionary groups and terror organizations with anti-Western and anti-Israeli ideologies. In 1976, Qadhafi set aside \$580 million of the Libyan budget to sponsor terrorist activities. This money was primarily used to sponsor groups linked to the Palestinian Liberation Organization (PLO), as well as to various Arab terror groups with anti-Israeli agendas.<sup>24</sup> According to David Wittaker, "he went on to give money, arms, and sanctuary to terrorists who committed random acts of horror."<sup>25</sup> However, the money

20 Wittaker, 59.

21 Wittaker, 60.

22 USDOS, Libya, 2.

23 Wittaker, 63.

24 Wittaker, 64.

25 Wittaker, 64.



and support changed hands extremely quickly when Qadhafi felt that he was being betrayed. This unpredictability became one of his distinguishing characteristics. “Qadhafi, they felt, was giving international terrorism a bad name.”<sup>26</sup>

Libyan sponsored attacks continued against American, European, and even moderate Arab countries. A failed plot to assassinate Egyptian President Hosni Mubarak in 1985 proved to many in the international community that Mu’ammr Qadhafi was determined to spread his ideals at any cost. A Berlin nightclub, La Belle Discotheque, was bombed in 1986, killing three American soldiers and wounding over eighty more.<sup>27</sup> Unlike previous incidents, the La Belle bombing did not go unnoticed. In April of 1986 as retaliation for the La Belle disaster, U.S. fighter jets launched air strikes against selected Libyan targets. Along with the retaliatory attack, the U.S. government imposed unilateral economic sanctions against Libya.<sup>28</sup> Qadhafi “showed much greater caution” with his foreign policy decision making shortly after.<sup>29</sup> Regardless of the sanctions, Qadhafi proved he could carry out large-scale terrorist operations, which brought high prestige and support among his radical Arab neighbors. “Those who did not admire him seemed to fear him.”<sup>30</sup>

In 1988, Qadhafi apparently overstepped a boundary. Pan Am flight 103 was flying over Lockerbie, Scotland when it suddenly exploded in mid-air, killing all 259 (189 Americans) on board.<sup>31</sup> This action, perpetrated by terrorists from Libya, Iran, and Syria, shocked the Western world. Due to the complete destruction of the plane, implicating one single terrorist or nation was initially very difficult. The matter was turned over to the UN Security Council, which unanimously adopted resolution 731, indicting two Libyan agents for their role in the disaster.<sup>32</sup> Qadhafi refused to turn over the agents, and suffered through UN and U.S. sanctions, isolating him economically and politically for much of the 1990s. Finally, in 1999, Libya surrendered two men suspected in connection with the bombing. In February of 2001, an international court held in the Netherlands found one of the two suspects guilty, while the other was found not guilty.<sup>33</sup> UN sanctions were suspended; if Libya complies with the remaining responsibility in the original resolution, including appropriate payment, U.S. imposed sanctions will be fully lifted.

## Algeria: Political Chaos

Algeria, a former French colony, is a country riddled with violence and hostility. In 1997, Martin Stone described Algeria as being a “state in agony.”<sup>34</sup> Algerian government officials estimate that during the 1990s, terrorists killed over 100,000 civilians.<sup>35</sup> 1,200 Algerians were killed monthly during the mid-1990s, making the country “statistically the most dangerous place in the world for foreigners.”<sup>36</sup> To understand the origins and depth of terror in Algeria it is necessary to appreciate the instability and vulnerability that exists in the state political system.

Revolution against French imperialists began in 1954 by a radical nationalist group

26 Laqueur, 169.

27 Laqueur, 170.

28 Laqueur, 170.

29 Laqueur, 171.

30 Laqueur, 171.

31 Alan Sipress and Peter Behr, “Bush Says Iran, Libya Sanctions to Stay,” *The Washington Post*, 20 April 2002, A20.

32 Laqueur, 171.

33 Howard Schneider, “Lockerbie Defendant Embraced by Gaddafi,” *The Washington Post*, 2 February 2001, A01.

34 Wittaker, 141.

35 United States Department of State, [www.state.gov](http://www.state.gov), Algeria, Retrieved, 15 April 2002 at [www.state.gov/r/pa/ci/bgn8005pf.htm](http://www.state.gov/r/pa/ci/bgn8005pf.htm) (Henceforth noted as USDOS, Algeria)

36 Wittaker, 144.



that called themselves the National Liberation Front (FLN).<sup>37</sup> Guerilla war ensued, leading to the use of violent terror tactics by both sides. After much violence and bloodshed, negotiations for peace led to a cease-fire signed by France and the FLN on March 18, 1962, at Evian, France.<sup>38</sup> France declared Algeria a free nation on July 3, 1962. On September 8, 1963, a constitution was adopted and the FLN was named as the sole party in Algeria. Ahmed Ben Bella, a member of the FLN, was formally elected president. This stability did not last; Ben Bella was ousted in a bloodless coup in 1965. The new leader, Colonel Houari Boumedienne, “introduced plans for: creating a socialist system maintaining Islam as the State religion, the drafting of a new Constitution, and the holding of elections for a President and National People’s Assembly.”<sup>39</sup> In November of 1975 a new Constitution following the guidelines set by Boumedienne was approved by national referendum. President Boumedienne died in December of 1978 and was replaced by the commander of the Oran military regime, Colonel Chadli Ben Djedid. As president, Chadli began to reverse the socialist economic policies that Boumedienne desired. Unfortunately, Algeria continued to experience severe unemployment, high prices, and lack of essential supplies.<sup>40</sup>

All of these dismal circumstances contributed to a revolt against the government in 1988. A six-day state of emergency was imposed during which 159 civilians were killed and 3,500 more were arrested.<sup>41</sup> In response to continued protest and unrest, Chadli proposed constitutional amendments allowing non-FLN candidates to participate in elections. This change was seen in 1989, when a new constitution was adopted that allowed non-FLN candidates and removed the armed forces from a designated role in the operation of the government.<sup>42</sup> The militant Islamic Salvation Front (FIS) won 50% of all votes cast in municipal elections in June 1990, providing the Algerian people with the hope of political change.<sup>43</sup> However, facing the distinct possibility of a sweeping FIS victory, the Algerian government (FLN) canceled the second stage of elections. This action, along with continued economic turmoil and political uncertainty, led to a second revolt by the Islamists. A campaign of terror, including assassinations, bombings, and violent massacres crippled the country. President Chadli, after declaring a state of emergency, resigned and appointed a five-member High Council of State (HCS) to run the tarnished government.<sup>44</sup> The HCS officially outlawed the FIS, in response to their part in the revolt. This ruling led to the immediate arrest of over 50,000 FIS members.<sup>45</sup>

More recently, since August of 1992, fanatical Islamist insurgents have continued to use ruthless terror tactics in an attempt to topple the state.<sup>46</sup> These terrorists ambush anyone they believe is loyal to the government, regardless of their background. School-teachers, doctors, lawyers, journalists, academics, civil servants have all been popular targets for terror.<sup>47</sup> Assassinations of politicians have also been practiced. They are often planned well in advance, but periodic “surprise” attacks are also utilized to increase pressure on the regime and to ensure continued fear. One could reasonably consider the

37 Wittaker, 140.

38 USDOS, Algeria, 3.

39 Wittaker, 140.

40 Wittaker, 140.

41 USDOS, Algeria, 3.

42 USDOS, Algeria, 3.

43 USDOS, Algeria, 3.

44 Wittaker, 141.

45 USDOS, Algeria, 3.

46 Wittaker, 141-150.

47 Wittaker, 147.



terror movement a success, as many Algerian politicians have been forced to flee their towns and take refuge in guarded villages.<sup>48</sup>

In the mid-1990s, radical extremists continued their assault on conventional victims but also targeted “relatives of government officials and ‘anti-Islamist’ civilians.”<sup>49</sup> The murder of merchants, shopkeepers, engineers and laborers was a sign that Algerian terrorists were ruthless and indiscriminant. Foreigners were also beginning to become a favorite target for terrorists. By 1995 “the United States identified Islamic extremists as the most significant threat to Western interests worldwide, citing Algeria as the most visible ‘proof’ of this development.”<sup>50</sup> This recognition by the U.S. led to a 1998 report from the United Nations, describing the dismal situation in Algeria while also outlining possible counter-terror measures available to the Algerian government. Much of the efforts made by the Algerian government since the 1998 report have focused on promoting citizen “self-defiance” groups to thwart terrorist activity. These groups, under the direct control of the army, are authorized to carry weapons and ammunition.<sup>51</sup>

## **Algerian Anti-State Terror**

There were approximately sixty Islamic extremist groups active in Algeria in the mid to late 1990s. These operations varied from tiny groups operating in small cities to well developed militias utilizing 60 or more armed guerrillas.<sup>52</sup> The GIA (Armed Islamic Group) and the MIA (Movement Islamic Army) remain the two most powerful extremist groups responsible for terrorizing Algeria. Both of these groups have been known to operate out of higher elevations in Algeria from where they can ambush targets that travel on the roads beneath them.

The MIA was organized and developed by FLN guerrillas during the war of independence. Like most well organized and trained terrorist movements, and in accordance with the Leninist theory, the MIA has a complex cell structure where each member of the cell knows only two other members of the network, making it difficult to identify members of the organization if they are ever caught. Figures estimate that there are as many as 15,000 active MIA members with perhaps several thousand active supporters.<sup>53</sup>

The GIA operates in a less organized but more violent organization than the MIA. Many of the guerrillas are under twenty-five years old, unemployed and possess long criminal records. The GIA have approximately 2,500 members.<sup>54</sup>

Support for these groups has traditionally come from radical Islamist states such as Iran and Sudan. Although much of the information linking the two nations to Algerian terrorism is circumstantial, it is clear that Algerian guerrillas have received support from foreign governments loyal to their cause. These groups have also raised money from Islamist supporters in Europe and North America, most notably from wealthy Algerian businessmen. The groups have also participated in more traditional activities to gain money. Bank robbery has been an essential practice to help fund much of their operations.<sup>55</sup>

48 Wittaker, 147.

49 Wittaker, 147.

50 Wittaker, 148.

51 Wittaker, 148-149.

52 USDOS, Algeria, 4.

53 USDOS, Algeria, 4.

54 Wittaker, 145-146.

55 Wittaker, 146.



## Revolutionary v. Establishment Terrorism

The fundamental difference between terrorism in Libya and Algeria is that Libyan terrorism has historically been supported by the government, while Algerian terrorism has historically been directed at the government. The most notable Algerian terrorist groups, the MIA and the GIA, could be considered what Richard Schultz defines as a form of “revolutionary terrorism,” which is “the threat or use of political violence aimed at effecting complete revolutionary change.” These groups have used terrorism as a method to change their political situation.<sup>56</sup> Libyan terrorism, on the other hand, could be considered “establishment terrorism,” which is “the threat or use of political violence by an established political system against internal or external opposition.”<sup>57</sup> Libya is a sovereign nation that has directly financed and participated in acts of terrorism against other nations, most notably secular Western countries.

As mentioned earlier, the desire for radical Islamic rule seems to be the most widely accepted motivation for terrorism by separate organizations today. These groups are allowed to operate more “freely” because they are simply harder to identify and also to defend against. Little can be done to these organizations without outright justification because, as Chris Smith, research analyst for the Center for Defense Information says, “large-scale military actions will only contribute to the sense of powerlessness that already exists among individuals and even countries.”<sup>58</sup> Furthermore, “U.S. military action could destabilize or even topple key allies in the region like Pakistan, Saudi Arabia or even Egypt, making it harder for America to dismantle terrorist groups in the future.”<sup>59</sup> To complicate matters further, military retaliation against individual terror groups often generates more support for the terror movement and its fundamental motivation altogether. Retaliatory attacks against terror groups will, according to Ivan Eland, director of defense policy studies at the CATO Institute, “lead to instability and strengthen the hand of the extremist.”<sup>60</sup> According to Anthony Cordesman, a senior analyst at the Center for Strategic and International Studies, in a worst-case scenario, “you could find yourself at war with the entire Arab world.”<sup>61</sup> In essence, counter-terror measures against revolutionary terrorists are extremely complicated and limited.

Counter-terror measures are slightly different when dealing with state (or establishment terrorism), as in the case with Libya. We have already seen several forms of retaliation from the United States against Libya, including economic sanctions as well as direct military strikes. It is much easier for countries fighting terrorism to justify action against a state rather than a group. From the perspective of the United States, there are only three legitimate ways to defend against state terrorism. Keeping in mind that the U.S. government has a strong policy of “no concession,” meaning zero negotiation with terrorist states, and that eliminating the causes of terrorism is unrealistic, only three options remain: economic sanction, military force, and preempting measures. David Tucker believes that “economic sanctions are less problematic and more effective as a response to terrorism than generally assumed.”<sup>62</sup> He notes the ‘success’ of sanctions on Libya as his major argument. Military force, also used against Libya, has had what Tucker believes to be “limited

56 Wittaker, 33

57 Wittaker, 33

58 David Masci and Kenneth Jost, “War on Terrorism,” *CQ Researcher* (12 October 2001), in *Annual Editions/American Foreign Policy (AE/AFP)* 02/03, no2, 9,13.

59 Masci and Jost, 14.

60 Masci and Jost, 14-15.

61 Masci and Jost, 15.

62 David Tucker, “Responding to Terrorism,” *Washington Quarterly* (1998), in *AE/AFP* 02/03, no31, 194.



effectiveness.”<sup>63</sup> This argument stems from what most believe is the ‘David v. Goliath’ approach, which may encourage further terrorism. Finally, preempting measures also poses significant problems. In order to prevent a terrorist attack, reliable intelligence is imperative. “More than any other method of combating terrorism, preemption requires specific, accurate, and timely intelligence.”<sup>64</sup> These forms of counter-terrorism exist for independent groups as well, but as discussed earlier, are much more difficult to impose.

## **Risk assessment of Libya and Algeria**

Many, including the government of the United States consider Libya and their Islamic regime to be a direct threat to U.S. national security. The government of Libya refuses to take responsibility for the Lockerbie incident while continuing to research and develop weapons of mass destruction (WMD). Colonel Qadhafi may assert publicly that Libya condemns terrorism, but that is simply untrue. He has praised various terrorists for their bravery and dedication, while doing little to aid Western countries in the war on terror. Libya is a dangerous terrorist state and greatly compromises U.S. efforts for peace and stability in the region. For these reasons, Libya remains a direct threat to the United States and its interests.

The Libyan president began a 1999 speech in Tripoli by stating: “Now that Libya’s liberation stage has ended, the world wants to know Mu’ammar Qadhafi as the leader of peace and development in Africa and other countries.”<sup>65</sup> This statement resembles the perplexity of Qadhafi’s political career. In order to promote any sort of peace, Qadhafi must comply with U.S. sanctions, admitting guilt for the Pan Am bombing and paying reparations to the victims of the tragedy. Instead, the Libyan leader “declared he would not pay compensation to the victim’s families or acknowledge official responsibility for the 1988 bombing.”<sup>66</sup> This apparent disregard for justice, as defined by the international community, proves that Libya and its leader have not made any significant changes from earlier terrorist ideology. The presidential administration of George W. Bush has remained firm in its resolve to hold Qadhafi to the original decision regarding the sanctions. “We’ve made it clear to the Libyans that the sanctions will remain until such time as they not only compensate for the bombing of the aircraft, but also admit their guilt and express remorse.”<sup>67</sup>

Some Americans believe that relieving Libya of the sanctions would promote trade and allow U.S. companies to prosper from Libya’s oil wealth. Vice President Richard Cheney headed an energy task force that explored the possible economic benefits of lifting sanctions against several Middle Eastern countries, namely Libya. The group acknowledges that domestic and global energy needs are too great to continue to restrict Libya’s oil production. Libya exports on average six million barrels of oil daily and is home to 4 percent of the world oil reserve.<sup>68</sup> Is it worth removing these restrictions on Libya so the U.S could benefit financially? Massachusetts Senator Edward Kennedy believes that “doing so would have a far-reaching, negative impact on America’s twelve-year pursuit of justice for the 189 innocent Americans murdered in the bombing of Pan Am Flight 103. Although there is strong interest in the U.S. oil industry in investing

63 Tucker, 194-195

64 Tucker, 196

65 Wittaker, 70

66 Schneider, 1

67 Peter Behr and Alan Sipress, “Bush Says Iran, Libya Sanctions to Stay,” *The Washington Post*, 19 April 2001, A20.

68 Behr and Sipress, “Cheney Panel Seeks Review of Sanctions,” A13.



in Libya, profits cannot take priority over justice.”<sup>69</sup>

Quadhafi has openly praised the return of terrorists acquitted in the Lockerbie bombing. In February of 2001, Quadhafi, “with his arm draped around the shoulder of Lamen Khalifa Fhimah ... offered a warm welcome home to the acquitted defendant in the Lockerbie terrorism trial.”<sup>70</sup> According to the United States government, Lamen Fhimah, is a terrorist, directly responsible for the death of 189 American civilians. A warm welcome home from the pre-eminent leader of state sponsored terrorism does not seem to fit Quadhafi’s new calls for “peace and development.”

Libya continues to research and produce chemical and biological weapons, a sure sign that the country is not ready to conform to international standards. Libya has “a chemical plant that is now the largest such facility in the Third World,” according to the U.S. Department of State, and “is currently constructing another chemical weapons production facility at Tarhuhah.”<sup>71</sup> Libya also has proved they will utilize these weapons. It is widely rumored that the Libyans utilized chemical agents in a war against Chadian troops in 1987.<sup>72</sup> If the United States lifts the economic embargo, without Quadhafi complying to sanction guidelines, it could be making a grave mistake. Libya could easily utilize its increased oil revenues, which would be enormous, to develop more weapons that threaten U.S. interests in the region. Libya is relatively small and poor, but is ruled by a leader who aims at promoting fundamental Islam by any means possible. WMD would allow Quadhafi and Libya to have a much louder voice in the region to promote radical ideals. “Because of the wide ambitions of its ruler, it has attempted to enhance its influence through the acquisition of weapons of mass destruction.”<sup>73</sup>

Algerian terrorism is unique because it stems from the government’s inability to maintain stability and reform social and economic problems within society. Massive amounts of Algerian people have dealt with these problems for their entire life and do not understand what it means to have a stable and just government. “It is crucially important that the government give serious consideration to programmes of social reform that would reduce the sense of hopelessness that we were told was very widespread among large sections of Algerian youth.”<sup>74</sup> If Algeria cannot reform and stabilize, a prosperous and safe future is unlikely.

Fierce hatred of the United States and its allies exists throughout Algeria, within terrorist groups and among their supporters. The extreme anti-Western and pro radical Islamic rhetoric adopted by groups in Algeria echoes in the region and around the world. The lack of resources and manpower are two essential reasons why Algerian groups have not directly targeted the United States. However, this has not always been the case. Algerian terrorists were directly connected to a plot that would have destroyed prominent landmarks in the United States during the millennium New Year celebration. Abdel Ghani Meskini pleaded guilty to charges that “he aided the effort to smuggle explosives into the United States as part of an alleged millennium plot to bomb U.S. landmarks.”<sup>75</sup> Meskini, and his associate, Ahmed Ressam, were arrested in December of 1999 attempting to cross from Canada into Washington State with a car full of explosives, equivalent in power to the bomb that destroyed the federal building in

<sup>69</sup> Behr and Sipress, A20.

<sup>70</sup> Schneider, 1.

<sup>71</sup> USDOS, Libya, 5-6.

<sup>72</sup> Laqueur, 243. Libya has finally accepted full responsibility for Lockerbie and has paid compensation.

<sup>73</sup> Laqueur, 243.

<sup>74</sup> Wittaker, 150.

<sup>75</sup> Dan Eggen, “Algerian Guilty in Plot to Bomb Landmarks in U.S.,” *The Washington Post*, 9 March 2001, A03.



Oklahoma City.<sup>76</sup> Both of these Algerians have commented publicly about past terror attacks against the United States and their interests. Ressaym told a federal jury that the 1998 bombings of U.S. embassies in Africa was “a good thing” and his only regret was that the damage and destruction did not take place on U.S. soil. He also spoke of his career in terrorism, and about terror camps he had attended throughout the Middle East that teach anti-Western philosophy and instruct how to disrupt that philosophy through terror tactics.<sup>77</sup> These public announcements from Algerian nationalists show first hand that much of the terrorism in Algeria is geared towards disrupting modernity, or promoting anti-Western philosophy, as discussed earlier.

Relations between the United States and Algeria have increased and improved dramatically over the past several years. In July of 2001, Algerian President Bouteflika became the first Algerian President to visit the White House since 1985.<sup>78</sup> The meetings were geared towards working to complete a peace plan between Ethiopia and Eritrea. Economically, the U.S.-Algerian relationship is growing due to direct U.S. investment in Algerian oil supplies. Banking, finance, services, pharmaceutical, medical, telecommunications, aviation, and IT are all areas where U.S. companies are directly involved in Algeria.<sup>79</sup> The Trade and Investment Framework Agreement, signed between the two countries in July of 2001, has established a working relationship between the two nations. Official U.S. presence in Algeria remains limited, but the U.S. embassy has moved toward more normal operations and now provides services to the American and Algerian Community.<sup>80</sup>

More important than increased economic and diplomatic relations between the two nations is Algeria's support of the international war against terrorism. Algeria has publicly condemned the terrorist attacks on the United States and expressed deep sorrow for the victims and families.<sup>81</sup> President Bouteflika also publicly endorsed military strikes against Afghanistan and feels that it is necessary to end the “injustice created by fanaticism, and which has been also exploited in order to create more despair and to nurture terrorism.”<sup>82</sup> Bouteflika is extremely logical in his reasoning and seems to understand the need for stability. He acknowledges that unless a government can support and care for its citizens fairly and properly, the potential for terrorism always exists. Unlike Quadhafi or other leaders in the region, Bouteflika has begun to show some effort in promoting a stable, terrorist free Middle East. If he can remedy the social and economic problems his country has battled for decades, Algeria looks to become a voice for peace and prosperity in Africa and throughout the Middle East.

76 Eggen, A03.

77 Christine Haughney, “Algerian Hails Bombing of 2 U.S. Embassies,” *The Washington Post*, 16 July 2001, A02.

78 USDOS, Algeria, 6.

79 USDOS, Algeria, 6.

80 USDOS, Algeria, 6.

81 USDOS, Algeria, 6.

82 Mike Allen, “Bush Meets With Algerian President,” *The Washington Post*, 6 November 2001, A14.



## Conclusion

Some people may believe that the “War on Terrorism” has somehow erected a wall around the United States, making a terrorist strike against the country less likely. This could not be further from the truth. The reality of the current situation is that, regardless of how many bombs are dropped on terrorist camps or terrorist countries, terrorism will continue to threaten the United States for as long as democracy and capitalism remain paramount ideals in the modern world. “The threat of terrorism is personified by Usama bin Laden, but virtually all agree that the specter of global terrorism transcends him.”<sup>83</sup> The fierce hatred of modernity runs deep throughout much of the Middle East. If these sentiments do not change, terrorism will continue to represent the most dangerous foreign policy threat to Western countries into the near future.

While it is impossible to precisely predict which terrorist group or terrorist countries pose the greatest threat to the United States in the twenty-first century, this paper has analyzed the possible threat that Algeria and Libya pose to the United States. By doing just that, it has also uncovered the reality that religion and politics remain the foundation of a phenomenon that cannot be eliminated.

The United States is the leader of the free world, a bright beacon for liberty, stability, power and wealth. Unfortunately, these are exactly the values that terrorists seek to repress. Democracy and capitalism have proven to be the most successful ideologies for the most successful countries. However, in order to promote and preserve these principles, the United States has to find a way to control terrorism. If not, the future stability of this country may be in jeopardy.

83 “U.S. Post-Cold War Military Strategy,” *Washington Quarterly*, (1998) AE/AFP, 190.