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For financial support, we are thankful to the Association of Professional Schools of International Affairs (APSIA), the Nathan Cummings Foundation, and the Woodrow Wilson School.
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Special Thanks to:
Patricia Coen
Richard Falk
Karen Jezierny
Peter Kennen
Kay King
Maria Malson
Ruth Miller
Agnes Pearson
Nathan Cummings Foundation
Editors' Note

The *Journal of Public and International Affairs (JPLA)* is the only national journal for graduate students working in public and international affairs, and as such serves as a unique forum for the views of future scholars and policy makers.

Contributing editors from thirteen schools (twelve of which are members of APSIA) in the United States and Canada helped gather over 100 submissions for this year's issue. Six of these editors traveled to Princeton and joined the Princeton editorial board in early February to help make the first cut of papers in a blind selection process. A final, blind selection process narrowed the papers for publication down to ten.

Building on last year's strong emphasis on the environment, this edition features a special section on environmental issues that is funded by a grant from the Nathan Cummings Foundation. The environmental articles examine U.S. environmental policy as conducted in the domestic, bilateral, and multilateral arenas. Other articles in the journal address a wide range of complex issues including refugee women's rights, U.S. policy towards non-proliferation in South Asia, and the difficulties that U.S. cities face due to the migration of corporations to the suburbs.

We would like to thank our contributing editors. Their help and suggestions during the publication process have been invaluable. As in the past, Kay King, the Executive Director of APSIA, has been a tremendous source of support and ideas for the *JPLA*. We are also extremely grateful for the assistance of Pat Coen, the new Communications Director at the Woodrow Wilson School. Her skills and patience were critical in developing the finished product. Finally, we would like to thank the Nathan Cummings Foundation for its support. The Foundation's grant will allow us to feature a section on environmental issues in the 1994 edition as well. We encourage journal submissions for next year in this area.
Before the revolutions of 1989 had erased Europe's bipolar order, neither the West nor the East Germans had to make difficult decisions about their fundamental responsibilities and orientations in the international community. Firmly entrenched in the two dominant blocs, almost all aspects of their foreign policies—from trade to strategic doctrine to foreign aid—were clearly prescribed by their respective and competing functions in the Atlantic and Soviet hemispheres. Despite divergent paths, however, the Federal Republic of Germany and the German Democratic Republic were both bound by the perceived moral obligation to distance the postwar order from the scourge of national socialism. Each country accepted this obligation as a basis for the abridgement of its sovereignty.

Today, the victors of World War II no longer exercise their pedagogical control over Germany's sense of responsibility. With political reunification achieved and sovereignty fully restored, Germany is searching for a new consensus in its relations with neighbors and allies. Although post-reunification Germany is heir to the values of the old Federal Republic, a new generation of politicians must determine the priorities that Germany will project abroad.

In shaping this image, German leaders are struggling to find a balance between those forces that encourage them to act boldly and unilaterally on the international stage, and those that encourage a more restrained approach. This promises to be exceptionally difficult, since most foreign leaders recall that Germany has twice in this century pushed Europe into cataclysmic conflict. At the same time, however, Germany's geographic position in the heart of Europe, combined with its massive potential to

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propel economic and political change, requires that it assume a leading role in international politics. The result is a symbiosis of these incompatible pressures. The new Germany can be expected to resolve this dilemma by being simultaneously meek and assertive.

In his first speech before the U.N. General Assembly in September 1992, Foreign Minister Klaus Kinkel guaranteed that neither the German parliament nor the government would forget that history requires a special obligation of restraint from Germany (Süddeutsche Zeitung 1992, 2). This historical obligation—strongly emphasized in the wake of last year's resurgence of neo-Nazi hate crimes—manifests itself in a form of diplomatic over-compensation. German leaders want to show that Germany is a reliable, peaceful, and moderate power, and they demonstrate these traits through rigorous financial and political support for international organizations (most notably the EC, the Conference on Security and Cooperation in Europe (CSCE) and the U.N.) that help absorb the impact of Germany's newly-enhanced sovereignty. This very activism will undoubtedly touch sensitive nerves and resurrect fears of Germania. Nevertheless, only by acting in a manner commensurate with its ability to enact change will Germany dispel old fears and garner a position in the ranks of "normal," sovereign states. Since 1990, this interplay between the competing mandates of sensitivity and sovereignty has shaped Germany's international maneuvering and has resulted in declared or implicit commitments to at least four areas: European integration, Russia's rehabilitation, bilateral cooperation with its neighbors, and maintenance of the transatlantic friendship.

**European Integration**

By promoting the "deepening" of the EC, Germany furthers its goals at two levels: it facilitates the export of German products to their most important and reliable markets, and it binds the Community's strongest member to a federal system that illustrates its commitment to peaceful coexistence with its neighbors. Whether the result is a more European Germany or a more German Europe, the German commitment to a united Europe as envisioned by the Maastricht Treaty for Political Union is unwavering. The consensus in Bonn is that Maastricht darf nicht an Deutschland scheitern (Maastricht may not fail because of Germany).

Admittedly, the framework for the monetary and political unification of Europe as conceived at Maastricht has been crippled by Danish skepticism, French nationalism, and British withdrawal from the European Monetary System. In Germany, too, there is reticence about the prospect of trading the deutsche mark for a common European currency. Nevertheless, an overriding majority from all major parties favors further integration. Even if a "multiple-speed" Europe emerges, Germany will remain
devoted to the core group of "deepeners." As a young German friend recently told me, *Der Riese Deutschland lässt sich gerne fesseln* (The giant Germany gladly allows itself to be fettered). Now that the giant has gained nearly 20 million inhabitants and annexed territory roughly the size of Ireland, it executes its responsibility of promoting Europe with added conviction.

At a broader level, Germany devotes itself to the empowerment of the CSCE. Germany needs the CSCE to help repair the ruins of the Warsaw Pact and achieve transparency and cooperation between western Europe and the fragile democracies in eastern Europe. As a central European state unable to avoid the consequences of instability in eastern Europe, Germany will undoubtedly continue to take the CSCE more seriously than do its partners in the EC and NATO.

**RUSSIA'S REHABILITATION**

By virtue of its geographic position, Germany is naturally interested in preserving a modicum of stability in its gargantuan neighbor to the east. The death of the Soviet empire and the withdrawal of Soviet troops from German territory have yet to diminish German concerns about the former great power. Despite President Yeltsin's reformist agitations and halting efforts for integration into the global economy, Russia remains a massive, unpredictable military might with thousands of nuclear weapons.

The keen interest in preserving stability in Russia and its neighbors in the former Soviet Union is undergirded by the tangible manifestations of further decay. First, according to the German embassy in Moscow, there are at least 2.2 million ethnic Germans (ITARTASS, Moscow radio broadcast, 1992) in the former Soviet Union with the right to migrate to Germany. German authorities shudder at the thought of this potential influx of immigrants. Second, the German economy has traditionally relied heavily on markets in the East. Germany needs to dominate these emerging markets to rebuild its own industrial strength. Finally, close Russian-German cooperation will be needed to slow the wave of crime that is spilling into Germany. From auto theft to the sale of fissile uranium and plutonium, organized crime in Russia directly threatens Germany's security.

These factors, combined with German gratitude for former President Gorbachev's support of German unity, guarantee the continued flow of assistance to Russia. Undoubtedly, the ruinous consequences of World War II for the Soviet Union also help to account for Germany's willingness to provide more financial and humanitarian assistance than the other G-7 nations combined.
BILATERAL COOPERATION WITH NEIGHBORS

Among Germany's neighbors, the transition from fear to trust has been most difficult for Poland and France—both of which were bled by Nazi terror during most of the five years that World War II raged across Europe. Memories of the barbarism notwithstanding, restoring trust has been difficult due to uncertainty about the future stability of national frontiers and lingering suspicion of German irredentism.

Intent on dispelling the insecurity that naturally evolved from Germany's pre-1945 expansionist ambitions, postwar German leaders initiated a series of bilateral acts of good will to restore Polish and French confidence in Germany. Konrad Adenauer joined Charles de Gaulle in a Declaration of Franco-German Friendship in 1963, and Willy Brandt fell to his knees before the Tomb of the Unknown Soldier in Warsaw, Poland in 1970. Chancellor Helmut Kohl's government continues this tradition by taking initiatives to strengthen bonds with its neighbors: Poland is reassured of the permanence of the Oder-Neisse border, and France is assuaged with promises of intensified military cooperation.

TRANSATLANTIC COOPERATION

Germany remains inextricably linked to the United States through the long-standing NATO partnership. Although the presence of American troops and nuclear weapons on German soil has, at times, spurred anti-American activism, an inter-party consensus maintains that the United States security guarantee is indispensable. In describing the German-American security relationship through NATO, German politicians and diplomats frequently pepper their speeches with terms like "foundation," "bedrock," and "keystone"—all used to dispel fears in Washington that Germany might rethink its critical role in the European pillar of the Alliance.

Since 1990, Kohl's government has taken steps to realign Germany's position in NATO which has often been unwelcome among orthodox Atlanticists in the United States. Suspicion of anti-Alliance thinking reached Washington in several waves: first, as a minority of German politicians and intellectuals (most notably, novelist Günther Grass) discussed German neutrality à la Sweden or Switzerland in the immediate aftermath of East Germany's fall, and then as Chancellor Kohl and President Mitterrand declared their intention at the La Rochelle Summit to form a European Army as part of the Western European Union. Also, the delayed and limited German support for the American-led coalition to oust Saddam Hussein from Kuwait prompted many U.S. officials to fear for the future of NATO.

Still, Germany's benefits from nourishing this relationship far outweigh the possible disadvantages. First, core political values in Germany re-
semble those in the United States partly because Americans helped write Germany's postwar constitution and steady streams of German immigrants helped build the United States. Second, Germany needs the Alliance to anchor its armed forces. Although the Bundeswehr is reducing its ranks to a targeted size of 370,000 troops, Germany seeks avenues for legal participation in international peacekeeping and humanitarian missions. Since unilateral deployments remain unthinkable, NATO is the obvious structure for German deployments abroad once the constitutional crisis regarding "out-of-area" deployment is resolved. Third, the integrity of NATO complements Germany's goal of building a stable eastern Europe. As long as NATO is the only security institution that can provide a true security guarantee for its signatories, the budding democracies of eastern Europe will seek closer association with their western neighbors in the Alliance.

SYNTHESIS

One of the principal values the new sovereign Germany wishes to project to its neighbors is that of a reliable ally, permanently situated in the western fold of nations. This priority finds strong symbolic expression in the new parliament building in Bonn, partly constructed of glass to demonstrate the transparence and predictability of the German parliamentary system. Above all, German politicians and diplomats want to convince other governments that the fundamental values adopted by the Federal Republic after 1949 are as current today as they were before unification.

In order to prove that Germany deserves the role of a "normal" state, echoes of restraint and hesitation characterize its post-reunification foreign policy. Many Germans believe that German participation in "out-of-area" conflicts is morally untenable and consider premature Foreign Minister Kinkel's conviction that a legal framework for German military action abroad can be crafted in the near future. As Der Spiegel editor Dirk Koch recently wrote, in the century of Auschwitz, a giant difference remains between media reports of destruction caused by American troops and pictures of devastation left by German troops (Koch 1992, 26).

Such thoughtfulness should be welcomed. As the dominant pole in Europe, the vitality of Western European integration and pan-European cooperation hinge on Germany's willingness to act as a reliable, peaceful, and generous partner.

References


The New Nuclear Threat: U.S. Post-Proliferation Policy in South Asia

Andrew Tiffin

With the end of the Cold War and the reduced danger of strategic nuclear conflict, U.S. policy makers are now paying greater attention to a new type of nuclear threat—nuclear proliferation. The appearance of new nuclear weapons states promises to usher in a more dangerous era of proliferation requiring a new type of policy. In contrast to arguments that "more may be better," this essay maintains that the introduction of nuclear weapons into certain regions may be destabilizing, and that this is especially so in the case of South Asia. India and Pakistan are now both de facto nuclear powers. The essay looks at a number of U.S. policy responses to this situation, ranging from diplomacy, to the transfer of stabilizing technology, to further U.S. efforts at strategic arms control.

For the last 45 years, the United States has worried about the acquisition of nuclear weapons by other nations. With the end of the Cold War and the downgrading of the nuclear threat from the former Soviet Union, the nuclear capability of smaller regional powers promises to be an even more important item on the national security agenda. This issue has been dramatically thrust into the public spotlight with revelations of Iraq's secret quest for a nuclear arsenal and has been cited by the new Secretary

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for Defense, Les Aspin, as one of the four principal threats to be dealt with by the new Clinton administration.

Until now, the main thrust of U.S. non-proliferation policy has been an attempt to prevent the emergence of new Nuclear Weapons States (NWS) on the world stage. The United States has hoped that a combination of secrecy, export controls, and inspections of civilian nuclear facilities would prove sufficient to thwart the designs of any nation wishing to acquire nuclear weapons. Unfortunately, such hopes have proven to be overly optimistic. As the example of Iraq has shown, weapons technology is sufficiently aged and well understood to ensure that any nation that is determined to build a bomb will eventually be able to do so, with or without American consent. When nations have decided that their national security requires a nuclear option, they have been able to develop their own nuclear weapons programs despite the best efforts of the United States. They are now set to deploy the results of these programs, leading the world into a new and much more dangerous era of nuclear proliferation. Such an era may require a significantly different policy approach. This essay discusses the elements of a new approach. Taking South Asia as the area most likely to confront future policy makers, and assuming that both India and Pakistan now have a rudimentary nuclear force, what should the United States do in a post-proliferation environment?

**Nuclear Proliferation: The U.S. Interest**

*Why Worry?*

The first obvious question is: should the United States "do" anything? Although the horrific nature of nuclear weapons causes many people to accept the benefits of non-proliferation at face value, a number of political scientists have challenged this conventional wisdom. Perhaps the most cited example of this school of thought is the 1981 paper by Kenneth Waltz entitled "The Spread of Nuclear Weapons: More May Be Better." Based on an underlying faith in nuclear deterrence, his paper argues that the spread of nuclear weapons may in fact add to global stability. If such deterrence was successful in preserving the peace between two antagonistic superpowers during the Cold War, he asks, why would it not do the same for other nations? Perhaps further proliferation could create a series of peaceful regional balances and produce a global system of general deterrence that dissuades all nations from aggression (Brito and Intriligator 1983, 137). The nuclear age is the longest period without war between the great powers since the foundation of the modern state system in the 17th century. Would not U.S. interests best be served, therefore, if this type of peace were to spread over the entire globe? Following this line of reasoning, policy aimed at preventing proliferation actually prolongs global instability and reflects an underlying ethnocentric bias which sees the developed coun-
tries of the North as the only nations “mature” enough to be trusted with such weapons. However much the United States may disagree with their policies, Waltz argues, the political leaders in other proliferating nations are not suicidal. They are quite capable of ends-means rationality and are thus quite capable of being deterred by nuclear weapons which clearly and unambiguously remove any possible gains from aggression. The “irrationality” of such leaders, so feared by the nuclear armed states of the North, will most likely be replaced by caution and moderation once they find themselves within a nuclear balance. There is even limited historical evidence for such nuclear-induced moderation in the case of China. After acquiring nuclear weapons in 1964, nuclear rationality and caution set in almost immediately. Wild statements welcoming nuclear war quickly ceased and were replaced by a much more responsible attitude (Quester 1984).

When Pierre Gallois put forward the pro-proliferation thesis in the 1960s, however, Hedley Bull countered by arguing that the logic of preventing war through proliferation was similar to preventing automobile accidents by placing a small pile of nitroglycerine on every car bumper. Everybody would certainly drive more carefully, and there would likely be far fewer accidents. People being human and cars breaking down, accidents would still occur, however, and with infinitely more horrible results (Ezz 1989, 36). The point should be well taken. A fully credible deterrent requires that a nation actually be ready and willing to go to war, and be demonstrably capable of launching a nuclear attack on its opponent. Yet, the system and organization that are set up to do this may be prone to miscalculation or accident. While no “rational” person would launch a nuclear attack given an alternative, there is always the finite risk of inadvertent war (Harvard Nuclear Study Group 1989, 263). Similarly, even in the face of a credible and guaranteed response, as long as there is a difference between striking first and striking second (during the Cold War this difference could be measured in tens of millions of casualties), a rational person may still attack if it is believed that war is inevitable (or if it is believed that the opponent thinks so). In a crisis situation, with pressing time constraints, and with incomplete or misleading information, the chance of such misjudgment becomes dangerously real. Therefore, although people today might look back fondly at the past 45 years and claim that the nuclear peace was infallible, it was not. Throughout the Cold War there was always a finite chance that the superpowers could go to war, yielding a relationship more accurately described as a “delicate balance of terror” than “stable deterrence.” As we look to the future benefits of proliferation, therefore, we would do well to keep this in mind. As long as there is a finite possibility of conflict, increasing the number of nuclear rivalries will increase the chance that sometime, somewhere, these weapons will be used.
Furthermore, it may be inappropriate to compare future regional conflicts with the one that existed between the United States and the Soviet Union during the Cold War. There is reason to believe that this finite risk may have been as low as it was only because of specific geostrategic and technological factors which may be absent in future regional rivalries. Thus, there is a potentially greater chance of nuclear war actually breaking out in these new nuclear regions.

Regional Conflicts

As a number of critics of the pro-proliferation thesis have pointed out, the "stability" of the superpower balance was not the product of nuclear weapons alone. It rested on an assured second strike capability—the ability to retaliate with nuclear weapons even if the opponent attacked first (Dunn 1991, 24-5). The rudimentary forces that are likely to be deployed by a newly emerging nuclear power may lack this ability. While the two superpowers had the scientific and economic resources to consider mobile-basing, hardened silos, and sea-based weapons, new forces are likely to be a good deal more vulnerable. They are also far less likely to be subject to the same detailed and stringent command and control systems that the superpowers employed. The net effect is that the nuclear forces of emerging proliferators will most likely be unable to guarantee an assured second strike. In these cases, the introduction of nuclear weapons may well make any local rivalries considerably less stable. When war between two antagonists becomes a possibility, there will be a strong incentive for either side to pre-empt the other. The side that is the target of vulnerable nuclear forces has an incentive to destroy them before they are used, while the side possessing the vulnerable forces has an incentive to use them before they are destroyed. Each antagonist fears these types of calculations by the other, and will be driven by the crisis and the advantages of pre-emption to take the initiative and escalate the conflict.

Similarly, stability between the superpowers rested on a set of de facto rules and procedures learned slowly over time—a learning process that captured both governments' interests after the Cuban missile crisis of 1962 (Nye 1992, 8-9). New nuclear weapons states will not have had the benefit of such a learning period. The Soviet Union and the United States had no common borders, had no previous history of warfare against one another, and had no disputed territorial claims that threatened the political or national survival of either country. This situation stands in stark contrast to the regional contexts that are likely to host future proliferation. In many of these cases (South Asia, the Middle East, and the Korean Peninsula), the presence of common borders and territorial disputes means that limited crises could quickly escalate to place national core values at stake. In such crises, the use of nuclear weapons becomes far more conceivable. Rather than the steady and mutual deployments characteristic of the superpower
arms race, these regional rivalries are likely to display more explosive proliferation, giving their antagonists far less scope for mutual nuclear learning (Dunn 1991, 25). Compared to the superpowers, these nations may have less flexibility to manage and successfully contain a nuclear crisis. They may not know if their opponent's operational procedures signal an intention of war or peace; they may be less aware of the technical requirements of deterrence, and they may not fully understand the risks of nuclear war.

The claim that nuclear proliferation is potentially in the U.S. interest and requires no policy response, therefore, should be treated with caution. Indeed, there is considerable reason to believe that the introduction of nuclear weapons into some regions may be destabilizing, not only increasing the probability of regional conflict, but also adding immeasurably to its destructiveness. Given a general U.S. national security interest in a stable global order, and a more humanitarian interest in preventing global suffering and destruction, U.S. policy makers are right in continuing to express concern about further nuclear proliferation. What of the specific case of South Asia? Is this a region prone to crisis instability? Should the United States be concerned about proliferation in this context? As we shall see, the current situation in South Asia is indeed one that should worry U.S. national security managers. Despite the claims of academics such as Waltz, it is a situation that justifies a U.S. policy response.

**Nuclear Proliferation: The Case of South Asia**

**India and Pakistan: Regional Rivals**

India and Pakistan have been rivals since the creation of Pakistan during India’s partition in 1947. Pakistan was born out of the notion that Hindus and Muslims were not only two separate peoples, but also two separate nations (Varshney 1991, 999-1000). In forming a separate Muslim country, Pakistani nationhood centered around a continuing fear of Hindu dominance and a struggle for independence. India, on the other hand, never accepted the two-nation theory. From the time of independence, the Indian nationalist movement espoused a concept of India that was incompatible with this type of religious separation. The core of Indian identity is a secular vision of a nation in which people of many different beliefs and religions can live together in peace and harmony. The formation of Pakistan represented a direct challenge to this vision; it was a rebuttal and a threat to the secular consensus which formed the basis of Indian nationhood. In addition, the formation of Pakistan conflicted with the dominant Indian view of the sub-continent as a single strategic unit, united by geography and culture. Since the moment of partition, Pakistan has been viewed as a villain—a nation that has shattered the unity of the continent, spread discontent and conflict, hindered India’s legitimate peace-keeping role in
the region, and served as a conduit for outside interference and trouble-making (Tanham 1992, 132-133).

With the core values of each nation at such odds, it is little wonder that these two nations have had difficulty getting along amicably. Since 1947, India and Pakistan have fought three wars: two over Kashmir, a mainly Muslim province that is currently part of India, and a third which resulted in the fragmentation of Pakistan and the creation of Bangladesh. They have come perilously close to conflict on a number of other occasions. In the winter of 1986-87, India conducted an unexpected series of exercises on the Pakistani border called “Operation Brass Tacks.” Pakistan reacted, and over 300,000 Indian and Pakistani troops were engaged in a tense stand-off along their mutual border. A full scale war was narrowly averted only through an intense series of negotiations (Isphahan 1989/90, 33). The two nations have also been engaged in an ongoing conflict since 1984 along the Siachen glacier, located where their borders converge with those of China, Afghanistan, and Tajikistan. Hundreds of troops have died in this particular conflict, and artillery fire is exchanged almost daily (UPI 4 November 1992). Where tensions are highest at present, however, is in the province of Kashmir.

Kashmir

As mentioned, Pakistan was created from the idea of a separate Muslim nation. During the partition, Pakistani leaders expected Kashmir to become part of this new nation. Indeed, the name “Pakistan” was an acronym for the majority Muslim areas of the old Indian union: Punjab, the Afghan border, Kashmir, Sind, and Baluchistan (Joec 1986, 80). When the Hindu prince of the province hesitated to join, Pakistan sent thousands of armed infiltrators into the region, causing the prince to merge the province with India in 1948. India and Pakistan have since fought two wars over the province, one in 1948 and the other in 1965. The first war left one-third of Kashmir under Pakistani control before the United Nations ordered a cease-fire. The second war ended in a stalemate.

The future of the province is a highly emotional issue for both nations, and one on which neither is willing to give much ground. For Pakistan, a country of different ethnic groups held together by the common idea of Muslim nationhood, the continuing presence of Kashmir within India is a betrayal of the national ideal. A Pakistani government cannot give up its claim to Kashmir without alienating itself from this ideal. Such a move would certainly damage the standing of the government, adversely affect its efforts at nation-building, and possibly threaten the central consensus that holds Pakistan together. On the other side, India cannot give up its claim to Kashmir without inflicting similar damage on its underlying national identity. The loss of Kashmir would bring into question the idea that different religions and peoples can indeed live peacefully within the
Indian union. It would fuel other separatist movements such as the Sikh movement in Punjab, and it would confirm the claims of Hindu nationalists, an increasingly important political force, that members of the Muslim community have divided loyalties and that India should move towards Hindu majority rule. It is feared that the loss of Kashmir, to the extent that such a move would threaten the survival of the secular constitution, would worsen communal tension within India, possibly to the degree experienced during the 1947 partition. The experience of 1947 is still a key feature in the minds of many Indian policy makers as an event in which Hindu-Muslim violence killed over half a million people and tore the nation apart (Varshney 1991, 1002).

Since 1990, this issue has become more emotionally charged for both sides. Following the killing of 35 unarmed Muslim demonstrators by Indian security forces in January 1990, the simmering Muslim separatist movement in Kashmir flared into a widespread popular insurrection. Between one and two thousand people have died in Kashmir due to political violence, and there have been numerous reports of human rights violations, both by Indian security forces and by Muslim extremists who have forced almost all of the Hindu population to leave. Arguing that fellow Muslims are being kept within a Hindu state by force, Pakistan has given political support and may have provided arms and training to the insurgency. Pakistan has denied the latter accusations by claiming that armed support is the action of private individuals which it is powerless to prevent. India, fearing the loss of the province, has stepped up its security presence in the valley and has taken an even more hard-line stand on the issue, with Prime Minister Rao declaring that “no force on earth can alienate us from it.” (UPI 15 August 1992) Mutual recriminations and threats over Kashmir have become commonplace, and a number of commentators describe it as an issue that could easily tip the region into armed, maybe nuclear, conflict (Jones 1992, 113).

**Nuclear Capabilities**

Foreign experts now generally agree that both India and Pakistan have the basics of a small, militarily significant nuclear force, i.e., they both have the components necessary to assemble a number of warheads, perhaps within hours, as well as the ability to deliver them against each other.

**India:** The Indian nuclear weapons program is based primarily on early generation fission bombs made from plutonium. Although a number of India’s reactors are subject to International Atomic Energy Agency (IAEA) safeguards, there are several that are free from such restrictions. The plutonium produced in these reactors is therefore free to be used as fissile material for nuclear warheads. It is estimated that by the end of 1995 India could have a stockpile of around 400 kilograms of plutonium, or enough material for about 65 weapons (Albright and Hibbs 1992a, 29).
India decided to pursue a nuclear weapons capability in the mid-1960s, largely in reaction to its humiliating defeat by China in 1962, and the first successful Chinese weapons test in 1964. In 1974, India conducted its first test, claiming that it was a "Peaceful Nuclear Explosion" (PNE) with no military significance. From that point, India has pursued a policy of deliberate nuclear ambiguity, insisting that it has not produced any nuclear weapons, but maintaining that it has a sovereign right to do so. Although the initial decision to branch into weapons research may have been a response to the Chinese program, the clamor for an Indian bomb following the 1964 Chinese test was short-lived. Since then, India's conceal-reveal handling of its nuclear "option," and the debate over the merits of weaponization, have been largely reactions to revelations of Pakistan's nuclear weapons program (Seth 1988, 712). In 1987, as a result of Pakistani disclosures of its nuclear capabilities and confirmations by the foreign press, the Indian Defense Minister argued that "the emerging nuclear threat to us from Pakistan is forcing us to review our options." (Seth 1988, 712) Since then, it has been widely accepted that India has prepared at least the components of a number of weapons which could be assembled and delivered quickly. For example, former CIA Director Robert Gates reported in January 1992 that India had weapons that "could be assembled quickly" and the Indian Foreign Minister in February 1992 stated that "A bomb is part of defense preparedness. We have defense preparedness." (Albright and Hibbs 1992a, 27)

At present, such nuclear weapons will probably have to be delivered by modified high-performance aircraft such as the Mirage 2000 or the MIG-23. India, however, is also currently working on missile-based delivery systems. It successfully tested the Agni in May 1989, an intermediate range ballistic missile with a range of 1550 miles which is more than capable of carrying a nuclear warhead. Another test to increase its payload capability was scheduled for March 1993. India has also successfully developed the Prithvi, a short range nuclear-capable missile that can be used against strategic targets in Pakistan. This system is expected to enter full scale production this year (UPI 3 January 1993).

Pakistan: The Pakistani nuclear weapons program centers around early generation fission weapons which use Highly Enriched Uranium (HEU) as fuel. It is believed that by 1992 Pakistan had produced between 100 and 200 kilograms of weapons grade uranium, enough material for approximately 6 to 13 weapons (Albright and Hibbs 1992b, 42).

The Pakistani government decided to develop a nuclear weapons program after its 1971 war with India, a war that resulted in the dismemberment of Pakistan and the creation of Bangladesh (Seth 1988, 712). That war reinforced Pakistani fears of Indian opportunistic aggression and emphasized Pakistan's vulnerability to Indian conventional military might. The nuclear option was seen as a way of dealing with this threat. The
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The weapons program was also substantially accelerated after India’s test in 1974. Like India, Pakistan has aimed for a posture of designed ambiguity. While insisting that its nuclear program is entirely peaceful, Pakistan has nevertheless ensured that the world is aware that it too has a nuclear weapons “option.” In 1984, the head of Pakistan’s enrichment program openly stated that Pakistan could build nuclear weapons if called upon to do so, and in 1987 the President of Pakistan himself declared that “Pakistan had the capability of building the bomb.” (Carnegie Task Force 1988, 18) These claims have been largely substantiated by the assessments of other countries. The U.S. State Department reported through the 1980s that Pakistan had tested a number of weapons-relevant explosive and triggering packages, and that it had received a proven warhead design from China, based on the weapon exploded in China’s fourth test in 1966 (Albright and Hibbs 1992b, 42). A U.S. intelligence assessment published early in 1992 concluded that the country had enough material to make ten nuclear weapons (Mann 4 December 1992, 1), and in December 1992, Senator Larry Pressler claimed that Pakistan had at least seven nuclear weapons that could be assembled and dropped within hours (Chicago Tribune 2 December 1992, 2).

Like India, Pakistan is also working on delivery systems but at the moment must rely on the use of modified high-performance aircraft (such as the F-16 and the Mirage-V). Although its missile program is significantly behind that of India, there have been recent reports that Pakistan has received a number of Chinese M-11 missiles, which have a range of around 400 kilometers and are capable of carrying nuclear warheads (Mann 4 December 1992, 1).

The United States is thus faced with a new and challenging situation. While it had hoped that its earlier non-proliferation efforts would prevent additional nations from acquiring nuclear weapons, such hopes have been dashed in the case of South Asia. U.S. policy must now address the proliferation that has already taken place. While still unconfirmed, there is considerable evidence to suggest that both India and Pakistan have the means to build quickly a number of nuclear warheads and deliver them against each other.

Regional Nuclear Stability

Is this a cause for concern? We have seen that regional nuclear balances may be less stable than the superpower balance of the Cold War and may adversely affect U.S. interests. Is this the case in South Asia? This essay will argue that the regional balance between India and Pakistan is particularly unstable and that it justifies a U.S. policy response.

Stable deterrence requires that both antagonists expect nuclear aggression to be met immediately with an unacceptable retaliation, i.e., it requires an assured second strike. Unlike the situation that existed between the
superpowers for most of the Cold War, this assured second strike cannot be taken for granted in South Asia. First, the fact that both nations maintain covert weapons programs presents a considerable problem for deterrence stability. To successfully deter an adversary, a state must be able to effectively communicate its willingness and ability to retaliate in a way that makes aggression unambiguously unprofitable. By keeping nuclear forces secret, each nation introduces an extra degree of uncertainty about its ability to carry out its deterrent threats. Thus, a rival country may consider using nuclear weapons, thinking that it can escape retaliation. Such a situation certainly detracts from deterrence stability. Uncertainty and ignorance about the other's nuclear forces may also feed misperceptions of its intentions during a crisis. Ambiguity and doubt about the capabilities of a rival may breed excessive and destabilizing "worst case" assessments of its first strike potential and designs. With this type of planning, each side becomes more inclined to consider pre-emption, hoping to minimize the damage from what it mistakenly sees as an imminent or probable attack. Furthermore, uncertainties about the capabilities of an adversary, when combined with this worst case planning, may also provide added impetus for explosive and perhaps destabilizing arms racing. One example is the hysteria in the United States during the 1950s in response to a misperceived bomber and missile gap (Burns 1991, 92).

Second, technical features of Indian and Pakistani nuclear forces make an assured second strike unlikely. During the Cold War, the superpowers spent countless billions of dollars on the survivability of their forces and command structures, ensuring that their ability to retaliate with nuclear weapons was demonstrably impervious to any type of aggression. These resources will probably be unavailable to India and Pakistan. As mentioned, both sides at present rely on aircraft to deliver their nuclear weapons, leading to a particularly unstable situation. For the nation that has a disadvantage in airpower, in this case Pakistan, there is no guarantee that its planes will be able to penetrate the defenses of an alert defender. Pakistan also may lack the wherewithal to prevent India from disabling its airfields or destroying its planes. A disarming strike by India, therefore, must be considered a possibility. If Pakistan considers the possibility great enough, it may be tempted to pre-empt this strike to avoid losing its nuclear capability. India will be aware of such Pakistani fears and thus will have to consider heading off this pre-emption, and so on. In addition, the planes that deliver these weapons have a dual purpose. They are also useful in a purely conventional war. For Pakistan, therefore, a conventional conflict with India will rapidly present it with an uncomfortable choice. As the crisis continues, it may find itself losing the very aircraft it needs to be able to launch a nuclear attack. Pakistan will have to decide whether to accept a conventional defeat and the possibility of nuclear blackmail, or exercise its nuclear option very early in the crisis. Given the secrecy surrounding the
nuclear capabilities of both sides, India may have no way of knowing just where this decision point is, and may therefore unwittingly drive Pakistan into making such a choice, mistaken in the belief that the crisis could be contained at a purely conventional level.

Finally, the relationship between India and Pakistan is much different than the relationship between the superpowers during the Cold War era. The superpowers had no previous history of major conflict prior to the Cold War, had no common borders, and had no pressing dispute in which the stakes were so high as to directly threaten the national survival of both. The two were thus better able to avoid crises, and when crises did occur, the superpowers had more scope to make concessions so as to ensure that they did not escalate out of control. India and Pakistan are not so fortunate. They share a common border, maintain a number of territorial disputes, have a history of mutual suspicion, conflict, and hostility, and are engaged in an argument that has implications for the core values of each nation. For these two, therefore, crises are much more likely to occur, and when they do, their leaders are much less able (or willing) to defuse them quickly. In addition, unlike the superpowers, who had up to half an hour to determine if an attack was in progress, the proximity of India and Pakistan makes each country more likely to adopt "hair trigger" launch-on-warning postures during such a crisis. When combined with the above mutually recognized incentives for pre-emption, the possibility that misperceptions, accidents, and false alarms will tip that crisis into a nuclear conflict are much greater.

So what should the United States do? While it may have done everything it could to prevent the current situation and while it may prefer a nuclear free South Asia, that time is gone. The weapons are there. The United States has a general interest in ensuring that South Asia remains as stable and conflict-free as possible. It must, therefore, direct its policy towards ensuring both that the number of crises confronting the region are as few as possible, and that the likelihood of such crises escalating into nuclear conflict is as low as possible.

**Deteriorating Relations**

Events over the last half of 1992 do not give much grounds for an optimistic assessment of South Asia's immediate future. Hindu-Muslim relations within India, which were already strained over the last year, have taken a dramatic turn for the worse. Following the destruction of a mosque in Uttar Pradesh by Hindu nationalists in December, India was swept by a wave of riots and sectarian violence that left over 1500 people dead (UPI 15 December 1992). Sporadic violence still occurs, and an additional 500 people have been killed since the riots were brought under control towards the end of December. This violence, an illustration of just how fragile the secular Indian national identity is, gives a small taste of what is in store should the national consensus fail and makes internal unrest the primary
Indian national security threat. It is thus likely to make Kashmir more important than ever. Earlier this year, India moved an extra three divisions of troops from the Chinese border to the Kashmir frontier in an attempt to restore order and prevent trans-border infiltration (UPI 30 December 1992). It also threatened that if Pakistan did not stop aiding the Kashmiri insurgents, it would “teach a lesson to Pakistan that not only its present generation but future generations would also remember.” (UPI 3 September 1992) Such rhetoric is indicative of a general decline in Indian-Pakistani relations over the last year. Last December, India and Pakistan engaged in a series of expulsions of each other's diplomatic staff (UPI 29 December 1992), leaving their bilateral relationship at the lowest point in years. If the United States is to do anything to help avoid a regional conflict in South Asia, it should do it now.

U.S. ACTION: DIPLOMACY

Until the 1980s, U.S. non-proliferation policy was based on the premise that nuclear proliferation was driven by technological momentum. Once nations acquired nuclear technology, they would progress inevitably to the manufacture of weapons. Anti-proliferation policy, therefore, centered around the tight control of nuclear technology by the advanced countries of the north. Export controls, technology denial, and international safeguards aimed to solve the proliferation problem by preventing additional nations from acquiring the components, materials, and technological ability to build nuclear weapons. This view gradually changed, however, as weapons technology matured, as an increasing number of states with the ability to build weapons decided not to do so, and as states which were denied technology nonetheless proceeded with weapons programs.

Throughout the 1980s it was increasingly recognized that proliferation was at its core a political problem. Nations make the decision to acquire nuclear weapons in response to their perceived security position. The only anti-proliferation measure that has any chance of success in the long run, therefore, is an accommodation between regional rivals that leaves them more secure, and which thus removes their underlying motivation for having nuclear weapons in the first place. This essay argues that such an approach is appropriate not only for pre-proliferation policy, but that it is also doubly appropriate for dealing with a region in a post-proliferation situation. In the case of South Asia, U.S. policy should continue to encourage such an accommodation between the nuclear rivals. This accommodation would lower the level of mutual fear and suspicion, increase the chance that crises would be defused before they escalate into nuclear conflict, and reduce the motivations each might have for further proliferation, either by acquiring greater numbers of warheads or developing more sophisticated weapons. A major feature of U.S. post-proliferation policy in
South Asia, therefore, should be a concerted diplomatic effort to defuse tensions between India and Pakistan and promote peaceful regional coexistence.

The Five Power Conference

U.S. diplomatic officials have already been quite active in this regard by proposing a Five Power Conference on regional nuclear arms control. This conference would include India, Pakistan, China, the United States, and Russia and would serve as a forum for the discussion of ways to stem nuclear rivalry on the subcontinent. The inclusion of China is seen as vitally important, since India has traditionally argued that its nuclear “option” is concerned not only with a threat from Pakistan, but also with the nuclear capabilities of China (Chellaney 1991, 49-51). Previous proposals for a Nuclear Weapon Free Zone in South Asia have generally been rejected by India on the grounds that any regional arrangement that excluded China would be artificial and would leave the region open to Chinese hegemony (Vanaik 1987, 71). The conference would serve as a vital first step in building a closer, more stable relationship between India and Pakistan. First, it would facilitate discussions on mutual security concerns that could help reduce tensions and bring bilateral relations out of their current slump. Second, it would serve as a venue in which the two nations could negotiate mutually acceptable measures to head off further nuclear arms racing and stabilize the nuclear balance. Finally, it could serve as the beginning of an ongoing dialogue between the two countries on regional security. This dialogue might then guide both nations in the successful management of future crises, so as to prevent them from getting out of control. Crisis instability is reduced when the various informal rules and procedures for defusing a crisis are worked out before that crisis actually takes place.

The idea for such a Five Power conference was enthusiastically endorsed by Pakistan’s Prime Minister in June 1991, and both China and Russia have agreed to attend. Only India has rejected the idea. Given that the inclusion of China addresses India’s traditional objections to such South Asian talks, its present position is all the more puzzling. While India has steadfastly maintained that it cannot assure nuclear disarmament outside of a general and globally applicable treaty, there nevertheless seems to be no reason why it cannot at least attempt to remedy some of its more immediate stability problems with Pakistan. Some commentators have suggested that Indian intransigence reflects the poor state of Indian-Pakistani relations, combined with the perception of the conference as a Pakistani initiative (MacFarquhar 9 March 1992, 42). If indeed this is the only objection, then there may well be a role for the United States in providing a gentle diplomatic “push” at least to get India to the table.
A Policy Mistake—The Isolation of Pakistan

U.S. diplomatic engagement in the region requires the ability to talk with both sides, bring Pakistan and India together in negotiation, provide a mediator/broker service to the contending parties, and propose constructive solutions without being suspected of undue bias. Current U.S. policy towards Pakistan and India, however, may prevent the United States from being able to do these things effectively.

With the withdrawal of the Soviet Union from Afghanistan, and the end of the Cold War, the 1990s have seen a dramatic shift in U.S. regional foreign policy—a shift that has been dubbed the “quiet revolution” by Pakistani security planners. U.S. diplomats have made a concerted effort to improve relations with India and have radically cooled relations with Pakistan, the principal U.S. ally in the previous regional struggle against Soviet expansion. For India, the new relationship has been characterized by the opening of economic and trade opportunities as well as by the formation of a new strategic alliance under the “Kicklighter proposals.” These proposals call for extensive cooperation and joint training of the U.S. and Indian militaries, going well beyond the 1971 Indo-Soviet Treaty of Peace and Friendship (Bidawi 20 January 1992). For Pakistan, the new relationship has meant increasing confrontation. Throughout the 1980s, the United States provided Pakistan with billions of dollars of economic and military aid. Although a number of Congressional amendments to the Foreign Assistance Act threatened this aid because of Pakistan’s nuclear weapons program, their requirements were waived by Presidents Reagan and Bush in the interests of U.S. national security. In October 1990, President Bush refused to certify that Pakistan did not “possess” a nuclear explosive device as required under the Pressler Amendment. An automatic aid cut-off placed all previous aid on hold and finally terminated it in October 1991. Since then, U.S.- Pakistani relations have become increasingly distant, with the United States insisting that a restoration of aid is only possible if Pakistan’s weapons capability is dismantled.

This abrupt cut-off in aid, and the subsequent inflexibility of the U.S. stance, is largely the product of select U.S. policy makers’ frustration with the continuing Pakistani weapons program (United States Senate 9 October 1990), together with a belief that this program can be stopped with enough U.S. pressure (see the recommendations of the Carnegie Task Force 1988, 114-115). There is reason to doubt, however, that any amount of U.S. pressure could force Pakistan to give up its nuclear deterrent. On the contrary, by stopping shipments of needed conventional military supplies, radically reducing the prospect of U.S. assistance during a crisis, and aligning itself with Pakistan’s principal rival, the United States may well be forcing Pakistan to rely even more heavily on its nuclear forces. The Pakistani nuclear weapons program has long been associated with the nation’s independence and sovereignty and is popular domestically. In a
Gallup poll held in Pakistan in June 1991, 77 percent of the respondents favored rejection of U.S. aid over giving up the nuclear program, and 87 percent were in favor of Pakistan developing nuclear weapons (Kahn 1992, 205). By insisting on the unilateral disarmament of Pakistan—a measure that the United States has not yet considered for itself despite its more favorable security position—the United States policy may only serve to increase anti-Americanism within this Muslim country, and so strengthen popular support for an independent nuclear force.

There is also a feeling within Pakistan that the U.S. approach in pursuing non-proliferation has been highly discriminatory. The imposition of sanctions against Pakistan and the favorable diplomatic shift towards India, which has already tested a nuclear weapon and which by all accounts has a greater weapons potential, may confirm this. In addition, the United States' excessive and uneven concentration on Pakistan's program may reduce India's incentives for entering into meaningful regional security discussions. India has few reasons to enter into an arms control agreement with Pakistan if it thinks it can avoid making concessions by relying on the United States to slow down the Pakistani program on its behalf (Carnegie Task Force 1988, 72).

One possible example of this problem is the current deadlock over a regional moratorium on weapons material production. This proposal was put forth by the Carnegie Task Force on Non-Proliferation and South Asian Security as a valuable and eminently achievable first step towards regional stabilization. While Pakistan may have been predicted to be less enthusiastic about this proposal because it would have locked the country into a position of strategic inferiority, it surprisingly announced that it had unilaterally frozen its nuclear weapon program in 1991. U.S. intelligence confirmed that the freeze extended to the enrichment of uranium and the shaping of this material into weapons cores (MacFarquar 9 March 1992, 42). When pressed by U.S. officials in November 1992 to respond in kind and join a regional production freeze on weapons grade material, India once again refused to enter into any kind of regional negotiations.

It would seem, therefore, that a more even-handed approach is required. The current U.S. stance in the region, and especially its increasing isolation of Pakistan, may hinder U.S. efforts to encourage greater dialogue and stabilization between the two rivals. By stripping Pakistan of U.S. security assistance, and by aligning itself with Pakistan's main rival, the United States may well be removing the last of that nation's incentives for nuclear restraint. An isolated Pakistan, facing a looming Indian threat without the support of a superpower ally, may have to look for friends elsewhere. Encouraged by growing anti-Americanism within its own population, it might seek these friends in the Muslim Middle East. The price of acceptance may well be the transfer of nuclear technology. By the same token, as a nation on the receiving end of U.S. sanctions and hostility,
Pakistan may adopt a siege mentality and become less willing to engage in dialogue or accept compromise. It will certainly be less receptive to proposals from the United States. While the United States is right to express its displeasure at developments that it sees as destabilizing for the region and for the world as a whole, it should also take care to express appreciation for positive initiatives by either nation which enhance regional stability. The United States should also make sure that it is seen as treating both sides equally, or at least fairly. This may mean being less tolerant of Indian unwillingness to at least sit down at the negotiating table. If the United States continues with its current policy, it may have considerable difficulty playing a positive diplomatic role in the region. Accusations of bias could undermine the U.S. role as a mediator and foster suspicion of U.S. proposals.

To the extent that the damage has already been done, the United States may have to combine its diplomatic efforts with those of other powers. While U.S. credibility has generally been low within both countries in the region, the credibility of another power such as France may be higher. Japan could also be included in a joint diplomatic effort to stabilize the region. Japan has direct interests in the stability of Asia, has unilaterally denounced the possession of nuclear weapons, and has considerable economic and technological leverage over both countries. This particular issue, therefore, might afford an ideal opportunity for Japan to take a more active diplomatic role in world affairs. By working with other powers, the United States not only increases the resources at its disposal, but also the moral pressure on both India and Pakistan to negotiate in good faith. When both parties become aware that their situation is a matter of concern to the entire world, not just to a single power, they might be more inclined to resolve their differences without resorting to force.

**U.S. Action: Technical Assistance**

*Confidence Building Measures: Verification*

While U.S. officials can bring the parties together and propose any number of viable arrangements, the principal barrier to the adoption of regional arms control or crisis stabilization measures is a lack of mutual trust. By providing each party with the technical means to verify that the other is not cheating on an arrangement, the United States can ensure that this lack of trust presents as small a barrier as possible. Such technical assistance can take various forms depending on the particular arrangement in question. In the case of a negotiated withdrawal and demilitarization of a border area, the United States may be able to help India and Pakistan set up a network of remote unmanned sensors capable of alerting them of suspicious movements by the other side. This type of technical assistance was provided by the United States to facilitate the Israeli-
Egyptian Sinai Disengagement Agreement of 1975 (Burns 1991, 101) and may be useful in helping India and Pakistan negotiate a mutual withdrawal from the Siachen glacier, an inhospitable region where manned third-party peacekeeping missions may be inappropriate.

Intelligence resources are another possible form of verification assistance. Specifically, Washington might consider providing India and Pakistan with the requirements for a satellite verification regime. The use of satellite image verification can be part of any number of stabilizing agreements, including: maintenance of demilitarized zones, elimination of nuclear missiles deployed within a certain distance of the border, quantitative or qualitative arms limitations, and moratoriums on fissile material production. The imaging services necessary for many of these agreements are commercially available, but they are expensive. The United States, therefore, should consider subsidizing these services and providing technical expertise to help develop an appropriate and adequate imaging package.

A number of agreements, however, such as one limiting the production of nuclear weapons components, require a level of sophistication in satellite imaging that is not available commercially. In this case, the United States might want to consider selling or giving a modified military satellite to either or both of the parties (Gupta 1991, 252). The United States has already seriously considered selling a military satellite to the United Arab Emirates to improve stability in the Persian Gulf (UPI 18 November 1992), so this type of policy initiative is not entirely unprecedented. Even if it cannot provide the region with one of its military satellites, the United States might still provide India and Pakistan with the imaging data required to support a regional agreement. This type of assistance has been provided before, in a number of different situations. The Sinai agreement, for example, included weekly overflights by U.S. SR-71 reconnaissance aircraft that relayed the resulting information directly to Israel and Egypt (Burns 1991, 102). The United States has also provided imagery to Israel, England, and Canada, and more recently, to both Pakistan and India in order to avert a crisis over Kashmir in 1990 (Gupta 1991, 252). The United States might even reconsider the establishment of an international global satellite verification system, perhaps under the auspices of the UN. The idea of the International Satellite Monitoring Agency (ISMA) has been discussed since 1961 and was shown to be viable in a UN study conducted in 1982 (Ali 1991, 281). Perhaps it is time for Washington to put its weight behind such a proposal.

Enhancing Stability

While the above technical assistance may ensure that India and Pakistan can enter into confidence building and arms control agreements, thus enabling them to reduce the level of bilateral tension and avoid crises, their
nuclear forces are still configured in a way that makes any crisis potentially unstable. The United States might therefore also consider transferring technology that limits the possibility of accident or unauthorized launch, and reduces the incentives for pre-emption.

First, South Asia has the unenviable distinction of being the region with the highest incidence of terrorism in the world. Given that both Pakistan and India suspect each other of supporting their respective insurgencies, the threat of nuclear terrorism in this region is more likely to lead to interstate conflict. It is thus in everyone’s interest to ensure that the scope for theft and/or use of nuclear weapons is minimized. To this end, the United States should consider providing the technical assistance and expertise necessary for Pakistan and India to establish proper physical security and anti-terrorism safeguards wherever they produce, store, and transport their weapons materials. At the very least, the United States should push both India and Pakistan to ratify the Convention on the Physical Protection of Nuclear Material, specifically designed to deter international nuclear terrorism (Chellaney 1991, 328). The United States might also help both nations establish the equivalent of the Department of Energy’s Nuclear Emergency Search Teams (NEST), groups of specialists trained to find and render harmless stolen weapons, improvised nuclear devices, or weapons-grade material.

Second, and perhaps more open to debate, the United States might consider transferring technology that makes Indian and Pakistani arsenals less susceptible to accidental detonation. This technology might range from the manufacture of insensitive high explosives to the promotion of “safe” weapons design. Recent revelations show that the United States transferred such technology, albeit covertly, to the French throughout the 1970s and 1980s (Ullman 1989, 3-33). There may be an equally pressing reason for transferring such technology to India and Pakistan: in order to move their nuclear programs to a more secure and stable level. Similarly, the United States may want to transfer technology and expertise that can eliminate unauthorized use of Indian and Pakistani weapons. Such technical assistance may be in the form of “Permissive Action Link” (PAL) technology, i.e., coded electromagnetic locks for nuclear weapons, or information on human reliability testing, or the concepts behind sensor switches (safeguards that ensure that a bomb is in free-fall or that a missile is in flight before a weapon is armed).

The reason such assistance may prove to be controversial, however, is that it could be argued that it enhances the nuclear capabilities of the recipient. It may be impossible, for example, to transfer U.S. knowledge on weapons safety without also giving the recipient certain insights into warhead design that the state might otherwise not have known. Similarly, by passing on PAL technology, the United States could be improving the recipient’s ability to command its nuclear forces during war.
It would not be difficult to argue that such assistance directly violates U.S. obligations under the Nuclear Non-Proliferation Treaty (NPT) of 1968. Article I of that treaty states clearly that the United States should not "transfer to any recipient whatsoever nuclear weapons or other nuclear devices or control over such weapons or devices directly, or indirectly; and [should] not in any way assist, encourage, or induce any non-nuclear State to manufacture or otherwise acquire nuclear weapons or devices, or control over such weapons or devices." This U.S. assistance could also damage the international norm against nuclear possession and proliferation in that it helps to legitimize the acquisition of nuclear weapons by a new state. The risks, uncertainties, and dangers of possessing nuclear weapons, it is argued, are perhaps the most important disincentive to weaponization. By stepping in and managing those risks, the United States is accepting a proliferator as a legitimate nuclear weapons state and is removing a major obstacle for the next potential proliferating nation who may be considering crossing the weapons threshold.

Finally, and more selfishly, it should be pointed out that the enhancement of another nation's nuclear capabilities may not be in the direct interest of the United States. As the Iranian revolution has shown, weapons have a tendency to outlast the government they were intended to support. Today's friend may be tomorrow's enemy, and it may not be in the U.S. interest to have this new enemy armed with nuclear weapons enhanced by U.S. technology. This argument, therefore, suggests a broad rule of thumb to guide policy decisions on which technology to transfer and which to retain. The United States should not pass on any stabilizing technology that it would not also give to a hostile nuclear rival. Under this criterion, certain PAL technology probably would be acceptable, while a hardened command, control, communications, and intelligence network would not. Broad concepts of weapons safety would be acceptable, but the detailed design of a safe warhead would not. By following this broad guideline, the United States will be less vulnerable to critics who argue that it is directly adding to the threats which confront it and that its transfer of technology may serve to make the recipient's neighbors less secure. Since it would preclude the transfer of technology that directly or indirectly augments another nation's offensive capabilities, this rule would also make the United States less open to criticisms that it was violating the NPT by enhancing the weapons capabilities of proliferating states.

The criticism would remain that the transfer of stabilizing technology damages the international norm against nuclear weapons possession and proliferation and legitimizes the weapons program of a proliferating state. This is certainly a valid point, and the decision to deal pragmatically with an emerging nuclear weapons state may not be an easy one. The global norm that the United States wants to preserve, however, is one that denies that global nuclear proliferation is inevitable. While efforts to stabilize the
arsenals of Pakistan and India may indeed hurt this norm, what would be the effect should a nuclear war break out between the two? It is possible that the world would recoil in disgust and abolish such weapons once and for all. The continued production of chemical weapons after World War I, however, suggests that this may be wishful thinking. Instead, it is likely that the use of nuclear weapons in South Asia, particularly if used in a “successful” first strike, will shatter the nuclear taboo forever. Once the world witnesses the use of nuclear weapons, there may be more states looking to acquire the ability to deter such use against themselves. As all these states look to nuclear deterrence, the view could set in that worldwide proliferation may be only a matter of time. A norm that views universal nuclear armament as inevitable will almost certainly become self-fulfilling. Therefore, while agreeing that the transfer of stabilizing technology to South Asia entails a certain cost, this essay takes the position that the costs of an actual nuclear conflict between India and Pakistan would be even greater. As we have already seen, the risks of this conflict are frighteningly high. High enough, perhaps, to justify such a policy.

**U.S. Action: Arms Control**

Given that its efforts to stabilize the South Asian nuclear balance may erode the international norm against proliferation, the United States should seek other means of strengthening that norm and reducing the long term prospects for global nuclear proliferation. There are two main areas in which the United States can act: the promotion of a Comprehensive Test Ban and the move to further arms reductions.

*A Comprehensive Test Ban Treaty*

The anti-proliferation regime rests upon a few core features. The most important of these is the Nuclear Non-Proliferation Treaty (NPT) of 1968. In this agreement, the non-weapons states promise not to acquire nuclear weapons and to keep their nuclear facilities under the safeguards of the IAEA in exchange for access to civilian nuclear technology from the nuclear weapons states. In addition, they receive an obligation from the weapons states that they will pursue negotiations among themselves in good faith with a view to arms control and early general disarmament. It is this latter obligation, spelled out in Article VI of the treaty, that has proven to be the biggest issue of contention between the large weapons states and the non-weapons states. Whenever the treaty has come up for review, it has been argued, with some justification, that the weapons states have not kept their promise, and instead have engaged in an arms race that puts the future of the planet at risk.

The NPT comes up for review again in 1995. At this conference, however, it will be decided whether or not the Treaty should be extended,
either indefinitely, for a limited period, or not at all. To ensure the extension of the NPT, the United States must demonstrate that it has fulfilled its obligations under Article VI. A vocal group of treaty members, led by Mexico, has made it clear that this requires the completion of a Comprehensive Test Ban (CTB) (Strategic Survey 1992, 205). Therefore, if it wishes to ensure the extension of the NPT and maintain the international anti-proliferation norm, the United States should sign a CTB treaty.

Not only would a U.S. signature on the treaty immeasurably strengthen global anti-nuclear sentiment, but it would also help stabilize directly the regional nuclear balance in South Asia. India's position has objected to a regional nuclear test ban because it would be discriminatory in allowing the existing nuclear weapons states freedom to do as they please. India has maintained, however, that it would sign a test ban treaty if it were universally applicable to all states. This position was reiterated on January 11, 1993 (UPI 11 January 1993). Pakistan is willing to sign any arrangement, regional or global, as soon as India does. The United States is now presented with an opportunity to lock the South Asian rivals in at a relatively low level of proliferation. Although testing is not essential for a nation to be able to build an early generation weapon, a test ban nevertheless does represent a significant constraint on any weapons program. It prevents more advanced proliferation, such as the development of smaller, more powerful, or tactical weapons. It also almost certainly precludes a nation from developing thermo-nuclear weapons. The United States, supported by Britain, is currently the main obstacle to the adoption of a CTB. It could easily agree to a test ban by supporting an amendment of the Partial Test Ban Treaty of 1963, as proposed during a special UN conference in January 1991. Even the former Soviet Union unilaterally declared in 1991 that testing would no longer be conducted at Soviet sites (Warnke 1992, 38). By taking the lead in forging a CTB treaty, the United States would be well positioned to take India up on its word and thus ensure that both India and Pakistan disavow any need for further nuclear testing.

The U.S. weapons establishment currently argues that tests are needed to ensure the reliable operation and safety of the present and future U.S. arsenal (Von Hippel 1991, 29). Recent studies, however, show that this argument is not sufficient. The have found that reliability and safety do not pose the problems that some scientists have claimed, and that there is "no technical reason why the U.S. nuclear stockpile cannot be rapidly prepared for a CTB, with little if any additional nuclear testing." (Kidder 1992, 14) The United States should therefore drop its current opposition to a CTB. By joining such an arrangement, the United States not only would be providing a valuable, perhaps crucial, boost to the international anti-nuclear norm, but would also be adding significantly to South Asian stability.
Disarmament

One of the most striking challenges to the anti-proliferation norm has been the nuclear arsenals of the superpowers. Their expanding stockpiles and competitive quest for strategic advantage have reinforced the fallacy that nuclear weapons can be used for political gain. The superpower stockpiles also have contributed to the feeling in the South that the non-proliferation regime is a discriminatory confidence trick—designed to ensure the dominance of the developing world by the north. With the current dramatic series of arms reductions between the United States and the former Soviet Union, Washington finally has a chance to undo some of the damage and live up to the spirit of Article VI of the NPT. After signing START II on January 3, 1993, the superpowers committed themselves to reducing their stockpiles to 3800-4250 weapons within the next seven years, and to 3000-3500 by the year 2003. They should not stop there.

The United States instead should continue to press for further reductions so as to achieve the minimum possible force consistent with stable deterrence. While estimates on the necessary size of such a force vary, a number of commentators have suggested that a force of around 1000 warheads may be sufficient (Feiveson, Dallmeyer, and Von Hippel 1992, 61). Some have even suggested that a further reduction to 100 warheads is consistent with minimum deterrence (Epstein 1992, 23). Whatever the number, there seems to be additional scope for further reductions that the United States should take advantage of. Even if the superpower arsenals cannot be dismantled any more rapidly due to technological and environmental constraints, there is no reason why the United States should not at least begin to negotiate the next round of reductions. The objective of continuing negotiations, and of such abrupt reductions, is to teach the rest of the world a dramatic lesson: the superpower arms race was a dangerous and hugely expensive waste of time and effort, and any country acting in its own self interest is clearly better off avoiding a similar situation if they possibly can.

Of all the nations in the South claiming that the NPT and the non-proliferation regime are discriminatory, India and Pakistan are perhaps the most vocal. How, they argued, could the United States criticize the nuclear programs of India and Pakistan when its own nuclear arsenal seems to be spiraling out of control? Indeed, some people have argued that a significant reason behind the Indian decision to acquire a nuclear capability in the first place was the example set by the superpowers—an example in which nuclear weapons came to be associated with international prestige and global power status (Harrison in Carnegie Task Force 1988, 123). An environment of arms reductions between the superpowers, therefore, along with a dramatic and visible lessening of their reliance on nuclear weapons, could have an especially beneficial effect in South Asia. Not only would it defuse anti-NPT criticism, but it also could improve the
climate for the acceptance of regional nuclear restraint. By portraying such weapons as costly blunders, the superpowers might be able to limit the ability of Indian and Pakistani leaders to hold their nuclear programs up as symbols of national independence and sophistication. Superpower disarmament may also help to reduce popular support for the nuclear programs in each country. By promoting disarmament through its own actions, the United States may encourage disarmament movements within India and Pakistan and certainly will make it more difficult for their governments to justify an expensive qualitative or quantitative arms race.

**CONCLUSION**

Until now, U.S. proliferation policy has been concerned with trying to prevent other nations from crossing the threshold into nuclear weapons state status. The case of South Asia, however, presents the United States with a different kind of problem: how to deal with a region that already has nuclear weapons. While some academic commentators claim that such a situation is no cause for concern, this essay has argued that specific features of the South Asian Indo-Pakistani rivalry combine to make the nuclear balance between these two nations extremely volatile and unstable. Given the implications of such nuclear instability for U.S. interests, the situation in South Asia warrants significant concern.

Perhaps the most effective policy that the United States can adopt is active diplomatic engagement in the region so as to bring India and Pakistan closer together and to promote peaceful regional coexistence. While certain U.S. initiatives in this regard should be commended and continued, there are a number of problems with the overall U.S. position in the region. With the end of the Cold War, the United States has tried to engineer a radical strategic realignment away from Pakistan in favor of India. This realignment, if pressed too far, may prove to be incompatible with U.S. non-proliferation interests. It may force Pakistan to commit the very acts that the United States is trying to prevent, and it may damage the ability of the United States to bring the two rivals together in any kind of agreement.

In addition to diplomatic efforts, the United States should take full advantage of its technological resources to help stabilize the region. Through the provision of remote sensing technology and expertise, the United States may help to build any number of vital regional verification regimes and help to reduce the threat of nuclear terrorism. The transfer of other technology, however, may be a more sensitive issue, particularly those transfers that appear to legitimize the status of either India or Pakistan as a new nuclear state. While recognizing this problem, and thus urging a selective approach to technology transfer, this essay nevertheless argues that the region is sufficiently unstable that such a transfer, in this case, may be justified.
Having possibly weakened the international anti-proliferation norm by dealing with India and Pakistan as nuclear states, the United States should now do what it can to bolster this norm as much as possible. To this end, this essay recommends that the United States drop its opposition to a Comprehensive Test Ban and take further steps toward a posture of minimum deterrence. These measures not only will help foster a climate of greater restraint in South Asia, but also demonstrate to the world what an expensive and dangerous white elephant the U.S. nuclear arsenal has been. Only by convincing the world that it is not in their national security interests to wind up in a nuclear rivalry can the United States hope to prevent the widespread proliferation of these weapons. Hopefully, as enough nations get the message, the world may see a day in which nuclear weapons are removed from the globe altogether.

Note
1 A shortened and revised version of this paper appears as "Towards Nuclear Peace", in Robert J. Art and Kenneth Waltz (Eds.) The Use of Force: Military Power and International Politics, 3rd Ed., pp.684-712.

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FOREVER AT THE END OF THE LINE?
THE PLEIGHT OF REFUGEE WOMEN

Helene Holm-Pedersen

The majority of the world’s adult refugees are women, yet both international law and the bulk of refugee assistance programs have responded inadequately to their needs. This article provides an overview of the special human rights problems of refugee women, including their vulnerability to sexual abuse and the persistence of gender biases in most material assistance programs. Although citizens’ associations and nongovernmental organizations are making progress toward gender-sensitizing the international refugee assistance regime, the prospects for enhancing women’s protection under international law remain grim.

Although 80 percent of the world’s 20 million refugees are women and children, it is only within the last decade that any significant attention has been given to the special needs and resources of refugee women (Martin 1992, 1). Before then, few refugee experts challenged the notion that because international refugee instruments apply equally to men and women, they must also be non-discriminatory. Even now, the majority of social scientists and legal scholars attach no gender to the term “refugee.” Yet a growing number of relief agencies are beginning to realize that

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precisely because international refugee instruments have been applied indiscriminantly of sex, they have failed to take account of the special problems of refugee women and have, in effect, placed women at a disadvantage relative to men (Loescher and Monahan 1989, 145). As Barbara Harrell-Bond put it: "gender blindness does not... lead to gender neutrality" when men and women are unequal to begin with (Harrell-Bond 1986, 282). Indeed, the world community's commitment to equality in principle may have caused it to discriminate in practice.

While recognizing that refugee women do not conform to a single profile, this article maintains that they nevertheless share a common predicament: they are in many ways "forgotten," both by so-called refugee experts and by the world community of states. They are typically "last in line" for everything from material assistance to health care, and their special protection needs are scarcely met. Even their special resources are under-utilized. Many of these problems could be alleviated if refugee planners were more aware of women's needs and if refugee relief workers were better trained to detect and counteract discrimination against women. Securing refugee women against sexual abuse, through adequate international legal protection, poses a greater challenge. The principle of state sovereignty precludes the international community from enforcing even existing protection measures, and there is little hope that the 1951 Convention Relating to the Status of Refugees will be amended any time soon to grant women the right to asylum on the grounds of a well-founded fear or experience of sexual persecution. There are simply too many prominent states that oppose this type of international legal reform. A number of Southern states, specifically, resist the inclusion of women's rights in international refugee law because it implies that these rights are both a matter of legitimate international concern and universal. These states view gender issues not only as culturally specific, but also as a matter of exclusive domestic jurisdiction. Northern states, for their part, are wary of broadening the 1951 Convention definition of a "refugee" to include victims of sexual persecution because they fear that this kind of legal reform will trigger female mass migration from the Third World to the societies of the North, which are in many ways more liberal. The number of Southern women who might flee from female circumcision, to take but one example, is potentially huge.

This paper discusses the threat of sexual persecution, and other legal and human rights issues that adversely affect refugee women. It describes the legal instruments that apply to female refugees, identifies their special assistance needs, and evaluates progress towards more responsive legal and assistance regimes.
ON THE PLIGHT OF REFUGEE WOMEN...AND MEN

Clearly, refugee men and women share a number of problems concerning the promotion of their human rights and their needs for physical protection. A full account of these gender-neutral aspects of the refugee experience goes beyond the scope of this paper, yet a few examples will be given for the purpose of illustration.

First, in the human rights area, men and women suffer equally from the reality that although they have a right to "leave any country ... including [their] own," (Universal Declaration of Human Rights 1948) there are no provisions under international refugee law that oblige foreign states to take them in. Thus many forced migrants are left in a state of limbo, having neither the option of seeking safe havens abroad nor the choice of returning to their home communities. Some of them end up as illegal immigrants in foreign countries, vulnerable to exploitation and abuse. Others become internal refugees, or "displaced persons," or perish under the strains of perpetual uprootedness. Whatever the result, these individuals' human right to flee and seek safe havens abroad is practically void.

Second, men and women who flee their countries of citizenship effectively relinquish their human rights as set out inter alia in the Universal Declaration of Human Rights (1948). International law designates human rights as a claim of citizens against their state rather than jus naturale, i.e. a right accruing to the individual by virtue of his or her humanity. Human rights, in this respect, are part of the social contract of modern nation states. International refugees break this contract by fleeing and they are legally without rights until they succeed in establishing a new "social contract" somewhere else. Arguably, recognition as an "official" refugee to some extent restores the rights of individuals in flight by forging a limited contract between refugees and host states on mutual duties and obligations. Yet the rights of international refugees remain precarious. Not only do refugees' rights (e.g. the right to relief, religious freedom, and protection from forced repatriation) fall far short of the rights spelled out in the Universal Declaration of Human Rights (1948) and the two Human Rights Covenants of 1966, but the international community has no effective means of preventing host states from violating them. The principle of state sovereignty and the absence of authoritative international enforcement mechanisms render refugee law extremely "soft." In a human rights sense, refugees constitute a human "under-class" in the current world order.

A third human rights problem that affects refugee men and women equally is that the official definition of a "refugee" inadequately reflects the causes of forced migration. The 1951 Convention Relating to the Status of Refugees reserves the term "refugee" for individuals who have suffered, or fear to suffer, persecution primarily for political reasons, and who have crossed international borders in their search for security. The Convention
specifically defines a "refugee" as a person who: "owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [sic.] nationality and is unable, or owing to such fear, is unable to avail himself [sic.] of the protection of that country." (The International Convention Relating to the Status of Refugees, 1951) Yet even the United Nations High Commission for Refugees (UNHCR) has acknowledged that "violence, tension, total disregard of human rights, poverty, and ecological degradation" cause refugee movements as frequently as does individual persecution. Moreover, there are as many internally displaced persons in the world today as there are refugees. Have they no right to relief and protection under international law? The 1951 Convention would suggest they don't.

Finally, refugee men and women suffer equally from the geopolitical and domestic political considerations that bias receiving governments' decisions on granting asylum. On the geopolitical side, receiving states are well aware that granting official refugee status to a country's citizens amounts to criticizing its human rights record. Depending on these receiving states' foreign policy goals, this may or may not be a desirable outcome. For example, during the Cold War, it suited the United States perfectly to open its doors to Cuban refugees as a means of "snubbing" Fidel Castro, whereas admitting Haitian refugees held no comparable foreign policy rewards. Domestic political considerations may also cause receiving states to apply the 1951 Convention selectively, since accepting too many refugees could disrupt a country's internal cohesion and put politically unacceptable strains on its social service systems (Loescher 1992, 4-15). As the French, German and Swedish governments, among others, have discovered over the past ten years, there are limits to their peoples' tolerance for foreign immigration. Many of their citizens feel that their national cultures are threatened, to some extent, and they are increasingly reluctant to share their wealth with immigrants. Indeed, most Western countries have tightened their immigration policies since the late 1960s in an attempt to keep tidal waves of economic migrants from crossing their borders. Unfortunately, these policies also have screened out thousands of international forced migrants whose requests for asylum were based on actual cases of persecution (New York Times 1993). In addition to common human right problems, male and female refugees have overlapping needs for physical protection. First, the security guarantees contained in the 1951 Convention extend only to refugees, male or female, who fit its narrow definition, leaving everyone else uncovered. This has negative implications for the many international refugees in the Third World who have been allowed to stay in their country of first refuge but have not been accorded official refugee status. In Africa, this category of refugees
constitutes a majority (Martin 1992, 22). Second, the 1951 Convention assigns host governments the full responsibility for the physical security of refugees within their borders. This is highly problematic, as Zia Rizvi candidly explains, because it means that the “individual has to depend on the state for its protection, the monster that we have created [...] which has further monsters at its disposal, like the notion of sovereignty and the question of national security—all the arguments you hear from a Minister of the Interior, or a policeman, or a soldier.” (Rizvi 1984, 261) In addition to worries about the state being too strong, there are also problems when host states are “too weak” to dispense properly with their protection responsibilities. The Thai government, for example, had great difficulties in the mid-1970s protecting Vietnamese boat refugees from piracy and abductions even after it decided to make a concerted effort to do so in conjunction with the United Nations.4

Thus, it is not that the human rights predicament of refugees is gender-specific in every way. Rather, refugee women face additional hardships simply because they are women. The international community’s widespread neglect of their special needs exacerbates these problems.

**THE NEGLECTED NEEDS OF REFUGEE WOMEN**

**Protection Against Gender Violence**

Several legal instruments accord special protection to women, especially the four Geneva Conventions of 1949 and the two Additional Protocols of 1977.5 In international conflicts, for example, women benefit from general protection under the Fourth Geneva Convention, as persons taking no part in the hostilities (Chapter II, Article 76). In internal armed conflicts, Article 3 of the same Convention provides for the protection of (male and female) non-combatants. In addition to these gender neutral security guarantees, Article 27 of the Fourth Geneva Convention spells out the particular rights of women in the context of armed conflict. It states that “women shall be especially protected against any attack upon their honour, in particular against rape, enforced prostitution or any form of indecent assault.” Article 38(5) adds that “children under 15 years, pregnant women, and mothers of children under seven years shall benefit by any preferential treatment.” And the Second Additional Protocol specifically forbids “outrages upon [women's] personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault,” (Article 4). (League of Red Cross and Red Crescent Societies 1991, 8-9) Finally, the Universal Declaration of Human Rights (1948) and the United Nations Human Rights Covenants of 1966, lay out a basic framework both for promoting women's rights inside their countries of citizenship on the basis of gender equity and for ensuring the full and effective participation of women in activities affecting them.
Together, these provisions ought to shield women in flight from most kinds of abuse, yet they have failed demonstrably. One need but look to Bosnia, where thousands of women of all ethnic groups have been raped by enemy forces during the past eighteen months, to appreciate the extreme vulnerability of refugee women (Riding 1992, A1). The Bosnian stories are not unique. According to the UNHCR, more than 2400 Vietnamese women were raped by pirates in the course of fleeing Vietnam between 1980 and 1984. Refugee women in Djibouti have also reported numerous cases of sexual abuse (Loescher and Monahan 1989, 146). And, stories of sexual persecution of refugee women in Latin America abound (Martin 1992, 20-24). Although the general public and the media may have been oblivious to refugee women's security problems, these problems are real enough to tens of thousands of women across the world.

Few people realize, moreover, that refugee women's troubles with sexual abuse do not necessarily end after they have reached so-called "safe havens" in foreign refugee camps. The UNHCR has received numerous reports of camp guards either raping refugee women or extracting sexual favors from them in return for food and clothes for their children (Camus-Jacques 1989, 146). Refugee men also are known to have raped refugee women, who they learned had already been sexually abused and therefore no longer "deserved" respect (Johnsson 1991, 100). Domestic violence is also common in refugee settlements. Many refugee men are frustrated and psychologically distressed (e.g. from having been tortured or having lost their traditional roles as providers), and a significant proportion of them take it out on their wives and children (Martin 1992, 8 and League of the Red Cross and Red Crescent Societies 1991, 10). Despite the prevalence of these two forms of violence against women, neither security patrols nor psychological counseling facilities are standard features of Third World refugee camps. Significantly, the UNHCR took nearly five years after learning of rapes and abductions of Vietnamese refugee women before it began implementing a counseling program staffed by Vietnamese-speaking female staff. So far, none of the UNHCR's refugee camps in Croatia and Slovenia have psychological support staff or female counselors. Only after a recent initiative by the International Federation of the Red Cross (IFRC, formerly the League of the Red Cross and Red Crescent Societies) to provide gynecological and psychological assistance to sexually abused women and their families in the former Yugoslavia, did the UNHCR and its partners in the World Health Organization (WHO) begin to show an interest in the matter. Outside the former Yugoslavia, refugee women's physical, psychological, and social safety needs are still largely neglected. The consequences are tragic and predictable. As the International Red Cross has stated in addressing the problem of rape:
it can virtually destroy a person. It can cause serious internal damage (and in the worst cases death), and it inevitably causes serious psychological damage. Furthermore, it is one of the most socially-disruptive forces, for although the victim is completely innocent, she is likely to be treated with contempt, made an outcast, and certainly cannot hope for a normal affective life in the future (either with a husband, or, if unmarried at the time the rape occurs, with a future partner), at least unless and until she receives expert help (and perhaps the partner too). Furthermore, it has been observed that women can lose all sense of their own value as a consequence of rape, and may even feel that they deserve their rejection by their husbands and community. In certain traditional societies, rape and any sex outside marriage are cognizable offenses which have to be punished. (IFRC 1991, 10) [Emphasis added].

Gender blindness in the realm of physical protection is almost certainly a recipe for human suffering.

Refugee Women's Special Assistance Needs

In addition to inadequate protection and counseling services in refugee camps, refugee women have to deal with various forms of gender bias in their contacts with the international refugee relief system. Not only do many relief programs routinely overlook women's special assistance needs in the food and health realms, they also tend to reinforce existing patterns of gender inequality in the refugee community. For example, men have easier access to education in the refugee camp setting and, unlike women, they are occasionally included in camp decision-making processes that affect their daily lives. These subtle forms of gender discrimination may be a less dramatic form of neglect than the world's inattentiveness to gender violence, but they constitute an injustice nonetheless.

In the area of food distribution, many refugee assistance programs are unduly gender biased. In an illustration of this problem, Barbara Harrell-Bond reported from her experiences in the Sudan that the UNHCR's decision to hand out each household's ration to its designated head had the unintended effect of causing widespread female malnutrition. The refugees, in this case, were from a culture in which the man traditionally is not responsible for feeding his own family, but is obliged to take care of his unmarried or widowed female kin. Food rations distributed to male heads of household, therefore, were frequently diverted from their intended use, and sometimes married women never saw the food rations that their husbands collected. To make matters worse, the men in the refugee settlement that Harrell-Bond described were accustomed to eating their meal before letting their families join in. As a result, there was often far too little food left over to meet their wives' and children's needs (Harrell-Bond 1986, 268-270). Food distribution by males presents another problem in
terms of ensuring adequate food rations for women and children. As Susan Forbes Martin reports, “food distributed through male networks has [occasionally] been diverted to resistance forces or sold on the black market, with women and children suffering as a result.” It is also not uncommon for “male distributors of food and other items to have required sexual favors in exchange for the assistance goods.” (Martin 1992, 36)

In addition to inadequate quantities of food reaching refugee women, the available food is often improperly balanced for their nutritional needs. Food relief packages, for example, are commonly designed without any thought for the nutritional requirements of pregnant and lactating women. The results of this neglect can be life-threatening: pregnant women who develop anaemia are prone to fatal hemorrhages during childbirth (League of Red Cross and Red Crescent Societies 1991, 13).

The low priority accorded by male refugee planners to the provision of safe water for refugee camps is also grossly disrespectful of women’s rights to life and personal security. Since women usually are in charge of fetching water in the Third World, they are the ones who are exposed to water-borne diseases and who may have to traverse mine-infested areas to serve their families’ water needs. A number of Somali refugee women, notably, are known to have been killed by mines while searching for water and firewood (League of Red Cross and Red Crescent Societies 1991, 15 and Martin 1992, 8).

Refugee women's health needs is another area where refugee planners' gender blindness is both harmful and alarming. Despite the fact that a woman's health is crucial both to her own survival and to that of her children, refugee camp health care services are typically either inappropriate for or inaccessible to refugee women. In Pakistan, for example, Afghan refugee women are precluded from using existing health services for cultural and religious reasons. Muslim women are prohibited from being viewed by any male outside their immediate family and, therefore, cannot consult health clinics that lack female examiners. Yet international relief organizations have sent out few female health care providers to Pakistani camps. Many refugee camp health services also pay little attention to refugee women's schedules. This detracts severely from the clinics' usefulness because a refugee woman who needs every hour of daylight to take care of her household duties and who has no one to look after her children simply cannot take the time to trek long distances for health care during “normal business hours.” (The International NGO Working Group on Refugee Women 1991, 19)

Even where health services are both available and accessible to refugee women, they are rarely properly equipped. Few refugee camp health programs, for example, are set up to handle female-specific illnesses such as serious gynecological disorders or complications arising from female
circumcision and infibulation. Refugee camp health services generally have been unable to accommodate such basic female needs as adequate cloth and washing facilities for menstruating women, although the IFRC's Slovenian and Croatian operations are a commendable exception (IFRC 1993). According to a 1991 report by the International Red Cross, programs on the needs of adolescent girls are virtually non-existent in refugee relief programs in the Third World, "despite the prevalence of early marriages and pregnancies (a root cause of poor health in certain parts of the world)." (League of Red Cross and Red Crescent Societies 1991, 16) Considering that the vast majority of the world's adult refugees are women, the latter health service deficiencies are disgraceful.

If refugee women's unequal access to food and health assistance results partly from insensitivities in program planning and operations, their exclusion from most decision-making processes is a case of outright gender discrimination. Cultural constraints undoubtedly play a role in excluding women from camp decision making, particularly when women have never participated in public life. Moreover, many men resent the idea of treating women as equals in administrative matters. It is also quite common among Muslim refugees for women to be physically confined to the family compound, which inevitably limits their ability to participate in camp life. Unfortunately, international and expatriate relief workers often reinforce these discriminatory patterns rather than trying to soften them or work around them. As Lance Clark of the Refugee Policy Group in Washington, DC points out:

There is a widespread tendency for expatriates to feel that simply by talking to those whom they understand to be 'traditional leaders' they have heard an accurate statement of refugee needs. This often leads to an over-representation of the picture as seen by older men, to the detriment of other sub-groups. For example, older men seldom see the problems of fuelwood collection, or the difficulties in participating in income generating activities when one is taking care of small children, with quite the clarity that women do. (Clarke 1985)

Arguably, encouraging women to participate in decision-making processes alongside men may amount to tampering with traditional customary norms and should be approached cautiously by refugee planners. Yet as Susan Forbes Martin notes, "the culture of refugees and displaced persons has already been tampered with. Social structures which existed prior to flight often become fragmented or destroyed when people are displaced. Deaths of natural leaders, and family separations, contribute to strains on the social order. In these situations, it may be impossible to select leaders on the basis of previous decision-making processes." (Martin 1992, 12) Moreover, many refugee women have lost their traditional source of influence on community decisions—namely their husbands—during flight.
Whereas before their views may have carried some weight in private family councils, women are now effectively deprived of a voice. In Barbara Harrell-Bond's words, "women may be 'muted' but this should not be interpreted to mean that they are either ignorant of their needs or unable to express them if the situation is right for them." (Harrell-Bond 1986, 280-281) Involving women in decisions on such issues as food distribution and educational opportunities would be a step towards the elimination of unintentional gender inequities and basic inefficiencies. It would also have positive effects on women's self-esteem and sense of purpose.

If refugee women had been consulted on the design of educational programs and income-generating activities, they might have adapted the programs more to their needs and skills. Certainly, they would have pointed out the need for some kind of financial assistance and child care facilities to permit women to partake in organized courses. As things stand, however, Article 26(1) of the Universal Declaration of Human Rights means little to refugee women: "Everyone" may have "the Right to an Education," but these women never get to enjoy it. In some instances, cultural constraints prevent refugee women from undertaking training that takes them out of the household. In these cases, "take-home" courses and house visits by educators would be helpful. More frequently, women are excluded from educational programs because these programs assume some level of prior education, such as literacy, which many Third World women do not have. The following statistics on Ugandan refugees in the Sudan are typical of the discrepancies between refugee men's and women's educational level: 67.0 percent of the surveyed refugee women had no education at all, compared to 25.4 percent of men (Harrell-Bond 1986, 270). Other constraints on women's participation relate to the design and content of training programs. As the International NGO Working Group on Refugee Women noted, "in some cases, the courses [offered] have been too far removed from the everyday activities of the refugee women and ... therefore appeared irrelevant to their needs." (The International NGO Working Group 1989, 47-49) Indeed, most educational and income generating activities for refugees have been geared more towards enhancing the marketable skills of men rather than enabling refugee women through literacy building and foreign language training.

This discrimination disempowers refugee women and reduces their ability to secure anything but a menial job once they are repatriated or settled more permanently in foreign countries. It also reduces their likelihood of being accepted for third country resettlement because of perceptions that women are unlikely to become self-sufficient as quickly as male refugees and, therefore, represent a larger burden on the host country's social service system. Certainly, advanced industrialized countries are known to discriminate against women on these grounds despite the non-
discrimination provisions of the 1951 Convention Relating to the Status of Refugees (Article 3) (The International NGO Working Group 1989, 17). Thus, another route for refugee women to escape their marginal existence has been needlessly closed off.

Women and International Refugee Law

In light of refugee women's extreme vulnerability to sexual abuse and the institutionalized neglect of their special protection needs, it is troubling to find that international legal instruments afford them so little relief on these accounts. Most notably, women have no right to asylum based on "a well-grounded fear" of sexual persecution. Although grassroots work is being done at present to win recognition for rape as a war crime, or possibly as an instance of torture, it will be a long time until these efforts produce concrete results. The international refugee regime could well remain insensitive to women's needs for years to come.

Women's difficulties in obtaining refugee status revolve around two issues: 1) the grounds upon which a person is granted refugee status; and 2) the process of establishing these grounds. As noted above, the 1951 Refugee Convention defines a refugee as someone who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership in a particular social group. Persecution for reasons of gender does not qualify an individual for refugee status. This means that women who have been sexually assaulted or otherwise persecuted by national authorities have no claim to refugee status unless they can somehow prove that this abuse served politico-strategic ends. The claim to refugee status of women who have suffered cruel or inhuman treatment because they have infringed upon the moral or ethical rules of their local communities (e.g. lost their virginity prior to marriage), is, in the UNHCR's words, "even more difficult to handle within the context of the 1951 Convention." First, these women have not been persecuted by a national authority, which is what the 1951 Convention is set up to address. Second, the Convention does not recognize transgressing social mores as legitimate grounds for refugee status. In sum, international refugee law offers scant protection for women who have fled their countries or communities for reasons of sexual abuse or violent gender discrimination.

Recognizing this problem, the European Parliament (EP) adopted a resolution in 1984, which called upon all member states to consider women "fearing cruel or inhuman treatment as a result of seeming to have transgressed social mores" as constituting a "particular social group" under the 1951 Convention (Martin 1992, 24). To the extent that EP member states choose to follow the Parliament's recommendation, this resolution marks a clear sign of progress towards a more humane international refugee regime. However, a few cautions against undue optimism should
be considered. First, the European Parliament's resolution is not legally binding upon states under current EC law. Nor is it clear that the Maastricht Treaty's provisions to enlarge the Parliament's powers will necessarily change this fact (provided that the Treaty comes into force at all). Second, the UNHCR has failed to adopt a similar recommendation, despite strong urgings from its senior professional staff. In 1985, when the issue was first discussed in the Executive Committee, a number of states refused to accept the EP definition of women as a particular social group because of a concern that it would interfere with cultural and religious practices. Other states opposed the definition on more principled grounds as an unwanted and unlawful interference in the internal affairs of states (Johnsson 1989, 100). Because it is dependent on the goodwill of its state sponsors, the UNHCR was forced to compromise: Instead of adopting the EP formulation, it limited itself to "recognizing" the right of states "in the exercise of their sovereignty, ... to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to having transgressed the social mores of their society in which they live, may be considered as a 'particular social group' within the meaning of Article 1A(2) of the United Nations Refugee Convention." (Johnsson 1989, 98) Since this abortive attempt to win greater recognition for women's rights under international refugee law, no further progress has been made within the U.N. system to gain legal justice for harassed refugee women.

Women's legal difficulties in obtaining refugee status on grounds of sexual persecution are compounded by a rather practical problem: they often have a tough time establishing these grounds. Women who have suffered sexual abuse, for example, are typically reluctant to speak about their experiences, especially to a male interviewer. Yet "very few countries have women involved in their refugee determination procedures." (Johnsson 1989, 98) Therefore, even women who have been sexually persecuted on grounds of ethnicity (that is, on a perfectly "legitimate" ground for seeking refugee status), generally will find it more difficult than their male peers to establish their claims. Women who have been the targets of military attacks face an additional problem. They are generally called upon to prove that they are victims of persecution rather than "crimes of opportunity of individual soldiers." This is no easy feat. The following case reported by Amnesty International is a strong illustration of this problem:

Catalina Mejia ... testified that during a search of her family's home by the military in 1983, a soldier ordered her outside at gunpoint, accused her and her family of being guerrillas (which they denied) and then raped her. During the next 18 months she was stopped twice at military checkpoints in other parts of El Salvador. At each checkpoint, she was singled out by soldiers, who accused her of being a guerilla ... She fled to the US in 1985.
The immigration judge presiding at her deportation hearing denied Catalina Mejia's application for political asylum in August 1988. He concluded that Catalina Mejia had failed to establish "that she fears for her life or freedom if deported to El Salvador." One of the reasons given by the judge for this decision was that the rape of Catalina Mejia by the soldier was not an act of persecution but "was more because she was a female convenient to a brutal soldier acting only in his own self-interest."

(In Martin 1992, 24)

Women who have been sexually abused because of their husband's activities have similar problems documenting the persecution. Amassing factual "evidence" is difficult to begin with; asking women, who are already traumatized by their experiences, to spell them out in great detail borders on the inhumane.

To be fair, some legal recourse exists for women to gain a minimum of protection and relief rights even if they are denied official refugee status in a country. For example, the United Nations has the option to extend "special humanitarian status" or "B-status" to refugee women who have been subjected to sexual violence (Johnsson 1989, 99). This status is typically given to refugees whom the UNHCR judges to be in desperate need of resettlement but who do not otherwise fit resettlement countries' criteria, e.g. official refugee status, literacy, and knowledge of the resettlement country's language (Martin 1992, 82). The U.N., however, rarely uses this option, presumably to avoid taking on a larger number of dependents than it can find national sponsors for. Battered refugee women find some protection under the aid umbrella of international relief organizations such as the International Federation of Red Cross and Red Crescent Societies (IFRC), the World Council of Churches, CARE, and others. These organizations do not discriminate between "official" and "unofficial" refugees in their distribution of material assistance. Still, they cannot offer protection against either forcible repatriation or sexual abuses by local officials or refugee camp guards. As mentioned above, refugees ultimately depend on the host state for their physical protection.

The brightest hope for sexually persecuted refugee women to find justice and relief does not come from governments or intergovernmental organizations (IGOs). Many state actors resist any legal reforms aimed at broadening refugee women's protection guarantees and most IGOs lack the necessary autonomy and financial independence to go against these states' will.

The most promising initiatives for a feminization of the international refugee regime come instead from a coalition of non-governmental organizations (NGOs) and citizens associations working to increase international awareness of refugee women's plight and perils. The 1983 Conference of International Socialist Women, for example, sparked the debate
about refugee women's rights to asylum based on sexual persecution. This debate subsequently caused the European Parliament to adopt its 1984 resolution on the subject. The Conference's concluding document specifically called upon "all governments and member parties to amend the Geneva Convention ... to include the victims of oppression and discrimination on the basis of sex as well as race and religion." (Camus-Jacques 1989, 147)

The International Non-Governmental Organizations Working Group has done important research on the needs and resources of refugee women that the UNHCR then used to gender-sensitize some of its policies. Individual NGOs have also done ground-breaking work in adapting their relief programs to the special needs of refugee women. In 1991, the League of Red Cross and Red Crescent Societies produced a working paper on refugee women that it subsequently sent out to all member societies. And most recently, an "Ad Hoc Women's Coalition Against War Crimes in the Former Yugoslavia" has been formed for the explicit purpose of pressuring the international legal system to bring to justice the people who are responsible for rape. According to Rhonda Copelon, a City University of New York professor of law who is working with the Coalition, efforts are focused on 1) trying to make rape a war crime under international law, considering it as a violation of the Fourth Geneva Convention (1949) and Second Additional Protocol (1977); 2) making it possible for rape victims to file complaints under the Convention Against Torture (1987); and 3) exploring the possibilities for using the 1948 Genocide Convention to prosecute rapists; conceivably, this Convention can be used "if rapes and forced pregnancies are shown to be part of a plan to eliminate a nation and if any nation brings [forward] such a complaint." (Lewin 1993)

No one knows how far these ideas will go, but drawing public attention to the plight of refugee women is at least a first step towards improving their situation. Certainly, the media attention given to the rapes in Bosnia-Herzegovina offers a unique opportunity for refugee women advocates to get their core concerns on the public agenda. Perhaps in the former Yugoslavia refugee women for once will not be at the "end of the line."

PERSPECTIVES

Although the rape incidents in Bosnia-Herzegovina present opportunities for increasing the world's awareness of the predicament of refugee women, the structural and logistical hurdles to reforming the international refugee regime are formidable. Awareness of refugee women's special needs and problems is helpful but may be insufficient to affect major institutional change.

Logistically, one problem is that many refugee relief organizations (especially NGOs) have limited human and financial resources. This clearly prevents them from undertaking major revisions of their material
and health care assistance programs. For example, an initiative to make food parcels more nutritionally balanced for women's needs might require relief planners to look for new supply systems, new packaging arrangements, and possibly new field staff (nutritionists). Certainly, it would presuppose the existence of reliable statistics on the demographic composition of the refugee camp served by a given relief agency. Such statistics are currently unavailable in a central database; therefore, individual relief agencies are forced to assess the situation on a camp-by-camp basis. Considering that camp population sizes can change dramatically over short periods of time, this is no small task (Camus-Jacques 1989, 145-147; and Martin 1992, 13-15).

Tailoring refugee health care services more closely to women's needs would entail costly changes as well. New health professionals, such as gynecologists, might have to be hired and, at a very minimum, current staff would need to be retrained. Camp security measures should also be strengthened to ensure the refugee women's safe journey to the clinics at any time of day. Similarly, dealing with the problem of mines in the vicinity of refugee camps could prove to be a costly operation; it would require humanitarian assistance providers to contract outside knowledge (e.g. from the military) since they lack experience with mine clearing. In the educational sector, finally, comprehensive program adjustments would be necessary to accommodate women's needs and lack of prior education. If refugee relief organizations are moving slowly to gender-sensitize their assistance programs, it is not only because of ignorance of women's needs or male conservatism. The dearth of funds for humanitarian relief is no doubt the greatest constraint upon refugee agencies' freedom of action.

The financial and logistical problems outlined above are ultimately solvable. Indeed, the International Red Cross' refugee assistance programs in Slovenia and Croatia are model examples of the kind of gender-sensitive humanitarian assistance that ought to become the trend of the future. The International Red Cross currently is implementing a comprehensive social welfare program in its refugee camps in the former Yugoslavia. The program features 1) women's participation in cooking and camp decision-making; 2) literacy education for women and children, if possible with teachers recruited from among the refugees; 3) women's health clinics, with female staff and gynecologists on duty; and 4) counseling and psychological services to help women who have suffered sexual or other forms of violent abuse. The Red Cross counselors will be predominantly female, locally recruited, and matched with their clients according to ethnic background (IFRC 1993, 1-3). Arguably, the Croatian and Slovenian situations are unique because the encamped refugees' basic needs have been met relatively easily and funding is abundant. Yet with greater coordination, pooling of resources, and a clear division of labor, the world's humanitarian assistance organizations could make tremendous progress
towards meeting refugee women’s needs in other geographical regions as well. Increased financial magnanimity on the part of government donors also would make a significant difference.

Given the structure of the current international order, enhancing refugee women’s protection under international law will be a far more difficult task than improving their material predicament. As the International NGO Working Group on Refugee Women has pointed out, one structural obstacle to the protection of refugee women’s rights is that “countries which do not respect the human rights of their own populace and/or have weak legal standards and remedies, cannot be expected to give refugees a greater degree of protection than is provided to the populace at large.” (International NGO Working Group 1989, 20) For refugee women residing in patriarchal and authoritarian societies, this is clearly a problem. Furthermore, countries that have not ratified the 1951 Convention Relating to the Status of Refugees cannot be expected to uphold its provisions. A number of Southeast Asian states, including such refugee-besieged countries as Thailand and Cambodia, fall into this category. Thus, even if the international community had effective ways of enforcing international law against member states, it would not help in these countries. That the international community in fact lacks these enforcement powers creates a final structural impediment to gaining justice for sexually persecuted women under international law. Indeed, this gets at the fundamental problem of creating a strong international refugee regime: as long as both international law and international politics are premised on the principle of state sovereignty, the prospects for a strong human and refugee rights regime are poor. Respect for the principle of state sovereignty not only precludes the international community from enforcing international human rights law against government perpetrators, it also deprives individuals and non-state actors of any direct influence on the reform and implementation of international legal standards that affect their lives. As long as states oppose the gender-sensitizing changes in current refugee law, sexually persecuted refugee women will have scant prospects of finding justice internationally.

In conclusion, the refugee assistance community is moving to create a more gender-sensitive refugee regime in the material and health care assistance sectors. The International Red Cross’ Slovenian and Croatian projects are examples of this new approach. The community may be progressing incrementally and on an ad hoc basis, but at least refugee workers and relief planners are becoming more aware of women’s special needs and of the programmatic changes that will be necessary to accommodate them. International NGOs have been leading the way and the UNHCR, the WHO, and the World Food Program (WFP) are slowly coming along as well, at least at the conceptual level. Moreover, some positive developments are raising international awareness of women’s
protection needs. Conceivably, the efforts of civil society groups—the Ad Hoc Women's Coalition Against War Crimes in the Former Yugoslavia, the Refugee Policy Group in Washington, and the International NGO Working Group on Refugee Women—could force the issue of refugee women's rights onto national agendas. Perhaps the Bosnia rape cases could even serve to catalyze international action. The Canadian government's decision in February 1993 to grant a Saudi Arabian woman refugee status based on a claim of sexual persecution sets a hopeful precedent in this regard (Farnsworth 1993, A8).

Yet one should not be overly optimistic about the chances of amendment of the 1951 Refugee Convention. The issue of women's rights is simply too sensitive for the community of states to want to delve into at the moment. It raises questions of the universal versus cultural nature of human rights, and it could open a pandora's box of women fleeing repressive societies, particularly in the Islamic world. In the end, the issue opens up to international scrutiny even Northern societies' records on women's rights. Can the United States, for example, agree to admit Bosnian victims of sexual persecution without simultaneously paying more attention to the personal security needs of American women? All this is not to say that the efforts of refugee and women's advocacy groups to win greater international protection for refugee women are quixotic; it is only a cautious reminder that the struggle will be uphill. Thanks to their work, the prospects for a more gender sensitive refugee assistance regime are far better. And for the majority of refugee women who have no chance of third country resettlement because of a shortage of resettlement spots, this may be the most important short-term goal.

Notes
4 An Anti-Piracy Program was initiated in 1982 by the Thai government with financial support from the international community ($2.4 million were provided by the UNHCR in accordance with the Anti-Piracy Act passed that
same year). The Program made considerable progress towards controlling the number of sea attacks on Vietnamese boat people, yet it did not eliminate the problem. As Susan Forbes Martin noted, the Thai government's improved enforcement measures reduced the percentage of boats attacked yet it also induced pirates to “intensify their attacks, killing more people so as to leave no survivors who could testify against them,” (Martin 1992, 17). As late as November of 1986, the French newspaper *Le Monde* carried a short notice reporting that a boat had been rescued by Malaysian fishermen: four Vietnamese women were missing, abducted by pirates. (*Le Monde*, 7 November 1986).

5. The official titles of the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 are as follows (in sequential order):

- “Convention for the Amendment of the Conditions of the Wounded and Sick in Armed Forces in the Field;”
- “Convention for the Amendment of the Conditions for the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea;”
- “Convention Relating to the Treatment of Prisoners of War;”
- “Convention Relating to the Treatment of Civilian Persons in Times of War;”
- “Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts;”
- “Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.”


9. Susan Forbes Martin cites documentation from the Dutch Ministry of Social Affairs and Labour on young girls being killed for having lost their virginity prior to marriage (whether by their own will or by rape). See Martin 1992, 23.
According to Birgitta Wetterdal, who went on a Red Cross sponsored fact-finding mission to the former Yugoslavia in February 1993, most of the big intergovernmental organizations are still at the stage of assessing refugee women's needs. This is compared to the nongovernmental organizations, like the Red Cross and Save the Children, which are in the project implementation stage and are providing physical and psychological support for refugee women who have suffered war and rape-related traumas during their flight. See Birgitta Wetterdal, “Final Report of a Mission to Croatia”, International Federation of Red Cross and Red Crescent Societies, internal report. op. cit., 1-2.

References


A Survey of European Monetary Policy Issues: The E.M.S. and The Future of Maastricht

Christopher P. Twomey

This paper surveys the recent history of, and future possibilities for, European monetary coordination. It will begin with a discussion of the evolution of the European Monetary System (EMS) together with its current institutional structure, arguing that the EMS has been broadly successful at achieving its goals. Using the recent crisis in the EMS as a case study to illuminate potential problems in future European monetary policy, the issues of limited convergence in macro-economic variables, and asymmetric shocks affecting various European countries are highlighted. Finally, this essay will look toward the future by examining one proposal for European Monetary Union (EMU), the Maastricht Treaty. Analysis of the economic theory underlying currency unions and their application to Europe concludes that a monetary union, such as the one proposed in Maastricht, has numerous advantages. However, it will still have to contend with the same difficulties that the EMS has recently suffered. A multi-speed Europe is a likely solution to these problems.

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Europe is undergoing a profound period of change. As a result of the end of the Cold War and changes in the European Community (EC), the Europe of tomorrow will look different in many ways. This essay will seek to survey some of these changes in the area of international monetary relations.

**The Basis of the European Monetary System**

Concerns about monetary stability in Europe date back to the late 1960s (IMF 1990; Gros and Thygesen 1992). Successive attempts to minimize exchange rate fluctuations in Europe have repeatedly failed, although in doing so they provided valuable learning experiences for European nations.

*The Pre-History of the EMS*

When the EC\(^1\) was founded in 1958, there was little need for exchange rate stabilization policies on a European-wide basis. The Bretton Woods system was functioning well, minimizing the volatility of foreign exchange rates (CEC 1990, 8). However, in the late sixties the Bretton Woods system came under severe pressures, and the intensity of trade within Europe increased. These changes inspired the Werner Report, of October, 1970, which advocated monetary coordination within Europe, culminating with European Monetary Union (EMU) in 1980. Unfortunately, with the collapse of the Bretton Woods system later that year, the goals of the Werner Report were abandoned (Archer and Butler 1992, 80). A persistent problem for EMU emerged in these early years: a reluctance by the European national governments “to accept the transfer of power (or sovereignty) implied by EMU.” (EC 1990, 9) The governments were hesitant in this regard since any plan for EMU would inevitably require a delegation away of control over their individual economies.

The foreign exchange rate management embodied in the ensuing Smithsonian Agreement was too loose for many Europeans. Thus, the EC nations agreed to minimize any bilateral exchange rate fluctuation among themselves even further, instituting the “snake within the tunnel” system. The “snake” of European bilateral rates would move within the “tunnel” provided by the broader maximum variation against the dollar. However, the “snake within the tunnel” system eventually fell to pressures similar to those that overtook the Werner Report and was largely abandoned by the mid-1970s.

By 1978, attention had once again returned to the subject, leading to the creation of the European Monetary System (EMS) in 1979. Initially, eight nations participated (Germany, France, Denmark, Belgium, Luxembourg, Netherlands, Italy, and Ireland); later Spain (in 1989), the UK (in 1990), and Portugal (in 1992) joined.\(^2\) Its primary goals were minimizing foreign exchange variability and inflation within Europe. The structure of this
agreement has remained essentially constant since 1978.³

The EMS Itself

The EMS has two major components: the European Currency Unit (ecu) and the Exchange Rate Mechanism (ERM). The ecu is a basket currency made up of specific amounts of European currencies. These amounts are adjusted roughly every five years and are loosely based on the size of a nation's economy. The ecu acts as a common denominator for intra-European government obligations, a point of reference for measuring a currency's divergence, a quantifier for intervention, and a reserve currency (Nielsen et al. 1991, 183). The most important of these roles is the second (see below), although today the ecu does not play a major role in the EMS.⁴

The Exchange Rate Mechanism (ERM) is the central element of the EMS. Instead of choosing to create a matrix or grid of bilateral currencies, the ERM sets a central rate in ecus for each participating currency. Each currency is then allowed a ±2.25 percent variation around this central value.⁵ After a currency has moved three-fourths of the way from its central value toward the edge of its permitted band, the central bank of that country is expected to intervene in support of its currency (Archer and Butler 1992, 82). In recent years, intervention before reaching the threshold of mandatory action has occurred more frequently (IMF 1990, 2). The goal of choosing central rates against a basket currency, rather than a bilateral grid, was to spread the responsibility for divergence among both the strong and weak currencies. Realignments within the ERM are allowed; unilateral realignments are not.

Evaluating the European Monetary System

This section analyzes the success and failures of the EMS up to August, 1992. Since the main goals of the system are to stabilize exchange rates and minimize inflation, the amount of exchange rate volatility and the convergence of inflation are clearly important variables in this evaluation. The contention of asymmetry within the system will also be assessed.

Stabilizing Exchange Rates

As can be seen in Figure 1 below, the ERM has been very successful at limiting the fluctuations of both real and nominal exchange rates within the system. This result holds true whether the EMS period is compared to the pre-EMS period (1974 to 1978) or the countries participating in the ERM are compared to those who are not.⁶ The success of the ERM in this regard has been so great that it has, in the last several years, achieved levels of stability previously seen only under the Bretton Woods system (Gros and Thygesen 1992, 104).
Skeptics of the ERM’s success argue that the decrease in volatility may be attributed to more frequent realignments. However, after 1983 both the number and the size of realignments actually declined dramatically, and virtually disappeared after 1987. This is even more impressive considering the turbulence of the period (e.g., the US stock market crash in 1987). Some might also attribute the apparent success of the ERM to the way in which the currencies were defended; again, the EMS seems to score well. In fact, after 1990, capital controls were completely removed among all major EMS participants. This neither led to realignments nor even to substantial pressure on the currencies.

**Macroeconomic Convergence**

Given the ERM’s contributions to external monetary stability, how has it performed in promoting internal monetary stability? Figures 2 and 3 show inflation and nominal interest rates respectively for a selection of EMS countries.
Especially after 1983, the EMS has succeeded in lowering inflation, although some differential remains between Germany and the rest of the Community. It should be noted that the recent convergence exhibited in the data may be overstated due to relatively high inflation in Germany (which was an unusually high 4 percent in 1991). Figure 3 shows that for the interest rates as well, some convergence is apparent, especially for the period after 1983. This result also holds true for real interest rates.

Source: (IMF 1992). Nominal rates for the money market rate as given in line 60b.
The lack of complete inflation rate convergence has profound implications for the system. The recent lack of realignments coupled with persistent inflation differentials has led to an appreciation of real exchange rates for many countries (relative to Germany and other "price-stable" nations). The devaluing realignments in the early period of the EMS had prevented this problem, allowing nations to maintain consistent real exchange rates (Gros and Thygesen 1992, 78; Barrell 1992, 10).

Asymmetry in the System

An additional important issue in evaluating the EMS is the degree of asymmetry within the system. The use of central values based on the ecu aimed to minimize this problem by obligating both strong and weak currency nations to take action. Disappointingly, an asymmetry remains, largely because the "loss of reserves constitutes a more effective constraint on the weak currency than the injection of liquidity in the country of the stronger currency." (Gross and Thygesen 1992, 76) As a result, nearly all intervention in foreign exchange markets today is based on bilateral exchange rate deviations between nations and is done by the weak currency nation's central bank.

Furthermore, it should be noted that the use of the ecu as a divergence indicator is inherently asymmetric since the ecu itself represents a moving target. In the case of a general appreciation by a currency that is heavily weighted in the basket (for example, the D-mark represents 30.4 percent of the basket), the entire basket appreciates. The other currencies will have to try to set their exchange rates at an increasing central value due to the appreciation of the entire ecu basket. On the other hand, if a less-heavily weighted currency appreciates (for example, the Luxembourg franc has only a 0.3 percent weight), the ecu would barely change. No nation would be forced to react. Thus, the large countries have relatively more autonomy in formulating their monetary policies. An appreciation or depreciation of their currencies will tend to pull the basket, which defines the central parity values for the other currencies.

Additional evidence of similar inequity can be found in other areas. For instance, one notices a bias against small countries in the area of realignments. Small countries are less likely to be permitted the full amount of their requested realignment than are large countries (Gros and Thygesen 1992, 51). As another example of this inequity, the Bundesbank still has a constitutional obligation to pursue domestic price stability, regardless of the implications that this has for exchange rate stability elsewhere. Other nations' monetary authorities do not have this luxury (Gros and Thygesen 1992, 76). On the other hand some statistical studies have found that the direction of causality between German monetary policy and that of France and Italy is, at best, ambiguous. It is clear that Germany is the "anchor"
of the EMS. It plays the leading role in setting monetary policy in the Community. However, in its formation of this policy it must consider, to some extent, the preferences of the other EC members.

**Turmoil in the European Monetary System**

At the beginning of September 1992, Europeans could look at the history described above and expect to continue progress toward monetary union. But by the end of the following month, this evaluation changed dramatically. This section will examine the events of September and outline their causes.

The beginnings of the crisis in Europe can be traced to early speculation against the Italian lira and the British pound in mid-August, and the Nordic currencies in early September. After forcing Finland to surrender its ties to the ERM and Sweden to raise interest rates to astronomical levels, market pressure returned to the lira and sterling. Responding to these pressures, the German Bundesbank cut its interest rate, and the lira secured a devaluing realignment.

But pressures continued. Britain was forced to raise its interest rates and use $15-20 billion of its reserves, while Germany may have chipped in another $30 billion of purchases to defend the pound. Nevertheless, sterling continued to fall, and Britain suspended its participation in the ERM. The lira was forced out of its recently revised band and also suspended its participation. The Spanish peseta was forced to devalue by 5 percent. France’s currency hovered at the bottom of its band for over a week, saved only by a commitment by the Bundesbank to stake its own reputation on the franc. Instability continued, with unrelenting pressure on the Danish krone, Irish pound, and French franc as well as a further devaluation of the Spanish peseta and the Portuguese escudo of 6 percent each. Five years of “hard” ERM had come to an ignominious end.

**Underlying Causes**

The single most important cause of the crisis was the persistent real appreciation of most of the currencies in the EMS (see Figure 4). It is clear that the two nations most adversely affected by this were Italy and the UK. An additional factor increased the potential for instability. The capital market liberalization concluded in 1990 took away the last vestige of insurance for some governments to protect their currencies. Although this step was an important one from the “pro-European market” perspective, it may have been premature. In order to recognize the scale of the potential problem, one must realize that the ratio of M1 to foreign exchange reserves for EMS participants ranged from 6 to 1 for Germany to over 10 to 1 in France, Italy, and the UK late in the summer of 1992 (IMF 1992). The governments simply lacked the resources to cope with a serious crisis of confidence or a loss of credibility.
Immediate Causes of the Turmoil

The factors discussed above certainly suggest that there were some fundamental problems with the EMS as it stood in early September. However, as these factors had existed for a long period of time, there must have been other factors that served as a trigger in the middle of September, 1992.

The most commonly cited reason for the crisis in the EMS is the effect of German reunification on Germany's monetary policy. The conventional wisdom is that high German interest rates put pressure on other currencies in the ERM which had low interest rates. Germany's rates were high for two reasons: (1) to pay for reunification, and (2) to stem the inflationary pressures caused by the German monetary union at a generous exchange rate for the East German currency.

However, as can be seen from Figure 5, German nominal rates have not been higher than those in either Britain or Italy. For Britain, this picture is largely the same if real interest rates are considered instead. This is generally true for Italy as well, albeit to a lesser degree.

Source: (IMF 1992), supplemented with the author's own calculations. The Real Exchange rate versus Germany is an index of the exchange rate divided by the ratio of the consumer price index (line 64). The base period here is 1978. Cross-country comparisons are therefore valid as far as the Base Period exchange rates were set appropriate to purchasing power. Inter-temporal comparisons are valid regardless of the original exchange rate.
If the capital market did not provide the main source of pressure on the lira and the pound, then perhaps the asset market did. Figure 6 makes it clear that there has been a persistent, and growing, gap in price levels between Britain and Italy and the anchor of the system, Germany.

It is possible that these changes in relative price levels can be accounted for by movements of the exchange rate. However, given the lack of realignments from 1987 to 1992 and the evidence presented in Figure 4, it is clear that the exchange rate changes have not made up for the inflation differentials. Figure 7, below, provides quarterly data before and after the crisis. Obviously there has been substantial divergence in the real exchange rates for the UK and Italy relative to Germany. This fact is of greater importance for Italy.
Thus, for Italy, there seems to be some validity to the conventional wisdom that high interest rates in Germany have put pressure on its currency. Furthermore, the asset market also seems to have applied some pressure on the lira. However, both of these factors are less significant for the UK. One must look elsewhere for the causes of sterling’s decline.

Figure 7 - Real Exchange Rates for the UK and Italy, Relative to Germany

![Real Exchange Rates Graph](image)


One cause of Britain’s problems is apparent in Figure 8. This graph charts the changes in British real exchange rates versus those of Germany, as above, but also against the UK’s other trading partners (weighted by trade volume). A persistent gap has existed since 1987, and widened in early 1991.
The real appreciation of the pound was due not only to the depreciation of the D-Mark, but also to the depreciation of the US dollar. The importance of the American relationship should not be understated given the relatively high US-UK trade ratio and the similarities with which international investors view the dollar and the pound. The dollar's decline in mid-1991 pressured the pound, given Britain's need to maintain its international competitiveness in trade with America (see Figure 9). The interest rate differential between Germany and the United States played the key role in the depreciation of the dollar—this differential was on the order of 6 percent. Thus, it was in this way that high German interest rates led to the eventual British devaluation.
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A final cause of the crisis was the uncertain future of the Maastricht Treaty which would institutionalize the EMS. The French people voted on the Maastricht Treaty in a referendum on September 20th. Since the vote was as predicted, yet quite close, the future of the EMS was uncertain. In times of uncertainty, the D-mark appeared to be a safe option. The pound and lira appeared less secure and suffered as a result.

In summary, low interest rates relative to Germany and a lack of devaluations to compensate for inflation differentials were the fundamental causes of Italy's eventual departure from the ERM. For Britain these factors were also important. However, the additional impact of the UK's loss of competitiveness with the United States, an important trading partner, was vital. Once it became apparent that Britain's competitive position internationally was unsustainable, speculators were presented with a golden opportunity.

AN INTRODUCTION TO EUROPEAN MONETARY UNION

The above discussion has focused on the events in Europe over the past fifteen years. This section turns to the future, as proposed by the Maastricht Treaty. Before looking at the treaty itself, this discussion will briefly outline the economics of currency unions and the implications of this theory for Europe.

The Economics of Currency Unions

In considering the goal of monetary union, economists consider several criteria in order to determine the "optimality" of any potential currency union. An optimal currency area will be characterized by the following: (1) high intensity of intra-area trade, (2) high mobility of labor, (3) efficient (i.e. flexible) wages and prices, (4) similar response to external shocks, and (5) similar economic goals for society (EC 1992a, 46).

Based on these characteristics, how does Europe compare? On the negative side, half of all trade by European nations is not intra-European trade and a large non-tradable sector exists (Bean 1992, 35). Labor mobility within the EC remains low, and unions are loath to agree to pay cuts (Nielsen et al. 1992, 198; Bean 1992, 35). Furthermore, there is reason to expect that Europe will not respond to external shocks symmetrically (EC 1992a, 46). On the other hand, Europe benefits from high mobility of capital and widespread agreement regarding the goal of price stability. On the issue of trade, not only are trade ratios growing in Europe, but European trade is increasingly characterized by "intra-industry" trade (EC 1992a, 136). European nations also have similar, and well diversified, structures with regards to trade flows. Thus, optimal currency area theory provides support, albeit with some reservations, for an EMU.
The Maastricht Treaty

The EMU proposed in Maastricht suggests a three stage progression culminating in full monetary union, with one currency for all participants (EC 1992b, Chapter 4; Archer and Butler 1992, 86-95; Fratianni et al. 1992). The nations of the EMS are already in the first stage, maintaining the EMS and concentrating on achieving convergence of certain macroeconomic variables. An intermediate stage is to be characterized by further coordination and convergence. During the final stage, participating nations will cede most monetary authority to a European Central Bank (ECB).

In order to move into the final stage, a nation must meet four requirements (EC 1992b, Art. 104a, 109, 303, and relevant Annexes): convergence in inflation, convergence in long-term interest rates, limits on the ratios of governments' deficits to GDP, and limits on the ratios of gross debts to GDP. Some flexibility is allowed in achieving the latter two requirements. Additionally, the nation must exhibit relatively stable exchange rates. It is interesting to note that as of 1990 only Germany, Denmark, France, and Luxembourg met these requirements (Fratianni et al. 1992, 22) and by the end of 1991 only France and Luxembourg were still eligible (Bean 1992, 44).

The role of the ECB is crucial, and therefore warrants further discussion. The treaty states that "the primary objective [of the bank] shall be to maintain price stability." (EC 1992b, Art. 105) The treaty also contains relatively strong language regarding the institutional independence of the bank. This should help to minimize political intervention with aims other than fighting inflation. However, potential problems may arise due to unclear jurisdiction in setting foreign exchange policy (Bean 1992, 43).

Evaluating the Maastricht Treaty

In judging EMU's effects, one must consider: efficiency, international equity, constraints on national economic policy, and the role of asymmetric shocks.

Efficiency Gains

Few would dispute that EMU will lead to more efficiency. Studies abound showing that the costs of changing £100 from one EC currency to another, until all twelve had been tried, can leave the unlucky tourist with £50 or less (EC 1992a, 66). These costs will vanish with EMU. However, quantifying these, and other gains in efficiency for the economy as a whole, is difficult. One author places the gains due to transaction efficiency at 0.25 percent to 0.5 percent of GDP, annually. The European Commission has estimated the annual gains due to eliminating currency risk at 2 percent of the EC's GDP (Currie 1992, 253). Estimates of other efficiency gains are more difficult to find. Since this is the fundamental basis for most arguments in support of Maastricht, the lack of more study is distressing.
Nevertheless, the estimates that do exist are promising for the future economic prospects of Europe.

**International Equity Effects**

While there is a possibility that Maastricht will decrease the equity across countries, especially in the short term, the preponderance of evidence supports the proposition of a more equal Europe (Barrel 1992, 220-30).

It is generally agreed that, initially, there could be some worsening of the relative performance of some countries. This is partially because of the loss of policy tools with which to deal with external or internal shocks that is implicit in the move to the currency union. Additionally, while some countries currently rely on seigniorage, they will be unable to do so after EMU. These issues are taken up more fully below.

Yet there are likely to be gains from savings due to the higher foreign exchange transaction costs in poorer countries. With their more inefficient capital and foreign exchange markets, these gains could be significant as the need for such transactions vanish. Similarly, since most of the poorer countries in Europe have higher rates of inflation, the decrease in inflation and its variability should lead to bigger savings in the real interest rate for these same poorer nations. Since EMU should stimulate growth generally, this too should help decrease the disparity in Europe. Disparity tends to rise more when growth is weak. Finally, increased use of the cohesion fund, as mandated under the EMU treaty, will also benefit the poorer nations.

**Constraints on National Economic Policy**

The EMU proposed in the Maastricht Treaty would constrain national policies in at least three different ways. First, and most obviously, it would remove monetary authority from the hands of the national central banks and put it in the control of the ECB. The conventional wisdom is that, by appropriate use of monetary policy, governments can take advantage of the tradeoff between inflation and unemployment (i.e., the Phillips Curve). However, economists are increasingly rejecting the existence of such a tradeoff, suggesting instead that in the long term, low inflation leads to lower unemployment. It should be noted that the statistical evidence is weak on either side of this argument.

In the short run, many still feel that monetary policy might stimulate employment. This is the case only if the monetary expansion is "unexpected" by the public, which requires a perception of credibility for the national central banks that few possess (outside of Germany). The ECB, given its institutional structure, may be much more credible as an inflation fighter than many countries' central banks, allowing it to use a few surprise monetary expansions to provide short-term stimulus (Gros and Thygesen..."
Either way, the loss of control over monetary policy seems likely to cause little harm for individual nations in the long term.

The treaty would also constrain fiscal policy. Many voice concerns that EMU will give countries an incentive to rely on debt-financed fiscal policy too frequently. The rationale behind such fears is that there is an implied commitment on the behalf of the ECB to back up the debts of the national banks, thus creating a problem of "moral hazard." However, this should not be a problem under Maastricht. First, the treaty quite strictly states: "The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities." (EC 1992b, Art. 104b) Furthermore, there are several other provisions within the treaty that will discipline governments on the matter of debt funding of budgets (EC 1992a, 101).

In fact, an under-provision of fiscal policy is more likely. The treaty's encouragement of balanced budgets will not account for how a potential deficit might have been spent (i.e., investment in infrastructure). Additionally, countries will realize that the rewards due to any domestic fiscal expansion will be shared across the community, while the costs will remain in the hands of the national governments—a classic public goods problem (Gros and Thygesen 1992, 131).

A final constraint on domestic economic policy due to EMU will be the loss of seigniorage privileges. Although for several poor countries this source of income is important, it is also clear that it has substantial societal costs in the form of inflation.

Furthermore, the potential for seigniorage income will not be lost, but transferred to the EC level. The EC ecu will provide an even greater potential for seigniorage income at any given inflation rate than any national currency because it will serve as a major international currency, used for trade, offshore savings, and as a reserve currency (EC 1992a, 23-30). Printing money for these uses will not fuel European inflation.

Asymmetric Shocks

The final issue regarding the implications of Maastricht is that of asymmetric shocks. Many of the policies discussed above are used by governments to cushion the blow of external shocks to their economies. Loss of these policy options will lead to major problems since Europe is likely to face shocks that have differentiated impacts on the countries of the continent. Under the Maastricht plan for EMU, nations will lose substantial autonomy in economic policy making. Not only will their monetary and fiscal policies be constrained, but they also will be unable to use their control over nominal exchange rates to react to external shocks because there will be no "internal" exchange rate (Nielsen et al. 1992, 168). Additionally, the option of using the real exchange rate to adjust exchange rates, by varying the rates of growth of wages and other prices, seems
beyond the abilities of most governments. Exchange rate adjustment options will only be implemented at the Community level. It should be noted that this same constraint exists, to a limited extent, in the current EMS (EC 1992a, 136).

Asymmetric shocks are only a concern if they are likely to occur. Some authors suggest that this probability is low, pointing to the similarities across the EC, the role of intra-industry trade, and the increasing cohesion (never precisely defined) in Europe (Nielsen et al. 1992, 169; EC 1992a, 136). Unfortunately for the EC, this assessment is overly optimistic: the probability of asymmetric shocks is high. There are many influences which could divide the European Community: the wealth of the north relative to the south; the production of oil in the UK, Norway, and the Netherlands; the strong UK-US trade relationship; Germany’s traditional interest in Eastern and Central Europe; or France’s concern with its inefficient farmers. Each of these divisions could easily be exploited by an international economic shock that would hurt some countries while benefiting others. The ERM crisis of September discussed above is a prime example of the effects of the UK-US trade relationship and German reunification. One should not expect that these types of shocks will disappear in the future.

**CONCLUSION**

While predicting the future is never easy, the above discussion has laid out a framework for some tentative conclusions concerning the future of European monetary policies.

First, if one looks at the EMS as it existed in August of 1992, it is clear that an important international regime had been created. Continual (although not always steady) progress on the internationalization of monetary policy in Europe was traced back to the late 1960s. Macroeconomic policies had converged for at least nine years, and the system was “hardening” as evidenced by the five year absence of revaluations within the system. It would be unlikely for this momentum to stop in the early 1990s, regardless of the current problems in the EMS and of the changes in the international system as a whole.

Second, the ERM crisis of September, 1992 showed that the pace towards stronger institutions had probably moved too quickly. In retrospect, divisions within the system were obvious and plainly unsustainable. The system was being pulled in three directions at once: exchange rate stability embodied in the “hard” ERM, financial integration with the abolishment of capital controls in 1990, and autonomous monetary policy as evidenced by Germany’s tight monetary policy while the rest of the EC attempted monetary expansion. If monetary union is to be the ultimate goal for the EC, then monetary autonomy will have to be sacrificed. It is unclear if the national governments are willing to delegate this power yet.
Third, the proposal for monetary union, as embodied in the Maastricht Treaty, appears sound on the basis of achieving both internal and external monetary stability in Europe. The institutional structure outlined in the treaty will create a well-functioning supra-national economy with low inflation. Achieving the entry conditions of high convergence of macroeconomic variables is vital for the success of the union. This will require substantial attention by the participating nations.

Fourth, Maastricht, or its successor, will have to find a way to face the problems of asymmetry, whether these arise from external shocks or German dominance. Monetary union is a positive sum game for Europe. However, distributing those benefits equitably is a task that must be addressed.

Finally, it seems likely, based on the above points, that a multi-speed Europe is the best way to proceed. Issues of convergence and asymmetric shocks are less likely to adversely affect a small subset of nations. The "fast" Europe would probably include: Germany, France, Netherlands, Belgium, and Luxembourg. A second tier of nations who are close to the core would include: the UK, Ireland, Italy, and Denmark. The slower nations of Spain, Portugal, and Greece have much work before they are ready for union.

As the end of this millennium approaches, Europe is poised to undergo a historic transformation. Careful attention to the points mentioned here will ensure that the Europe of the future can benefit from the progress in the past.

Notes
1 Referred to at that time as the European Economic Community.
2 Greece remains outside of the EMS.
3 Subsequent to the enactment of the EMS Agreement in 1979 there was only one important revision, the Basle/Nyborg agreement of 1987 (Gros and Thygesen 1992, 166).
4 However, it has played a major role in the private financial market.
5 The UK and, for a time, Italy have opted for wider bands of ±6%.
6 Although in this latter case the contrast is less dramatic: exchange rates in general have been less volatile after the 1979-80 oil shock (Archer and Butler 1992, 83). For real vs. nominal variability see (Nielsen et al. 1991, 191).
7 Italy's realignment of 1990 essentially represents a strengthening of the system. Italy chose to move from its ±6% band of fluctuation to the norm of ±2.25% band used by other participants. In doing so it also chose to devalue its central rate modestly. Since Italy's new, narrow band was entirely within its old, wide band, this move represented a positive shift for the EMS as a whole.
8 For further discussion of capital flow liberalization, and its effects on monetary stability see (EC 1991).
Throughout this essay, inflation will be measured as change in the Consumer Price Index. While this measure certainly has its shortcomings with regards to the topic in question (e.g., inclusion of non-tradables, under-emphasis on production costs, etc.) it has been chosen for reasons of data availability; CPI indexes are available across countries and have relatively standardized definitions.

Note: the UK did not join the ERM until 1990. It is included here for the sake of comparison.

It is interesting to note that this same criticism was frequently, and correctly, raised under the Bretton Woods system.

All ecu basket percentages are from October 1990 and are taken from *Danmaks Nationalbank, Beretning og Regnskab*, 1990 cited in (Nielsen et al. 1992, 183).

Having permission for realignments is vital given the ERM's prohibition against unilateral moves.

Numerous studies have performed Granger causality tests on the leading role of German, French, Italian, etc. monetary policy on the rest of the EC. The results, while rejecting the strong notion of German dominance, are ambiguous. A good survey of these issues is provided in (Gros and Thygesen 1992, 136ff).

A rare example of the ecu divergence indicator working as it should, forcing both the high and low currencies to act. See "Some are more EMU than others," *The Economist*, Oct. 3, 1992.

The analysis of causes will focus primarily on Britain and Italy, for reasons of data availability. However, the lessons learned are broadly applicable, especially from Italy to Spain and Portugal.

However, some authors have noted that the example of Germany may be misinterpreted in this regard. Perhaps it is not the independence of the Bundesbank that keeps German inflation so low, but the overwhelming consensus of the German people that inflation should be minimized. If this is the case than concerns regarding the relative independence of the ECB are irrelevant.

Similarly, governments will be unable to react to *internal* shocks that affect the tradable and non-tradable sectors differently.

References


This research shows the limitations of institutionalist assumptions concerning the prospects for international regimes. After showing the theoretical shortcomings of institutionalist and neo-liberal deductions, I propose a "state-power" model for better understanding regime dynamics. I test my propositions with an extensive case study that traces the Western oil regime from its creation under the global hegemony of the United States through its demise after the United States lost relative power in the petroleum issue area. I also show that attempts by the West to re-create a viable oil regime to counter OPEC power have been unsuccessful.

Since the late 1960s, the concept and study of international regimes has remained a vibrant research area in the field of international relations. The upsurge in regime scholarship is, in part, a response to examinations of the relative decline of U.S. power and global stability. Interest in regime theory can also be attributed to its transideological appeal. Indeed, both liberal institutionalists and structural realists recognize the existence of regimes, although the two groups disagree on their usefulness in explaining the behavior of states in the international system. Realists such as Kenneth Waltz acknowledge the concept of a regime, but see regimes only as formal representations of the underlying power relationships that created them and keep them functioning (Waltz, 1979, 118). Regimes themselves are assumed to play a minimal role in influencing state behavior. In contrast,
neoinstitutionalist and liberal scholars argue that once regimes are in place and their frameworks are understood, they can constrain and condition the behavior of states, and continue to do so despite shifts in the distribution of power (Kratochwil and Ruggie 1986, 760).

This study first defines regimes and analyzes the variables that lead to their formation, existence, and decline (Krasner 1976, 343; 1993). It then presents the theoretical basis for the central proposition that the survival of a regime in a period of hegemonic decline depends on the distribution of relative power within the regime. The study concludes that without a predominant power in specific issue areas to uphold the principles of the regime, dilemmas of common interest (Stein in Krasner, ed. 1983, 120) and corresponding collective action problems (Olson 1971) will lead to suboptimal outcomes for most states.

Because energy is closely related to state capabilities, power, and security, it provides an appropriate testing ground for the evaluation of cooperation between states. Since the oil regime is one that relates directly to states' vital interests, power can be isolated as an overriding variable. This article’s propositions are tested by analyzing the post-World War II rise, decline, and failed re-creation of the Western oil regime. The main thesis of this paper—that a predominant power is necessary, though not sufficient, for a strong regime—is tested with an analysis of the four decades following World War II.

**Theoretical Overview and Deductions**

Hegemonic stability theory provides a useful framework for studying the systemic effects of shifts in state capabilities. From this analysis, further assumptions concerning power, change, and cooperation among states can be formulated and tested.

For the purposes of this study, regimes are defined as "rules of the game" in specific issue areas. The concept of regimes does not require the formal institutionalization of explicit rules, but it does include implicit patterns of cooperative behavior that embody principles, norms, rules, and decision-making procedures which "guide" the behavior of states (Keohane 1980, 133). Regimes are also the underlying values between states that make cooperation and agreement possible (Krasner 1983, 3). Thus, as Robert Jervis notes, regimes must be conceptualized as "not only norms and expectations that facilitate cooperation, but a form of cooperation that is more than the following of short-run self-interest." (Jervis in Krasner, ed. 1983, 173)

The study of international regimes can provide an explanation for the behavior of states in terms of changes in relative distributions of power. It also allows for an observation of the effects of "institutionalized" norms and expectations of behavior in relation to the power capabilities of states. Regimes may be viewed as a microcosm of the system as a whole. Thus, an
understanding of the effects of shifts in power within regimes can give insight into how behavior is conditioned in the international system.

Regimes provide the necessary elements for optimal inter-state cooperation (Oye 1986, 1-24). These elements include shared interests, clear and valued rules, decreased transaction costs, increased communication and information, reduced numbers of players, and known penalties for breaking the rules. Cooperation should take place within such a framework. Findings to the contrary would severely hinder the institutionalist assumptions made in much of the cooperation literature.

HEGEMONIC STABILITY THEORY AND THE STATE POWER MODEL

Hegemonic stability theory is essentially a theory of power distribution and regime development. By definition, a hegemon is a state with disproportionate relative power in specific issue areas. If a hegemon loses relative power in an issue area, the regime created under the conditions of original asymmetrical leadership will fragment and eventually dissolve. If, however, the hegemon retains asymmetrical power in other issue areas the regime will remain strong (Keohane 1980, 144). Thus, using this interpretation of hegemonic stability theory, this paper argues that cooperation without a conventional "global" hegemon is possible, but for reasons different from those provided by institutionalist theory.

According to hegemonic stability theory, successful regimes can emerge only if there is an actor so dominant in economic, military and political resources that it can create conditions for the achievement of collective goods. The hegemon takes on the role of an Olsonian "privileged group," overcoming problems of collective action stemming from dilemmas of common interest, such as the prisoners' dilemma (Olson 1971, 48). A hegemonic state has the capability to maintain regimes that benefit it and other states by using coercion and positive sanctions to enforce the rules (Keohane 1980, 136).

Under realist assumptions, each actor in a given arrangement to provide a collective good has a dominant strategy to defect and free ride on the contributions of others. States also want to avoid being exploited. While all would benefit from the provision of the good, each pursues the same rational dominant strategy resulting in a Pareto sub-optimal equilibrium.

According to hegemonic stability theory, a dominant state absorbs costs in order to benefit from the long term political and economic stability associated with regimes (Kindleberger 1973, 291-294). One state must assume a leadership role in the system in order to guarantee that free riders will be detected and penalized, and that costs for the maintenance of the system are distributed proportionately (Gilpin 1975, 75). This leader must also provide security. Members should be confident that the leader can,
and will, provide distress "goods" and management in times of crisis (Gilpin 1975, 79-80). Secondary states will not worry about the sanctity of agreements because the leading power will keep all states in line. Hegemony therefore provides "what otherwise has to be constructed more laboriously through multilateral international regimes: standards of conduct, information about others' likely patterns of behavior, and ways of providing incentives to states to comply with rules." (Keohane 1984, 180-81) Therefore, a strong leader is necessary for a strong regime; regimes "created" without such asymmetrical power may be considerably weaker.

Hegemonic stability theory defines regime change in terms of relative power distributions between states within the system. Robert Gilpin and other proponents of hegemonic stability theory argue that as a hegemon declines it will undermine the regime that it created (Gilpin 1975, 89). The hegemon becomes increasingly intolerant of free riders taking advantage of its "altruistic" initiatives. The declining hegemon begins to take advantage of its continued relative power to pursue more self-interested policies. The hegemon begins to act less as a benevolent shopkeeper and more as a predator seeking narrow self-interests (Krasner 1983b, 363).

However, this theory does not predict that continued cooperation is impossible after the decline of the hegemonic power, providing that the interests and social purposes of the major powers in the regime are congruent (Gilpin 1975, 91). Regimes are slow to change, in part because of the intrinsic value and "sunk costs" of member states. Because undoing the present system will be costly and of uncertain benefit (Krasner 1983b, 138), nations may continue to conform to regime dictates despite power shifts.

THE INSTITUTIONALIST MODEL

Alternatively, the institutionalist model posits that, once established, regimes "assume a life of their own and do not necessarily change even though the basic causal variables that led to their creation in the first place have altered." (Krasner 1983b, 358). This approach leads one to expect that certain values created by regimes themselves, such as a changed context for interaction, alter the behavior of states. For Robert Keohane this means that "international institutions change rational calculations of interest and facilitate mutually advantageous bargains among states." (Keohane 1984, 184)

Institutionalists view regimes as important not because they act as "centralized governments," but because they "facilitate agreements, and decentralized enforcement of agreements, among governments. They enhance the likelihood of cooperation by reducing the costs of making transactions that are consistent with the regime. They create the conditions for underlying multi-lateral negotiations, and legitimize... different types of state action. 'Regimes' increase symmetry and improve the quality of the
Thus, the effects that regimes have on individual state actions play into each actor’s rational assumptions of costs and benefits. Regimes foster the principle of reciprocity with decentralized enforcement by establishing standards of behavior and improving ways to monitor compliance (Keohane 1984, 245). Regimes decrease transaction costs by providing a recognized forum for negotiations. They also decrease marginal costs of state interactions over time (Keohane 1984, 96) and enhance the quality of information exchanged between states.

Institutionalists posit that regimes create powerful networks to achieve common interests. They overcome the self-help nature of states’ actions and foster mutual gains. For the institutionalists and liberal trade theorists alike, the mutual benefits of cooperation override the costs of defection. They do not believe that asymmetrical power resources within regimes are necessary for their success. While some authors (Keohane, Stein) believe a power might be necessary initially to create a regime, others (Kratochwil, Young) feel that common interest is sufficient to create a successful regime. Both groups share the view that once regimes are established they become autonomous variables that constrain and shape state behavior in an orderly way. The legitimacy of international regimes emerges from the vested interests of the member states. Even if the underlying reasons for a regime’s formation are no longer present, a regime should continue because the benefits reaped from the regime still outweigh the expected costs of creating a new one.

There are three major shortcomings to the institutionalist approach. The first, and most important to scholars of international relations, is that states perceive different situations according to a “hierarchy” of interests. Some issues that call for interactions among states require cooperation, but others are one-time prisoners’ dilemmas.

The state’s action is determined by an evaluation of relative versus absolute gains (Grieco 1990) and a differentiation of issues of importance. States act more conservatively when they feel that they are losing relative power in any relationship. It is also very difficult for states to identify the “vital issues,” although clearly there are hierarchies of concern. The prisoners’ dilemma payoff structure should become more conducive to an optimal solution as the benefits of being a free-rider rise relative to the costs of being exploited. Regimes in areas of vital concern, such as oil, should be predicated and assessed on more than just slippery notions of “norms” and “legitimation.” As the costs of exploitation rise, so will the need for an underlying power to enforce mutual cooperation.

The second shortcoming of institutionalism is that many scholars overlook the underlying assumptions about the creation of a regime. According to Arthur Stein, a regime can survive the disappearance of the power asymmetry that created it because of the following factors: (1) states
do not assess their power positions very often; (2) the value of “sunk costs” may preclude the regime’s collapse; and (3) the fear that a violation of common legitimacy decreases the possibility of future agreements (Stein in Krasner, ed. 1983, 138-39). In other words, regimes shift the criteria by which decisions are made and remain even if the “creating” power decreases or new ones develop. Regimes cause states to adopt joint-maximizing instead of self-maximizing behaviors.

Thus, institutionalist scholars assume away the dilemmas that caused power to be necessary for regime creation in the first place. In a regime that is providing a collective good, with no real sanctioning power to penalize violators, common interest is the only remaining incentive for participation. Free-riding will become each state’s most preferred outcome. Furthermore, with no “guarantor” to stabilize the regime in times of crisis, states become increasingly reliant on the “cooperative” policies of other parties, rather than a large power to ensure behavior.

Finally, institutionalists make unsubstantiated assertions about the strength of “symmetrical” international regimes. They assume that the success of post-hegemonic regimes is due to the institutionalization of norms, but fail to assess the relative power distributions within that specific regime. Moreover, in many of the regimes studied by regime theorists it is difficult to really know how robust the regimes are; some may be ready to crumble at the first sign of trouble.¹

**Defining Power, Leadership, and Common Interest**

In regime analysis the leading state seeks power not only to fulfill individual desires, but also to provide long-term benefits for the group—benefits that would normally be unattainable due to the prisoners’ dilemma. In the context of this study, power is dependent not only on the distribution of capabilities within specific issue areas, but also on the allocation of “sensitivities” and “vulnerabilities.” Sensitivity refers to the costs states incur due to changes within a regime. In contrast, vulnerability refers to states’ capacity to handle the breakdown of the regime. The distribution of tangible resources and vulnerabilities in different issue areas determines who sets the rules in interstate relations. As Thucydides said, “the strong do what they have the power to do and the weak accept what they have to accept.” (Thucydides, trans. Rex Warner 1972, 402) The distribution of power, on the other hand, determines the outcome of arrangements in general (Krasner 1993, 6-8). To be strong and successful a regime requires two other variables in addition to a preponderant power: common interest and the willingness of the strong power to “lead.”

Neoinstitutionalists have made important contributions to regime analysis by assessing the role of common interest in interstate cooperation.
They argue that common interest is crucial for achieving the mutually preferred outcomes that are a necessary part of strong regimes.

In strong regimes, as explained by hegemonic stability theory, there is also the need for a dominant power to assume the role of stabilizer and example-setter (Kindleberger 1973, 291-94). According to Charles Kindleberger, leadership is exercised when one actor persuades others to follow a given course of action that would not be in their short-run interest if they were acting independently (Kindleberger 1981, 243). Even though Kindleberger views a successful hegemon as "altruistic," he also states that a true leader uses strong-arm tactics such as arm-twisting and bribery. The leader alternatively accepts a disproportionately small share of the "good" provided by its management as an incentive to others to abide by the rules.

**Testable Propositions**

This study contends that the regimes that continue after the decline of a global hegemon will be weaker and less capable of crisis management. If they remain strong, it is probably due to (1) a continued power source in that specific issue area, or (2) the fact that the regime does not involve vital state interests. Hence, regimes that continue after the predominant power declines will lack (1) the robustness of the original regime to handle crises, (2) the confidence of the member states, and (3) an effective mechanism to deter costly defection.

Stephen Krasner notes that "interests alone, have not been able to constitute an international order. It has always been necessary to have some political power that can provide collective goods and enforce rules and norms." (Krasner 1978, 86). Hegemonic stability theory provides the foundations for a strong state-power model concerning regime creation, change, and demise. Along these lines, this study proposes that post-hegemonic regimes fade away as the power of the state that upholds them falls to a level more equal to other states' capabilities in a specific issue area. This could happen in four different ways: (1) a shock that tests the robustness of the regime, (2) a gradual erosion of confidence as rules are undermined, (3) a shift in power, and (4) a demise in common interests.

According to the institutionalist model, interstate cooperation without a strong global leader is unlikely. Nevertheless, this study proposes that a global hegemon is not necessary for the success of issue-specific regimes; a regime leader can play the same role. A regime without a strong leader may also endure due to normative expectations and past successes—provided no major crisis disrupts the status quo.

The following propositions are tested in the case study which follows: **Proposition 1:** A decline in the leading power’s capabilities and its willingness to enforce the rules result in a frail regime. This frailty is demonstrated by a regime’s lack of robustness and inability to manage crises and maintain stability.
The lack of an effective political leader and provider of "confidence" leads to the demise of the regime as (1) the regime confronts unexpected shocks, (2) states become unwilling to pay the additional costs for maintaining the regime, and (3) states lose confidence in the regime. As uncertainty grows, players begin to view the situation as a last play in a sequence of prisoners' dilemma games. There will be an incentive to cheat against the system in pursuit of short-term self-interest (Avery and Rapkin, 30).

Proposition 2: A regime will not be created without the presence of a strong leader, even if states share perfectly compatible interests. This leader, however, is not necessary to the continuance of the regime, given no major crises in the system.

THE CASE OF OIL

The rise and decline of Western oil regimes provide a unique opportunity to trace the factors involved in regime development and tangible shifts in the distribution of power. State power and institutionalist assumptions can thus be directly tested within this framework.

For analytical purposes, the following overview is divided into three time periods. The first covers the formation and composition of the post-WWII, U.S.-sponsored oil regime. The second incorporates the decline of U.S. power and the U.S. oil regime, the rise in power of the Organization of Petroleum Exporting Countries (OPEC), and the effects of this power shift on the traditional regime during the decade. The third period includes the attempts to create a new Western oil regime and analyzes the effect of that regime on the behavior of member states.

Within these three time periods, the crucial analysis centers on the effects of five oil crises that occurred between 1950 and 1981: the 1956 Suez crisis, the 1967 Arab-Israeli War (period one), the 1973 Arab-Israeli War (period two), the 1979 Iranian Revolution, and the 1980 Iran-Iraq War (period three). The conclusion relates the findings to the propositions.

Period I: Forming the Traditional Oil Regime (1947-1969)

The connection between oil and state power is not new. As early as 1905, when oil was used mainly for household purposes, Britain protected oil drilling operations in Persia (Business Week Team 1980, 101). As oil became an integral element of industrialization, the major powers attempted to gain as much control over it as possible.

Following World War II, the United States emerged as the world leader by fostering economic and political recovery in Europe and Japan. By 1953, the U.S. "hegemony" controlled 53 percent of global oil production, 54 percent of steel production, 42 percent of iron production, 17 percent of wheat production, 50 percent of international financial reserves, and 30
percent of total world exports; it also spent over 30 percent of global military expenditures (Gilpin 1975, 344). Between 1945 and 1947, the United States provided more than $9 billion in economic assistance to Western Europe. In 1947, the U.S. initiated the Marshall Plan, under which oil was the single largest “import” for most Western European countries. Oil, however, was provided to Europe indirectly through a cartel of major international oil companies that controlled over 90 percent of all oil reserves outside of the United States (Painter 155-56).

The oil cartel controlled production, pricing and the distribution of the West's oil supply. The United States maintained considerable influence over these companies and tolerated the cartel in order to ensure unrestricted American access to inexpensive oil. Washington was even prepared to waive antitrust laws in times of crisis to allow intercompany collaboration. The bilateral relationship between the United States and the oil companies, supplemented by extensive U.S. domestic reserves, was the hinge of the postwar oil regime.

Although there were never any formal arrangements to institutionalize an official oil regime (until the International Energy Agency agreement of 1974), after 1947 the Western nations acted under the guidelines of an international regime. Actors' expectations converged around certain principles, norms, rules and procedures, allowing for the maintenance of mutually beneficial cooperation. Free access to oil at stable prices provided the incentive for Western nations to adhere to the regime. The norms of the regime consisted of the international oil companies providing Western Europe and Japan with Middle Eastern oil, to be replaced by U.S. domestic resources in times of crisis. The principle rule of the regime involved consuming countries maintaining low barriers for major producers and high barriers for new producers. In return, major producers limited price competition (Keohane 1980, 133).

This regime was made possible by the predominance of U.S. power in oil issues and a vested interest in maintaining vibrant economies in Western Europe and Japan. The basis for U.S. hegemony in petroleum centered around (1) its vast political influence in the Middle East, especially Saudi Arabia and Iran; (2) its close ties with the international oil companies that led to a convergence of interests in the distribution of oil; and (3) its minimal dependence on imported oil due to the availability of large oil-producing capacity at home.

As predicted by hegemonic stability theory, the United States incurred costs and accepted a certain amount of free riding by others in order to achieve a long-term stable oil regime. Under normal circumstances, U.S. oil producers had trouble competing with cheaper foreign oil; however, in times of crisis, the United States provided domestic supplies to its allies and absorbed shipping and other expenses to ensure “business as usual” for the West. These U.S. financial outlays ensured the smooth operation of the regime.
Also in keeping with theory, the United States repeatedly demonstrated leadership during the creation of the oil regime. This included supplying Western Europe with U.S. oil during the Mossadegh nationalization attempt in 1951 and forming a new oil business order in Iran against the wishes of the British. However, the first real test of the regime’s strength and longevity was the 1956 oil shock.

SHOCK I

By the mid-1950s, 90 percent of Western Europe’s and 95 percent of Japan’s oil supply came from the Middle East (Kapstein 1984, 100-01). The United States, however, relied primarily on domestic supply. At that time, U.S. domestic reserves accounted for over 20 percent of the West’s total oil reserves (Darmstadter and Landsberg 1975, 30-31). This asymmetry of power capabilities, along with a common interest in the access to oil at fair market prices, allowed a strong regime to remain functional despite the 1956 shock.

Because 70 percent of Western Europe’s oil supply travelled through the Suez Canal, Nasser’s plan to nationalize it in July 1956 represented a security threat to the West. This “threat” was used as justification for the invasion of Egypt by France, Britain and Israel in late October in an attempt to regain control of the waterway. As a result of this military action, Nasser shut down the canal. The closure, along with Syria’s blockage of the Iraq Petroleum Company (IPC) pipeline to the Mediterranean and Saudi Arabia’s embargo of oil shipments to Britain and France from the Trans-Arabian pipeline (Tapline), forced Western Europe to face the prospect of losing 1.8 million barrels of imported oil per day (Kapstein 1984, 102).

The United States was quick to act with its vast economic and political resources. Under the leadership of then-President Dwight D. Eisenhower, the United States established a Middle East Emergency Committee (MEEC) under the provisions of the Defense Production Act of 1950 (Keohane 1984, 170). Comprised of the major U.S.-based oil companies, the MEEC devised a plan to increase domestic production and re-route tankers to Western Europe around the Cape of Good Hope. It also called for the reinstatement of mothballed tankers and the use of several U.S. naval vessels to provide extra distribution capacity.

Although the United States did not support the nationalization of the Suez Canal by Nasser, it viewed the allies’ military action unfavorably. Washington maintained that military action violated international law (Kapstein 1984, 102) and could escalate into a superpower war. Eisenhower halted the emergency oil supply plan, chastised the allies and demanded their immediate withdrawal. After receiving assurances of allied withdrawals by the end of November, Eisenhower implemented the MEEC plan. Faced with the direct threat of a severe oil shortage, Britain and France
had no choice but to comply with the wishes of the United States.

Once the withdrawal of British, French, and Israeli troops was underway, the United States successfully met the oil needs of the Western industrialized world. To ensure increased production, Eisenhower threatened the Texas Railroad Commission (the oil sanctioning board that reduced production to raise prices) with a federal takeover if it did not increase production. Production increased from 3.3 million barrels per day (mbd) in November 1956 to 3.73 mbd in March 1957, thus considerably easing the European shortage (Kapstein 1984, 103). With the increase of over 400,000 barrels per day provided by the U.S., the diversion of extra oil to Western Europe, and the new tanker schedules, the oil crisis subsided by March, without a noticeable change in price (Keohane 1984, 158). By the end of May, the Suez Canal and the oil pipelines were reopened and the MEEC was disbanded (Kapstein 1984, 103).

The success of the emergency sharing plan in 1956 demonstrates the necessity of power in order to achieve desired outcomes amid divergent interests. Although there was a common interest in maintaining access to oil at a low price, the United States and its two most powerful allies (Britain and France) also had differing interests in the Middle East, especially regarding the Suez Canal. The United States, because it controlled immense resources (oil and transportation) that it could redistribute at relatively low cost, was able to achieve its preferred outcome.

The Organization of European Economic Cooperation (OEEC) states had confidence in the regime because the U.S.-sponsored MEEC was distributing oil equitably to all states confronted by a shortage. Therefore, individual states did not enter oil markets unilaterally and/or seek bilateral arrangements that would have affected the market price. While Britain and France disagreed with U.S. action, most states felt that the United States was exerting its power and leadership in a mutually beneficial way. The 1956 shock demonstrates that universal access to low-cost oil by the West was considered a "public good," although states could be excluded for unacceptable behavior.

In the early 1960s, the OEEC became the Organization for Economic Cooperation and Development (OECD), adding the United States, Canada, Japan, Australia and New Zealand to its list of members (Kapstein 1984, 102). As Western European, Japanese, and American dependence on foreign oil increased steadily, the Oil Committee of the OECD became the most important part of the organization. By 1966, OECD members consumed 1.1 million metric tons of oil each day, with Western Europe requiring 35 percent of the total (Kapstein 1984, 103). Western Europe and Japan were now importing over 95 percent of their petroleum requirements, while the United States purchased up to 21 percent of its oil from the Middle East. Hence, during the 1960s, the Oil Committee began recom-
mending that members develop 90-day emergency reserve stocks in case of another crisis. The committee was also planning for crisis communication between the major oil companies and the OECD members to prevent a shortage panic (Kapstein 1984, 103).

**SHOCK II**

In 1967, Egypt, Jordan, Syria and Iraq signed a pact apparently in preparation for an attack on Israel. On June 5 of that year, Israel launched preemptive air strikes against Egypt and Jordan, destroying most of the Egyptian and Jordanian air power on the ground, and directed attacks against Syria. By June 10, Israel had won the war and gained vast territory (Kapstein 1990, 143). In retaliation, on June 6 the Arab oil producers agreed to cease all oil exports. This was the first time that all Arab nations had unanimously used an oil embargo as a weapon against the West (Kapstein 1990, 143). The IPC pipeline, the Saudi Tapline, and the Suez Canal were all blocked. The OECD was faced with a 5 mbd shortage of oil comprising 65 percent of its normal daily supply (Kapstein 1990, 144).

As in 1956, the United States relied on presidential leadership (this time from Lyndon Johnson), along with collaboration from the OECD and oil companies, to increase Texan production and develop alternate tanker schedules with a greater number of sea vessels. This was done under the auspices of the Emergency Petroleum Supply Committee (EPSC), which functioned much like the 1956 MEEC. By July 1956, shipments of crude oil from the Gulf coast were 650,000 barrels per day above the normal level (Kapstein 1990, 148).

The increase in U.S. supply can be seen through comparison of U.S. exports before, during, and after the crisis. U.S. crude oil exports in 1966 were around 1.5 million barrels. In 1967, the total had increased to over 26 million barrels, but fell back to 1.8 million barrels the following year (Kapstein 1990, 149). With the large increase in U.S. oil supply, OECD oil requirements were restored to virtually normal levels by early August 1967 (Kapstein 1990, 148).

The situation was also aided by several Arab states (Kuwait, Bahrain, Qatar) that unilaterally exported oil to make a quick profit after observing that the United States had successfully circumvented the embargo (Kapstein 1990, 148). Several months later, the rest of the Arab states ended the embargo. Although the Suez Canal remained closed, all other Arab petroleum exporting facilities began to function again at full capacity, and regional oil production and exports were restored to normal levels (Kapstein 1990, 107).

Once again, the U.S.-led oil regime expediently and effectively countered a potentially devastating oil shock. Although some allies (most notably France) distanced themselves from the United States' pro-Israeli
stance, there was a common interest in keeping the Western supply of oil flowing at its normal rate and a shared faith that the regime was capable of equitably supplying its members with oil. As the leader of the regime, the United States acted as a "supplier of last resort" by convincing the OECD members that their energy needs would be met at all costs. The United States incurred the costs of the redistribution of sea vessels from other areas, the vast depletion of domestic reserves, and the cutbacks at home despite a low dependence on embargoed oil. Without such an asymmetrical U.S. contribution to the management of the crisis, OECD members would have acted unilaterally, decreasing the collective good.

Period II: Decline of Hegemony and OECD Autarky (1969-1973)

Following the 1967 shock, external and internal factors combined to cause a shift in power from U.S.-controlled Western oil companies to those of host countries in the Middle East, North Africa, and elsewhere. A decline in U.S. oil production capacity, increases in domestic demand for oil, and production shifts among foreign oil exporters weakened the traditional regime and contributed to its demise (Keohane 1984, 142). As U.S. asymmetrical capabilities in oil declined, the American role as "supplier of last resort" deteriorated, placing the United States in competition with its allies for foreign oil. In keeping with the state-power model of regime change, as the power of the leader diminished, the corresponding regime withered.

Domestically, several factors led to an increase in U.S. dependence on foreign oil. The most important was the Mandatory Oil Import Program (MOIP) devised in 1959 under President Eisenhower. The MOIP was an attempt to decrease U.S. dependence on oil imports, which had tripled between 1948 and 1957 (Keohane 1984, 174). To protect national security and the politically powerful domestic oil companies, the government set an import quota of 12 percent of total domestic use (Schlesinger 1988, 12). The MOIP did, for a time, increase domestic oil revenues and lessen U.S. dependence on foreign oil; this, however, was achieved at the expense of domestic reserves. The traditional oil regime paid the price for this policy at the end of the 1960s.

As a result of the reduction in U.S. domestic production capability, the MOIP finally was overturned in 1973. Due to the depletion of reserves under the MOIP, by 1973 the United States only had 10 percent excess production capacity, compared with 25 percent in 1967 (Keohane 1984, 147). In that year the United States imported over 35 percent of its oil, which came to almost 20 percent of its total energy supply. Clearly, the U.S. had lacked foresight in devising its energy policy in the 1950s and 1960s. An increase in U.S. dependence was also caused by lags in the completion of nuclear power plants, resistance by the environmental movement to the use of coal, and increased industrial energy demands (Darmstadter and Landsberg, 27-28).
The U.S. role as the crisis supplier of oil was, by 1973, almost negligible. American society consumed virtually all the oil it produced, while U.S. production capacity steadily diminished (Kapstein 1984, 162). In 1950, the United States had 53 percent of world petroleum production capacity; by 1976 its capacity had fallen to only 14 percent. External factors that contributed to the decline of U.S. oil power were the consolidations of oil production, operation, pricing and distribution by the host nations in the late 1960s and the early 1970s. Although OPEC was formed in 1960, it became capable of negating the traditional Western regime only after it achieved vast influence in production and pricing decisions.2

The United States publicly accepted this outcome for two reasons: (1) compensation was paid to the international oil companies in accordance with international law and (2) Arab regimes remained aligned with the United States rather than the Soviet Union. The traditional Western oil regime was based on the norm that the private sector would supply alliance oil needs at low cost. The oil companies stabilized the regime by following the rule of treating all consumers equally with respect to purchasing opportunities. Confident that the United States would supply them with oil during an emergency, states did not make unilateral side deals and spot purchases. Thus, supply and prices remained stable through normal and crisis periods (Kapstein 1984, 110-111).

With the dramatic rise in oil prices beginning in 1970 (prices rose almost 600 percent between 1970 and 1974), and the knowledge that supply was now in the hands of politically volatile Middle Eastern governments, members of the OECD began to view the act of purchasing oil as a zero-sum game. Since oil was limited in supply, one state’s gain was another state’s loss (Kapstein 1984, 111). By early 1973, bilateral deals between producer and consumer nations were increasing rapidly, drastically reducing OECD coordination and increasing the power of OPEC to raise prices at will.

A feeling of insecurity developed in the OECD. As predicted by the state-power model, dilemmas of common interest became apparent. In the spring of 1973, Japan, France, Italy, the United Kingdom, and West Germany initiated spot and bilateral deals in violation of the norms and principles of the oil regime (Kapstein 1984, 160). By May, the Western nations were involved in an “oil scramble.” “The bilateral deals, designed to enhance national security through energy supplies, caused a rapid escalation in costs for all consuming nations.” (Kapstein 1984, 111) The inevitable result was market chaos.

Members of the once stable regime now feared being exploited by other members and were faced by a classic prisoners’ dilemma. Cooperation between all OECD importers would have kept prices down, increased the (bargaining) power of the OECD, and decreased the power of OPEC. Instead, dilemmas of common interest overwhelmed the situation as states began securing as much oil as possible. Many Western states distanced
themselves from the United States and its pro-Israeli stance. Some states became emphatically pro-Arab, and actually made arms-for-oil deals with several anti-Western oil producers such as Libya and Egypt (Kapstein 1984, 160). To the OECD members, bilateral deals, a pro-Arab stance, and unilateral stockpiling of oil reserves appeared the only way to ensure a stable supply of oil. The United States, the former leader of the regime, now became viewed as an oil competitor and a threat to the Western oil supply because of its Middle East political agenda (Kapstein 1984, 162).

Although communication existed between the OECD oil committee, oil producers, and consumers, the strength of the traditional regime was at an all-time low by October 1973. The shift in norms (bilateral deals), principles (no oil company collaboration and U.S. reserves in case of a crisis), and rules (spot purchases and purchases from minor producers), left the regime very vulnerable. It appeared likely that the regime would fall apart at the first sign of trouble.

SHOCK III

In October 1973 another Arab-Israeli war erupted. The Middle Eastern OPEC nations launched an immediate embargo against the United States and the Netherlands and cut off supplies to other West European nations based on "the level of support they offered Israel." (Kapstein 1984, 111) In December, OPEC abruptly quadrupled the price of oil (Kapstein 1984, 111). As one Arab commentator said, "the situation presented an opportunity to make money and be a patriot at the same time." (Kapstein 1984, 165)

Because of OPEC's manipulation of the oil market, available world oil supply fell by 7 percent between October and December, and by March 1974, was still 5 percent below normal (Keohane 1984, 222). Arab leaders stated that they would not "harm any friendly state which assisted... the Arabs actively and materially." (Kapstein 1984, 165) In response, Western Europe and Japan, fearful of running out of oil, openly supported the Arab cause. Britain shipped arms to the belligerent Arab states in exchange for an oil agreement. France openly supplied weapons to Libya and Saudi Arabia that were subsequently sent to Egypt and Syria. All NATO nations except Portugal denied landing rights to the United States for transport planes to Israel (Kapstein 1984, 165). Japan also openly supported the Arab cause (Keohane 1984, 222).

The Western alliance was divided, and all remnants of the old regime were gone. Although the Arabs resumed normal deliveries to such pro-Arab Western states as Britain, France, Spain and Japan, intense competition for oil by the allies continued. Even though most OECD members had high reserves, nations were making ad-hoc and spot market purchases to gain as much oil as possible. This dilemma of collective action led OPEC to follow the spot market price and increase the official price of a barrel of oil
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from $3.00 before the war to $12.00 by the end of December (Keohane 1984, 223). The scramble-induced price increases led to a decline in total world production by 6 percent and a loss of almost $1 trillion in revenues.

In many ways, Western Europe's and Japan's response to the oil shock of 1973 is not surprising. In the absence of supply guarantees, interalliance coordination proved fruitless. Each state acted in accordance with its immediate self-interest, breaking agreements and turning against former allies. As Keohane said, "the 1973 crisis illustrates the severity of collective action when uncertainty is high and no institutions for reducing it exists." (Keohane 1984, 223) Each actor behaved in the crisis as if it were involved in the last play of a prisoners' dilemma, and defected in fear of a supply shortage (Keohane 1984, 223). While all would have profited from coordinating policies and a plan for stable purchasing to confront the OPEC extortion, the regime lacked an effective leader. Thus, because the traditional regime was no longer valid, a Pareto sub-optimal equilibrium was inevitable.

As in 1956, the crisis of 1973 was marked by differing strategic policies among allies. However, with the United States no longer powerful in the oil area, Washington was unable to insure a common solution to the crisis. Because power and leadership were absent in 1973, political differences resulted in a sub-optimal solution (Kapstein 1984, 192).

The 1970s were marked by a notable decline in the United States' relative economic power. The U.S. GNP was still 3 times that of its closest non-communist rival (Japan), but had decreased from over 60 percent of the world total in 1950 to 30 percent by 1976 (Keohane 1984, 199). Crude steel production was down from 53 percent of world total in 1950 to 14 percent by 1976, iron production declined from 42 percent to 10 percent, international financial reserves went from 50 percent to seven percent, and exports were down from 18 percent to 11 percent of world total. As shown above, the most dramatic decline of U.S. power came in the oil area. While the United States maintained vast power in many areas (military, trade, GNP, etc.), the decline in oil was relative and absolute.

In 1973, U.S. military intervention in the Middle East was less likely because the costs of such an operation, including the transfer of U.S. forces from elsewhere, would have been excessive (Business Week Team 1980, 95). Thus the oil producers did not perceive American military power as a viable or credible threat to their security. As stated above, a second U.S. power base was its vast economic strength. While this power could not foster a solution to the shock of 1973, it did bring the allies to the negotiating table in 1974 to devise a plan to prevent similar fiascos in the future.


Beginning in early 1974, the United States held a series of international
energy conferences which became the International Energy Agency (IEA) (Lantzke 1975, 225). The Europeans were originally cool towards the idea, fearing that the United States was pursuing its own political agenda. Finally, thinly veiled threats by Secretary of State Kissinger to reduce the role of the United States in the European security system eventually brought the OECD to the negotiating table (Gilpin 1974, 255). The IEA was signed by all 16 OECD members with the exception of France; but, because IEA headquarters were located in Paris, France maintained active involvement (Lantzke, 224).

The problem perceived at the Washington Conferences was correctly labeled "a dilemma of collective action." All members of the OECD shared an interest in maintaining access to oil at reasonable prices. Therefore, they agreed on the need for devising a regime to ensure purchasing policy cooperation. The IEA was thus created primarily as an emergency oil-sharing scheme to insulate members from supply shortages.

Functioning to replace the previous "security system," the emergency sharing plan consisted of three basic principles. The first required that each country build up its own emergency reserves to 60 days' worth of normal supply, providing a buffer to allow for policy coordination in case of a crisis. The second principle instituted an understanding that any crisis (defined as a supply shortfall of 7 percent or more by at least one member) would activate a allotment system that would aim for equitable burden sharing and distribution. The third called for immediate political consultation in the event of a crisis (Lantzke, 224).

In addition to the emergency scheme, the IEA had vital "everyday" functions. A full-time oil information system was devised to coordinate activities between the IEA, the oil companies, and the producers (Kapstein 1984, 113). This system was to provide reliable information to all members and thus overcome the collective action problems of information sharing (Kapstein 1984, 111). Each state also agreed to the concept of a yearly energy policy "audit" that would be published for all to see. Transparency would increase, free riders would be chastised, and compliant states would be lauded. Thus, peer pressure and reputation played a significant role. The IEA also had long-term functions such as researching alternative energy sources to decrease oil dependence.

As seen above, the IEA regime incorporated many of the recommendations of the "cooperation-under-anarchy" theories discussed earlier in the paper. There was a shared interest, clear and valued rules, low transaction costs, increased communication and information, a set number of players with a high level of transparency, and a penalty for deviant behavior.

In light of the fiasco of 1973, obviously the most important function of the IEA was to provide the basis of belief that external events would not affect the supply of oil. This attempt at crisis management in the absence of a leading power (Keohane 1984, 224) would be handled by the IEA
Secretariat. The Secretariat was charged with dictating the emergency distribution plan, and was to replace the United States as the leader of the regime. This time, members had to rely on the cooperation of all other states, rather than on the leadership of one. “Agreement” had replaced “assurance” for guaranteeing members a continued oil supply.

By the end of 1978, the IEA was an “operational organization clearly oriented toward facilitating cooperation among the advanced consuming countries.” (Keohane 1984, 224) The IEA regime was complete with a central organization, the Governing Board, that members were obliged to follow. An Emergency Management Manual, handed out to all members in 1976, incorporated the plan of action in the event of a supply crisis (Keohane 1984, 225) This plan was tested when a crisis arose the following year.

SHOCK IV

In 1978, the contract between Iran’s oil workers and the nation’s foreign oil consortium expired. Because of wide differences between the parties over the new contract, strikes erupted at the major Iranian oil fields in September (Kapstein 1984, 185). The oil workers’ strike fomented anti-Shah feelings in Iran. Government forces fired upon a crowd of peaceful demonstrators in late September, killing 4,500 people and providing the catalyst for the Iranian Revolution. Iranian exports ceased in January and February of 1979, leading to a total production decline of two mbd or 4 percent (Kapstein 1984, 185).

Despite the fact that oil supplies to OECD countries were not nearly as threatened as they had been in 1973 (when there was a 7 percent drop in supply), the West panicked. The IEA immediately attempted to restore confidence by reporting that market conditions were less severe than countries feared. The Governing Board provided continuous reliable information on set prices and spot fluctuations. The IEA, however, was unable to control the unilateral actions of its members. As Kapstein reports, “nations fervishly [sic] ‘paid any price’ for oil supplies. The oil scramble created a vicious circle leading to chaos. Member-states acted unilaterally in disregard of their obligations to the [IEA] and its guidelines. Consumed by domestic fears, IEA members failed to see the benefits of collective action.” (Kapstein 1984, 185)

More than in 1973, the situation in 1979 was viewed as a zero-sum game. Two factors were responsible for this result. First, by 1979 the United States was 50 percent dependent on foreign oil (over 20 percent of total energy supply), and contributed as much to the scramble for oil as any other nation (Keohane 1984, 199). Far from being the leader of assured supply that it once was, the United States hoarded and conducted unilateral dealings.

The second factor was that the international oil companies controlled
only 50 percent of the oil trade in 1979, whereas they had controlled 90 percent during the 1973 crisis (Keohane 1984, 226). Direct deals were more commonplace, and consuming states felt vulnerable to supply manipulation. With no real "equitable" oil company distribution, hoarding and spot purchases were common, causing official oil prices to rise along with the spot market.

Kapstein concludes that "despite common interest in containing the economic shocks caused by the Iranian Revolution, the allies were defecting from agreements and making a bad situation much worse." (Kapstein 1984, 190) Concerned that the others would take advantage of "the good" produced by its cooperation, each state adopted the rational policy of taking advantage of the common good. Without a leader to lend confidence by ensuring cooperation, the outcome was predictably Pareto suboptimal.

Iran previously had supplied IEA members with over 16 percent of their crude oil (over 3 million barrels per day). Even though Western states had built up large reserves, they were hesitant to draw on them. Instead, their scramble for oil led to drastic increases in spot prices, and increases in OPEC prices to $14 per barrel by November. Spot prices remained 20 percent above the official price, and as spot prices rose, OPEC's prices followed (Kapstein 1984, 185). By December 1979, prices reached $16.75 per barrel, and continued to rise throughout the spring of 1980 (Keohane 1984, 227).

The oil scramble brought a complete disregard of IEA rules by its members. While the Governing Board kept market information flowing to all members, recommended simultaneous stock drawdowns and reduced demand, members did not heed the advice of the "substitute leader" of the regime. On March 2, the Governing Board devised a scheme for members to reduce demand by 2 million barrels per day, or 5 percent of total consumption (Kapstein 1984, 187). Although the IEA agreed to the plan, most states failed to comply, hoping for a free ride on what they thought would be declining OPEC prices because of a glutted oil market (Kapstein 1984, 188). Not only were the IEA members neglecting to draw from reserves and decrease demand but, led by the United States, they were actually increasing demand to add to their already large stockpiles. During the first quarter of 1979, U.S. oil demand actually rose by 1.4 percent to 20.3 million barrels a day, the largest demand in U.S. history (Kapstein 1984, 188).

Virtually the entire IEA membership behaved opportunistically. Spot market purchases, bilateral deals with producers, and purchases from ad hoc suppliers were widespread, with each state buying as much oil as possible. As a result, prices doubled while production actually exceeded consumption (Keohane 1984, 129). As Keohane described, "the industrialized countries of the OECD inflicted on themselves one of the most disastrous events in their economic history." (Keohane 1984, 129). Al-
though the IEA attempted to assuage the situation with accurate market information and rules regulating demand and stock draw-downs, its actions were largely ineffective. The IEA failed in its most important role as manager and “supplier of last resort” in an emergency sharing system.

For example, although overall supply for the OECD never fell below the 7 percent emergency-sharing system minimum, Sweden and Denmark requested emergency shares at the May IEA Governing Board meetings. The Governing Board assumed that these countries were experiencing a shortfall due to inflexible domestic price controls and unique winter shortages caused by ice buildup in their ports, and that these members were trying to take advantage of the regime and its sharing system (Keohane 1984, 229). Even when it found that Sweden’s normal supply was down 7.7 percent, the Board did not implement the emergency sharing system (Keohane 1984, 230). The Governing Board failed to act because it feared that “actuation of the allocation mechanisms might cause panic and hoarding.” (Kapstein 1984, 190) As Kapstein explains, this was “at odds with the very purpose of the emergency system to prevent a scramble for oil.” (Kapstein 1984, 190) In actuality, the IEA realized that states would never accept the cuts involved with sharing. Thus even the Governing Board had no confidence in the IEA as a crisis manager.

Large reserve stocks, communication between states, agreed-upon rules to decrease demand, accurate market information, and “institutionalized” knowledge of how to work for the common interest were the only ways to achieve cooperation in the absence of a regime leader. In 1979, the institutionalized norms and procedures embodied in the IEA “regime” were universally overlooked. As in 1973, states could not act beyond their narrow self-interests to reap the benefits of cooperation. Each one feared being left in a worse position if it incurred the costs itself, or became vulnerable by cooperating while others took advantage of the benefits. In this case, a state’s primary fear was to be left without oil in the long run, while others accumulated adequate supplies. Therefore, as predicted by the state-power model of regimes, without a hegemonic power in a vital issue area, a Pareto sub-optimal equilibrium ruled the day.

The 1979 crisis shows that cooperation without a preponderant power is unlikely in a vital area because of the absence of a “real” supplier of last resort. A common political agenda cannot overcome the dilemmas of collective action in such a case. Also, events in 1973 showed that despite the allies’ shared interests in maintaining an adequate and cheap oil supply (the basis of the traditional regime), their difference over Middle East policy exacerbated the problem and divided a potentially strong group of consumers. In 1956, divergent policies did not affect the normal operation of the traditional regime because power and leadership were sufficient to keep the regime functioning. This comparison shows the ability of power in international relations to achieve preferred outcomes. When the United
States was dominant in resources and oil capabilities, it could influence the strategic policies of its allies. Although the United States remained the strongest global power in the early to mid-1970s, the relative decline in its capabilities in the oil area meant that it was unable to influence its allies towards a strategic policy during an oil crisis. By comparison, in 1979 there were no strategic conflicts among the allies. Without a leading power to foster cooperative behavior, however, common strategic economic interests could not ensure a preferred outcome for all members. As Kapstein concludes, "the IEA endured the (1979) crisis because the allies continued to have convergent interests, but it was ineffective because power and leadership were absent." (Kapstein 1984, 135)

In early 1980, the IEA met several times to devise a better way to handle a future shock and avoid the dramatic failure of 1979. The energy ministers agreed to raise stocks to a level that would cover at least 90 days' normal use (to increase Western bargaining power vis-à-vis OPEC) and prevent purchasing panics. To restrain demand, members committed themselves publicly to stated oil import targets, thereby putting their reputations on the line and providing incentives to comply. The IEA also set up a mandatory stock drawdown policy for any crisis of less than a 7 percent shortfall. Immediate consultation and coordination would now be expected to ease a 1979-type shock.

Even after the realignment, the IEA was still a weak regime. The OECD was heading into the next shock with the same confidence problems and unilateralism that underscored the 1973 and 1979 crises. States were unwilling to allow the IEA to assume any level of real power over their behavior. Stockpiling remained uncoordinated, still representing "national" rather than community interests. The supposed "binding" policy of demand restraint with set import numbers was useless. States declared numbers that were higher than their usual annual import figures to give themselves a "margin of safety." (Keohane 1984, 232)

SHOCK V

In September 1980, longstanding ideological and territorial disagreements between Iran and Iraq erupted into open hostilities. Since most of the opening battles of the Iran-Iraq War focused on the destruction of enemy oil production and distribution capabilities, the conflict soon removed 3.8 million barrels per day from the world oil market (around 4 percent).

The IEA acted decisively by meeting immediately and disseminating vital market and supply information to its members. State interests also acted quickly. Although stockpiles were at record high levels, uncertainty about market conditions and the duration of the crisis contributed to the fear of being caught in short supply, and resulted in an immediate surge in spot prices to over $40 per barrel (Kapstein 1984, 197). Despite immedi-
ate Governing Board recommendations for stock drawdowns (to decrease
demand and steady the price rise), states once again went “purchasing
crazy.” Ad-hoc deals, such as Japan’s agreement with Kuwait for guaran­
tee oil with a $5 premium per barrel, again caused market uncertainty and
drastic price increases (Kapstein 1984, 198).

Still, the 1980 shock was not as lengthy or disruptive as the 1979 shock.
By July 1981, prices were only 5 percent above the pre-war level (Keohane
1984, 197). Although the 1980 case is viewed by many institutionalists as an
example of behavior modifications based on agreements, principles, and
common interest, there were far too many other factors at work in 1980 to
lead to such conclusions. In light of the evidence from the crisis, it appears
that the IEA “regime” had, at best, only a minimal effect on the outcomes
of state behavior.

Several factors were responsible for the easing of the 1980 crisis. First, by
1980 non-OPEC oil producers accounted for about 50 percent of the West’s
oil supply, not 10 percent as in 1973. This reduced Western dependence on
OPEC and the influence of a Middle East supply shock on the oil market.
Second, due to a global recession, the oil market in 1980 was very weak.
Conservation policies in the West and enormous reserve stocks led to a
supply glut and lower demand. Thus, the oil producers were the hardest
hit by the recession. Combined with high interest rates in the recession
economy, the oil glut resulted in a general consumers’ market by the time
of the crisis (Kapstein 1984, 114). By 1980, Nigeria and Venezuela, both
hard hit by the recession, were at full production capacity. Third, by
January 1981 Saudi Arabia had bolstered production in return for U.S.
promises of protection against Iran and assured sales of U.S. AWACs
(Kapstein 1984, 198). Finally, after the primary cutoff of supplies from Iran
during the Revolution of 1979 (Shock IV), Iran added to the market glut by
producing at maximum capacity in order to stimulate its economy. Follow­
ing the initial battles of 1980, both Iran and Iraq were producing as much
oil as possible to finance the war.

Keohane and Kapstein point to the 1980 crisis as an example of post­
hegemonic cooperation due to institutionalized avenues of behavior.
Keohane concludes that the IEA “facilitated coordination between govern­
ments and companies and reduced uncertainty by providing reliable
information.” The IEA’s monitoring system and calm recommendations,
Keohane suggests, “may have done as much to avoid a price rise as any
other single measure.” (Keohane 1984, 237) Kapstein concludes that the
“establishment of the IEA signified a fundamental change in alliance
energy management. In the absence of a supplier of last resort, the IEA
members recognized that crisis prevention must be stressed. By providing
market information and a pool of expert advice, the IEA helped alliance
members to formulate appropriate energy policies. These policies contrib­
nied the outbreak of the Iran-Iraq War." (Kapstein 1984, 177)

The IEA’s contributions as an autonomous entity fostering mutually beneficial outcomes and a congruence of interests are questionable. The above four factors demonstrate the difficulty of making a direct causal link between IEA “regime” policy recommendations and crisis outcomes. It is true that several IEA recommendations were implemented: states drew down stocks at double the normal rate in the fourth quarter of 1980, oil companies sold rather than stockpiled oil, and ad-hoc purchases never reached the 1979 levels. It should be noted, however, that the IEA acted almost identically during the two crises by making the same recommendations. That the recommendations were “followed” in 1980 and disregarded in 1979 was less a product of IEA authority and more a result of unilateral initiatives in stock drawdowns, reduced spot purchases, and global economic factors. In fact, the use of stocks by members was never under direct IEA jurisdiction, and the large build-up of stocks (most members had at least 90 days of normal supply) was due to unilateral national security measures, not IEA rules (Keohane 1984, 232).

In 1980, the weakness of the IEA was shown by its inability to enact the emergency sharing plan. This time, Turkey was the country hardest hit by the supply shortage because 60 percent of its oil supply had been provided by Iran and Iraq. When it shortfall had crossed the 7 percent level, Turkey asked the IEA to initiate the sharing system. After prolonged talks (during which Turkey’s oil supply dwindled to about five days’ reserve), the Governing Board decided against initiating the sharing plan (Kapstein 1984, 198). Turkey was finally saved by the reopening of an Iraqi pipeline in early January 1981. Again the IEA failed in its primary task of fostering confidence in future oil supplies among its members, more evidence that states had no justification to place confidence in the IEA as a reliable leader of the Western energy supply.

There is no reason to believe that if the 1980 crisis had been as severe as the 1973 crisis (which involved a major political jolt and at least a 7 percent supply shortage) the actions of states and corresponding crisis outcomes would have been fundamentally different. The above analysis shows that interstate cooperation in the oil area remains very volatile. Cooperation is based more on external factors and conditions—and unilateral state responses to such factors—than on the principle of upholding agreements among states and the IEA.

**CONCLUSION**

In the years following WWII, the United States effectively served as the leader of the Western energy regime. With its preponderant power (domestic reserves, influence on oil companies, and distribution capabilities) and a willingness to lead, the United States directed the West through
major crises in 1956 and 1967. Due to the dramatic decline in U.S. oil area capabilities in relation to OPEC and the West, the United States was unable to maintain this role in the shock of 1973. The traditional regime, still functioning on past momentum and continued common interest, became extremely frail and dissolved under the pressure of the first crisis it faced after the decline of the leading state (Proposition 1).

The attempts at a new energy regime following the decline in U.S. oil capabilities was unsuccessful due to the lack of a strong leader in the area (Proposition 2). Even continued American interest in upholding the regime, as well as U.S. global power, was not enough to stabilize the regime. Despite the fact that coordination can be mutually beneficial and cooperative policies have been embodied in the IEA “regime,” states have acted in line with narrow self-interest in the oil area since the early 1970s. The IEA’s emergency sharing system failed to inspire confidence in its members against the risk of running out of oil in 1973, 1979, and 1980. Thus, with no guarantor of supply, states took advantage of any situation and acted in their self interests (Proposition 1).

While access to oil at a reasonable price has remained the common interest of Western states, strategic policy has not always been the same among the members of the regime, as was the case in 1956 and 1973. In accordance with realist assumptions concerning the creation and enforcing of the rules of the game, the 1956 shock shows that power overrides conflicting interests. In 1973, when both power and common strategic policy were missing, the outcome was a pure conflict of interest. In 1979, when U.S. oil power was missing, but common strategic policy was present, the outcome was similar to that of 1973. This falls in line with the state-power realist model, which is based on an underlying assumption that power is the single most important variable in the international system.

The oil case confirms the assertion that regimes can function without a hegemonic leader in the absence of a crisis (1968-1972, 1974-1978). However, if that regime is confronted by a crisis of any magnitude (real or perceived), regime agreements break down as they did in 1973, 1979, and 1980.

Keohane argues that the most important function of the IEA should be to increase communication among states and act as a facilitator of agreements (Keohane 1984, 220). The United States, however, assumed a much larger responsibility in merging common interests as the postwar oil regime leader. Keohane’s undemanding expectations of the IEA “regime” are overly optimistic as this case study casts doubt on the value of agreements made between states in the absence of a strong leader. It has shown that states in such situations are likely to defect on agreements. The IEA “regime” cannot be viewed as a structured traditional postwar regime because no leading state acted as a catalyst for the achievement of common
interest.

The above case study has shown that because of the prisoners’ dilemma, factors such as common interests, respected rules and norms, increased communication, decreased transaction costs, and costs of defection cannot achieve cooperation on their own. The key element in a regime is a strong power willing and able to assume responsibility for mutually beneficial international outcomes. The role of institutional factors is unequivocally weak.

Given the scenarios described above, what are the prospects for international cooperation? Institutionalist and liberal scholars state correctly that if cooperation is to take place in a more symmetrical international environment, it must be done through institutions. Cooperation theorists, on the other hand, have yet to find an adequate replacement for the power variable in achieving mutually beneficial outcomes. Abandoning the belief that states are independent and act to maximize their interests would require an unrealistic set of assumptions about the international system. Acknowledgement of state interest, concerns over relative gains, and the ever-present possibility of power as an end in itself, must be incorporated into any scheme for international cooperation.

Thus, we must return to the realist paradigm. Current international relations can be viewed as tragic; states would like to cooperate, and would be better off under cooperation, but the overriding condition of systemic anarchy makes this outcome difficult to achieve. Until the constraints of the prisoners’ dilemma are mitigated, the problem of achieving cooperation in the international system will not be solved.

Notes
1 This is a methodological problem in general regime analysis, and not confined to just institutional analyses.
2 The Teheran and Tripoli Agreements of 1971, which allowed more host control over production and prices, led to full control as well as extremely high world oil prices.

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HUMAN RIGHTS AND DEVELOPMENT: A ROLE FOR THE WORLD BANK?

Cherrie S. Daniels

Development banks are sometimes criticized for not taking into account the human rights records of prospective borrowers. This article lays out the conceptual and practical issues that frame the debate on whether and how to incorporate concern for human rights into development lending and projects. After discussing the evolution of human rights in international law and the linkages between development and rights (especially—but not only—social and economic rights), the author makes the case that the World Bank's development objectives would benefit from a re-evaluation of the axiomatic relevance of human rights to socio-economic development.

It is becoming increasingly clear that human rights are integral to the development work of the World Bank in a number of ways. Despite widespread resistance within that institution to the dialogue of "human rights" because of its "political" connotations and alleged encroachment on the Bank's Articles of Agreement, there is actually a great deal of overlap between the development mandate of the Bank and the imperative of international respect for and promotion of human rights. Slowly, but steadily, the issue of human rights is being thrust upon the world's development institutions, as it has been upon governments. The reasons

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for this, as will be shown throughout this essay, are not merely normative, but pragmatic—that is, not only respect for international human rights per se, but concern for enhancing the effectiveness, efficiency, and sustainability of development itself. Most recently, human rights dialogue entered the development arena at the Consultative Group meetings of Western donors concerning Kenya and Malawi, which were chaired by the World Bank in November 1991 and May 1992, respectively. Responding to events and trends in those countries, bilateral donors collectively decided to suspend new aid to the repressive regimes. Bilateral donors have much more leeway to consider political conditionality for loans than does a multilateral and avowedly non-political institution such as the World Bank. The mandate of the World Bank is to offer economic and technical assistance in order to stimulate development and raise the standard of living of the world’s poorest people. Can the World Bank attend to human rights without losing credibility as a non-political entity and without undermining its own mandate?

This essay offers responses to that question. It is first and foremost an inquiry into the inter-relationship between human rights and socio-economic development. Particular attention is focused on Sub-Saharan Africa, where crises of governance have demonstrably affected the pace of development. The purpose of this tract is to determine in what ways the overall effectiveness of the World Bank’s development objectives can be strengthened by greater awareness of human rights. Section One presents the concept of human rights, including its origins and legal evolution, in both global and African contexts. Section Two examines the nature of the relationship between human rights and development, emphasizing economic and social rights and the connection between those rights and the accepted goals of socio-economic development. What are the indices of economic and social rights? What are the indices of development? How, if at all, do they coincide? Is there a trade-off between human rights and development or are the two mutually supportive? After laying out the major conceptual framework in Sections One and Two, the third section addresses the changing context within which the World Bank operates and the institutional issues faced by the Bank in addressing human rights concerns in concert with development. Some brief policy recommendations, as well as questions for further study, conclude the essay. The complexities—both theoretical and practical—of applying human rights paradigms to development are daunting. But hopefully, a more comprehensive view of the choices faced by the World Bank in this realm, a view which takes the debate above the level of a single choice between whether “to aid or not to aid” a repressive regime, will make some contribution to this complex field of study.
I. HUMAN RIGHTS

EVOLUTION IN INTERNATIONAL LAW

International Consensus Emerges

In 1948, the UN Universal Declaration of Human Rights (UDHR) granted the rights of the individual a new importance in international law.\(^1\) Human rights have since been codified more specifically in numerous global and regional covenants, treaties, and declarations. In 1966, two documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), were signed at the United Nations. The covenants, which entered into force in 1976, made clear the obligation of the state toward the individual. Additionally, some parties signed the Optional Protocol to the ICCPR. This landmark human rights instrument, though signed by only a minority of states, granted the right of the individual in certain circumstances to make a claim to the UN against his or her state if that state party to the Protocol violated the individual's rights. The Universal Declaration, the two covenants, and the Optional Protocol together constitute the "International Bill of Human Rights." Universal acceptance of human rights was advanced over the years as regional charters and national constitutions affirmed these rights or adapted the rights into a framework which was acceptable under their normative systems. Both ratification of the documents and enactment of national legislation giving substance to the rights contained in the international documents should remain a priority for human rights activists worldwide.

In 1975, the culmination of the so-called "Basket Three" provisions of the Helsinki Final Act introduced new and more positive steps toward the universal acceptance of human rights, with the Soviet bloc agreeing in principle to a qualified range of individual civil and political rights lobbied for by the West and submitting to a limited amount of intrusive international monitoring. Prior to that, the Soviets had insisted on interpreting human rights as primarily collective rights of an economic and social nature, while the United States usually preferred to interpret them as individual rights, predominantly civil and political in nature. This ideologically-motivated split may have played a part in crippling the movement for global realization of human rights, especially economic and social rights, during the Cold War. To Cold Warriors in the West, to admit the importance of economic and social rights was to risk legitimizing the totalitarian communist systems allegedly founded on the basis of such rights. America's policy toward Third World regimes under Reagan was tainted by this world-view.

African Human Rights Law Expands

The evolution of human rights instruments in Africa has been some-
what different from that of the global instruments, with domestic jurisdi-
cion of states superseding human rights as a working principle of the
Organization of African Unity (OAU). Almost all leaders jealously guard
their ability to exercise free reign inside their borders. In that regard, the
near obsession of post-colonial African leaders with sovereignty is neither
surprising nor unique. Nevertheless, the 1963 OAU Charter had espoused
adherence to the UN Charter and to the Universal Declaration of Human
Rights. Despite this pretense, it was not until 1981 that the OAU was
shamed into adopting an African Charter on Human and People’s Rights,
after witnessing throughout the 1970s the destructive implications of
allowing tyranny to go unchecked in the name of national sovereignty
(Welch and Meltzer 1984, Chapter by Edward Kannyo: 128-151).

In Africa, concern for human rights beyond one’s borders had long been
limited to condemnations of the white South African apartheid regime and
Portuguese colonialism. Human rights debacles in Idi Amin’s Uganda and
Jean-Bedel Bokassa’s Central African Empire, among others, finally pushed
the OAU heads of state into action. The task, as some people saw it, was to
formulate a human rights standard that was more distinctly African and
not colonial, emphasizing communal rights and obligations. In 1979, the
OAU convened a human rights conference in Monrovia, Liberia to pursue
the idea of an African charter and commission on human rights, almost two
decades after African jurists in Lagos first recommended a separate
African convention in 1961 (United Nations 1990, preface). The resulting
charter enshrined the rights of the individual, the rights of the family and
of women, and the rights of peoples before addressing in Chapter II the
duties of the individual to family, society, and the State. It has taken another
ten years for African heads of state to develop a consensus on implement-
ing more fully the principles of the African Rights Charter.

HUMAN RIGHTS: AN INTERNATIONAL RESPONSIBILITY
The cumulative effect of these international human rights instruments has
been to enhance the probability that human rights may no longer be treated
as purely a matter of states’ domestic jurisdiction (under Article 2(7) of the
UN Charter). Yet even after the creation of these documents, it took much
longer for the domestic jurisdiction excuse for inhumanity within sovereign
borders to be eroded in practice. In fact, it is only since the end of the
Cold War that international practice has had the potential to match
international promise as laid out in Article 55 and 56 of the UN Charter
regarding international cooperation and responsibility for protection and
promotion of human rights.

A Closer Look at the Language of Rights
What does it mean to “have a right?” First, the right may be guaranteed
in law, either domestic or international and either written or customary.
The second sense in which one may be said to have a right is the more meaningful one: a right may be “effectively enjoyed,” which means it is not only professed, but protected, fulfilled, and enforced. What if one is guaranteed the right by law, but in practice the right is denied or unfulfilled? Some would argue that to have a right is meaningless if one cannot also enjoy it in practice. But others have countered insightfully that the establishment of the right in law or in declarations is a valuable step toward fulfillment of the right in practice. That is, declaring something as a “right” instead of merely as a “good” gives it an enhanced legitimacy and creates a legal obligation on the part of the state and international community to fulfill it. The UN Universal Declaration and Covenants on human rights were crafted to confer legitimacy on the rights contained in them and to help ensure the eventual (not necessarily immediate) enjoyment of those rights in practice.

A list of some of the standard threats or obstacles to effective enjoyment of human rights might include: government actions, government inaction, laws, lack of laws or inadequate enforcement of the law, actions of private entities (such as corporations or rebel groups), local customs and traditions (especially in the case of women’s and children’s rights), and abject poverty.

**Categories of Human Rights**

Human rights have somewhat arbitrarily been separated into three categories, despite the obvious connections between them: 1) civil and political rights, sometimes dubbed “first generation” rights, 2) economic, social, and cultural rights, or “second generation” rights, and 3) collective/solidarity rights, or “third generation” rights to aspirational or collective goods such as peace (UN Declaration, 1984), a clean environment, and development (UN Declaration, 1986).

How are the first two sets of rights related? The African Charter on Human and Peoples’ Rights states that “civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality.” Similarly, the Preamble to the 1986 UN Declaration on the Right to Development asserts that “all human rights and fundamental freedoms are indivisible and inter-dependent.” A useful way to think about the two categories of rights is presented by Rhoda Howard (1983). Howard suggests that the rights are “interactive, not sequential”; that it is inappropriate to think one set will automatically follow once the first set of rights is realized. “The ‘full-belly’ thesis,” she writes, “is that a man’s belly must be full before he can indulge in the ‘luxury’ of worrying about his political freedoms. Yet there is an alternate view that human dignity, or perhaps ‘self-respect,’ is a fundamental requirement of human nature.” (Howard 1983, 469) In other words, liberty and rights may in fact be
construed as basic human needs just as food and shelter are. Economic rights such as the right to food and an adequate standard of living serve and are served by the development of the individual’s civil and political rights.

Howard and others warn that the emphasis placed by certain African elites or governments on first achieving economic advancement “may well be merely a cover for denial of those basic civil and political liberties which will allow the dispossessed masses to act in their own interest.” (Howard 1983, 478) Another analyst, Shridath Ramphal, has said of the symbiotic relationship between rights: “Only if criticism is seen as fundamental to a healthy society—rather than as being subversive of it—are decisions likely to be taken that are so sufficiently informed by the public will as to be supportive of the public interest.” (International Commission of Jurists 1981, 22) “In this context,” writes James Paul, “the alleged dichotomy between ‘economic’ and ‘political’ rights should be seen as mischievous jurisprudence.” (Paul 1988, 80) That insight into the relationship between socio-economic rights and civil-political rights proves invaluable in the assessment of the place of universal human rights in socio-economic development discussed in Section Two.

Positive versus Negative Rights: International Responsibility Reconsidered

A distinction is sometimes drawn between those rights which require positive action for their fulfillment (“positive” rights) and those which merely require avoidance of action (“negative” rights). Generally, civil and political rights are considered “negative” rights, requiring only that the government not interfere with individual freedoms such as speech and assembly, or that the government refrain from certain actions like torture, extrajudicial execution, “disappearances,” arbitrary detentions, etc. Economic, social and cultural rights, on the other hand, are generally considered “positive” rights since they entail obligations on the part of the state to actively protect and promote the individual’s right to work, to an adequate standard of living, to education, to health, and to equal pay for equal work, etc.

It is comparatively easy to determine whether civil and political rights are not being respected in a given country. Though the scale of violations is normally difficult to measure (due to official secrecy and restriction of information), the facts of torture, killing, genocide, or denial of due process and the culpability of the government in these activities is often discernible once procedures for complaint and remedy have been clearly established. But how does one determine whether economic and social rights are being respected? Furthermore, which party or parties have a binding obligation to ensure that these rights are realized? Much work remains to be done on this troublesome question; however, there are some preliminary guidelines in international human rights law. For instance, the 1948 Universal
Declaration of Human Rights (Article 22) states:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality (emphasis added).

Building upon that theme, the 1966 economic and social rights covenant posits in Article 2:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means including particularly the adoption of legislative measures (emphasis added).

The operative phrase in defining the scope of national obligation is "to the maximum of its available resources." This, alas, has proven to be a decidedly political determination.

Who, then, bears the primary responsibility for a country's lack of jobs or food? Does the responsibility for famine belong to government policy, to nature, or to international economic conditions? Of course, all of these factors often contribute in varying measure to the severity of famine. But equally often, local laws, customs and practices determine the scope of the crisis and dictate which societal groups will suffer first and most from famine (i.e., rural communities, women and children). It should be noted that the entire international community not just the individual state, under Articles 55 and 56 of the UN Charter, has a duty to "promote universal respect for, and observance of, human rights and fundamental freedoms for all." From the above discussion it follows that some of the responsibility for realizing rights belongs to people other than the government of the nation experiencing the deficiencies in satisfaction of human rights. On that basis, let us turn in Section Two to a discussion of human rights as they relate to development.
II. THE LINKAGE BETWEEN HUMAN RIGHTS AND DEVELOPMENT

DEVELOPMENT: WHO IS IT FOR?

The individual has come to be accepted as the ultimate subject and the primary beneficiary of development. Broadly stated, the goal of development is improvement in the quality of life. How does one measure that? A concern for the rights of each individual illuminates the importance of paying attention to the distribution of costs and benefits of development. For instance, if the introduction of a new technology turns what was once a woman’s task into a man’s task (because of prevailing culture or because the new technology is prohibitively expensive or not made available to women), and, therefore, deprives those women of their livelihood and subsistence, is the new technology worth introducing? The answer is not obvious. It depends on the severity of the harms versus the reach of the benefits, as well as on the alternatives. But in the absence of concern for the individual, there would be no reason to ask the question; the aggregate growth in output would speak for itself.

In the 1970s, the shift in the development community’s emphasis from growth-centered development to “human development” and poverty-reduction revealed the interconnection between development and the satisfaction of human needs. Then World Bank President Robert McNamara was influential in advancing this basic needs approach. The 1990 Human Development Report issued by the UN Development Programme (UNDP) added further weight to the idea that development entails many aspects of the human condition besides aggregate measures of economic well-being, thereby establishing new “human development indicators.” (Carstairs 1990, 40-46) Some targets of human development for the year 2000 include universal basic education for men and women, primary health care and safe water for all, elimination of serious malnutrition, expansion of job opportunities, and a 50 percent reduction of absolute poverty.

Development and Human Rights: Separate Evolution

Development work and human rights advocacy have to a large extent developed autonomously, with separate institutions for each at both the national and international level. For instance, in the United Nations framework there is the UN Development Programme, quite separate from the Commission on Human Rights and the Committee on Economic, Social and Cultural Rights. There have been prominent conferences exploring the linkages between trade and development and between environment and development, but for many decades there was little concerted movement for human rights and development. At the national level, there is in the United States an Agency for International Development and
a State Department Bureau of Human Rights and Humanitarian Affairs. Separate institutions and bureaucracies with separate mandates have tended to obscure the links between the two. In fact, the mandates and goals of human rights advocates and development agencies were conceived by many to be conflicting or even mutually exclusive. As it turns out, this was probably due to a narrow conception of human rights as purely civil and political rights, and of development as purely economic development.

Once the conceptual parameters of both approaches are sufficiently broadened, the "trade-off" appears a little less dramatic. With the emergence of the "Right to Development," the lines between the two fields were effectively blurred (for the worse, according to Jack Donnelly, who articulates his views in Welch and Meltzer's 1984 text). The preamble to the 1986 UN Declaration on the Right to Development asserts that "in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights." Substantial endeavors, both conceptual and practical, must be undertaken to understand the complex relationship that exists between promoting development and human rights establishment.

Far from being mutually exclusive and inherently irreconcilable, the human rights and development approaches to the advancement of human well-being actually share many of the same objectives and targets. That message was clear in a 1974 United Nations Special Report on the question of the realization of economic, social and cultural rights in developing countries. Emphasizing the importance of incorporating social objectives such as societal justice and equality with economic objectives in national development planning (the so-called "Unified Development Approach"), the Special Rapporteur wrote:

A unified national development plan should, therefore, provide for all a purposeful and continuous education, an acceptable standard of health and nutrition, proper housing, social insurance and social welfare and the right of individuals to participate in social, cultural and political activities. These desiderata should be considered not as the by-products of economic growth to be postponed for later stages of development but as the basic policy tools for mobilizing human resources, a type of resource that the less developed countries have in abundance but utilize the least (Ganji 1974, 299).

The model of some newly industrialized countries (NICs), such as the "Asian Tigers," which reached remarkable rates of economic growth while continuing to deny basic civil and political liberties, might seem to contradict this argument about the centrality of civil and political rights to development success. But there are problems with drawing from the NICs
the lesson that denial of rights advances the cause of development. First, economic growth is by no means the only measure of development progress. Moreover, decades of denial by other developing countries of both human rights and broad political participation have not brought those countries anywhere near the NICs economically. With the slow realization of the conceptual convergence of human rights and development approaches comes the recognition that fulfillment of basic human rights should be seen as an end and a means of development, not its antithesis. There remain differences in emphasis, to be sure. For example, the majority of the international human rights community continues to focus on quite limited conceptions of human rights as civil and political rights. Likewise, recognition by the development community of the political determinants of socio-economic development, "the governance dimension," was late in coming.7

Nevertheless, widespread institutional barriers between human rights and development show signs of crumbling. The U.S. Agency for International Development, for instance, created a "Democracy and Governance Program" under the aegis of its Africa Bureau. Canada's development agency, meanwhile, now defines promotion of human rights as part of its mandate and prescribes an impressive human rights training course for its staff. Encouragingly, one of the objectives of the 1993 UN World Conference on Human Rights is to examine the relation between development and the enjoyment of all the rights enumerated in the International Covenants on Human Rights. What does not yet exist is a consensus about the best way to link the two concerns in practice without compromising the achievement of either.

The World Bank's General Counsel Ibrahim F. Shihata implicitly addresses both the complementarity and contradiction of the human rights and the development focuses in a 1988 article on the World Bank and human rights. On the one hand, he suggests that the Bank's development work has "played a leading role in the promotion" of human rights, particularly universal economic and social rights such as the right to education, the right to the highest attainable standard of health, and the right to an adequate standard of living (Shihata 1988, 39). "The World Bank Group, the International Development Association (IDA), and the International Finance Corporation (IFC)," he states, "have financed efforts to fulfill the universal right to economic development and a broad range of human rights associated therewith in the amount of 203 billion dollars."(Shihata 1988, 39)

Highlighting the interconnection between poverty-reduction and fulfillment of human rights, he acknowledges that some basic human rights, such as the right to an adequate living standard, education, nutrition, and health, are closely interwoven with the problem of the alleviation of poverty itself. His study concludes with the observation that "[no] bal-
anced development can be achieved without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve their culture while continuously improving their living standards." (Shihata, 66)

On the other hand, if human rights are construed to mean primarily civil and political rights, the situation at first glance seems to be reversed. The General Counsel reports that far from “playing a leading role” in the civil and political rights sphere, the Bank is severely limited in its ability to address this category of rights because of its Articles of Agreement. According to General Counsel Shihata’s 1987 legal opinion, violations of human rights (qua civil and political rights, according to my reading of his interpretation) may become a matter of concern for the Bank if such violations have preponderant effects on the country’s economy or on the feasibility of project implementation. “But,” he writes, “the degree of respect paid by a government to human rights cannot by itself be considered an appropriate basis for the Bank’s decision to make loans to that government or for the voting of its Executive Directors.” (Shihata, 46-47)

It is worth quoting a portion of Shihata’s article in order to understand the conception of human rights on which his legal opinion is based:

As Professor Reisman observed, “There is a limit to ‘institutional elasticity,’ i.e., the extent to which institutions are created and still used for other purposes can be ‘stretched’ in order to get them to perform human rights functions, especially when those functions are accomplished at the expense of their manifest functions.” Ignoring the limitations to this “institutional elasticity” could only be detrimental to the Bank and its members as a whole. This is especially true in matters where the views differ sharply and political prejudice often colors the judgment of governments. While a loan to an authoritarian government may be seen as a form of support to that government, a development loan from the World Bank which is made to finance or facilitate investments and, thereby, improve the people’s standards of living casts a different light. Arguably, if a loan is rejected, solely on the basis of the authoritarian and suppressive character of the government involved, the result may only add another injury to the country’s population who [are] already the victims of actions of their own government and the inaction by the Bank. Further, such a decision would violate the Articles. [emphasis added] (Shihata, 47)

Several aspects of this argument merit closer attention. The implications in the above passage are that concern for human rights (if viewed only as civil and political rights) interferes with development aims, and that development loans inherently foster human advancement. Implicit in such an argument is the assumption that the Bank has only two options when facing a repressive government: (1) continue to make the loans, thereby
advancing the cause of economic and social rights for the population; or (2) cut off assistance to the country, thereby setting back the fulfillment of economic rights. The passage begs the question: is development only consistent with economic and social rights, while concern for civil and political rights is somehow inimical to development? In order to assess the overlap between human rights and development, we should compare the indices used to measure the performance of both. What does “progress” look like to the developmentalist and the right-ist? What trends should one look for in measuring this progress?

**Meeting Basic Needs, Promoting Basic Rights**

Developmentalists, generally speaking, are concerned with meeting basic needs, while human rights advocates strive for realization of basic rights. Are basic needs and basic rights the same? Human rights have their origin in human needs and in obstacles to satisfaction of those needs (Shue 1980). The language of human rights, it will be remembered, is used to define that which is essential to a dignified existence. The “essentials” include both material needs, such as food, water, and shelter (a group of rights that Henry Shue labels “subsistence”) and non-material needs such as the right to physical integrity and to freedom of thought. Fundamental rights are designated as such because they are meant to empower people to meet basic human needs.

**Measuring Human Rights**

Some of the indications that human rights are being met in a particular country are, in the field of Civil and Political Rights: constitutional-legal guarantees, protection of, and practice of rights to assembly and association, freedom of expression, freedom of the press, the right to vote, the right to leave and return, the rights to citizenship, equal protection of the law, a fair open trial, and personal integrity and security rights. All of these can be monitored and measured by looking at constitutional provisions and signatures on international human rights instruments, and by examining enforcement of written and customary law. The number or rate of executions, cases of mistreatment and torture of prisoners, or prosecutions for exercising guaranteed rights gives one side of this picture.

In the field of Socio-economic Rights, indices of human rights performance are less clear and standards less uniform. But a good place to start in measuring a nation’s success in meeting this category of rights is to examine disaggregated statistics which reveal possible discrimination in enforcement of rights such as the right to education, access to the highest attainable standard of healthcare, and access to food across the gender divide, the urban/rural split, and regional or ethnic divisions. Some quantifiable measures include national data on the number of children—
both boys and girls—in school, rates of inoculation against disease and malnutrition, and provision of social security. In addition to discrimination at the national level, measurement would also have to take into account differential enjoyment of rights within the household, including especially access to food and free choice of work, where women and children may require special protection.

**Measuring Development**

Measuring development is also an evolving and imprecise science. Some *economic indicators* are: growth of gross national product, growth in per capita income, employment trends, and equity considerations such as distribution of income. *Social indicators* of development are captured by various “quality of life” measurements such as, data indicating the incidence and depth of poverty (with special emphasis on bringing the absolute worst off up to some minimum level), increase in life expectancy, literacy and education rates, a calorie intake/nutrition index, trends in maternal, infant, and child mortality rates, access to food, water, and housing, and the ratio of medically trained personnel to population. Spanning all these indices, fairness should be seen as a key element of development, with progress pursued for all without differentiation on basis of sex, race, ethnic group, religion, language, place of birth, or national or social origin (UNDP 1992; Ganji 1974). Finally, a relatively new measure of development performance includes *good governance indices* such as an objective and efficient judiciary (the rule of law), bureaucratic accountability and efficiency, and freedom of information and expression (Landell-Mills and Serageldin 1992).

Are development indicators adequately attentive to considerations of equity? Can they address distribution of the costs and benefits of development across gender, race, ethnic, age, and regional lines? Can they address intra-household distributional equity? With those questions in mind, we can attempt to determine how human rights standards can illuminate the decisions of development policy-makers.

**What can a Human Rights Perspective Add to Development?**

In what ways can the overall effectiveness of the World Bank’s development work (from analysis and statistical modeling to project design, appraisal, and review) be strengthened by awareness of the human rights dimension? Some possibilities, deduced from the analysis above, are:

1. *Increased attention to distribution of costs and benefits of development (equity)* and, more specifically, possible *discrimination in project design and implementation*. Attention to the discriminatory intent or effect of development programs is not just a normative matter of promoting social justice.
Rather, non-discriminatory development “sets the basis for national integration and consolidation, which is in turn fundamental for national independence and development.” (Ganji 1974, 299)

2. New focus on the human rights aspect of reducing poverty and meeting “basic needs rights” to food, health, education, and security in land (Paul 1988, 80 and 98). Henry Shue addresses the reason for employing the term “rights” even if basic needs could theoretically be provided without bringing up the notion of rights: “Simply to provide something is not the same as to provide it as a right. To provide something as a right means to provide social guarantees for its enjoyment against standard threats, and these guarantees must include adequate arrangements for the effective performance of all three types of correlative duties.” (Shue 1980, 76)

According to Shue’s analysis, every basic right has three correlative duties: (1) duties to avoid depriving, (2) duties to protect from deprivation, and (3) duties to aid the deprived (Shue, 52). He continues, “[To] enjoy something only at the discretion of someone else, especially someone powerful enough to deprive you of it at will, is precisely not to enjoy a right to it.” (Shue, 78)

3. Recognition of the human right to participation and its centrality to sustainable development. The UN Economic Commission for Africa (UNECA) views participation in development as a way to “encourage the people to increase their development effort and to accept whatever sacrifices that may be implied by the programs, thereby consolidating and deepening the process for national self-reliance” (Skogly 1991, sec. by UNECA: 24). Only if people are aware of their rights can they become self-reliant in working for improved access to the material goods and services necessary for their survival and in promoting a more equitable distribution of the fruits of development. Development projects should not be envisaged as perpetual handouts. If development has an endpoint, it is the time when people of developing nations become empowered to sustain the means of their own survival. This involves not only fostering productive technologies, institutional development, sound infrastructure, and renewable resources, but the building of human resources. To summarize, supplying the disadvantaged with basic goods helps them meet their needs for today; securing recognition of their rights to those goods empowers them to provide for themselves.

Regarding the Bank’s studies on promoting participation, James Paul comments that “[if] the ‘sociological’ conclusions of these important studies can be merged with a legal understanding of rights of participation, one may hope for significant changes in the Bank’s operating procedures” [emphasis added] (Paul 1988, 76). If participation was addressed as a human right instead of as a good, what changes would be brought about in the Bank’s attitude toward popular participation in development?
Following a line of analysis similar to Shue's, Sigrun Skogly argues:

When it comes to the practical implication of dealing with human rights in a development perspective, this recognition of the nature of rights [as entailing duties and claims] may be painful and difficult to deal with both for development workers and for financial institutions. Not only are they “helping” out in a difficult situation, but the population they are dealing with would have some entitlement to assistance, and in addition, be entitled to make specific demands and to participate in the decision-making process. Indeed, looking at these issues from the perspective of rights is to take it out of the realm of charity and into the realm of entitlement, in which the beneficiaries have the right to be heard. (Skogly 1991, 31)

III. INSTITUTIONAL ISSUES FOR THE WORLD BANK

EXTERNAL PRESSURES

Pressures from outside the Bank brought the human rights debate to the fore. The issue of human rights was first systematically addressed in the development context by bilateral development agencies such as USAID, the Canadian International Development Agency, and the Nordic development agencies. In the multilateral context, the EC’s Lomé II Convention and the mandate of the European Bank for Reconstruction and Development have been instrumental in making human rights concerns central to the decision to provide development assistance. In the 1970s, the United States Congress passed legislation conditioning U.S. economic assistance on the human rights performance of recipient countries. Moreover, Section 701 of the U.S. International Financial Institutions Act stipulated that the United States would use its voice and vote in IFIs to advance the cause of human rights.

As mentioned at the outset of this paper, it was the bilateral donors that raised overt human rights considerations in the Consultative Group meetings which the World Bank chaired in November 1991 in the case of Kenya and May 1992 in the case of Malawi. Donors from industrialized countries demanded progress on the human rights front in Kenya and Malawi before they would consider providing new loans. In the case of Kenya, the Bank itself also suspended new lending.11

The Bank’s Articles of Agreement explicitly prohibit it from interfering in the political affairs of any member, an injunction meant to ensure the legitimacy of the Bank across the ideological spectrum. The Articles were thorough. Among other rules, (a) loans cannot be influenced by the borrower’s political character, (b) decisions must not be influenced by
political interests of donors, and (c) only economic considerations are relevant to the Bank’s decisions (Shihata 1988, 46; and Paul 1988, 115). At first glance, the scope for consideration of “political” human rights factors seems narrow, but there are definitely openings.

First of all, what constitutes “political”? The Articles were intended to preclude ideological, partisan, and special-interest considerations from tainting the Bank’s role as an impartial economic development agency. Violations of universally recognized human rights—especially, but not only, when the abusing state is a signatory of the Human Rights Covenants—hardly count as elements of “political character” which must be categorically ignored. Like the domestic jurisdiction argument for state impunity in violations of citizens’ rights, the interpretation of “political character” is in need of modification based on the evolution of universal principles. The World Bank, as an inter-governmental body, certainly faces a delicate balancing act in promoting human rights without blatantly overstepping the lines of national sovereignty. Third World countries have been quick to sound alarm when they feel that the affluent North is attempting to dictate internal policy through political conditionality. But many have already accepted a role for outside interference in internal economic policy as the price of continued development assistance, most overtly in their acceptance of structural adjustment programs (SAPs). In the Final Document of the Tenth Non-Aligned Summit in Jakarta, Third World nations emphasized their belief that the promotion of human rights must be based on the principles of “non-selectivity, objectivity, and impartiality.” (Lang 1992, 4). Devising a de-politicized human rights policy is no small task and, with the waning of the Cold War, human rights considerations are less likely to reflect the “political interests of the donor” in the manner envisaged by the drafters of the Articles.

Arising precisely from such a re-evaluation of what is political is the recognition that sustainable development requires good governance. The Bank’s Long Term Perspective Study on Sub-Saharan Africa, From Crisis to Sustainable Growth (1989), illuminated the linkage between legitimate, accountable government and a country’s development prospects. Openness, accountability, and the rule of law are essentials of good governance which lead to more efficiency in government and a more effective use of development assistance. These aspects of the management of a nation’s resources for development, though labeled as “technical”, not political, components of governance (and therefore legitimate areas of concern for the Bank), are, nevertheless, acknowledged to be derived from or related to the Universal Declaration of Human Right (Landell-Mills and Serageldin 1992).

The World Bank could choose, if it wanted, to treat human rights issues only indirectly, as a matter that affects the legitimacy or credit-worthiness
of a borrower. That would be the case, for example, if it was found that a certain level of human rights abuses would lead to instability or civil war, and thus that such abuses made the offending state a bad credit risk. Indeed, to the extent that human rights considerations have a preponderant economic effect on the country, the Bank is already allowed to take them into account when making loan decisions (Shihata 1988, 46-47). What remains in this scenario is to identify the threshold level of human rights violations where one might discern a preponderant economic effect, and, moreover, to identify appropriate methods of sensitizing Bank policies and procedures to human rights concerns.

What Role for the World Bank?

The conceptual linkages presented in Section One of this paper and the changing international context facing the World Bank as briefly outlined above point to the necessity of taking a comprehensive look at how human rights bear upon development and how development work affects the satisfaction of human rights. The policy choices are decidedly more complex than whether to aid or not to aid offending governments. What is envisioned here is a pro-active, positive effort to promote socio-economic rights through Bank dialogue and projects, as well as through genuine participatory development. Unfortunately, many human rights advocacy groups have not developed very comprehensive recommendations for what specific changes in World Bank procedures would help promote rights. However, there seem to be at least three aspects of the Bank's role in the promotion of human rights.

1. Positive promotion of human rights, especially economic and social rights and the right to development.
2. Avoidance of violating human rights directly or indirectly through repercussions of Bank policy- and project-lending.
3. Reaction to widespread violation of human rights.

It is in the first area, positive promotion, that the World Bank enjoys the greatest comparative advantage. Beyond the progressive realization of economic and social rights targeted in the Bank's everyday operations (poverty reduction, increased lending to the world's poorest nations, satisfaction of basic human needs—rights to health, education, and an increasing standard of living), there exist other elements of a pro-active strategy that would help to ensure the equity and sustainability of development:

i) Data Collection: Insufficient data, especially disaggregated data, is one factor inhibiting the full implementation of economic and social rights. The Bank is a widely respected source of reliable statistics on those areas covered by the economic rights covenant. Other groups who might be
charged with reporting on the progressive achievement of socio-economic rights, such as NGOs or state signatories to the ICESCR, may be either less capable of collecting adequate data or less objective.

ii) Technical Assistance: The Bank's knowledge on issues such as public sector management, judicial/legal reform, institutional development, capacity-building, and governance could be used in addressing the accountability of the government to its people, restructuring of governments to eliminate waste and corruption, and prioritization of spending to maximize gains in the enjoyment of human rights. Such efforts would create an environment capable of sustainable development, a first step toward the effective realization of economic and social rights. At the same time, those efforts will create an enabling environment for the realization of civil and political rights by promoting the need for openness (which entails freedom of expression, freedom of the press, and freedom of association).

iii) Private Dialogue With Borrower Governments: This is an arena where the Bank can influence recipient governments by emphasizing the importance of protecting the most disadvantaged elements of society such as women or minorities and the methods of incorporating their needs into a country's development projects.

None of this has to take on the overtones of "conditionality," but might instead be considered as a way of using the Bank's leverage and expertise to advance sustainable development and empower people with the means to secure their own survival.

The second role in advancing rights is negative: avoidance of violating or assisting in the violation of human rights in the execution of the Bank's operations. This means giving adequate consideration to the human rights repercussions of Bank policy and project lending (Paul 1988). Do the policies advocated in technical assistance programs advance the welfare of some at the expense of others? If so, are adequate and enforceable remedies available for those left worse off? Were these costs properly budgeted for? Concern for human rights can reinforce project design and implementation by promoting the inclusion of women (through affirmative action if necessary) in development decisions and implementation. The rights most likely to be affected by Bank programs are the rights to food, land, clean water, health, work, and participation, as well as environmental claims. Special consideration should be focused on the implications of each project for forced resettlement and the rights of indigenous or tribal peoples.

Some preliminary recommendations are to (1) include project-affected people in planning, design, and implementation or provide adequate information to project-affected people in a timely manner, (2) budget for prompt and adequate compensation for those harmed by development undertakings, and (3) establish rule of law (either in international law relating to development agencies' obligations or as part of each project's legal agreement) that makes the development process more open and
accountable.

Finally, the Bank can react to a country’s poor human rights record. There are several ways of doing this, some more feasible than others. We have already mentioned the idea of suspending development assistance. The debate over this option essentially amounts to a replay of the controversy surrounding the merits of constructive engagement. But, constructive engagement (in this case, continuation of development loans) is not a unidimensional act. Instead of reacting to an abysmal human rights situation by denying economic assistance, one might target assistance to particular objectives while cutting non-essential programs. It must not be forgotten that money donated or lent for development purposes frees up funds elsewhere in the national budget that the government can use to wage its campaign of destruction. Funding legal reform projects or increasing contacts with private entities, NGOs, and community groups are some avenues already being considered, though not yet in the explicit context of promoting human rights.

Even assuming there were no statutory limitations on possible Bank responses to tyranny, troubling questions persist. What standard of human rights are we talking about? How serious must the abuses be before it would be legitimate and uncontroversial for the Bank to respond? More fundamentally, will the cause of human rights be advanced by curtailing aid? Under the circumstances, does the prospect of reduced outside aid stand a chance of influencing the offending government? Or is the action symbolic without being substantive? When will assistance be reinstated? This returns us full circle to the question of which human rights criteria are relevant. All of these questions would be useful areas for further study.

**CONCLUSION**

It is hoped that this essay has dispelled four common illusions. The first involves the misconceptions that “human rights” are just political and civil liberties which fall completely outside the Bank’s mandate. The second illusion is that human rights are merely vague ideals, and no nation or international organization has any legal obligation to respect or promote them. A third misunderstanding is the concern that human rights would drastically interfere with or undermine the Bank’s development objectives. The final commonly held belief is that regardless of the utility or desirability of human rights, the World Bank has no authority or expertise to contribute to their promotion or protection and, therefore, should remain out of the fray.

Human rights, it is clear, are economic and social as well as civil and political. Rights are interdependent and mutually reinforcing, as well as being linked closely with socio-economic development. Both human rights and development advocates aim at improving the quality and conditions of human life. Advancement of human rights improves the
prospects for long-term development, while socio-economic development, in its broadest sense, lays the groundwork for effective enjoyment of human rights. Grassroots participation, poverty-reduction, empowerment of the disadvantaged, universal literacy and access to health care are not only desired end products of economic growth but are actually critical inputs into growth and sustainable development. The World Bank's development agenda would be well served by a fresh look at the axiomatic relevance of human rights. The institution and the nations which comprise it have a multiplicity of tools at their disposal for addressing human rights, even within the current legal strictures of the Articles of Agreement. Furthermore, international conditions are ripe for a new, non-conflictual approach to human rights.

Notes

1. The UDHR was passed unanimously by the UN General Assembly with eight abstentions, including South Africa, Saudi Arabia, and several Soviet bloc states. Although the Declaration was not, when adopted, a binding legal document, it has now acquired the status of customary international law.


4. On the subject of government responsibility and the right to food, see Paul, pp. 85-6.


9. "The process of rights development is, in part, a process of developing particular components rights geared to the context of specific needs of particular groups for particular forms of protection of those basic interests which are promised protection by declaration of the general right" (Paul, 80).

10. For component rights deemed necessary to guarantee meaningful participation, see Paul, pp. 81-2.

12. The social costs associated with SAPs—a separate issue which deserves further attention—are addressed by Cornia et. al., 1984, and Khan, 1990.

**References**


NEW YORK CITY LIMITS: 
THE CASE OF MORGAN STANLEY
Charles J. Wheelan

In 1991, the New York investment bank, Morgan Stanley, announced that it was considering relocating its corporate headquarters from Manhattan to Stamford, Connecticut. New York City and New York State interceded to prevent a business they perceived as an anchor in the financial community from leaving. A deal was struck in which Morgan Stanley agreed to remain in New York City for ten years in exchange for a package of tax incentives worth $40 million. This paper explores the details surrounding the Morgan Stanley case. In addition, it explores how the comparative advantage of cities like New York has slowly been eroded. Finally, it seeks to explain why the states of New York, New Jersey, and Connecticut continue to use tax incentives to lure businesses away from one another despite the fact that they would be collectively better off if they agreed to stop the practice.

INTRODUCTION

New York Newsday reported that “even by the standards of Manhattan power dining, it was an impressive show of force.” In attendance, among others, were: Senator Daniel Patrick Moynihan, Mayor David Dinkins, former Secretary of State Cyrus Vance, billionaire brothers Laurence and Bob Tisch, Cardinal John O’Connor, American Express Chairman James Robinson, and the President of the Federal Reserve Bank of New York, E.

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Gerald Corrigan. The gathering had been hastily arranged and was being held in the private dining room of the publisher of the New York Times, which made it all the more noteworthy (Newsday October 14, 1991). This eminent group came together for breakfast in the fall of 1991 to persuade top executives of Morgan Stanley, New York City’s preeminent investment banking firm, not to move the firm’s headquarters from its current midtown Manhattan location to a site in Stamford, Connecticut. The stakes were high. Morgan Stanley had already purchased an option on a building site in Stamford, and the City of Stamford and the State of Connecticut had offered to pay the full cost of constructing a new international headquarters there — an incentive valued at $100 million. The meeting was inconclusive. The group of government and business VIPs argued that Morgan Stanley was the anchor of the City’s financial community and that the firm would cause a domino effect if it decided to leave. The Morgan Stanley officials countered that the City had never shown much interest in the firm or its business climate until they threatened to move out (Whittemore 1993).

In the end, almost two years later, Morgan Stanley reached an agreement with New York City and New York State in which the firm committed to remain in Manhattan for ten more years. In exchange, the City and the State offered the firm a package of tax incentives worth $40 million. The City also agreed to freeze its corporate tax rate for four years. Morgan Stanley was a clear winner. As Morgan Stanley executive Fred Whittemore explained quite bluntly, “We’re not stupid. We orchestrated this to get the most out of both government bodies. When you’ve got people by the short hairs, you have to twist just enough” (interview, 6 January 1993). The tax base of New York City and State had been eroded by $40 million. The long term costs will be much higher if other companies follow Morgan’s lead in asking for special concessions. The irony, however, is that Mayor David Dinkins scored a small political coup by negotiating a deal to keep a prominent New York business in New York. On the day the deal was announced, News Anchor Diana Williams opened the story on the WABC 11:00 News (with an estimated nightly viewership of 1,214,000) by announcing, “New York wins tonight, giving tax breaks to keep jobs at Morgan Stanley from moving to Connecticut.” (WABC-TV Transcript October 19, 1992)

The Morgan Stanley deal illustrates two interesting policy processes. The first is the City Limits phenomenon outlined in detail in the work of Paul Peterson (Peterson 1981). New York City is an entity constrained in its ability to make policy and yet struggling to stay competitive with surrounding suburban areas. Many businesses and middle-class residents are reexamining their need to be in the City, which they often perceive as expensive, dangerous, and inconvenient. New York City, with a very limited arsenal, is trying to fight back as its comparative advantage relative
to surrounding areas slowly erodes. Second, this case suggests that the states of New Jersey, New York, and Connecticut (and all 50 states for that matter) would be collectively better off if they agreed not to use tax incentives to lure businesses away from one another. A 1990 Newsday editorial noted, “So long as businesses in the city know they can successfully pit New Jersey and Connecticut against New York, there will be no end to costly wars and Pyrrhic victories” (Newsday November 26, 1990).

Yet a 1991 “nonaggression pact” among the three states and the City of New York collapsed in little more than a year. From the perspective of the political leaders in New York City and the surrounding states, the short-term political advantage of appearing to preserve and protect jobs, especially in hard economic times, outweighs damage from the long-term erosion of the tax base.

According to Whittemore, consideration of the move to Connecticut originated with a petition circulated by a group of young Morgan Stanley executives. For this group, most of whom try to balance long work hours with family commitments, a suburban locale would offer shorter commutes, better schools, and safer neighborhoods. Senior executives were sympathetic for a number of reasons. Many felt that the City had done an inadequate job of managing the public schools, the economy, the crime and drug problems, and the transportation infrastructure. And New York is expensive. Although rents have dropped since the onset of the recession, Manhattan rents dwarf those in the suburbs. But most importantly, Morgan Stanley no longer had any reason for which they absolutely had to be in the City. Given the revolution in communications, most business that could be conducted from Manhattan could also be conducted from Stamford. During the decision process, Morgan Stanley people with stopwatches determined that the travel time from the Stamford site to a major airport was the same or shorter than from Manhattan at most times of the day (Whittemore 1993). All of this is a dramatic change from the heady days of the past when cities could charge a premium for the location and concentration of services that they offered. Peterson explains the advantage that accrued to cities such as New York until a shift towards a service economy and a revolution in communications changed the rules of the game:

Because cities were located at the nodal points of fixed water and rail transportation networks, they monopolized the most valuable land in the region. Whatever differences existed in local taxes and expenditure policies, these weighed lightly on a scale where the physical location of cities sat so heavily. The largest and most powerful of cities could exploit the great wealth their location generated to provide a level of public services that far outstripped the surrounding communities (Peterson 1981).
Unfortunately for cities like New York, physical location no longer commands the premium that businesses once paid. A shift away from manufacturing has made transportation nodes less important. Innovations in telecommunications have made it possible for many businesses, including investment banking, to function outside of urban centers. The fact is, however, that New York City’s fiscal policies, particularly its relatively high level of taxation and social services, have been slow to respond to the fact that the City is no longer preeminent. One of Peterson’s key premises is that the more a local community engages in redistribution, the more the marginal benefit/tax ratio for the average taxpayer declines and the less competitive a city or state becomes with its neighbors. If the process goes unchecked, those who stand to pay the most in taxes move out, and those who stand to gain the most from city services and transfer programs move in. The result is a shrinking tax base and growing revenue demands. By the mid-1970s, New York was out of sync with the rest of America. The advantages that the City offered to businesses and middle class citizens had been slowly whittled away, but the tax and redistribution policies did not reflect the new reality. The New York City per capita tax burden in 1974 was $699 while that for the next 14 largest cities averaged $257 (Peterson 1981). In 1973, the average U.S. resident earning $50,000 a year paid 3.7 percent of his or her salary in state and local income taxes. The average New Yorker making the same amount paid 11.1 percent. The result, for all practical purposes, was bankruptcy. A report issued by the New York Temporary Commission on City Finances assessed the factors that led to the 1975 financial catastrophe:

Taxes were raised beyond the point of economic rationality and helped to drive out mobile businesses and individuals; debt was issued beyond the capacity of the market to absorb it at competitive rates and, ultimately, to absorb it at all; salaries and benefits were negotiated beyond the capacity of the local government to finance the increases except by reducing the work force, cutting essential services and worsening the quality of life in New York City. In each instance, it clearly was in the short-run interest of City officials to pursue policies that were destructive to the future (Peterson 1981).

New York bounced back from the 1970s, but the problems outlined above are still endemic to the City, as well as to many other American cities. Fewer companies are willing to pay a premium to be in the Big Apple. As an example, in 1970 there were 124 Fortune 500 companies based in New York; by 1990, only 42 were left. The result is a scissors effect that bodes poorly for the long-term health of the City: many of New York’s social problems, such as drugs and crime, can only be remedied with more money; yet higher taxes will arguably drive businesses and middle-class residents — the tax base — out of the City. Fred Whittemore offered a
pessimistic appraisal: “What we learned in the process [of the negotiations] is that the City of New York is teetering on the brink of survival.” (Whittemore 1993)

**Striking a Deal**

Both New York and Connecticut would have been better off if the attempt to lure Morgan Stanley out of Manhattan had never been undertaken. (The tax base in New York City and State would be $40 million higher and Connecticut would not have exhausted whatever resources it used to make the Morgan Stanley bid, including the political loss of face.) Yet, once Connecticut began the bidding war by offering an incentive to relocate, New York City had almost no choice but to respond in kind with whatever was necessary to win the battle. Morgan Stanley is an extremely valuable revenue source. The firm generates $2 billion in economic activity each year and pays roughly $100 million in city and state taxes annually. Over the life of the 10-year agreement, Morgan will pay $911 million in direct taxes to New York City and State (Morgan Stanley Press Release October 19, 1992). Additionally, Morgan Stanley employs 4,100 people in Manhattan and Brooklyn. The New York City Office of Economic Development estimates that each New York worker generates $10,000 a year in direct and indirect taxes for the City alone (Fuld 1993).

Beyond that, many in New York believe that Morgan Stanley is not just any company. In the words of Steve Fuld, one of the New York City representatives who helped negotiate the final deal, “Morgan Stanley is an institution unlike virtually any other. It is the epicenter of finance—real and perceived” (Fuld 1993). Founded in 1935 with the breakup of the J.P. Morgan financial empire, the investment bank is an acknowledged leader in the financial world. As an example of the leadership it exerts on the industry, in 1973 Morgan Stanley was the first investment bank to move from Wall Street (downtown) to the midtown area. In a matter of years, First Boston, Bear Stearns, Smith Barney, Paine Webber, and E.F. Hutton all followed (Newsday October 14, 1991).

Nor is the financial services industry just any industry for New York City. The Big Apple prides itself on being the financial capital of the world, a claim difficult to make if the world’s most prestigious investment banks are in Stamford, Greenwich, or Jersey City. As Newsday reported, “City leaders fear that if Morgan Stanley decides it can make deals from the suburbs, the image of New York as the epicenter of investment banking would be shattered and its grip on the industry broken.” (Newsday October 14, 1991)

In isolation and under the circumstances, the Morgan Stanley agreement was good for New York. In exchange for $40 million dollars in concessions, they ensured a revenue stream of hundreds of millions of
dollars down the road. The long-term problem is that Morgan Stanley does not have the patent on "twisting short hairs." In November of 1992, New York City and State had to offer $80 million in incentives to prevent the New York Mercantile Exchange from moving to Jersey City (New York Times November 30, 1992). In August, Prudential Securities threatened to move to New Jersey, Houston, Los Angeles, or San Francisco. To forestall that relocation, the City and State pledged $106.2 million in tax incentives and energy savings over 20 years. Also in August, the New York reached agreement with four of the five commodity exchanges in the City; the package was worth $75 million (New York Times October 20, 1992). Lest one think this is an attitude exclusive to the avaricious financial community, even the Girl Scouts of America have played the game. The City negotiated a deal to keep the Girl Scouts in New York after Baltimore offered the organization a building and a $5 million grant to relocate (Fuld 1993). Each concession by the State and City brings forth new businesses looking for special deals. In fact, if one investment bank strikes a deal with the City, it would almost be negligent on the behalf of the management of other investment banks not to seek similar treatment.

**INTERJURISDICTIONAL COMPETITION**

Competition among states and cities, or "interjurisdictional competition" as it is known in the academic literature, is not without its supporters. Traditional economic conservatives see it as a mechanism for keeping taxes in check and public services up to par with surrounding communities. Charles Tiebout originally developed a theory along these lines (Tiebout 1956). He postulated that individual consumer-voters (and businesses as well) can choose among the "packages" of taxes and services offered by the various governments in a metropolitan area in much the same way that consumers can choose private goods in the competitive marketplace. The result, in theory, is a Pareto-optimal distribution of public goods by local governments. No one who has ever encountered suburban zoning laws or inner-city public schools would argue that the theory works perfectly in practice, but in a report entitled, "Interjurisdictional Tax and Policy Competition: Good or Bad for the Federal System?", John Shannon offers the charitable view of this kind of competition:

> The behavior of our states resembles 50 ships sailing in a great naval convoy during wartime. The farther any state moves ahead of the convoy on the tax side, the greater becomes the risk of tax evasion, taxpayer revolts, and the loss of economic development to states pursuing more conservative tax and spending policies. By the same token, the farther any state falls behind the convoy in the public service area, the greater becomes the risk that it will lose economic development to states providing a higher quality of life, especially public education (Kenyon 1991).
Although traditional liberals and conservatives disagree sharply over whether this competition is good or bad for the overall economy, all parties agree that city and state governments would be better off without the intense competition. An appropriate analogy is the airline industry, which has suffered greatly ever since fares were deregulated in the Carter Administration. Consumers have benefited from sharply lower fares, just as businesses benefit from tax wars, but the airline industry has been devastated as profits sink lower and lower, and in many cases, disappear (The Economist March 6, 1993). Competition among states has the same long-term effect. As stated by Vincent Tese, the New York director of economic development, "[Competition] does not create new jobs or economic activity in the region. What it does is enrich private-sector entities." (New York Times November 30, 1992)

Basic economic theory says that the airlines would be better off if they could collude and artificially hold up prices (which was essentially what the government did for them before deregulation) (Katz and Rosen 1991). U.S. anti-trust law prohibits such collusion among the airlines, but there is no such structural barrier preventing New York, Connecticut, and New Jersey from agreeing not to engage in tax wars and other forms of destructive competition. With some form of cooperation, the money now being used to trade companies within the region could be used to bring in companies from outside or to invest in communications, transportation, and other kinds of infrastructure that would make the region more competitive (Rincon 1993).

New York State, New York City, New Jersey, and Connecticut did in fact sign a limited Nonaggression Pact in October 1991. While the agreement was tepid and had no enforcement mechanism, the City and the three states agreed to 1) a ban on negative advertising and any other kind of behavior designed exclusively to lure businesses across the border; 2) a pledge to persuade firms considering leaving the region to stay; and 3) an agreement to pool resources to attract industries to the region. However, in the face of ravaged economies and short-term political aspirations, the nonaggression agreement lasted barely a year before it collapsed with a flourish. In the latter part of 1992, New Jersey unveiled a $224 million Economic Recovery Fund that is to be used to make grants, loans, investments or loan guarantees to promote economic development. On November 30, Governor Florio announced the Fund would also be used to allow the State to take partial ownership of vacant or underutilized commercial buildings in an effort to attract new tenants. (The State pays the up-front costs of renovating the space and making it more attractive to new businesses in exchange for a share of future rents.) Recognizing that most of the businesses moving into these vacant office buildings have crossed the Hudson, New York swiftly retaliated by announcing the next day that
it would start a marketing program aimed specifically at persuading New
Jersey companies to move the other direction across the river. New York
State Economic Director Vincent Tese explained, "New Jersey will wind
up spending money keeping firms they've got, and it's not going to be a
pleasant situation for them." (New York Times December 1, 1992) Thus, a
relatively short period of cooperation was over.

This outcome accords with what many theorists would predict in this
situation. In the volume, Competition Among States and Local Governments,
Kenyon and Kincaid postulate, "Cooperation between states will arise
periodically, but will ultimately be undone as individual states find
advantage in cheating on agreements. Price rivalry will prove to be a
profitable short-term strategy for particular states, but a troublesome one
for all states in the long run." (Kenyon and Kincaid 1991)

Game theorists point out that any self-enforcing collective agreement is
unstable if there is an incentive to cheat, as there is in this case. If two states
agree to hold their tax rates high, then the third state can attract businesses
from the other states with only minor incentives. When the other states
reciprocate, the agreement falls apart and everybody loses (OPEC and its
efforts to keep oil prices high is one such example) (Katz and Rosen 1991).
The analogy often used is that of a group of hunters that has a stag
surrounded in the woods. A rabbit runs through their circle. If any one of
the hunters chases the rabbit to keep as his own, which may be a finer prize
than a share of the stag, then the hunting circle is broken and the stag
escapes. Although one member bags a rabbit, the group as a whole is worse
off. If this process is repeated often enough, even those who bag the rabbit
will eventually be worse off (Ndungu 1993).

The rabbit in this case is reelection for the area's politicians. The current
political landscape consists of two unpopular governors—Jim Florio of
New Jersey and Lowell Weicker of Connecticut—and an embattled Mayor
in New York City, all of whose tenures have been marred by the recent
recession. In the time between October 1991, when the Nonaggression Pact
was signed, and November of the following year, New York lost 134,000
nonfarm jobs, New Jersey lost 93,000 jobs, and Connecticut lost 53,000 jobs
(New York Times November 30, 1992). Given the economic malaise con-
fronting these politicians, the basic dilemma lies in the fact that the benefits
of cooperation are significant but long term. Competition, on the other
hand, presents the illusion of success in the short run, such as an election
cycle, but is devastating in the long run. Governor Florio looks good for
actively seeking out jobs for New Jersey. As we shall see in the Morgan
Stanley example, New York City Mayor David Dinkins and New York
State Governor Mario Cuomo look good for warding off attacks and
occasionally luring a business back across the Hudson. That the competi-
tion between the two states is to the detriment of both is not a story easily
explained on the nightly news. Peterson, citing New York’s fiscal problems
in the 1970s as a manifestation of larger problems, draws the appropriate
conclusion: “New York’s near default (1975) seems to suggest that local
governments are fundamentally responsive to short-term political forces
within their cities regardless of the long-term economic consequences of
their policies.” (Peterson 1981)

On October 19, 1992, Morgan Stanley Chairman Richard Fisher held a
press conference with Mayor Dinkins and Governor Cuomo to announce
jointly that Morgan Stanley would be staying in Manhattan for at least
another 10 years. Each party praised the other effusively. Mayor Dinkins
told the press, “[The agreement] sends an invaluable, priceless message to
the world’s businesses that New York City is the place where businesses
do their business, the giants and the leaders choose to headquarter
themselves.” (Morgan Stanley Press Release October 19, 1992) The media
almost universally praised Dinkins and Cuomo for saving New York jobs
and improving the business atmosphere despite the potential long-term
erosion of the tax base. Channel 11 called it a “flicker of hope on the
economic front”, and the New York Post, in its inimitable style, ran a
subheadline that read, “Dinkins wants to keep business in New York.”
(WPIX-TV Transcript October 19, 1992; New York Post October 29, 1992)

NEW YORK CITY: THE LONG VIEW

Morgan Stanley never publicly stated why they chose to stay in New York.
Whittemore says that the agreements with the city were important but not
the dealbreaker. In effect, Morgan Stanley has postponed the relocation
decision for now. “We’re really seeing if the city rights itself,” says
Whittemore (Whittemore 1993). The task of “righting” New York City is
daunting. City officials must hold taxes in line with surrounding commu-
nities while simultaneously tackling the crime, drug, and infrastructure
problems that originally drove Morgan Stanley junior executives to peti-
tion for a move to the suburbs. Politicians generally do not excel at doing
more with less. One obvious possibility, though not a long-term solution,
is an increased level of federal aid, which dropped dramatically during the
Reagan-Bush years. Direct Federal aid to cities was cut by 60 percent after
adjusting for inflation between 1981 and 1993 (New York Times January 25,
1993). The nation’s mayors, aware that a Clinton Administration repre-
sents possible relief, have already asked the President for assistance. At a
midwinter meeting of the U.S. Conference of Mayors, the group presented
Clinton with a list of 7,000 possible urban construction projects totalling
$27 billion that the President should consider as a way to aid the cities and
jump-start the economy. (Mayor David Dinkins personally presented
Secretary of Housing and Urban Development Henry G. Cisneros with a
President Clinton will be severely constrained by his commitment to curb the Federal budget deficit, but he has also committed to a fiscal stimulus to stoke the economy and create jobs. One way to do that would be to channel funds to America's cities. The Conference of Mayors estimates that the list of projects they left at the White House doorstep would generate 400,000 jobs, not to mention numerous long-term economic benefits.

Looking to Washington is a limited solution at best, however. In the long run, New York City must remain attractive for middle-class residents and businesses — the "median taxpayers." The city's fiscal policies must acknowledge the exit option that has evolved over the past several decades. From a fiscal standpoint, the most painless way to improve the City's competitiveness would be to attempt to wring greater productivity out of current spending. Some kind of structural school reform, for example, might improve results while lowering cost. The numerous union agreements are also obvious targets. But changes of this nature take tremendous political will, and the Dinkins Administration, soon to face reelection, has been unable or unwilling to make such changes even on the periphery. A January 1993 contract agreement with the sanitation union is a small but telling example. Dinkins had pledged to link pay increases to concomitant increases in productivity. The final agreement, however, mentioned only the pay increases. As the New York Times wrote in a scathing editorial, "The Dinkins administration's new deal with its sanitation union is yet another missed opportunity to improve government, another signal to municipal unions that New York City is willing to buy labor peace by tolerating waste and inefficiency." (New York Times January 30, 1993) Other big city mayors have had greater success in this area. Philadelphia Mayor Edward Rendell—his hand admittedly strengthened because the city bordered on bankruptcy—won major municipal labor concessions in 1992, allowing him to cut $374 million from the city budget over four years (Newsday January 26, 1993). At some point, New York will have to play tough if it hopes to improve services without increasing the tax burden on citizens and businesses most likely to settle in the suburbs.

Social service programs must be similarly scrutinized, especially since the benefits do not accrue to the average taxpayer. All spending must be viewed from the perspective that continued erosion of the tax base is the worst possible situation in the long run. Despite the fiscal problems of the 1970s, New York is still extremely generous in its social services relative to the rest of the country. According to 1990 figures, the State of New York spends more per capita on welfare, $707, than any other state in nation. Alaska is second at $591, and the U.S. average is $352, less than half the New York figure (U.S. Advisory Commission on Intergovernmental Relations 1990). These programs are motivated by good intentions, but the homeless are not well-served if Morgan Stanley moves 4,000 jobs and $100 million
in annual tax revenues to Stamford. Keeping taxes and services at a level palatable to the City’s businesses and middle class residents may require some emotionally difficult decisions in the short term, but to do otherwise is to give the impression of social progress while laying the groundwork for long-term ruin. In short, New York City must acknowledge that it is no longer exempt from Peterson’s major premise: as long as businesses and individuals are mobile, a city’s spending and redistribution policies are constrained by those of its neighbors (Peterson 1981).

**ENLARGING THE PIE**

The broader problem of destructive competition among New York City and State, New Jersey, and Connecticut is vexing as well. The seemingly obvious solution is another attempt at some kind of binding agreement among the City and the states. Unfortunately, this is not a practicable solution for a number of reasons. First, given the absence of an effective enforcement mechanism, the incentive to cheat would likely chip away at the agreement and eventually cause its collapse, as happened with the 1991 agreement. Second, defining interjurisdictional competition to the degree necessary for a binding agreement is extremely difficult. States and localities use tax abatements, attractive financing, real estate deals, venture capital funds, enterprise zones, and a score of other tools to lure businesses to their locale, which enables innovative local leaders to sidestep almost any agreement. And finally, even if New York, Connecticut, and New Jersey were to come to a meaningful agreement, almost instantly the competition would begin from outside the region. I have focused on these three states and New York City because they were most involved in the Morgan Stanley case, but the other 47 states—and thousands of cities—have the same incentives to compete. According to Brook Hern, spokesperson for the New Jersey Department of Commerce and Economic Development, the State of South Carolina has an office in New Jersey for the sole purpose of making cold calls on manufacturing firms and encouraging them to move south (Hern 1993). If Stamford and the State of Connecticut had been bound by an agreement not to strike the initial deal with Morgan Stanley, then Atlanta, or Dallas, or Los Angeles would have been quick to fill the void.

A more viable kind of agreement would be one in which the states agreed to act in concert to make the region more attractive. By creating an investment pool, New York, New Jersey, and Connecticut could improve the region’s airports, highways, rail lines, telecommunications, and other components of the infrastructure in order to make the region a more attractive place to do business. (The Port Authority of New York and New Jersey already does this on a limited scale.) The internecine competition among the three states would almost certainly continue, but as the pie gets
larger, the actors are less likely to fight over the pieces. Politicians would be able to take credit for attracting jobs from outside the region—and for actually creating jobs—rather than simply luring them across the border at great expense to the state. While a company like Morgan Stanley might not be able to jockey for the tax breaks they receive now, they would benefit in other ways. As Whittemore said, "We are trying to run a business in an atmosphere that is conducive to good business." (Whittemore 1993) If clients and employees can travel in and out of the City easily, depend on a communication network that will link them to the rest of the world, and work in relative safety and comfort, then the firm is well-served.

**CONCLUSION**

The policy processes outlined in this paper will loom large between now and when Morgan Stanley’s Manhattan lease expires in 2002. I agree with Peterson that New York City must somehow move quickly to restore its attractiveness for businesses and middle-class citizens or face a vicious cycle further into decline. Similarly, the states and cities in the region have to acknowledge that trading businesses among themselves is a negative sum game and therefore a bankrupt strategy in the long run. An improvement in the economy will dramatically help the situation in both of these cases. Also, President Clinton might be more generous than his two predecessors with the states and cities. But most importantly, it will take effort and foresight on the part of policy makers to maintain a tax base that is both amenable to businesses and middle-class citizens and also sufficient to provide the level of services necessary to compete with the rest of the country, and increasingly, the world.

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A SPECIAL SECTION FUNDED BY THE NATHAN CUMMINGS FOUNDATION
Trade Measures as a Tool to Influence Environmental Policy Abroad: The Unintended Consequences of U.S. Unilateralism

Andrew S. Jones

Global awareness of the severity of natural resource mismanagement and environmental destruction worldwide has increased markedly in recent years. In the United States, this trend has resulted in heightened popular pressure on government officials to use all available tools—including unilateral trade measures—to influence foreign governments’ environmental policies. This paper illustrates current efforts, both unilateral and multilateral, by the U.S. government to affect via trade policy environmental regulation or resource management abroad. It suggests that while unilateral trade measures are easy to administer and can be very effective in shaping
environmental policy abroad, they can also be detrimental to U.S. interests in a liberalized world trading system and comprehensive international agreements to deal with global environmental problems. The paper concludes that use of U.S. unilateral trade barriers should be restricted to cases where such action punishes behavior that blatantly and dangerously disrespects a widely accepted international norm. Otherwise, less intrusive alternative policy responses should be preferred.

**INTRODUCTION**

Awareness of issues concerning the global environment has risen quickly in recent years in many parts of the world. As greater understanding of the magnitude of global environmental problems and the need for collective action has emerged, representatives in Congress have begun to look at the environmental policies of other countries and how the United States government might take unilateral action to prod other governments into emulating the U.S. model. In many cases, legislators have found unilateral trade measures, especially import restrictions, to be one of the most practical and influential instruments in pressuring foreign governments to follow our lead in combating such problems. By making trade with the United States contingent on adopting our environmental standards, we can have an impact, especially on developing countries that rely on trade with the industrialized world and have no capacity for retaliation.

While the environmental movement has gained a great deal of momentum in the North, less developed countries in the South have other, more compelling priorities. During the 1980s, massive external debt burdens and deeply entrenched political and economic instability resulted in stagnated development for many developing countries, leaving them justifiably preoccupied with how to allocate scarce financial and technical resources to meet basic needs. The environmental problems with which they are most concerned therefore relate to survival: basic sanitation, contaminated and insufficient water, soil erosion, and other immediate crises. They do not have the luxury of concentrating their attention and resources on international environmental problems that may impact, however severely, future generations.\(^1\) It should be noted, however, that differences in environmental priorities are driven not only by differences in wealth. The spread of public awareness and education about the environment, and the receptivity of the government to this public concern can also play a significant role in shaping environmental policy.\(^2\)

While unilateral U.S. trade measures have been levied indiscriminately against countries of widely varying size, wealth, and power, the impact may be most pronounced in less developed countries (LDCs), especially those that rely heavily on trade with the United States. (Financial Times,
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1992b). Consideration of the unintended consequences—economic, political, and legal—of using trade measures to force other countries to mirror our environmental preferences demonstrates the need for some restraint. Though utilizing trade policy to extract environmental policy changes in other countries does respond to the heightened demands of many in the environmental community, it can only be justified as in our best interest under certain narrowly defined circumstances and subject to strict limits. This paper will first discuss the current actions the United States is taking, both unilaterally and multilaterally, in this area. Then it will analyze the advantages and disadvantages of designing unilateral trade measures specifically to influence foreign countries' environmental policies. Finally, it will explore the conditions under which such action is justifiable.

**Unilateral Initiatives by the U.S. Congress**

As indicated, a powerful movement to dictate appropriate environmental standards to other countries has gained an impressive following in the U.S. Congress. In many cases, collective action through multilateral negotiation and positive incentives has been supplanted by the more immediate and powerful threat of trade barriers for those who do not cooperate. There are two rationales for unilateral efforts to alter the environmental performance or standards of foreign nations. First, the U.S. government, for either competitiveness or paternal reasons, might attempt to sway other countries' purely domestic environmental policies. Second, it might attempt to penalize another country for environmental degradation or unsustainable resource depletion of the "global commons".

In cases that fall under the first category, Congress has expressed dissatisfaction with another sovereign nation's choice of how best to respond to local environmental problems, the effects of which are clearly confined to national borders, and sought to impose U.S. preferences. Such dissatisfaction may have arisen from concerns of environmental groups or complaints of U.S. industries facing stringent domestic regulation. Although these two political lobbies pursue very different goals, when trade measures are used to back the sovereign imposition of environmental preferences they can both be satisfied with the enactment of a single piece of legislation.

For example, in 1991 Senator David L. Boren (D-OK) introduced the International Pollution Deterrence Act which calls for countervailing duties to be levied against countries whose industries are not forced to invest an equal amount of money in pollution prevention and environmental cleanup. The bill addresses a concern of U.S. businesses that they are disadvantaged by these costs in competing with foreign firms; proponents of the bill argue that the countervailing duties simply encourage more stringent and more appropriate environmental regulation abroad.
Leaving aside the very practical problems of how to actually implement such legislation (whose arbitrary determination of foreign costs stands, and what happens if we find that certain industries in other countries are actually investing more in compliance costs), the bill is fraught with more fundamental problems. First, it is not realistic to expect all countries to have identical standards. Second, determination of U.S. competitive disadvantage on the basis of money invested rather than environmental outcomes discourages efficient, least-cost pollution reduction. Third, such subjective and far-reaching legislation invites retaliation from those countries that receive unfavorable “scores” or those that have problems with U.S. policies in other areas (say less burdensome labor laws, e.g.) that work to the advantage of U.S. companies. In any event, such legislation can unite environmental advocacy groups and the protectionist lobby resulting in a powerful political coalition.

Unilateral action may also be taken to influence environmental policy affecting common resources, such as fishing stocks or marine mammal populations. Examples of such action are found in the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) which call for import barriers on certain categories of goods to discourage environmentally offensive action such as the killing of an endangered species. Often, the imported products that are targeted are only linked to the behavior which the U.S. government seeks to alter. In other words, the imported products themselves are not endangered species, but they are caught or produced in a manner or via a process which is deemed environmentally offensive. The 1989 Amendments to the ESA, for example, include a provision that restricts the importation of shrimp in order to protect sea turtles whose lives and marine environment have been threatened by the intensive use of shrimp trawlers in commercial shrimp fishing operations (16 U.S.C. Secs. 1531-1544 1988). Such restrictions already exist for U.S. businesses who have found it difficult to compete against countries who do not face these restrictions. The trade measures are to some extent included to placate the domestic shrimp harvesting industry, which has complained bitterly about the extent of U.S. regulation in comparison to that facing foreign competitors. (McDorman 1991, 496).

The MMPA also is designed to reduce the incidental taking of marine mammals in the course of commercial fishing. The Act imposes the most rigorous requirements on foreign nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean (ETPO), an area where dolphin populations are particularly vulnerable. The law directs U.S. fishermen to use “the best marine mammal safety techniques and equipment that are economically and technologically practicable” and bans imports of commercial fish or fish products that are caught with technology “which results in the incidental kill or incidental serious injury of ocean mammals in excess of
149 United States standards." Specifically, foreign companies are bound by the "average rate of the incidental taking by vessels of the harvesting nation [of] no more than 1.25 times that of U.S. vessels during the same period." As with the 1989 Amendments to the ESA, U.S. business interests are well represented in the trade provisions of the MMPA.

The amendments to the MMPA also ban imports of fish and fish products if it cannot be demonstrated that these products were not harvested with large-scale drift nets. Specifically, imports are banned from countries whose fishing boats practice high seas drift net fishing unless the exporting nation can "provide documentary evidence that the fish or fish product was not harvested with a large-scale drift net in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after July 1, 1992." (16 U.S.C.A. Sec. 1371.a.2.E 1991). The amendments call for faster action with respect to tuna and tuna products, requiring proof that such products were not harvested with a large-scale drift net anywhere on the high seas after July 1, 1991.

**Multilateral Initiatives Implemented by the U.S. Congress**

Multilateral initiatives to address international environmental problems generally rely on both positive and negative incentives to encourage participation and the good will of participants to enforce it. An effective course of action to address environmental problems requires a critical mass of the countries that contribute to or are affected by the problem. To secure such participation, a reservation clause may be included which allows a country to exempt itself from the need to comply with any particular provision of or amendment to the agreement. Yet this flexibility can make certain provisions of the treaty ineffective. If a significant number of participating countries (which can be as few as one or two key signatories) opt out of important components of the agreement, then the fundamental objectives may not be met.

**The Pelly and Packwood-Magnuson Amendments**

To discourage countries from exempting themselves from the terms of international fisheries and wildlife agreements, the Pelly Amendment of the Fisherman’s Protective Act of 1967 (22 U.S.C. Sec. 1978 1988) and the Packwood-Magnuson Amendments to the Fisheries Conservation and Management Act were introduced (16 U.S.C. Sec. 182.1e2 1988). The Pelly Amendment attempts to dissuade foreign countries from both "conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program" and "engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species." (22 U.S.C.
Sec. 1978 al-2 1988). If a country is deemed in violation of either of these provisions, a process of “certification” begins whereby the President is notified of the findings and may then “prohibit the bringing or the importation into the United States of fish . . . or wildlife products” for an appropriate duration and to the extent that such a prohibition is GATT-consistent (22 U.S.C. Sec. 1978 a4 1988).

The Pelly Amendment originated in the 1969-1971 period with concern over the depletion of the Atlantic salmon stock which was gravely threatened by intense harvesting. Its sponsor, Representative Thomas M. Pelly, argued that in order to enforce a ban on salmon fishing, as proposed by the International Commission for the Northwest Atlantic Fisheries (ICNAF), the U.S. government should use trade measures to deter non-cooperative countries from undercutting conservation goals. The nations which the Pelly Amendment targeted (Denmark, Norway, and West Germany) had exercised their right under the convention to object to particular measures taken by ICNAF and were, therefore, not bound by international law (McDorman 1991, 482). So although the Pelly Amendment, as written, should be considered an effort to strengthen those environmental agreements to which the United States is a party, it attempts to extend liability under such agreements to countries that have no binding commitment under international law.10 The role of the U.S. fishing industry, disadvantaged—at least in the short run—by the ban on salmon fishing, in applying political pressure in favor of an aggressive trade policy should not be overlooked.

The Packwood-Magnuson Amendments were designed specifically to lend enforcement power to the International Convention for the Regulation of Whaling (ICRW, 1946), though, as with the Pelly Amendment, countries subject to sanctions pursuant to these amendments may not be in violation of their obligations under international law. The International Whaling Convention reflected international recognition of the need for some protection of whale stocks (61 Stat.1716, T.I.A.S. No. 1849, 161 U.N.T.S.72). Over the decades, the United States pressed for more effective and comprehensive conservation efforts and by the early 1980s, an international consensus had emerged in favor of a moratorium on commercial whaling (D’Amato and Chopra 1991). This moratorium was resisted by several LDCs, as well as a few other countries whose cooperation was critical to the effectiveness of the Convention. The governments of Japan, Iceland, Norway, and the USSR, for example, consistently filed objections to more stringent catch restrictions despite international pressure. Several countries, Japan in particular, have recently preferred not to object but rather to take advantage of a loophole in the moratorium to catch unreasonably large numbers of whales under the guise of “scientific research.”11

Two key provisions of the Packwood-Magnuson Amendments pro-
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Provide the United States with an enforcement mechanism for the Convention. First, the offending country is certified under the Pelly Amendment if foreign nationals are "conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling." (16 U.S.C. Sec. 1821e-2 1988). Second, if a foreign country is certified under these amendments, then that country's allocation of fishing rights for fisheries managed by the United States must be reduced by no less than 50 percent (16 U.S.C. Sec. 1821e-2 1988). Again, an aggressive U.S. Congress sought to prevent any country from free-riding on the conservation efforts of the committed signatories. Significantly, unlike the terms of other international agreements, the International Whaling Convention does not include any trade provisions. Further supporting the right of participants to escape specific obligations when deemed undesirable and casting some doubt on the acceptability of U.S. enforcement via trade measures, the Convention does not even contain a general provision permitting parties to take certain measures necessary to accomplish the goals of the agreement. Nevertheless, the International Whaling Convention has gained the backing of a huge majority of interested and affected countries worldwide and U.S. trade measures to encourage universal compliance with all of its terms may amount to enforcement of a widely accepted international norm.

The Convention on International Trade in Endangered Species

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed in 1973 for the purpose of protecting endangered species against the over-exploitation which unrestricted international trade may encourage. Unlike agreements such as the ICRW or the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (both of which promote the environmental goal of conservation or sound management of marine resources), CITES is concerned primarily and directly with the trade of endangered species. While congressional legislation like the Pelly and Packwood-Magnuson Amendments utilize trade provisions in an effort to limit excessive harvesting of marine life or whales, trade itself is considered the root of the depletion problem in CITES. By restricting trade, CITES presumably restricts the profit-making activity that drives the over-exploitation of endangered or threatened species.

CITES includes three appendices (the contents of which can change depending on the condition of particular species) which list species threatened with extinction (Appendix I), species potentially endangered without strict regulation of trade (Appendix II), and species that are regulated in a participating country's jurisdiction and which require international cooperation to control trade (Appendix III). As was the case
with the ICRW, CITES provides an optional commitment clause which enables parties to exempt themselves from the convention’s requirements with respect to particular species listed in any of the three appendices (GATT 1992, 37).

As of July 1991, 110 countries had signed CITES, demonstrating a remarkably broad international consensus (The Journal of Commerce 1991a). The United States again was a catalyst in spurring international agreement. The Convention regulates trade only in the species listed in the appendices, not in related products. While some sea turtles protected in the 1989 Amendments to the ESA and the dolphin species singled out in the MMPA are included in the CITES appendices, the Convention does not empower any one participating country to place import restrictions on shrimp or tuna harvested in a manner detrimental to sea turtles or dolphins. Yet where production or harvesting of an imported product compromises the survival or welfare of endangered or threatened species, the U.S. government is likely to restrict trade in the related product. The Pelly Amendment provides for U.S. trade sanctions to police violators of the agreement even though no such enforcement provisions are specified in CITES itself.

ADVANTAGES AND DISADVANTAGES OF UNILATERAL TRADE MEASURES

The advantages of unilateral trade action to pressure foreign governments into mirroring U.S. environmental standards or to compel participation in international agreements are becoming more apparent to members of Congress. The primary advantage of unilateral action lies in its effectiveness due to the economic and political leverage the United States enjoys. The imposition by the United States of an import barrier and the subsequent reduction in demand can have a marked impact on world price and the economic well-being of foreign producers of the restricted good. While the relative effectiveness of import barriers will depend on the magnitude of the targeted country’s trade with the United States and the existence of alternative sources of demand for the banned product, the majority of the countries which we target for import prohibitions to coerce certain behavior will accede to U.S. demands, albeit often begrudgingly.

There are numerous examples of policy changes which have resulted from U.S. unilateral pressure, especially the threat of trade sanctions under the Pelly and Packwood-Magnuson Amendments. The following examples are illustrative:

- In 1978, Chile, Peru, and South Korea, none of whom were parties to the ICRW, joined or took steps to join the Convention in response to the threat of U.S. trade barriers under the Pelly Amendment for unsustainable whaling activities that undermined the agreement’s effectiveness (Martin
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and Brennan 1989, 299). Similarly, Taiwan, also a non-signatory, ultimately banned whaling at least partly in response to U.S. pressure (Martin and Brennan 1989, 299-300).

- In 1984, the threat of sanctions under the Pelly and Packwood-Magnuson Amendments exacted concessions from Japan to adhere to negotiated quotas and ultimately to ban commercial whaling by 1988 in return for immunity from certification under either amendment. 

- In 1986, shortly after certification under the Pelly Amendment for exceeding whaling quotas, Norway announced its intention to suspend commercial whaling after the 1987 season (though it refused to withdraw its objection to the moratorium). The President deemed this a sufficient response and withdrew the threat of sanctions.

- In 1991, the Japanese government agreed to prohibit the importation of hawksbill-turtle shells by January 1993 in response to the threat of trade sanctions from the U.S. government that would have affected over $300 million worth of fish and other exports (Blackhurst and Subramanian, 266).

- The threat of a U.S. boycott on imports of tuna harvested in a manner inconsistent with the MMPA has apparently encouraged a number of countries, including the Congo, New Zealand, Senegal, and Spain, to adopt U.S. procedures for releasing dolphins trapped in fishnets.

These examples demonstrate that the threat of trade sanctions can be a strategically influential tool for the United States, allowing it to exert political and economic pressure abroad on a scale that is probably unmatched by even Japan or Europe. The United States government has powerful means at its disposal to spur other countries into designing government policies to support U.S. initiatives and into changing their priorities to more closely match ours.

Not only are unilateral trade measures a powerful tool in extracting behavioral changes from foreign states, but they can also play a critical role in pushing countries that are affected by or involved in a regional or international environmental problem to the bargaining table. There is substantial evidence to suggest that when the United States chooses to address an environmental concern, often international negotiations ensue between interested parties that can lead to some form of multilateral agreement. International negotiations on oil tanker standards were at least in part a result of U.S. legislation to regulate the passage of foreign ships in U.S. waters. In 1972, in order to minimize the risk to the environment of oil spills, Congress mandated that the United States impose tanker design and construction standards upon foreign vessels by 1976, unless the desired standards were adopted sooner by international agreement. The U.S. threat to unilaterally impose standards more stringent than those observed elsewhere forced foreign vessels desiring to transport cargo through U.S.
waters to take heed and ultimately contributed to the 1978 Amendments to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL).

U.S. pressure also led to a United Nations-backed unconditional ban on driftnet fishing which required all countries involved (i.e., Japan, South Korea, and Taiwan) to reduce their high seas driftnet fishing by 50 percent as of June 30, 1992, and to prohibit it by the end of 1992 (The Economist 1991b). The latest U.N. resolution extends the limited scope of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific to cover all oceans. Unilateral U.S. initiatives such as the Driftnet Impact Monitoring, Assessment and Control Act of 1987 went a long way toward garnering the kind of international consensus needed to render this practice obsolete.

It should be noted, however, that unilateral action is not always so effective. In response to the failure of the Mexican fishing industry to comply with limits on the incidental taking of certain dolphin species in the ETPO as stated in the MMPA, the U.S. government prohibited imports of Mexican tuna products. Then, in 1991, Mexico filed a claim with the GATT (General Agreement on Tariffs and Trade) against these sanctions. Ultimately, the GATT found unanimously in favor of the Mexican government and directed the U.S. government to make the inconsistent portions of the MMPA conform to GATT rules (Christensen and Geffin 1991-2). The U.S. government responded by reaching a bilateral agreement with Mexico to phase-out the practice of purse seine net fishing by year-end 1994 in the relevant regions. The MMPA’s provisions concerning dolphin conservation, though not necessarily permissible under international law, did raise the level of awareness of the indiscriminate killing of dolphins by confronting all concerned nations and may have expedited international negotiations. Yet, in this case, it was the United States that was forced to negotiate an agreement and consequently lift the boycott on Mexico’s tuna products in order to avoid retaliatory trade measures.

Another critical advantage of unilateral action is the relative ease with which it may be initiated and administered. Negotiations among many countries, each with its own set of demands and preferences, can be long and cumbersome. Even when multilateral agreements are in place, the U.S. government has used unilateral enforcement to strengthen the agreements’ effectiveness when parties exempt themselves (e.g., the ICRW, CITES). The delay which is avoided by replacing multilateral negotiations with unilateral sanctions is significant and may be critical when the magnitude and urgency of a problem demand it.

The disadvantages of U.S. unilateralism have already been implied. While sanctions enable the U.S to shape global environmental policy and set priorities, reliance on our own political and economic clout indepen-
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dent of input from abroad weakens, or at least de-emphasizes, multilateral channels for cooperation.\textsuperscript{29} Such unilateral action signals U.S. resistance to a process of international negotiation and compromise and produces a lack of international trust which can make coordination very difficult. This effect is particularly evident in relations between the United States and the LDCs. It is one thing for the United States to threaten the Japanese government with trade restrictions when both countries have substantial leverage internationally. However, unilateral measures directed at Mexico, Venezuela, Brazil, Thailand, Indonesia, Malaysia, and even poorer countries in the South can have a devastating impact. Insensitivity to the plight of many developing countries whose involvement is needed to combat environmental problems can poison the atmosphere around the bargaining table. For example, in negotiations leading up to the Earth Summit, the United States was viewed more as a bully than as a beacon of compromise and conciliation. The United States was and is considered a very reluctant partner, unwilling to compromise or participate in multilateral initiatives when it cannot set the terms.\textsuperscript{30}

Additionally, unilateral U.S. pressure designed to bring foreign nations to the bargaining table does not often result in the most effective, comprehensive and cooperative international agreements. For example, U.S.-Mexican bilateral negotiations on the use of purse-seine nets, undertaken primarily to head off trade retaliation under the GATT, resulted in a hastily-negotiated end-product. Other affected countries did not participate in the discussions and there was little emphasis on the need for information exchange and ongoing scientific assessment of the extent of the problem to guide the terms of the agreement. Furthermore, politically-driven bilateral negotiations provide little opportunity for financial incentives or technology exchange. This is especially true with respect to alternative fishing techniques and the economic well-being of the affected foreign nationals. The point is that international environmental agreements that arise from or are expedited by U.S. unilateralism can easily fall short of the kinds of sound, comprehensive measures that might be taken in a more cooperative, multilateral setting.

Unilateral U.S. trade sanctions may also be in violation of the GATT. The GATT and its promotion of free trade worldwide have benefited the United States and other countries by allowing for economies of scale and encouraging specialization. While the contribution of free trade to global welfare has been large, these benefits are spread over vast numbers of consumers and therefore few Americans recognize the gains in reduced protectionism that the GATT process has fostered. As a recent GATT report noted, "[t]o someone unfamiliar with, or indifferent to, the contribution of economic efficiency and the trading system to postwar economic prosperity, trade measures can too easily seem to be low cost and readily available
tools for pursuing environmental goals.” (GATT 1992,5) The GATT decision in the U.S.-Mexican tuna dolphin case has brought into question a range of U.S. domestic environmental measures that hinder free trade. While the issue of whether or not legislation such as the MMPA, which subjects foreign governments and their citizens to U.S. law, is compatible with or even should take priority over the General Agreement is the topic for another paper, the fact is that GATT parties unanimously condemned U.S. trade measures taken under the provisions of the MMPA. The MMPA’s third-country provisions in particular created quite a stir among European countries trading with Mexico and Venezuela.31 In fact, the EC was directly affected by a January 1992 U.S. court ruling that, as required in the MMPA, extended the import prohibition to about 20 additional countries, including France, Italy, and Spain.

Justifiably, European countries, as well as the developing world, fear the potentially disruptive and inflammatory consequences of an international trading system where each country, unique in its own preferences and perceptions of risk, restricts trade with others whose regulatory standards are deemed inadequate. The latest GATT statement on this issue includes the following:

[T]o allow each contracting party unilaterally to impose special duties against whatever it objects to among the domestic policies of other contracting parties would risk an eventual descent into chaotic trade conditions similar to those that plagued the 1930’s. Regardless of the nature of an environmental problem, the contribution of multilateral cooperation is to reduce the possibility that solutions are affected by differences in the economic and political strengths of the parties involved.... [I]t is important to minimize the risk of solutions being imposed by the larger or richer countries (GATT 1992, 1-9).

If the United States government continues to insist on employing far-reaching and intrusive domestic regulations that tear at the fabric of the world trading system, it may not just face retaliatory action from other GATT parties, but may also set a dangerous precedent to be followed around the globe. If the great majority of the world’s countries do not possess “economic and political strength” rivaling that of the United States, many may still follow our lead in applying potentially self-serving domestic laws extraterritorially.32

LIMITATIONS ON UNILATERALISM

In light of the advantages and disadvantages of unilateral trade measures, it is challenging to demarcate boundaries within which U.S. international environmental policy should operate. The next and final section considers the most effective means for the United States to combat ecological problems in the global commons.

The preferred manner of approaching international environmental
problems is through an open and anticipatory negotiating process in which all affected countries have a stake in the drafting and implementation processes. Ideally, consensus can be forged well in advance of severe ecological crises. Any multilateral agreement that requires global participation must respond to the needs of the developing world. However, the expediency and general effectiveness of unilateral trade sanctions often cause this tool to prevail over the more comprehensive approach.

When faced with a pressing global environmental problem, U.S. policy makers often expect the relevant countries to take immediate steps domestically to address the problem. Yet, such an outlook is blind to the fact that these steps are especially costly for LDCs given the state of development in these countries, and penalize the poorer countries who rarely have contributed substantially to the problem. In situations such as these, a multilateral context is superior to a unilateral one. Negative incentives in the form of threatened trade measures preclude a cooperative process where equity concerns can be addressed.

On the other hand, comprehensive multilateral agreements often include the extension of financial resources to reduce the hardships LDCs face in addressing the problem. Multilateral fora also build up trust and allow for greater coordination between regions and countries with respect to available technologies and regulatory/managerial know-how. As mentioned earlier, multilateral solutions can be very difficult to achieve because of such factors as diplomatic considerations, large numbers of interested parties, differing economic objectives, and lengthy delays inherent in the negotiating process. I do not deny these barriers, but argue only that they can be reduced if, in stark contrast to the current trend, U.S. policy consistently emphasizes cooperative and comprehensive international agreements.

The use of unilateral measures might also reduce the effectiveness of the United States as the leader in shaping international policy by reducing its credibility. By dismissing the multilateral approach, the U.S. government often appears insincere in its actions. Many countries wonder if the U.S. government policy is interested in sensible, cooperative, and comprehensive measures to redress environmental degradation and resource depletion in the global commons, or if it only responds to solutions that clearly favor U.S. interests.

While a multilateral process is generally preferred to a more unilateral one, the appropriate tool depends on the urgency of the problem and the effect that the tool is likely to have. For example, Congressional efforts to grapple with damaging fishing techniques on the high seas illustrate two very different situations, one in which unilateral action was justified but a primarily multilateral approach was used, and one where unilateral action was not justified but was used. Unilateral measures to ban the use of driftnets, known as “walls of death,” responded to a definite environmen-
tal crisis. In this case, immediate and extraordinary efforts were certainly justifiable. Even so, the United States government did not attempt to resolve this problem singlehandedly. In fact, the Driftnet Impact Monitoring, Assessment & Control Act of 1987 required “international negotiations aimed at assessing [the] impact of driftnetting on marine mammals, demonstrating a congressional desire to promote the dissemination of information, which can be critically important in persuading foreign nations that it is in their best interest to cooperate in combating mutually damaging global environmental problems.” (Driesen 1991, 307-08, n. 132).

The United States also spearheaded multilateral efforts in the UN General Assembly to push up the timetable for a total ban on this devastating practice (The Journal of Commerce 1991a). Japan, Korea, and Taiwan were the only countries resisting such a ban in the face of broad-based opposition and convincing scientific evidence. Based on the widespread consensus over and urgency of the problem, the U.S. threatened trade sanctions, and the three Asian countries subsequently agreed to phase out the use of these nets. In this case, where the environmental threat was immediate and the process primarily multilateral, the use of trade sanctions to extract a change in behavior should not be condemned. Additionally, it should be noted that in this case, poorer fishing nations had foregone the economic benefits of driftnet fishing while prosperous Taiwan, Korea, and Japan continued to permit it (The Economist 1991b). So the issue was very much a North-North one and the unilateral action should not be seen as insensitive to the plight of developing countries.

In a second case, the U.S. took unilateral action to address an environmental problem that was not immediate, and the resulting trade sanctions may be seen as insensitive to the condition of LDCs. To reduce the use of purse seine nets that indiscriminately kill dolphins, the U.S. government opted to enforce taking standards unilaterally via the MMPA rather than pursue more aggressively a cooperative regional solution to the problem under the auspices of the already established IATTC, whose members included all affected parties. As mentioned above, the MMPA’s provisions trigger trade sanctions against any country not in compliance with U.S. standards for incidental taking. One would think that a comprehensive and scientifically sound management plan to conserve the region’s threatened dolphins would set specific maximum quotas for incidental taking, distributed equitably amongst those parties involved, that in the aggregate would maintain sustainable populations of the protected species. The MMPA sets arbitrary and uncertain limits on foreign “producers” that have little basis in science. It defines a “bouncing-ball” standard by which foreign countries are obligated to limit the incidental taking of dolphins in the ETPO to 1.25 times whatever the U.S. fishing industry takes in a given year. This number could vary widely from year to year with shifts in the
location of U.S. vessels and fishing techniques. Furthermore, the chosen standard does not measure a country’s behavior, at least not in any way directly, in terms of how damaging it is to dolphins, but rather compares it to the performance of the U.S. industry. Additionally, the Act conveniently fails to consider the economic and technical disadvantages facing targeted nations. The MMPA’s provisions that raise import barriers against our poorer neighbors to the south represent some of the main failures and inadequacies of U.S. unilateralism.

The employment of unilateral trade measures to maintain the effectiveness of widely supported international agreements that have the potential to be undermined by free riders may also be justified (Christensen and Geffin 1991-2, 594 n.107). Even if an agreement, such as CITES or the ICRW, permits parties to opt out of certain commitments, a strong case can be made for punishing free riders when the great majority of affected parties abide by all important provisions. In such circumstances, especially when the free rider(s) exacerbates a potentially grave and scientifically recognized international environmental problem, the actions of the majority can be construed as laying the groundwork for an implicit international norm that can become binding under international law. A certain standard or norm of behavior over which there exists a nearly unanimous degree of consensus can come to be recognized under customary international law when a large majority of the world’s countries implicitly or explicitly follow or abide by it. Under this view, some applications of U.S. trade policy (including the threat of sanctions) under the Pelly Amendment that seek to strengthen CITES and international fishery agreements may be justifiable.

From an economic perspective, the optimal approach to dealing with international environmental problems is to set policies that target the problem directly; trade policy is not the “first-best” approach. However, trade measures may be the only available tool for policy makers, particularly in circumstances where cooperative negotiation (the first-best approach) is highly unlikely. Nevertheless, there are important economic tools (short of import prohibitions that are necessarily controversial in the world trading system) that can be used by governments in conjunction with political pressure to bring foreign countries to the bargaining table. These include import taxes on targeted products and labeling requirements that notify and educate consumers of the problem to make such products less attractive in the U.S. marketplace (GATT 1992,11,25). Such strategies exert pressure on foreign governments without the alternative intrusive bans.
CONCLUSION

While the threat of trade sanctions to encourage compliance can be justified with international governments under certain circumstances, positive incentives such as increased aid or reduced trade barriers are capable of exerting an equal amount of influence without impeding international trade flows. Ultimately, the acceptability of U.S. efforts that incorporate trade sanctions to influence other countries hinges on the necessity of our actions or support for our cause as evidenced by internationally recognized and mutually agreed upon consensus or, alternatively, on an unacceptable degree of risk that an environmental catastrophe could occur. These are the key criteria in assessing whether or not U.S. unilateralism in this area is justifiable. One must evaluate the nature of the environmental threat to which a country responds on its own. As recognized by Bilder, some unilateral steps are more likely to be justified (when there are effective barriers to a collective response) as "responses to imminent, highly probable, and fairly grave environmental dangers," while others, as "responses to what many might regard as a less imminent, more contingent, and less serious type of environmental threat" are much less valid. (Bilder 1981, 72).

Notes

1 The Hague Report refers to "an unequal world of the poor and the rich" and emphasizes that there cannot be "shared responsibility . . . for the health of the global commons without some measure of shared global prosperity. Global sustainability without global justice will always remain an elusive goal." (The Hague Report 1992,3).

2 See generally, GATT 1992, 19, n.20. For example, Japan, though exceedingly wealthy, has showed less concern for the environment than other comparably endowed OECD countries, in part due to lower environmental awareness. This is changing rapidly as indigenous and international environmental groups work to increase awareness. Eastern Europe also provides an illustration of the complex relationship between economic growth and environmental regulation. Despite a fairly advanced state of economic development in Poland, Czechoslovakia, and the former East Germany, the centralized regimes governing these countries were not directly responsive to public opinion or pressure in favor of at least minimal controls on severely polluting industries.

3 One should note that it can also play to the protectionist sentiments of domestic industries. The task of distinguishing between trade barriers erected primarily for environmental goals and those that hide disguised protectionist motives can become very difficult.

4 See, e.g., speech by Senator Max Baucus (D-MT) addressing disparity in environmental policy between countries, (BNA International Trade Reporter 1991, 1).
S. 984. This bill has not yet been enacted into law, but it has generated substantial support in both houses. See (BNA Trade Reporter 1991,1)

Apparently, damage to sea turtles is minimized by turtle excluder devices (TEDs) which may simultaneously reduce the size of shrimp harvests. (McDorman 1991).

A particular association between dolphins and tuna has long been observed in the ETPO, but not in other areas. Therefore, according to the GATT panel hearing the tuna-dolphin case, "intentional encirclement of dolphins with purse-seine nets is used as a tuna fishing technique only in the [ETPO] United States — Restrictions on Imports of Tuna, GATT Doc. DS21/R (Sept. 3, 1991) at 2. The notion that this phenomenon only occurs in the ETPO is the subject of some dispute. (McDorman 1991, 36-7).

For persuasive evidence of a protectionist element in these provisions of the MMPA. See GATT 1991a, 25-6; The Economist 1991a. But see Christensen and Geffin 1991-2 for argument that the U.S. fishing interests bitterly opposed the MMPA on the basis that it put American industry at an unfair disadvantage.

In this setting, "critical mass" refers loosely to the involvement/participation of enough countries to make the beneficial impact of their collective efforts significant in attacking the environmental problem at hand.

At least no explicit commitment under international law —leaving the possibility of the creation of a binding norm under customary international law aside until later.

For example, Iceland’s 1987 research program involved the hunting and killing of 80 fin and 20 sei whales (unrealistically high numbers) and Japan’s purported scientific research program for the same year proposed 825 mink whale and 50 sperm whale deaths. (D’Amato and Chopra 1991,48). D’Amato and Chopra describe Japan’s “very shady” scientific program as a “cloaked commercial activity.” (D’Amato and Chopra 1991,55; de la Mare 1990,771).


See infra note 36 and accompanying text for discussion of the development of international norms that can become binding under international law.


On the specific restrictions that govern trade in species according to their classification. See GATT 1991b, 27-30.

“CITES does not permit a state to impose an import prohibition on non-endangered species even if such a measure is perceived as necessary to protect endangered species.” (McDorman 1991, 509).
The targeted dolphin species in the ETPO are the common dolphin (*Delphinus delphus*), the spotted dolphin (*Stenella attenuata*), and the spinner dolphin (*Stenella longirostris*), all of which are listed in Appendix II (of the three, the latter two are more threatened). (Christensen and Geffin, 1991-2, 595n118). Protection of turtles under the ESA Amendments is directed, at least in part, at the olive ridley (*Lepidochelys kempi*) and hawksbill (*Eretmochelys imbricata*) sea turtles, both of which are endangered species. (Charnovitz, 1991).

Conversely it can have a very positive impact on domestic producers/suppliers of the trade-restricted good who will be called upon to meet demand in excess of domestic (plus some reduced level of foreign) supply.

Producers may be able to replace lost U.S. demand with increased demand by other foreign importers. In some cases, this process of shifting exports can be extremely costly for the foreign country and particularly damaging to the foreign industry involved. Provisions of the MMPA that restrict trade with “intermediary nations” (i.e. those that continue to trade in the restricted product with the targeted nation after the U.S. bans their importation) are highly intrusive in that they attempt to close off all export markets for producers in the targeted nation.

Such unilateral sanctions are not always successful as evidenced in 1988 when certification of Japan under the Packwood-Magnuson Amendments — leading to a threat of 100 percent withholding of fishing allocations in U.S. territories — failed to elicit the desired response from the Japanese government (Martin and Brennan 1989). One author attributed U.S. hesitation to go ahead with sanctions and the lack of response from Japan to the fact that “Japan imported more U.S. fish products than the U.S. imported from Japan, and, therefore, Japan could threaten to retaliate.” (McDorman 1991, 49) This demonstrates how unilateral U.S. trade measures used against poorer and smaller countries are both more attractive and more damaging.

*Japan Whaling Association v. American Cetacean Society* (478 U.S. 221 1986) arose out of what environmental groups declared to be lenient treatment of a country whose nationals were diminishing the effectiveness of an international conservation agreement. According to the plaintiffs, certification should have been automatic under the Pelly Amendment. The Supreme Court, however, held that there was no obligatory requirement to certify; rather the executive branch can exercise some discretion (within reasonable bounds) in determining what kind of response will contribute most to the effectiveness of an international conservation program (Martin and Brennan 1991, 302-04).

The United States government first moved to certify Norway (along with Japan) in 1983 for formally objecting to the moratorium. It has been suggested that, given Norway’s dependence on U.S. imports, an American boycott of Norwegian fish products would have a catastrophic effect on Norway’s economy. (D’Amato and Chopra 1991, 34).
The tropical hawksbill sea turtle is protected under CITES. Via the CITES reservation clause, Japan has opted to excuse itself from the convention’s requirements with respect to trade in hawksbill sea turtles (the hawksbill is just one of ten CITES protected species for which Japan has reserved its right to not be bound to the terms of the agreement). (Audubon 1991; The Economist 1991b, 34-5).


The power of U.S. unilateralism to shape policy in foreign countries is not limited to the environmental arena. We may also use the threat of trade measures to shape the human rights behavior of military or anti-democratic regimes. (Low and Sadafi 1991, 4; The Journal of Commerce 1992, 2A).

For a discussion of the complicated process of multilateral negotiations, see Bilder 1981; Low and Sadafi 1991; Christensen and Geffin 1991-2.

It also is inherently limited in that unilateral trade sanctions alone will not, at least prior to any subsequent multilateral agreement, efficiently and effectively reverse or mitigate an international ecological problem; concerted action will be needed in any effective solution. (Bilder, 1981, 85).

For example, at the Rio preparatory meetings, U.S. reluctance to provide financial and technical aid was the main gripe of embittered delegates from the North and the South. (The New York Times, 1992).

The MMPA includes measures to prevent countries whose dolphin fatality rates are higher than allowed for under the Act to indirectly export tuna to the U.S. market via intermediary nations. These include an import prohibition on fish and fish products from third countries that have not moved (within 60 days of a U.S. determination to cut off imports from a certain country for noncompliance with MMPA standards) to ban the importation of such products from the targeted nation. For statements of EC spokespeople condemning the MMPA, see BNA International Environmental Daily, 1992; Christensen and Geffin 1991-2, 30,32.

On the other hand, free trade is only a means to an end—namely grater welfare. Obviously, income is just one component that feeds into welfare calculations; many people consider protection of the global environment a higher priority than free trade. The issue being debated, however, is not how important free trade is, but rather what the consequences (actual or potential) are of unilateral trade measures employed by the United States to influence environmental policy abroad.

34 See The Economist, 1991a, 69.
35 The same is true of the similar 1989 Amendments to the ESA targeting foreign nationals who harvest shrimp with processes that lead to an average incidental taking rate worse than those achieved by U.S. vessels.
36 Bilder, for example, has argued that newly emerging international environmental norms as defined in UN resolutions or widely supported international agreements, for example, can be incorporated into international law (Bilder 1981, 69). McDorman also supports the notion that parties and even nonparties may be bound by the terms of an international agreement/treaty because it "codifies customary international law." (McDorman 1991, 500).
37 World Bankers Low and Sadafi caution, however, that "in general, the more remote international consensus is on an issue, the more disruptive will [the] use of trade policy [to encourage a commitment by a country to particular environmental policies or to an agreement] become." (Low and Sadafi 1991, 22).
38 The Montreal Protocol on Substances that the Deplete the Ozone Layer is a good example of an international agreement that calls for the use of strict trade measures against non-parties as a way of promoting participation (GATT 1992, 38; GATT 1991b, 27-30).
39 See GATT 1992, 30. While the Montreal Protocol employed negative incentives in the form of trade restrictions, its participation was also boosted by the very significant positive incentives in the agreement (e.g. the multilateral fund, technology transfer) and a scaled timetable recognizing both the unique needs of the less developed countries and the relatively minute contribution/blameworthiness of the South to the actual problem.

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WHEN CLEAN POWER AND PUBLIC INTEREST CONFLICT: 
THE CANCELLATION OF THE 1989 CONTRACT 
BETWEEN HYDRO-QUÉBEC AND THE 
NEW YORK POWER AUTHORITY 
Steven W. Vavrik

This paper analyzes the 1990 to 1992 public interest campaign that prompted the cancellation of a purchase agreement between Hydro-Québec and the New York Power Authority in March 1992. This campaign was led by the James Bay Defense Coalition and the Grand Council of the Cree (of Québec) and brought together many diverse public and private groups. Fueled by the social, ethical, environmental, and health issues that emerged from the proposed import of hydroelectricity, the campaign forced Governor Cuomo to reconsider and eventually cancel the contract. The successful campaign was a synergistic combination of four primary fronts: lobbying activities, legal action, public awareness efforts, and economic arguments. These interdependent and complementary fronts persuaded New York officials to reconsider the purchase and reevaluate the costs and benefits of alternative sources of energy.

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On March 27, 1992, New York Governor Mario Cuomo canceled a twenty-year contract to buy 1000 megawatts (MW) of electrical power capacity from the Québec government-owned utility, Hydro-Québec. In his statement, Cuomo said that the decision was based primarily on economic grounds and not on environmental concerns. He claimed that New York’s demand for power had decreased and that it would be cheaper to use energy conservation or alternative energy sources than to rely on the hydroelectrically produced import (Verhovek 1992).

Cuomo’s decision is ostensibly unworthy of notice: an elected official protecting his constituents from a bad deal. The contract cancellation was prompted, however, by a two-year opposition campaign led by the Grand Council of the Cree of Québec and the James Bay Defense Coalition. This campaign brought together diverse groups such as the National Audubon Society and the Independent Power Producers of New York and created myriad grassroots organizations, some with imaginative names such as “No Thank Q Hydro-Québec.” What motivated this volunteer army was not merely imports of electricity; after all, New York had been purchasing power from Hydro-Québec since 1915, and the canceled contract would have increased New York’s capacity by only three percent (NY State Energy Office 1992). What caused this coalition of citizens to bombard the New York political system with emotional and economic arguments were the social, ethical, environmental, and health issues that emerged. The Hydro-Québec contract decision reflects the quintessential modern policy problem: a string of interconnected dilemmas for which no simple solution exists.

From a historical perspective, Cuomo’s action was something of a landmark. By canceling the contract, the government conceded that the economic arguments proffered by the public interest groups were correct— or at least convincing enough to influence its decision. One of the cornerstones of the public interest groups’ argument was the value of energy conservation, or demand side management (DSM). Thus, intentionally or not, New York State validated a fundamental argument of conservationists and environmental economists and provided a precedent for other governments and organizations.

**BACKGROUND**

*Hydro-Québec and the James Bay Project*

The Hydro-Québec (HQ) utility is wholly owned by the Québec government and employs over 25,000 direct and 50,000 indirect workers. The population of Québec is 6.7 million, so one in ninety is either a direct or indirect employee of HQ (U.S. Bureau of the Census 1991). In 1990, HQ’s operating and construction activities injected over $7.5 billion into the Québec economy—about 4.5 percent of the Québec gross domestic prod-
uct — and generated 95 percent of the province’s electrical power (Farnsworth 1991). The high levels of spending have made HQ a prominent engine of economic growth for the independence-minded province, and the engineering feats undertaken have been a source of tremendous local pride (Walsh 1992). In addition, Québécois planners have included hydroelectricity exports as a key component of Québec’s balance of trade. The Québec Premier Robert Bourassa has been staunchly committed to HQ development as a foundation of his economic independence plan.

The James Bay Project was announced in 1971, affecting the regions east of James Bay and southeast of Hudson Bay. With a plan to generate 26.3 gigawatts (GW) of power, of which 15 percent would be exported, the project would be one of the largest hydroelectric complexes in the world.

The entire project consists of three stages. Phase I of the first stage, the LaGrande Project, was completed in 1985 and currently produces 10.3 GW of power; Phase II of the LaGrande Project will add 4.5 GW of capacity and is expected to be completed by 1995. The reservoirs created by damming the LaGrande River cover more than 4500 square miles of previously dry land, an area equivalent to half the size of Lake Ontario. In addition, 90 percent of the Eastman River and 40 percent of the Caniapiscau River have been diverted to the LaGrande, nearly doubling its previous average flow (Verhovek 1992; Thurston 1991). In 1984, the LaGrande Project became infamous when 10,000 migratory caribou died in the run-off water flow created by the project, although the circumstances of the caribou deaths are still in dispute (Verhovek 1992).

The second stage, the Great Whale Project, entails damming 8 rivers, flooding 5,000 square miles, and building 14 powerhouses, 16 dams, 10 reservoirs, and many dikes. This $11.3 billion project would produce 3.06 GW of power capacity, and construction of the necessary roads and airstrips was scheduled to begin in 1991. The third stage, the NBR Complex, consists of diverting the Nottaway and Rupert Rivers into the Broadback River, storing the water in 7 new reservoirs, and sending it through 11 powerhouses to produce 8.4 GW. The entire James Bay Project is scheduled to be completed sometime after the year 2000 (Verhovek 1992).

**New York State Energy Demands**

The state of New York has been a customer of HQ since 1915 and, under a contract signed in 1978, currently purchases 800 to 1000 MW during the peak demand period. In April 1989, the New York Power Authority (NYPA), which coordinates the state’s public utilities, entered into agreements with HQ to extend the 800 MW commitment to the year 2018 and to purchase an additional firm capacity of 1000 MW for 21 years beginning in 1995. The 800 MW extension cost $6.5 billion in 1989 dollars; the price of the 1000 MW purchase was $13 billion.
The 1000 MW of year-round power was to be distributed as follows: Long Island Lighting Company (Lilco), 218 MW; Consolidated Edison, 482 MW; Orange and Rockland, 100 MW; and city and county organizations, 200 MW. With this supply, ten to twelve percent of New York power would be purchased from HQ by the year 2000 (Verhovek 1992). If circumstances changed "significantly" from the initial signing of the agreements, either party could cancel the 1000 MW agreement before November 30, 1991 and the 800 MW agreement before November 1994 without penalty. Alternative power suppliers to New York include both public and private gas, coal, oil, and nuclear generating plants.

Cree and Inuit Populations

Approximately 12,000 Cree Native Americans and 6,000 Inuit Eskimos currently live in the James Bay region. In the 1975 landmark land-use agreement entitled The James Bay and Northern Québec Agreement, the Cree received over $170 million in land-use compensation for the construction of facilities as part of the James Bay project. Fur trapping subsidies, government housing financing, hunting and fishing rights, mineral-rights royalties, and other benefits were also granted to the Cree in the agreement (Thurston 1991). Although both groups opposed the development of the Great Whale River, it is fair to attribute greater involvement in the opposition campaign to the Cree than to the Inuit.

Portions of the Cree hunting and fishing grounds were flooded because of the LaGrande Project. This flooding allowed bacteria in the water to transform mercury in the soil and vegetation into toxic methyl mercury which was absorbed by fish and passed up the food chain to waterfowl and eventually to human consumers. A 1984 study of the Cree village of Chisasibi, near the LaGrande complex, found that 64 percent of the residents had methyl mercury levels above the safe tolerance level declared by the World Health Organization. Medication and strict limits on the consumption of fish have reduced these levels, but it should be noted that fish remain a significant portion of the Cree diet (Verhovek 1992).

The autonomy struggles of Québec, Canada and the Native American and Eskimo groups are superimposed on the health and environmental problems. Just as the Québécois demand their rights as the francophone minority in Canada, the Cree argue that their rights are equally legitimate and deserve the same attention (Rather 1991). The Cree demand an autonomy agreement with the Canadian government similar to an agreement in which the Inuit obtained control of two-thirds of the Northwest Territories. The ironic twist is that the James Bay project is being played in different ways by different groups for the same goal. For the Cree, the development of the James Bay area represents degradation of their culture and autonomy, whereas the Québécois see hydropower providing the necessary economic and energy resources for their independence.
MULTIPLE AND INTERDEPENDENT ISSUES

Within this already complex setting, many issues can be identified but hardly separated. The most immediate and significant issues are the energy requirements of HQ and its customers, the environmental effects in the Great Whale region, and the sovereignty and human rights of the Cree and Inuit. These issues have numerous secondary effects. For example, if New York chooses not to import hydro-produced power from HQ, it must satisfy its energy demand through alternative sources, typically gas, coal, oil, or nuclear plants. The increased demand on the gas, oil, and coal plants would increase harmful emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and particulates, although the predicted relative magnitudes of these increases are small (NY State Energy Office 1992). The recent Clean Air Act Amendments, effective in the year 2000, may make these sources very expensive. By importing the power from HQ, however, New York decreases labor demand in the state, especially for the smaller, independent power producers in the upstate region. In addition to economic effects, secondary issues might include health problems such as methyl mercury poisoning or environmental problems such as long-term change in migration patterns of Hudson Bay and James Bay waterfowl.

The traditional argument for hydroelectric power provided the rationale for the HQ contract and was later supported by the NYPA. Compared to fossil fuel-based generation, hydroelectric plants are cleaner source of power since they release no emissions. In a letter to the New York City Mayor David Dinkins, NYPA Chairman Richard Flynn cited the 1991 draft New York State Energy Plan: “[T]he Hydro-Québec contract will displace the equivalent of 56 million barrels of oil and six million tons of coal through the year 2010. Put in other terms, without the contract, state energy planners estimate that New York emissions of sulfur dioxide, nitrogen oxide, and carbon dioxide would cumulatively increase by 300,000 tons, 76,000 tons and 67.6 million tons, respectively, during that period.” (PR Newswire 1991) To the New York utilities, HQ offers inexpensive renewable power and the potential for continued expansion. With carbon taxes looming and older generating plants being phased out, hydroelectricity appears to be a promising alternative for an evermore electricity-dependent society.

Despite these more or less indisputable features of hydroelectricity, HQ expended considerable effort in responding to criticisms brought by a public interest opposition campaign. The sequence of events leading to the cancellation suggests that the opposition campaign relied on a synergistic combination of four fronts: provocative public awareness activities, savvy and effective political and legislative lobbying, persistent legal challenges, and robust economic arguments. A key tactic of the campaign was to use every public comment opportunity made available by the New York state agencies. One energy consulting firm, the Goodman Group, was especially
effective in working with the NY State Energy Office to revise the 1991 State Energy Plan projections and write the 1992 Hydro-Quebec Economic Study. These revisions later formed the basis of Governor Cuomo’s decision.

**Chronology of Events Leading to the Cancellation**

A chronological description of the opposition campaign is the best way to introduce and describe all the interdependent actions (The Gazette 1991). Throughout this chronology, one should keep in mind that four fronts of the campaign were working simultaneously: lobbyists applied pressure on New York politicians, public interest analysts discussed the economic models and assumptions with the New York State Energy Office, public interest attorneys argued in Canadian and U.S. courts, and public interest groups promoted public awareness and pressured the utilities to cancel the contract. The effectiveness of these fronts will be discussed in the next section.

- April 1990: Cree and Inuit protesters paddle down the Hudson River to New York City in an “Odeyak,” a hybrid canoe and kayak, generating a large amount of publicity and sparking the grassroots movement in New England.
- August 1990: Canadian National Energy Board grants an export license to HQ on the condition that all federal environmental standards are satisfied.
- August 18, 1990: In response to a critical letter he received, NYPA Chairman Richard Flynn writes a letter to the editor of The New York Times, stating that “New Yorkers have saved more than $600 million...in the last 12 years thanks to New York Power Authority purchases from Hydro-Québec. Consumers in the metropolitan area would lose $3 billion in future savings if our new 21-year contract...[was] not implemented. These savings reflect the fact that the Québec hydropower costs up to 15 percent less than alternate electricity sources.”
- November, 1990: Québec’s environmental minister agrees to split the environmental review in two parts: one for road construction, one for dams.
- March, 1991: HQ is prevented from starting road construction because
a Cree boycott is delaying the environmental review.

- April 2, 1991: NYPA Chairman Flynn writes to HQ expressing disapproval of a split environmental review. Meanwhile, the New York Power Pool predicts 1991-99 growth in “net internal demand” will average 0.7 percent a year, down from a predicted 1.13 percent in the 1990 forecast (“Hydro-Quebec Delay Decision...,” 1991). Also, Lilco announces that it is reconsidering its purchase in light of successful DSM and additional purchases from independent power producers.

- May 1991: In a New York Public Service Commission hearing of a proposed Lilco rate increase, private energy consultant Ian Goodman testifies that Lilco had failed to compare the cost of the HQ contract with cheaper alternative energy sources.


- August 7, 1991: Responding to private citizen and public interest group lobbying, Mayor Dinkins writes in a letter to NYPA Chairman Flynn, “given the changes in the energy marketplace and the significant environmental and native-rights issues... I am concerned there is not sufficient time to fully assess these various complex issues” and urges Flynn to negotiate an extension. Flynn defends the contract but acknowledges that “The considerable economic benefits of the Hydro contract have changed somewhat since it was signed.” (Hamilton and Gazette 1991)

- August 27, 1991: Flynn announces that the NYPA reached an agreement with HQ to extend the contract approval deadline to December 31, 1992. Flynn states that progress in utility conservation programs and increased use of independent producers had changed the projections of New York’s energy needs (Gold 1991).

- September 10, 1991: Canadian Federal Court rules that new projects could not begin on ancestral Cree land in the James Bay region until the Canadian government had conducted a full environmental review (Rather 1991).

- March 16, 1992: The New York Assembly approves a bill sponsored by Assemblyman William B. Hoyt that required a full environmental review of the James Bay Project before New York would purchase power from HQ. NYPA Chairman Flynn questions the constitutionality of the bill.

- March 27, 1992: Governor Cuomo announces that he will cancel the 1989 contract.

**THE FOUR FRONTS**

For the sake of simplicity, the opposition campaign will be analyzed as four separate fronts. The chronology illustrates, however, that these fronts were interdependent and complementary. Lobbying efforts not only put pressure on legislators but raised public awareness. Likewise, legal challenges
through the courts and the Public Service Commission raised awareness and exposed the economic inaccuracies of the State Energy Plan. Finally, although Governor Cuomo cited economic arguments in his announcement of the cancellation, it was the political pressure generated by activists that initially forced him to reconsider the contract.

**Lobbying Efforts**

The lobbying team of the opposition focused its efforts on Mayor Dinkins, Governor Cuomo, and the New York legislature in Albany. The main coordinator of the lobbying effort was Shelly Kath, chief lobbyist for the Sierra Club in Albany. In cooperation with the James Bay Defense Coalition in New York City, Ms. Kath organized headline-making demonstrations as well as closed-door, old-fashioned lobbying sessions with legislators. Illustrating the complementary fronts of the opposition, Ms. Kath (telephone interview, 6 November 1992) stated, “[The State] would not have looked at the economics if it had not been for the environmentalists.”

The most impressive and lasting achievement of the lobbying team was the passage of the Hoyt Bill in the New York General Assembly (N.Y.A.2162—B, January 23, 1991). Approved by an overwhelming majority of the Assembly, the Hoyt Bill amended the public authorities law to require an analysis “of the impacts, including cumulative impacts, at the site and in the region effected by the development of such generating source” for large electricity purchase contracts. The bill also stipulated a requirement to compare alternatives to the purchase or transmission of the electricity.

Although the New York Senate eventually tabled the bill in 1992, the Hoyt Bill illustrated the lobbying team’s penetration and effectiveness. In fact, Ellen Blackler, former Chief of Staff to the late Representative Hoyt, labeled the lobbying as “ferocious” and was very impressed by the coalition (telephone interview, November 1992). She described a coalition of relatively strange bedfellows including independent power producers, demand side management contractors, and environmental groups that joined together and exerted “incredible influence” through sophisticated efforts in Albany and more grassroots efforts in the representatives’ districts. Ms. Blackler said that direct phone calls from constituents expressing concern about the human rights or environmental issues were among the most effective forms of lobbying.

The lobbyists also stressed the potential for job creation if power were produced in New York State rather than imported. Independent power producers and DSM contractors stood to lose a substantial number of jobs from the HQ purchase. These estimates grabbed the attention of legislators. It is ironic, however, that environmentalists went along with this
argument, since the jobs saved would be in fossil fuel-burning power plants.

Legal Challenges

As with most modern public interest campaigns, a legal front was quickly mobilized in both Canada and the United States. In the Canadian courts, the advocates were able to force HQ to conduct a cumulative environmental review rather than two separate reviews of the road construction and the reservoirs.

In the United States, the coalition filed a petition with the Public Service Commission (PSC) of New York in May 1991 claiming that Lilco had not sought the cheapest supply of energy. With the assistance of the environmental law clinic of Pace University, under the direction of Prof. David Wooley, the coalition was able to get the economic comparisons developed by the Goodman Group on record. Both Ian Goodman and Rubin Brown (also an energy consultant in New York) testified that DSM techniques and natural gas generating plants would be more cost efficient than the HQ purchase. Although the PSC had no authority to cancel the agreements, the case was significant because it put the economic arguments on the public record. From this point onward, the agreement began to unravel as more New York politicians read and were convinced by the testimonies.

Public Awareness Campaigns

Public awareness of the Great Whale project was ignited by the Odeyak trip down the Hudson River in April 1990. Although the National Audobon Society had been criticizing the project’s effects on wildlife, the pictures of the Odeyak in newspapers across the northeast brought the human rights issues to every home. With this publicity invasion of the United States, public support swelled in the summers of 1990 and 1991, and numerous environmental and human rights groups joined in the effort, led by the James Bay Defense Coalition based in New York City. Some of the most well-known groups included: the Sierra Club, the National Audobon Society, the Natural Resources Defense Council, the Sierra Club Legal Defense Fund, the Interfaith Center on Corporate Responsibility, Greenpeace, the Rainforest Action Network, the Environmental Defense Fund, and the Student Environmental Action Coalition of New York. Smaller ad hoc groups were also created across the region, particularly at universities: The Northeast Alliance to Protect James Bay, Student Alliance for Energy Efficiency (Tufts University), Save James Bay Student Network (Yale University), No Thank Q Hydro-Quebec, Massachusetts Save James Bay, and the Vermont Coalition to Save James Bay.

With such a broad coalition, the campaign message spread in many ways. Those organizations with regular journals included articles about the James Bay project (see Picard 1990; Fierer and Moore 1992; Thurston
Steven Vavrik

1991). The smaller grassroots groups distributed pamphlets and flyers at universities and conferences. Soon, the newspapers and media started covering the Cree demonstrations in New York. As the coalition grew, so did its resources. On October 21, 1991 it bought a full-page advertisement in The New York Times with large letters exclaiming “CATASTROPHE AT JAMES BAY.” Three days later, HQ responded with its own full-page ad entitled “JAMES BAY: Looking at facts rather than symbols... LET’S TALK SENSIBLY.”

The lobbying and public awareness efforts finally began to persuade top officials in the summer of 1991. Mayor Dinkins was the first high-ranking New York politician to question openly the benefits of the agreements. In his letter of August 7 to NYPA Chairman Flynn, Dinkins pressed for a deadline extension in order “to fully assess these various complex issues.” (Hamilton and Gazette 1991) This letter represented the first fissure in the state’s position: a public admission that the benefits of the agreements should be re-examined. Other officials soon joined in the call for re-examination, and on August 29, Governor Cuomo directed three state agencies to investigate the cancellation of the 1000 MW agreement. Cuomo called on the Department of Environmental Conservation “to develop a supplemental environmental impact statement (EIS)” and the State Energy Office and Department of Public Service “to undertake an analysis of the economics of the Hydro-Québec contract and an evaluation of alternative supply options.” (NY State Energy Office, 1992) The economics team of the coalition now worked closely with the State Energy Office on rethinking the HQ contract.

Of all the organizations in the coalition, the National Audobon Society (NAS) was one of the first environmental groups to analyze the impacts of the entire James Bay project. Dr. Jan Beyea, Chief Scientist for the NAS, began analyzing the potential ecological repercussions of the James Bay project and the proposed transmission lines to Vermont and Maine in 1985-86 (Mercédès Lee, telephone interview, 23 November 1992). Dr. Beyea’s reports and comments, which were widely circulated, focused on the project’s effects on birds and marine fowl. In 1987, Dr. Beyea was invited by HQ to discuss the environmental impact statements for the project, and he persuaded HQ to consider conducting a cumulative review. In May of 1989, Dr. Beyea testified for the Vermont Public Service Board on the proposed transmission lines, and in July the NAS held a bilingual press conference to release the final report initiated three years earlier (see Beyea, Rosenthal, and Hansell 1990). The NAS increased its collaboration with the James Bay Defense Coalition in 1990 and continued to issue comments and position papers (see Beyea 1991; Beyea, Rosenthal, and Hansell 1991). Finally, Dr. Beyea was an invited speaker at the New York Bar Association/The Americas Society Debate on the James Bay agreements on

Beyond these reports and speeches which were instrumental to the opposition campaign, the most impressive feature of Dr. Beyea’s work was that it drew a great deal of respect from both coalition members and state officials. Both sides turned to Dr. Beyea for thorough analysis and his objective criticisms.

**Economic Arguments**

Although four fronts were complementary, the economic arguments put forth by the coalition proved to be the most convincing for Governor Cuomo. The coalition’s analyst was the Goodman Group, founded by Ian Goodman. Hired by the Cree in October of 1989, the Goodman Group began to assess the state’s projected energy demand and the attractiveness of DSM and power from New York’s independent producers. Not only were the Goodman analysts able to draw from the large resources of the Cree, but they had over a year to plan their strategy before the contract deadline. Shrewdly, they began to collaborate with the State Energy Office on the preparation of the State Energy Plan and with the Public Service Commission on rate impact cases. Peter Kelly-Detwiler (telephone interview, 3 December 1992), a Senior Research Associate at the Goodman Group, characterized the relationship with the state offices as one of “goodwill and credibility.” Rather than leading with emotional appeals, the economics team led with well-justified demand projections and estimates of long-run avoided costs. Peter Smith of the State Energy Office admired the technical expertise of the Goodman Group and described their arguments as “very effective” and “very forceful....They e-cubed us: energy, economics, environment.”(Smith, telephone interview, 2 November 1992)

The economic study prepared by the State Energy Office and the Department of Public Service incorporated the main arguments of the Goodman Group. The report found that “in view of the dramatic changes in energy markets since the Hydro-Quebec contract was negotiated in 1988, the economic premise of substantial economic savings upon which the contract was based no longer exists.”(NY State Energy Office 1992) Among the report’s other findings were the following:

- demand side management was expected to “reduce significantly the need for new capacity and electric energy”;
- the capacity of independent power producers had greatly exceeded expectations;
- “New York’s economic slowdown [had] lowered [electricity] demand over the past two years. (The anticipated electricity demand growth rate declined from 2.1 percent to 1.5 percent annually.)”;
- new gas pipeline expansion would allow an approximate increase in natural gas deliveries of 40 percent;
• the wellhead price of natural gas was at the lowest real price since 1976;
• combined cycle gas turbines had increased efficiencies in fossil fuel burning generators; and
• as a result of these changes, the forecasted long-run avoided costs (LRAC) had dropped significantly.

The report concluded that “implementing the HQ contract with the current prices and schedule (1995-2016) is not in New York’s economic interest...since the price of the contract (1995-2016) is significantly greater than the DPS staff current LRAC (1995-2016) estimates.”(see Appendix A) Nevertheless, the report noted that while the HQ contract is not in New York’s economic interests based on current projections, a future contract might be if the cost is competitive. Of course, appropriate environmental reviews must be conducted for any planned new facilities. It should be noted that additional hydro imports would:
• enable New York to expand the share of power obtained from renewable electricity generation;
• reduce the price risk associated with reliance upon oil and gas fueled generation; and

As these findings show, the decision to cancel the 1000 MW contract was relatively easy as the economics were undeniably against the contract. The efforts of the Goodman Group and the critical triumph of the opposition campaign played integral roles in convincing the State Energy Office of this fact. The report’s last finding states, however, that the advantages of hydropower make a renegotiated contract a very real possibility.

**FUTURE OF THE JAMES BAY PROJECT**

According to the Hydro-Québec Economic Study, there may come a time within the next five to ten years when the economic arguments proffered by the opposition campaign are no longer valid. Demand for electricity will certainly increase, and the cost of alternatives to hydropower, particularly natural gas, may rise. In addition, the Clean Air Act Amendments controlling SO2 and NOx emissions will be enforced by the year 2000, increasing compliance costs for fossil fuel burning generators. Hydroelectricity imports from HQ will probably continue to be an attractive power supply for the northeastern and possibly the upper midwestern states.

One must then ask if the public interest opposition could wage another successful campaign to cancel a renegotiated 1000 MW contract or the 800 MW extension contract which has a November 1994 deadline. A unique characteristic of the 1990-92 grassroots campaign was the financial strength of the Cree as a result of the James Bay and Northern Québec Agreement. This money gave the Goodman Group analysts access to the resources they needed to present their arguments effectively.
Most public interest groups cannot afford private energy consultants. Although the Cree may have the staying power, other groups may not have the depth of resources needed to endure another multiyear campaign. Ashok Gupta (telephone interview, 4 November 1992) of the Natural Resources Defense Council thinks the public interest campaign could quickly reassemble; however, Mercédès Lee (telephone interview, 23 November 1992) admitted that the NAS has difficulty securing funds and relies mostly on private and corporate donations. Also, these groups have many other issues on which to spend their scarce time and resources, yet even if financial resources were available, it may be difficult to motivate again the high level of emotional energy that was crucial to this campaign.

In view of these constraints, one must be skeptical of the opposition’s ability to wage another successful campaign. The Great Whale Project has been delayed, but not canceled, and Hydro-Québec and the Québécois government have invested two decades of financial and political resources in the James Bay Project. It is unlikely that they will accept this cancellation as anything but a minor setback.

Despite its uncertain future, the opposition campaign—which lasted from the Cree and Inuit’s journey by Odeyak to New York City in April 1990 to Cuomo’s announcement in March 1992—is historic for a number of reasons. First, the Cree successfully appealed to a more responsive public across the border in the United States. After making little progress with the power producers, the Cree went directly to the power customers. Second, the revised long-run avoided cost projections included in the Hydro-Québec Economic Study validated the consideration of demand side management in economic analyses. Other conservation groups can use the New York case as a precedent for their own campaigns. Third, the efforts of the Goodman Group, although unique to this case because of the wealth of the Cree, illustrated how technically robust arguments presented in a reasonable manner can be an incredibly effective tool for public interest groups. During the campaign, the Goodman Group formed a relationship of mutual trust and respect with the State Energy Office and the Public Service Commission. Rather than protesting against these state analysts, Ian Goodman sat down and worked with them. Lastly, the campaign organized by the James Bay Defense Coalition was a model opposition campaign. Four fronts were mobilized effectively and complemented each others’ efforts. Above all, the campaign used every public comment opportunity given by HQ or the New York government agencies.

The James Bay conflict will certainly result in a compromise. Some would say that the Cree have already been forced to give up much of their culture and community. The Québécois government is committed, however, to developing the hydroelectric potential in the James Bay area to serve Québec’s independence-minded future. Both sides have strong
arguments. The winner, if one can be declared, will not necessarily be the "right" one, but the one with the greater stamina.

"The rivers and lakes of northern Quebec can be harnessed to suit the demands of humans and to relieve ecological strains elsewhere. Or the taiga, the largest stretch of wilderness left in eastern North America, can simply be left alone. But in James Bay, you cannot have it both ways." (Verhovek 1992)

**Appendix A**
Comparison of HQ Costs and Long-Run Avoided Costs

![Comparison of HQ Contract (1995 Start) with Other Indicators](chart.png)

- **HQ Contract** (1995 Start): 5.79 cents/kWh
- **AVG. WIN BID**: 7.30 cents/kWh
- **DPS 92 LRAC's**: 6.84 cents/kWh
- **88 LRAC's**: 9.66 cents/kWh

1. Delivery costs including wheeling charges and line losses could increase the cost of the HQ contract to 7.91 cents per kWh. No similar costs are calculated for the other indicators.

Source: NY State Energy Office 1992

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ENCOURAGING RECYCLING USING TRADEABLE CREDITS

J.D. Lindeberg and Loch O. McCabe

Many cities in the United States have found that after collecting, sorting and bundling recyclable materials, no market exists for these goods. Rather than recovering the costs incurred in collecting recyclable materials, sanitation departments either receive little for these materials, or in some cases must bear an additional cost to have the materials taken away. To address this situation, policy analysts are considering ways to stimulate markets for recyclable and recycled products. One option proposed recently in the U.S. Congress is the development of a tradeable credits program for recycled material. Similar to the air quality emissions tradeable permits program, the government would require U.S. firms to use an established amount of recyclable material in production, or purchase “recycling credits” from a firm that has exceeded recycling levels. This paper analyzes the tradeable credits program, its advantages and disadvantages, and details many difficult issues of implementation. This paper argues that such a program would provide a necessary stimulus for the development of a healthy market in recyclable and recycled products.

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INTRODUCTION
Solid waste management in the United States is undergoing a dramatic transition towards resource conservation, reuse, and recycling. Recovery of municipal solid waste has increased dramatically during the last decade and is expected to continue to grow. The U.S. Environmental Protection Agency (EPA) predicts that total recovery of waste will jump from its current level of 10 percent to between 20 percent and 28 percent by 1995, more than doubling the amount of recyclable material on the market that would compete with virgin material (Franklin Associates 1990, 73). Yet the demand by manufacturers for recycled feedstock such as newsprint, cardboard, office paper, glass, and plastic bottles continues to lag behind the supply of these scrap materials. While some recycled material markets (aluminum, post-industrial paper waste, etc.) have been mature for years, other recycled commodities (glass, newspaper, plastic resins, etc.) have had a difficult time competing for market share. The resulting imbalance between supply and demand has depressed material prices and slowed growth in the supply of recyclable materials.

Traditionally, recovered material markets have been demand driven. Metals, some kinds of paper, and other higher value materials have been sought by entrepreneurs who could profit by recovering these materials and selling them at a higher value. But greater environmental awareness and a recognition of the limits to natural resources led to recycled materials markets which are increasingly supply driven, characterized by more material gluts than shortages. While every year the markets improve, both in terms of demand and price stability, recycled material is far from being universally accepted as a feedstock.

To accommodate this increase in the amount of recyclable material without causing significant dislocations and oversupply of these materials requires innovative and global thinking. Some of the ideas that have been implemented include content legislation, subsidies for material recovery operations, “buy recycled” legislation, and product bans. These efforts were by necessity and design both piecemeal and limited in geographic scope. Yet the materials economy is not local, but regional and even national in scope; accompanying market development strategies should use an equally large-scale approach.

A successful recycling credit program will assist in the reconfiguration of our industrial processes so that they can accept byproducts (wastes) from other processes as raw materials. Ideally, these processes would become self-sufficient by feeding on each other’s waste. Recovered materials would be used for the highest end-use possible and then recycled into lower and lower end uses. This both maximizes the value of recovered material and minimizes overall industrial reliance on virgin materials.

What incentives can be provided to encourage the recovery of even
more materials? One proposal now being considered by Congress to stimulate demand for recycled material is the recycling tradeable credits program (McHugh 1992). This essay will discuss how the tradeable credits program might provide broader incentives, linking environmental values with the discipline of a free market economy. The article will first describe the tradeable credits program and its two variants, content-based and utilization-based credits. It will then evaluate the advantages and potential difficulties the program might face based on experience with the tradeable credits program to improve air quality. Finally, the paper identifies additional implementation guidelines and critical issues that will need to be addressed.

**Tradeable Credits**

In a tradeable credits system, the government would establish a threshold level of recycled content for products that firms must meet through product or process changes or purchases of credits that allow them to fall short of the threshold. If a firm exceeds the threshold, it is given credits that it may sell (at a market determined price) to those firms that failed to meet the recycled credit requirement. When done properly, permit trading creates economy-wide incentives to apply technical ingenuity to maximize material recovery without placing undue constraints on economic behavior (Project 88 1991, 55). Producers are therefore provided with incentives to implement technological innovation without fear of regulatory reprisal. In fact innovation would be rewarded.

**Content-Based Recycling Credits**

The two recycling credits systems that have been proposed are the content-based recycling credits and utilization-based recycling credits. In applying a content-based system, the first step is taken by the federal government, which sets recycled content percentage goals for manufacturers to meet. Then those manufacturers which exceed the goals can sell credits from their excess use of recycled feedstock to those manufacturers whose use of recycled feedstock falls short of the goals. The government would ratchet up the recycling goals on an annual basis. This system directly subsidizes manufacturers that use recycled feedstock, and penalizes those that do not. For example, if a 30 percent content goal for newsprint is set, then a 100 ton-per-day (TPD) newsprint manufacturer who uses 50 TPD of old newsprint earns credits for 20 TPD of recycled newsprint. It may then sell this 20 TPD credit to another newsprint manufacturer who has fallen short of its content requirement.

Content-based recycling credits systems are most appropriate for products that can be used as a feedstock for remanufacturing the same product (e.g. old newsprint (ONP) remanufactured into new newsprint). The
current Resource Conservation and Recovery Act (RCRA) reauthorization legislation, proposes such systems for recycled newsprint and lead batteries (42 U.S.C. § 6901 (1982 & supp. III 1985)).

The content-based system grew out of the air quality emissions tradeable credits program that has been implemented in some regions of the United States. Some of the advantages of content-based credits are that they:

- Contain the program within a single industry, enabling self-regulation with minimal government oversight;
- Favor multi-plant corporations which encourages trading between plants;
- Favor manufacturers that already use recycled feedstock; and
- Achieve "highest end use" recycling where recovered products are remanufactured into the original product.

The primary disadvantage is that content-based credits are feasible only for homogeneous industries producing a few simple products.

Utilization-Based Recycling Credits

As with content-based systems, the government must first establish a recycling goal for the targeted product. State-approved recovery facilities that recover the targeted material would then sell credits to the manufacturers of that product. Different credit values could be given for different types of recovery processes — glass recovered for bottle cullet may receive one credit per ton recovered, while glass recovered for glassphalt may receive 1/2 credit per ton recovered.

In the case of tires, the government may set a 20 percent recycling goal. Then tire manufacturers would have to purchase credits representing 20 percent of the tires they sold in a given year. For example, if a tire manufacture sells 100,000 tons of tires annually, it must purchase credits worth up to 20,000 tires. These credits could be generated internally by the manufacturer’s own recovery programs or would be bought from retreaders, recyclers, incinerators, and other eligible third parties which recover tires.

Utilization-based credits systems are applicable to materials that are remanufactured mostly by "processors" and similar "third parties" rather than the product’s manufacturers. This system favors third-party recyclers and encourages manufacturers to set up their own internal recycling systems.

A utilization-based system has a variety of advantages over the content-based system. It can be more easily scaled up and applied to a whole industry or economy. It has fewer technical difficulties in dealing with complicated production processes and can more effectively accommodate major technical changes within the industry. The flexibility and overall
utility that this approach affords primarily comes from its capability as a system that can serve large-scale needs. The broad application of the program, however, presents both advantages and disadvantages. The strengths are that the system:

- Forces the producers most in need of incentives to participate in a tradable credits system;
- Allows manufacturers the technical freedom to change products or production processes;
- Strengthens the recovery and processing infrastructure by providing financial support for targeted materials; and
- Reduces the price of recycled feedstocks to manufacturers.

Its primary drawbacks, however, are that the system:

- Forces all producers, including those unsuited to the incentives (e.g., industry manufacturing goods from a wide variety of feedstocks like automobiles), to participate in the credits system;
- Requires sophisticated material monitoring to track accurately recycled feedstock within the system; and
- Relies on an administratively complex national credit market for efficient trading.

To administer and enforce such a system, a standards body could be developed that might be modeled after the American Society of Testing and Materials (ASTM). This administrative body would also require technical, financial, and economic expertise to handle industrial complaints about infeasible content requirements. As a potential commodity, credits could well develop into a quasi-independent market where puts and calls are traded as well as actual credits.

While both systems are likely to be effective, a content-based approach may provide a more focused approach for policy implementation. For instance, this approach allows credit programs to be aimed directly at a limited selection of markets over time. Although a utilization-based approach is more a comprehensive and even elegant approach to credit implementation, it would also require a great deal more administrative and political resources.

**Benefits of the Tradeable Credits Program**

Regardless of the variant adopted, the tradeable recycling permits system constitutes an effective incentive to economically achieve recycled content standards. Recycling credits will also work quite well in conjunction with other recycled materials market development measures. But there are a number of important strengths that the recycling credits system provides to encourage recycling. Specifically, recycling credits:

- Provide a financial incentive to end-users of recycled materials. Recycled material credits provide additional revenue for those operations
that efficiently recover materials, and extract additional costs for those that do not. Accordingly, manufacturers are encouraged to meet and exceed the amount of material recovery beyond the designated threshold.

- **Allow manufacturing facilities that do not use sufficient quantities of recycled feedstock to continue to operate.** “Command and control” minimum content requirements often force firms that cannot meet the environmental requirements to shut down. Under a credits system, however, manufacturing facilities that do not use recycled feedstocks may buy credits instead.

- **Form a financial cushion for recyclers when the economy is weak.** By providing an income source that is not tied to commodity prices, credits offset the severe price dips that recycled materials often experience. This reduces the risk of collectors and processors of recycled materials, and increases the willingness of lending institutions, venture capitalists, and entrepreneurs to invest in the recycling supply infrastructure.

- **Lower the costs of recycled materials for end-users.** By increasing per-unit revenues, credits will spur the supply of recycled feedstock; lower prices that result will make recycled feedstocks even more attractive to manufacturers.

**Lessons from the Air Quality Credits Market**

Experience with the air quality credits markets provides valuable insights into how best to design a credits system. While practical limitations have appeared, air quality credits trading schemes have been efficient in the achievement of their goals. Still, the credits program is criticized by various sectors. Many environmentalists and regulators are suspicious of market driven environmental regulation. Industrialists, on the other hand, argue that adjustments to the market in this case are not necessary. Legislators have been vulnerable to the lobbying of both industrialists and environmentalists for these reasons. (Dwyer 1992, 59-77). Finally, many regulators have also struggled with the difficulties of administering the credits programs (Dudek and Palmisano 1988, 217-56).

Several lessons about the implementation of a successful recycling tradeable credits system may be learned from the air quality credits example. In some ways the air quality credits market underperformed their expectations. For example:

- **Fewer trades** were consummated than predicted by modelers. Although the trading activity was considerable, more restrictive regulation and higher than anticipated transaction costs dampened overall market activity.

- **Modeled costs** included only the construction of new facilities, but did not anticipate the retrofitting of older facilities. Cost estimates for retrofitting proved to be considerably more difficult.
• **Uncooperative regulatory authorities** limited the scope of credit trading through inconsistent administration of the program and resistance to regulatory innovation.

• **Shortages of emissions banks** considerably reduced the value of credits. Without emissions banks, firms are unable to retain credits for future use.

• **Weak emissions standards** reduced incentives to introduce technological innovation. If targets are easy to achieve, firms are unlikely to undertake capital intensive technical innovation programs (Tietenberg 1991, 100-5). Clearly there is insight to be gained from the air quality emissions program.

Development of a feasible credits trading program requires that an efficient market in tradeable exist. The four conditions that have been identified as most critical for a successful recycling tradeable program are:

• **Universal Compliance** with recycled content regulations must be achieved. Every regulated firm must participate fully for the program to achieve threshold goals. Equally important, threshold standards must be set high enough to make it necessary for each firm to participate in the market.

• **Transaction Costs** for the credits must be minimized to ensure efficient trading. It is critical that the cost structure of the market be understood well enough to assess the potential transaction costs. If higher costs are unavoidable, credit brokers should be encouraged to take over market management. The market must also have the administrative structure to ensure that regulators do not purposely or inadvertently interfere with the functioning of the credit trading. This interference would inevitably raise transaction costs and detrimentally affect the trading market.

• **Market Competitiveness** must be maintained. Credit prices should reflect the internal costs and benefits of using secondary materials versus credit costs. Appropriate market behavior will be stimulated by creating "credit banks" where accumulated credits can be carried from one time period to the next. This in turn will promote trading by ensuring a long-term market in credits. Price setting behavior by any single firm or group of firms should be actively discouraged.

• **Market Longevity** must also be guaranteed in order to ensure the long-term value of internal capital investments and recycling credits. Actors must be confident that the market will continue to function and provide ready access to both buyers and sellers of credits. Longevity will be promoted by ensuring cooperative regulators and by developing a "credit bank" that will allow credits to retain their value from period to period. Additionally, the market should be verifiable and regulated to ensure that credit fraud does not become a problem (Project 88 1991, 58-60).

There is little doubt that implementation of air emissions tradeable credits program has resulted in tremendous savings to utilities that have
taken advantage of the system. Analysis of the EPA's program indicates that potential savings to utilities have ranged from $500 million to $12 billion. Given an investment of approximately $10 million, the cost savings have returned a considerable payoff to the investment (Dudek and Palmisano 1988, 217-56). Most of these savings have directly benefited utilities and their customers. Recycling credits hold similar potential to generate large benefits.

**Additional Implementation Guidelines**

The planner should anticipate potential problems in implementing a credits trading system. Past experiences with air emissions credits trading and other recycling efforts suggest that the program must strike a delicate balance between strictness and freedom. A healthy credit trading market requires a clear and simple set of rules that are easily interpreted by credit buyers and sellers, as well as by market regulators. There should be no confusion over which materials and products are affected by regulations.

The recycled material threshold must be chosen carefully. If the threshold is set too low, no credit trading will be induced. Yet if the threshold is set too high, it will have a dislocating and destructive effect on the industry it is regulating (Tietenberg 1991, 94). National waste disposal and recovery data should provide valuable assistance in developing the appropriate threshold.

Recycled content thresholds could be chosen based on the actual performance of a particular industry in a given year, and then increased incrementally to "lead" the industry in the desired direction. Goals set only slightly ahead of end-market performance have relatively little advantage over a laissez-faire approach yet entail the same overhead costs as an appropriately designed program. Regular readjustment of the goals would permit considerable market fine-tuning.

Recycled materials can be used in a variety of ways by end-users. Thus, the definition of what counts as a credit is important as well. Utilization-based credits allow the system administrators to value some types of recycling above others. For example, tires recovered for fuel might be assigned only one-half credit per tire, while tires recovered for retreading might be assigned a full credit. Similarly, old newsprint (ONP) used for animal bedding may be given a different credit value than ONP used for newsprint. In any case, a fair method of allocation of credits needs to be researched to minimize unfair benefit or harm to different producers or recyclers of goods.

In the same vein, the program should seek to minimize harm to manufacturers who use recycled feedstock for "low or no value" uses as they are vulnerable to significant declines in the supply of recycled feedstocks. For example, cellulose insulation manufacturers may lose their
supply of waste paper if the credit system shifts newspaper to newsprint mills. However, such shifts should be encouraged, because they represent higher material end uses.

It might be necessary to tailor recycling tradeable credits programs to different industries. It is unlikely that a single recycling credit system could be designed that would perfectly fit all target industries at all times. While careful attention should be paid to keeping the system as simple and universal as possible, it might be best to let the threshold vary among products depending on the availability of recycled materials, and the state of available recycling technologies.

If credits are to have the confidence of a traditional marketplace, fraud should be clearly illegal and punishable. Administrative agencies should have the right to “audit” and police any market actor. The consequences of abusing the system should be very high, with penalties such as fines (that fund the enforcement activities) and strict regulatory impositions.

Where possible, credit requirements should be simplified for different industries with distinct feedstock needs. For example, a ton of recovered newsprint should be given the same credit-value as a ton of recovered cardboard. This will greatly ease monitoring and tracking requirements, and provide maximum flexibility to the targeted industries. U.S. importers of targeted materials should also have to prove recycled material content or purchase recycling credits. By contrast, in order to avoid crippling export industries, production destined for overseas markets should be exempted from the recycling credit requirements. Together, these measures should provide a “level playing field” for all market players.

Because industry resistance may impede recycling tradeable credits programs for some target materials, their cooperation is key to long-term success. The administrative costs for the credits market will be substantially reduced if industry groups are willing to help make the system work and provide an important buffer between regulators and manufacturers.

UNRESOLVED ISSUES

There are a number of critical issues for recycling credits programs that still need to be researched and resolved. First, before implementing the tradeable credits program, it must be determined that such a program is needed. Some industries have claimed that government intervention is unnecessary as recycling rates have increased significantly over the last few years, despite the general economic slowdown. They argue that the market is working as it should—low prices for recycled feedstock and increased demand for “green” products are encouraging more manufacturers to use recycled feedstock. For example, despite popular opinion to the contrary, the market for old newsprint has and will continue to improve markedly due to governmental legislation and recycled material market dynamics.
Responding to these forces, publishers have switched from entirely virgin paper stock to stock with a substantial amount of post-consumer recycled material. As a result, by the end of 1992, total newsprint production capacity in North America will have increased by nearly one million tons, with approximately 90 percent of it capable of using recycled fiber (Frey 1991, 33-42). This success leads one to question whether a credits system is required at all.

A credits system overlaid on the existing market economy may change the efficient outcome of transactions within that system. Efforts should be made to limit these changes so that they do not become distortions resulting in misallocation of resources and counterproductive decisions (such as manufacturers shifting from recyclable products for which they must purchase credits to non-recyclable products outside the credit system). In order to develop a successful trading system, the dynamics of the market and the practical effects of credits require detailed examination.

The credits system must keep pace with technological innovation to prevent manufacturers from unfairly benefiting or hurting from the credits system requirements. There is particular concern that high value materials will divert innovation, resources and effort away from lower value materials. These interactions are complicated and probably cannot be anticipated. The best way to protect against such difficulties might be to establish a strong administrative institution to react to changes and alter the system efficiently and effectively. Monitoring will require a subtle compromise between excessive oversight, which may lead to higher transaction costs, and excessive freedom which could tempt manufacturers to buy and sell fraudulent credits.

Tradeable credits programs have only worked when the government has independently verified key information. For example, tradeable credits for the phase-out of leaded gasoline was successful in part because the government knew the production levels of leaded and unleaded gasoline by major manufacturers. Tradeable credits programs for emissions of some air pollutants are successful because the government operates an independent monitoring program. The critical pieces of information needed to make the recycling tradeable credits program successful have yet to be identified.

Recycling credits are valuable only to the extent that there is a gap between the actual and "desirable" demands for recycled feedstock. Therefore, unless recycling thresholds are periodically raised upwards, credits will tend to be the most valuable at the beginning when the demand gap is largest. Yet, the overall program aim is to use the credits as an aid in transitioning from an entirely virgin material dependent economy to one that allows virgin materials to compete on an even footing. Therefore the importance of recycling credits should diminish as recycled feedstock becomes more completely integrated into the industrial community.
Actual policy initiatives will have to balance the tension created by the need to preserve market legitimacy and value while simultaneously phasing the system out.

**CONCLUSION**

Environmental regulation is at a crossroads. On one hand, the United States has twenty years of experience with aggressive federal leadership and focus on major air and water quality issues. On the other hand, while improvements have come, the monetary costs have been high, so economic considerations demand that any new environmental regulations include a cost minimization component.

Market-based regulatory efforts provide a partial answer. In theory at least, these measures can adjust market decisions to reflect more "true cost" resource allocations. This market reallocation will help to rationalize resource use within industry. A recycling tradeable credits system will both provide an efficient regulatory mechanism and help place a cost on the externalities of waste. Together, this will increase material recovery.

The challenges of implementing a recycling credits system will require much creativity, persistence, cooperation and willingness to experiment from all participating parties. If recycling credits systems are allowed to evolve they will help harmonize public sector goals with private sector actions. They provide a critical step toward embracing an ecology of industry that promotes a more sustainable pattern of resource expenditure.

The use of recycling credits to promote development of recycled materials markets contributes to the rational development of a sustainable economy. Not only will the credits system directly increase industry's access to recycled resources for production, it will also work with the economy rather than against it to reduce overall dependence on virgin materials. Adopting this type of approach as an overall resource-use ethic neatly addresses the resource limitations that constrain both our use of virgin materials for production and valuable landfill area for waste disposal.

**Notes**

1 The goal of highest end-use seeks to ensure that recovered materials are used as the highest value raw material possible. For instance in paper recycling, recovered ledger grade office paper would go for the production of other ledger grade paper rather than box board for cereal boxes.

2 The first step of a content-based system is taken by the federal government, which sets recycled content percentage goals for manufacturers to meet. Then those manufacturers which exceed the goals can sell credits from their excess use of recycled feedstock to those manufacturers whose use of
recycled feedstock falls short of the goals. The government would increase the recycling goals on annual basis.

For example, if a 30 percent content goal for newsprint is set, then a 100 ton-per-day (TPD) newsprint manufacturer who uses 50 TPD of ONP earns credits for 20 TPD of recycled newsprint. It may then sell this 20 TPD credit to another newsprint manufacturer who has fallen short of its content requirement.

Emissions banks are institutional structures that facilitate the trading of credits by allowing companies to carry credits over from one period to another. In the case of recycling, these would be called recycling banks and used for analogous purposes.

References:
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