

ADV

A DIFFERENT VIEW

Issue 33
October 2009

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Editorial

Welcome to Issue 33 of A Different View

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Issue 33 is out. And it is the last issue under the current Board of ADV. From November onwards, a new team of editors will take charge as the current Board's mandate expires.

We are proud that we managed to publish articles touching almost every aspect of international relations and always stayed topical and commented on current events. We had the gas crisis in Europe, parliamentary elections in the EU, constitutional reform in the EU, women rights, security policies, China, Russia, India, human rights, development aid, international criminal law, the economic crisis, the Balkans, climate change, cultural policies, Africa, Latin America, the Middle East and many more topics covered in last year's issues of ADV. We thank everyone who has contributed to making ADV well-known and for providing us with great articles on so many issues. Also, the current team of editors is very grateful to IAPSS to have been given the chance to make use of our skills and knowledge on international affairs in practice.

We are excited to see a new generation of editors take over and are sure that they will realize the potential of ADV and put new ideas and practical changes into their work. They can draw from a large base of former contributors and on the experience of the former editorial

Boards and IAPSS's Executive Committee.

The new team of editors will also consist of three people:

Sven Brendel is currently a senior in Political-Economy, with a minor in Global Studies, at California State University, Monterey Bay. Having completed the coursework for his B.A., Sven is currently serving his second semester as Teaching Assistant for Global Economics. Next fall, he plans to either attend the Master's in Public Policy program at the Leon Panetta Institute at CSUMB, or pursue a PhD in political science at either UC Davis or UC Santa Cruz. In preparation for entering a federal civil service career, mostly likely as operations, management or policy analyst, Sven is currently a research analyst intern for the Monterey County government, assessing the use and need for human resources in the department of Child Support Services. His research interests involve the interaction of state and market across the developed world, political philosophy and welfare state development. Sven has published four peer-reviewed undergraduate papers and several columns in *A Different View* on these subjects. Over the course of his childhood Sven has moved across

the Atlantic three times, having been born as a U.S. birth abroad while his father worked for a the U.S. military in Heidelberg, Germany.

Hovhannes Nikoghosyan is a post-graduate student at Russian-Armenian /Slavonic/ University, International relations and world politics department. In 2008 Hovhannes earned a "Qualified specialist" degree from the same University (MA equivalent) with his thesis paper "Realization of Armenian strategic interests in South Caucasus. The role of external powers". Currently he is pursuing a PhD degree on humanitarian interventions theory at the same University. In June 2009, Hovhannes has been granted a Carnegie Research Fellowship to continue his research in the United States. Hovhannes Nikoghosyan joined the team of young scholars at the Public Policy Institution (Yerevan) in February 2008, and became the Director of the Foundation in April. He is actively involved in various regional and international initiatives and regularly gives speeches at events outside Armenia on his area of expertise varying from regional security issues in South Caucasus, Armenia-Turkey relations, European integration and human rights.

Krystle Wong is a 21 year-old Malaysian Chinese and is currently studying at Sciences Po Paris's Europe-Asia Campus. She has always had a very strong interest in writing as she believes in the power of the written word to inform, inspire and educate. Furthermore, her interest in politics is also evident in how she have chosen to engage with Malaysian civil society through her current internship at the Centre for Public Policy Studies (CPPS), a political think-tank and research institute. She believes that ADV is a great way to create an intellectual and informative global platform for students who are interested in politics and international affairs and that it has great potential to expand its outreach to many different networks, something which she is very excited to help facilitate.

A few words on this issue:

Originally we intended to focus entirely on the Lisbon Treaty of the EU. However, as it unexpectedly is still not ratified we thought we should focus on a broader topic and in the light of our diverse issues of last year, assembled articles on a wide range of topics. It is if you will a rainbow collection of articles, who all feature a security component. The first opinion article by **Thomas Bobinger** focuses on his pet project, the institutional reform of the EU. In his piece he deals with the Lisbon Treaty and the proposed European External Action Service and gives a short overview over the hurdles the Treaty had to take so far.

Mirsada Hallunaj talks about the new European Parliament and the challenges ahead. Mirsada also focuses on the ramifications of the victory of the center right political parties in the EP elections.

Next, **Hannah Birkenkötter** writes about the European Human Rights System after the Lisbon Treaty enters into force. An issue that is especially relevant considering that there is a multi-layered human rights system in Europe bringing together the European Convention on Human Rights and the Charta of Human Rights of the European Union that the Lisbon Treaty contains. What it means for the constitutionalisation of the European Union, Hannah Birkenkötter will explain in her article.

Then the focus of this issue broadens and **Cirill Khoroshiloff** asks for deeper economic integration of the Western states, including Russia, in the face of impetuous growth of China.

Military reform in Turkey and its meaning for Turkey's transition to a genuine democracy is scrutinized by **Mahir Zeynalov**. Turkey's role in the Middle East and the Caucasus and its importance for the EU should not be underestimated. All the more important that the military player, Turkey, who still occupies European Union territory (North Cyprus) reforms its military so that members of the military can be tried by civil courts.

The issue of development aid, its effectiveness or rather ineffectiveness, is treated by **Nathan Andrews**, who re-assesses Rober Calderisi's arguments why foreign aid is not working in Africa.

Women in peace and conflict and the need of female representation and participation in the resolution of conflicts is an issue that will become ever more important in the discourse of about conflict management and resolution. **Ulrike Krause** writes about it in this issue.

Yet, what would conflict management be without reconciliation and justice? The International Criminal Court was created to be an instrument to satisfy the need for justice by victim's of genocide, human rights abuses and crimes of war. However, many important states are not part of this international system, among them India and the US. While in a previous issue, the reasons for India's staying away from the Statute of Rome was explored,

Margarete Lengger this time analysis American sentiments for the International Criminal Court.

One last time the current editorial board of Felipe Nunes, Thomas Bobinger and Tobias Franke wishes you a pleasant reading.

Thank you all for an exciting and challenging year.

Opinion Articles

The Lisbon Treaty and the Future of Europe

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If we can trust recent media reports, Czech President Vaclav Klaus is willing to sign the Lisbon Treaty if he gets a political guarantee exempting the Czech Republic from the Human Rights Charta hidden in the Treaty.

The moment I read the news, I thought: "Could this be it? After all these years?". I remembered that I studied another legal text during my studies at Maastricht University: The Treaty Establishing a Constitution for Europe. Having spent endless hours studying the text, writing essays on it, campaigning for it in the Netherlands... it was finally rejected by the French and Dutch. A whole generation of lawyers and political scientists was born who studied a text that would have as much relevance as the European Political Community Treaty from May 27, 1952.

I also remember a talk I gave, in which I suggested that the window of opportunity for ratifying treaties, which change the workings of the European Union fundamentally, had closed with the 2004 enlargement and that the failure of the Constitutional Treaty meant the end of integration as we know it, meaning an integration that takes on board all the member states that are currently part of the EU, without leaving anyone behind.

Yet, like a phoenix the essence of the Constitutional Treaty emerged from the ashes of two burning referenda and was salvaged by the 2007 Brussels

Mandate for an Intergovernmental Conference in Portugal. Indeed, Merkel is not my favorite German Chancellor, but for making Lisbon possible, I am very grateful to her. From this IGC, the Lisbon Treaty was born. And although the press (which normally is almost hateful towards Europe) triumphed that a solution was found to the institutional impasse the EU was in since the Big Bang enlargement, it occurred to me: We are actually just in the same damn spot we were in 2004 after the signing of the Constitutional Treaty, not an inch further! Everything can still go wrong. And everything that could go wrong did go wrong!

A failed referendum in Ireland, opt-outs for Britain and Poland, an infamous judgment from the German Federal Constitutional Court, presidents that refuse to sign the treaty, last minute demands, international conspiracy at the highest level of government, and to make things even more exciting: a run against time. For if the British Tories come into power before the Czech President signs the treaty, everything will be lost.

If Lisbon fails in times of economic crisis, there will never be another fundamental treaty in circumstances that fall short of war. It would need an overwhelming threat from outside the EU to bring the Member States together, make them realize that their strength lies in unity,

not diversity. If the economic crisis is not such a unifying factor, if climate change is not such a factor, unfortunately only military threat from the outside could force governments to share sovereignty. A supposed threat from the inside (German unification) has brought us the Euro, but it has not brought us a common foreign and security policy that deserves the name. The next step for integration: a true union of states, a federation, cannot be fuelled by fears of Germany anymore. Such a step would need a European idea, a European people that supports the idea.

Yet, the permissive consensus (to let Europe grow without thinking much about it, or of it) has eroded and the public due to media reports, and blame-gaming Brussels short-sightedly for everything that is wrong at the national level is asking why it needs the European Union. The EU has not prevented economic turmoil, most people do not remember the war or hardships of re-building the continent, and the new generation does not even remember the Soviet Union as the common enemy. Today, we face sectoral threats, for which sectoral answers are thought to be sufficient. Climate change results in a new commissioner for climate change and a Parliamentary Committee on Climate Change, the gas crises in the winters of 2006-2009 result in article 194 of the Lisbon Treaty on energy issues, and terrorist threats result in NATO policies and the data retention directive. None of these threats has been met by a fundamental overhaul of the European institutions. The economic crisis does not even result in the formation of a powerful European rating agency, or the coordination of fiscal policies at national level. And the democratic deficit theory is mostly misconceived by ordinary citizens or used by national bureaucrats to argue for a re-centralization of powers at national level. Especially Mr. Gauweiler from the Bavarian CSU political party, is one of the most hypocritical and opportunist politicians of which there are still too many in the German parliament (despite the lackluster electoral victory of the CDU/CSU. Gauweiler, a homophobe, has put a legal complaint against the Lisbon Treaty before the German Federal Constitutional Court... and he cheered when the Court gave its judgment.

Many were at first relieved when they read that the Court did not declare the Lisbon Treaty incompatible with the German Basic Law. Yet, since then, people have actually read the judgment more carefully and started to understand that this was an ahistoric judgment, neglecting German identity and forgetting the conditions that made the German state what it is today, meaning World War I and II. The Court's judgment spills over to Poland the Czech Republic. Both their presidents are loathed by Europeans for their EU-skepticism. Nevertheless, the German judgment gives those presidents the tools necessary to argue against further European integration. That from all states, it had to be Germany that provided those tools is a shame.

The Lisbon judgment said nothing less than that the elections to the European Parliament are not democratic, because of the disparate (called "degressive" in political scientists' terms) representation of the Member States in the institution (Malta has proportionally more parliamentarians in the EP than Germany). The Court neglects that the principle "one man, one vote" still applies, and it neglects the political reality of a Union that is made up of small and big Member States. What people start to realize now, however, is that the spirit of the judgment prevents the European Union from becoming a federation in the future. The essence of the judgment is that a European Constitution (a real one) would be incompatible with the German Grundgesetz (Basic Law). In order to have a Constitution, so the judgment, a people is needed that supports this constitution, and the EU does not have a people, there is no "demos" in European democracy. It would need a referendum in Germany to allow for a European constitution, because the German Basic Law would have to be re-drafted. However, the German Basic Law does not foresee referendums, because Hitler abused referendums when he was in power (the German people cannot be trusted was the lesson learned from World War II).

Thus, essentially the German Federal Constitutional Court acts as a TÜV (Technical Control Board) for European integration. Doing its job, it has taken upon it the task to control the other 26 Member States also. Tell this to an Englishman whose Parliament reigns supreme and he/she would shake his/her head in disbelief. To be honest, there were many instances where the German Courts prevented the Parliament from infringing on human rights and at times was very progressive on social and family policies (in July 2009, it ruled that German same-sex marriage laws had to be on par with heterosexual marriage laws... sad though that we had to go the Indian way to achieve that), but in European questions it is very reactionary, mainly because it is fighting turf wars with the European Court of Justice. To say it with the words of Prof. Dr. Pernice, Director of the Walter-Hallstein Institute for European constitutional law: "The German Court is very slow, but eventually it will get there, it always has." In the meantime we can only hope that next time a Judge is elected to the German Constitutional Court, in the usual questioning; he or she will be tested on his European spirit.

So the EU cannot become a federal state anytime soon and the Lisbon Treaty will not make it one (a state has the so-called "competency competence", meaning it can give or withdraw competences from the federal states; the EU has not such a competency competence). The Member States will stay the Masters of the Treaties, and only they can give or withdraw competencies for legislative matters. Having established that, what does Lisbon actually add to the EU?

Answering this question, I want to stay away from

all the usual “bla bla” that we hear in the media, about a Council President, a Foreign Minister and so on. I believe that the Lisbon Treaty is underestimated by many. I would even go so far as to say that very few realize the potential impact of the Lisbon Treaty on the development of the European Union. It is at least on a par with the Maastricht Treaty establishing the European Union itself. A slight correction, there is someone who actually does understand the potential of Lisbon, the problem is he does not like what he realizes. Obviously, I am talking about Mr. Klaus from the Czech Republic.

An example of the impact of the Lisbon Treaty is the envisaged European External Action Service (EEAS). COREPER (the assembly of national representatives on ambassador level) is fully seized of the importance of the service and actively prepares for it to be put on a leash by Member States. Also, if France and the UK make such a big deal about it, it has to be important. On its implementation hinges the foreign policy perspective of the EU in the next decade. And exactly the implementation of the EEAS, the appointment of the High Representative of the EU and a couple of other issues (e.g. the financial perspective for the EU 2013-2020), is what is at stake in the next couple of months.

Filling the Lisbon Treaty with life will be the final act of a decade long struggle to reform the EU. It is quite frankly a run against time. For if the Tories are in power before the path is set for the EEAS and the new commission, they will block the whole thing. David Cameron has vowed to do so and this is the reason why the Swedish Presidency is looking to get political agreement on the EEAS at the next European Summit, even though the Czech President has not signed off the Treaty, yet. And this might be one of the reasons why Mr. Klaus has chosen to sign after all. He knows that the European train is running too fast and has progressed too far to stop it. But he can count on his British buddy to be his rock and to put a rock on every train-track that this train is passing. Everyone who thought that a decade of European self-reflection and eurocentrist introspection is over with the coming into force of Lisbon, that Europe could finally focus on real problems in the world, that naval gazing and institutional debate, withholding solidarity for political gains and the like is over, will find himself in a Thatcherite Europe after the UK parliamentary elections. That is why time is running out. Europe has to have strong institutions to get through the male Thatcher in the form of Cameron. This time there will not be a German re-unification or the collapse of an evil empire in the East to push Europe towards an ever closer Union. This time all we have are sectoral threats and the idea of a core-Europe in the drawers of the Europe Ministries.

Before I close, another slight correction: Mr. Klaus might not fully understand the Lisbon Treaty's implications after all. Lisbon presents unwilling Member States an exit-clause to leave the Union. Maybe Klaus might want to

make use of it (though I doubt that such a move would be popular amongst the Czech population). However, in order to use that clause... he first has to sign the Treaty. Well, life is difficult sometimes!

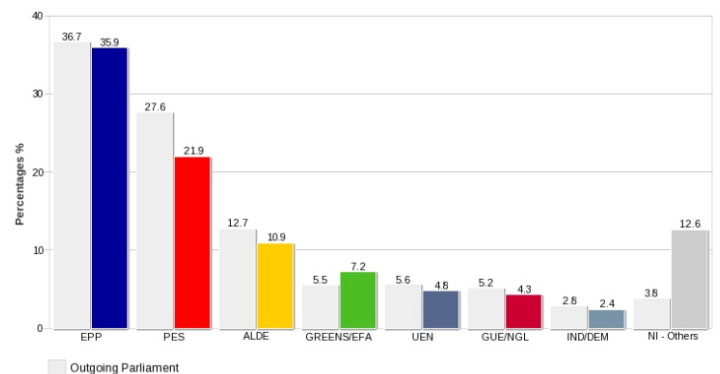
Academic Article

New European Parliament challenges and policies after the triumph of the right center in 2009 Elections

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After the 2009 European Elections held in the 27 member states of the European Union (EU) between 4 and 7 June 2009 two facts would clearly be declared. First different medias and political analysts noticed that in the 2009 European Elections the voters participation was the lowest rate ever seen during these lately years (43.08 %). Second was evidently, the win of right center and right wing parties in the European Parliament (267 seats). Voters have chosen representatives mainly from their own national parties, many of which join EU wide groupings with similarly minded parties from other countries. Considering these results which will be the role of the European Parliament in the future? Which will be the role of the rights in these issues and which will be the position and impact of other groups in the European Parliament? This paper aims to analyze some of the most important challenges, issues and problems with which the European Union has to confront in the future, especially after the win of the right wing forces in the European Parliament.

Security Issue: During the last years, European countries are systematically confronted with illegal emigration. Citizens especially from East



These results are taken from:

www.elections2009-results.eu/en/new_parliament_en.html

Legend:

- EPP: Group of the European's Party (Christian Democrat).
- PES: Socialist Group in the European Parliament.
- ALDE: Group of the Alliance of Liberals and Democrats for Europe.
- UEN: Union for Europe for the Nations Group.
- GREENS/EFA: Group of the Greens/European Free Alliance.
- GUE/NGL: Confederation Group of the European United Left - Nordic Green Left.
- IND/DEM: Independence/Democracy Group.
- Others: Others

countries have emigrated lately in different countries of Europe. This massive emigration has its roots in difficult economic, social and political conditions. One of the reasons why the right center has won the elections is related to measures that European Union is going to apply in the future to protect European Citizens from these problems (often of criminal kind) and to prevent illegal emigration towards European countries. This is an important step that the European Union has to apply after elections. This is a challenge for the European Union itself because illegal and active emigration is still very present and problematic in a considerable number of European countries. I want to mention the fact that sometimes arguments against illegal emigration have been very extremist, especially from right extremists, for example in Italy. The center-right has a conservative approach concerned with this problem comparing with the left. The right tends to refuse the integration of other countries in Europe or differences caused by emigration (we have to remember that after integration in Europe of Rumania and Bulgaria, the Europe is confronting with difficult problems, especially in welfare and security sectors). Culturally the right is for noncitizens assimilation. It is supported in the power measures, projection of clandestine emigrants or the possibilities limitation for the legal emigrants. Meanwhile the most extreme right wings have very emphatic nationalist approaches which currently in Europe are becoming more racist.

European Enlargement: European Enlargement is another important issue, which is in the top of European countries foreign policy agenda. European Enlargement has in its focus Southeastern Europe integration in the European Union. This process will be more difficult if we bring in our attention the win of right center parties. Security issue isn't related just with illegal emigration but at the same time it is connected with the programs that the right center creates and develop about the southeastern European countries integration in EU which yet are accepted in this large "family". The vision of the right is more skeptic than the left about the process of EU enlargement. European right projects delay the entrance of different countries moreover, an important part of the right in power, has declared openly its opinion for the entrance and integration in EU for a country like Turkey.

Economic Crisis: The rise in the far-right has been an expected effect because of the economic crises. The right has now an important obligation about the solution of the economic crisis in the Europe. In fact exist a paradox, because reforms applied during this time to overcome the economic crises has been

Keynesian reforms, which mean right economic reforms. Right policies (*laissez faire*) are considered as one of the reasons of economic crises that caused later the collapse of the market. In this situation the interference of national policies and national institutions was necessary. We know that economic policies that USA president is applying to overcome the economic crisis are left policies. How is possible then that Europe trust the right wing the solution of the economic crisis?

For example is significant to compare the USA, a multicultural and diversity society governed by a black president, which trusted the solution of economic crisis is in the democrat policies and strategy. In Europe this issue has to do with the security issue (this is expressed in jobs market during the economic crisis) which has dictated more right policies in economic problems as well. The security issue has changed the political view of many people in Europe.

At the same time the win of right wing, will reflect its effects in creating a legislation which will be more favorable to business and market liberalization. There will be less protection for workers in legislation. The economic crisis means that more regulation for financial services is almost unavoidable it's likely that here will be more financial regulations.

European Institutions: After European Elections the PES (Socialist Group in the European Parliament) will be weekend and the European Parliament as hole will be more fractured. The new EC group is likely to have a bit more bargaining power than was first assumed. However, it should be noted that the EPP isn't as right, so common ground with the Liberals and the greater number of votes they hold, means that there are a few dampening factors on any influence the EC may hope to have, including a lack of influence in Committees, which are the most powerful positions from which to exercise influence and shape legislation.

Green Gains. Fringe groups appear to have benefited, with far-right and anti immigrant parties picking up seats in the Netherlands, Austria, Denmark, Slovakia and Hungary. The British National Party won two seats - its first ever in a nationwide election. Greens also made gains - the Green-European Freedom Alliance bloc has so far taken 50 seats, compared with 43 in the last assembly.

European Parliament Challenges in the Future
Below are listed some of new European Parliament future challenges. Considering the actual economic

crises and the immediate interference in the climate problems, EP must confront with unusual challenges and has to take serious responsibilities for the protection of the 500 million European Citizens future.

Lisbon Treaty Ratification: This process is very important, because it will help for a strong and solid Europe, economically and politically, which recognize and admit the important role of national and regional governments.

A Europe with e strong social dimension: Regarding the economic crises will be very important the help for an equivalence of market forces with an energetic program and an effective solidarity and social protection. The European model of society should continue to guarantee support for them who lose their money as the result of the economic crises or suffer the discrimination and contempt.

Climatic Changes, Energy and Transport: The world today is facing off with one of the most important challenges of 2009, May be arrived a global agreement in Copenhagen, on December, of a sufficiency level, with a statement for a universal support to protect the earth from bad effects? The European Union should continue to play e leadership role in this direction.

Territorial Cohesion: One of the most important challenges for the European Parliament will be the strategy of EU budget after 2013, which must be appropriate to fulfill the new challenges of our continent. The European Parliament has at its attention the territorial dimension (regional and local) at all budget discussions.

Southeastern Europe and other neighbors of Europe: Europe has to execute an important and decisive role in the process of Balkan Region consolidation and stabilization. To achieve this challenge is necessary to create functional governance and democratic institutions in all levels. These institutions and their work organization and performance will achieve a general stabile development of all region countries. European Parliament must support all these countries to accomplish their duties and obligations, because Balkan countries integration in European Union in a short period of time is now a decisive process for the Balkan economic, politic and social future.

European Parliament characteristics, after 2009 Elections

New European parliament will be **less in favor of EU further enlargement** (Turkey may be a special case).

We can conclude that its role regarding the diplomacy and this policy area will not be very important, categorical or decisive.

The new European Parliament will absolutely be **more conservative** regarding the EU budget resources. It will aim to achieve a consolidation rather than expansion. I want to say at this topic that in the area of budget resources the Parliament will be more conservative (especially if we refer to financial problems and other perspective policies related with financial crises).

Issues of climate change and other issues of legislation will be very important challenges of new Parliament. The role of Parliament on these issues will be significant and the new European Parliament Agenda must seriously perceive these problems. This attitude is related with the rise of the Greens during the elections.

Considering the foreign policy and security issues I want to bring in attention the fact that if Lisbon enters into force the new provisions could **give the Parliament a crucial role in funding booth the External Action Service and the Union's peace-building operations abroad.**

May be resolved that **new European Parliament will be more divided over fundamental rights-related issues** (ever-more central in EU legislation), where tensions are likely to emerge especially between the right-wing populist parties, on the one hand, and ALDE and the Greens on the other with the EPP and the PES caught right in the middle.

Briefly, I want to emphasize that challenges of the new European Parliament are very serious and important. Unemployment and economic growth still remain fundamental issues. The role of Parliament is decisive because it is a key factor in improving the labor markets and creating a favorable environment by providing the right framework conditions. The European Parliament has an important role on inflation at institutional level. These issues are very important for European citizens and for the future of Europe. The success of the new European Parliament will be depended by the realization of these challenges.

Academic Article

The Treaty of Lisbon and the European Human Rights System Towards Constitutionalism within the European Union

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I. Introduction

With the positive vote in the Irish referendum on the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Treaty of Lisbon), the European Union is now close to achieving a long, complex and sometimes irksome reform process. After the Treaty establishing a Constitution for Europe failed due to Dutch and French referenda, the Heads of State or Government of the 27 member states of the European Union (EU) signed the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Treaty of Lisbon) on 13 December 2007. The Treaty was originally supposed to enter into force on 1 January 2009. With only one ratification missing, the entry into force is now, almost one year later, imminent.

Once the Treaty of Lisbon enters into force, it will have a twofold implication for the European human rights system. On the one hand, new Article 6 (1) of the amended Treaty on the European Union (TEU) provides for legally binding force of the Charter of Fundamental Rights of the European Union (Fundamental Rights Charter). On the other hand, new Article 6 (2) TEU provides that 'The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms'.

There are thus two distinct features of the Treaty of Lisbon concerning human rights: The European Union will receive its own legally binding fundamental rights charter, and the European Union will be obliged to become a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). While these two steps have normally been considered apart from each other, it is suggested that both will contribute to a common aim: Enhancing the process of constitutionalisation within the Union by placing fundamental rights at its centre.

After depicting some procedural challenges that still lie ahead with regard to accession to the ECHR, it is argued that the accession complements the constitutional approach to human rights that the EU, with the European Court of Justice (ECJ) in a leading position, has already adopted in particular with the *Kadi* judgment in 2008.

II. Procedural considerations on an accession of the EU to the ECHR

The President of the European Court of Human Rights (ECtHR), Jean-Paul Costa, once noted that ever since all states of the European Communities had ratified the ECHR, the question of whether the institution as a whole should not accede to the ECHR has naturally imposed itself

(Costa, 2004, p. 9). Taken up by the Constitution for Europe, EU accession to the ECHR has been discussed both in view of legal and technical aspects in both institutions as well as academia. Because the Treaty of Lisbon not only provides a legal basis for accession of the EU to the ECHR, but imposes an obligation to do so, these considerations now become highly relevant.

While EU accession to the ECHR, as already mentioned, results from a legal obligation incumbent on the EU after the entry into force of the Treaty of Lisbon, a closer look reveals that the accession procedure is likely to take an extended period of time. Both the EU as well as the Council of Europe impose strict conditions, and a number of unresolved issues add to the already heavy threshold.

Accession of the Union to the ECHR from the EU perspective will be regulated by new Article 218 TEU, which provides for a general procedure for the conclusion of agreements between the Union and third countries or international organizations and has some explicit references to the Union's accession procedure to the ECHR. In accordance with new Article 218 (2) TEU, the European Council is the competent institution for concluding such an agreement. Regarding the Union accession agreement, it can however only do so after obtaining the consent of the European Parliament. Furthermore, the Council is required to act with unanimity throughout the procedure regarding the accession agreement, whereas as a general rule, only a qualified majority is required. Lastly, the new TEU also provides that the 'decision concluding this agreement [regarding the Union's accession to the ECHR] shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements'. Thus, the threshold for the adoption and entry into force of such an agreement is relatively high and time-costly.

From the ECHR perspective, Protocol no. 14 adopted in May 2004 provides in its Article 17 that Article 59 ECHR on signature and ratification should be amended to include a provision allowing the European Union to accede to the Convention. However, Protocol no. 14 (which also includes a number of other amendments, most notably on an accelerated procedure in front of the ECHR to handle the case load currently at hand) is not yet in force, lacking the ratification of the Russian Federation. Consequently, the ECHR currently remains only open to states. The Council of Europe also mandated its Steering Committee for Human Rights to examine the legal and technical issues of a possible EC/EU accession to the ECHR. The Steering Committee presented its findings in June 2002. It focuses on modalities of accession and an overview of other legal and technical issues and possible solutions. The Steering Committee noted that an accession treaty between the Council of Europe and the EU could contain provisions relating to the amendment of the ECHR in order to adapt it for the purpose of EU accession as well as technical and administrative provisions at the same

time. But a treaty would equally require the ratification of every member state of the Council of Europe, a procedure that typically takes several years.

The Steering Committee further noted that existing legal remedies in the EU system (i.e. remedies available before the European Court of Justice [ECJ]) would need to be considered as domestic remedies in the sense of Article 35 (1) ECHR. The implications of this feature will be discussed below. Further questions that remain to date unsolved and are subject to a potential accession agreement are those of membership of the EU in the Council of Europe, or at least in some of its organs, such as the Committee of Ministers (which is in charge of supervising the execution of ECtHR judgments, Article 46 (2) ECHR) and the question of an EU judge to the ECtHR (cf Article 20 and 22 ECHR which provide that there shall be one judge from each state party to the ECHR). The Steering Committee also raised the consideration of introducing a new procedure whereby the ECJ could request interpretation of the ECHR from the ECtHR.

It becomes clear that while accession of the EU to the ECHR might be a legal obligation, compliance with this obligation will take several years and its implementation may give rise to intricate discussions. However, these procedural hurdles should not overshadow the importance of such an accession. Accession of the EU to the ECHR, as discussed below, will complement and finalise a system of constitutional human rights that has evolved within the Union over the past decades and is now reinforced with the legally binding force of the Fundamental Rights Charter as foreseen by the Lisbon Treaty.

III. Towards a constitutionalised approach to human rights protection in Europe

It is remarkable that while every reference to 'Constitution' (such as symbol or anthem) were carefully omitted in the Lisbon Treaty, the Charter of Fundamental Rights survived the process almost unchanged (Pernice, 2008, 236). Human rights now seem to have a place at the very core of the European Union; their respect is a condition for membership of the European Union and human rights are constantly referred to throughout Community acts. This is all the more remarkable given that the European Economic Community was established with almost no presence of human rights in the legal or political discourse (Greer/Williams, 2009, p. 471).

The Treaty of Lisbon provides for 'three pillars of fundamental rights' (Pernice, 2008, p. 240), namely the Fundamental Rights Charter (Article 6 (1) TEU), fundamental rights 'as guaranteed by the ECHR' and as a third component fundamental rights 'as they result from the constitutional traditions common to the Member States' (Article 6 (3) TEU). These three pillars will form the common foundation of the European Community's legal order, both insofar as they are a counterpart to the

principle of primacy (against which National constitutional provisions cannot be invoked), but also insofar as they constitute the standard against which acts of Community law affecting European citizens need to be measured (Pernice, 2008, p. 239). The judgment of the European Court of Justice (ECJ) in the case of *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* of 3 September 2008 is a culmination of case law by the ECJ illustrating that human rights as a standard against which legal acts of the Communities have to be seen is already a reality today.

On 3 September 2008, the ECJ's Grand Chamber overruled the Court of First Instance (CFI)'s judgments of 21 September 2005 in the cases of *Kadi v Council and Commission* [2005] ECR II-3649 and *Yusuf and Al Barakaat International Foundation v Council and Commission* [2005] ECR II-3533. In these two judgments, the CFI had rejected an action to annul Council Regulation 881/2002 which transposed Security Council Resolution 1267 (1999) on the Taliban and Afghanistan into Community law. The resolution required member states to freeze funds of those individuals and organisations that supported the Taliban and established a Committee tasked with designating such individuals. Both claimants were directly affected by the Council Regulation implementing the resolution. The ECJ annulled the Regulation insofar as it concerned the claimants, on the grounds that it infringed upon the claimants' right to be heard, right to an effective legal remedy and constituted an unjustified restriction to the right of property. While an important dimension of the case deals with the interesting question of the relation between UN law and EC law, these considerations shall not be discussed here. I would like to focus on the concept of an autonomous legal order of the European Communities with human rights at its heart that is presented by the ECJ. The ECJ recalls that 'the Community is based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid review of the conformity of their acts with the basic constitutional charter, the EC Treaty, which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions'. The Court then continues that 'fundamental rights form an integral part of the general principles of law', and that 'respect for human rights is a condition of the lawfulness of Community acts'. Both of these principles are already established in the Court's case law, and they appeared in this exact formulation as early as in 1996 in the Court's Opinion 2/94 on Accession by the Community to the ECHR. This brings the Court to the conclusion that 'the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to

review in the framework of the complete system of legal remedies'. The repeated reference to 'constitutional principles' and 'complete system of legal remedies' make clear that the ECJ makes a sharp distinction between the EU legal system on the one hand and the system imposed by general international law on the other hand. The ECJ implements a dualist approach, equating the Community legal order to a domestic legal order (Ziegler, 2009, pp. 293, 296) and consequently ruling that international law could not have any influence on the internal European legal order. While this attitude is certainly problematic regarding compliance by the Community with international law in general and Security Council resolutions in particular (Griller, 2008, p. 539), it at the same time illustrates the Court's firm commitment to placing fundamental rights at the heart of the Community's legal order. This provides for a full judicial review, which ultimately led the Court to the finding that claimants' fundamental rights had been violated, because the restrictions on fundamental rights were not proportionate to the aim of the regulation (i.e. the combat of international terrorism; Griller, 2008, p. 542). The Court's ruling is thus a clear decision towards establishing a rights-protecting and rights-based constitutional Community order (Ziegler, 2009, p. 303). This constitutional order will once the Treaty of Lisbon enters into force find its expression in the Fundamental Rights Charter. The Charter, while on the substance not adding anything essentially new to the standards already established by the ECJ's case law, underlines the constitutional character of European primary law (Pernice, 2008, p. 238). This process of developing a constitutional character within the EU has been described as 'multilevel constitutionalism' (Pernice, 2009, p. 24), a constitutionalism that encompasses both the national and the international level. The process of constitutionalisation within the EU has been a mutual influence of European law on national law and vice versa (Pernice, 2009, pp. 24/25). It is argued that the Union's accession to the ECHR will add another layer to a human rights-based constitutional legal order for Europe.

By acceding to the ECHR, the ECHR will become binding upon the European Union's institutions. This implies also that Community acts will be subject to review in front of the ECtHR. As already mentioned above, the Council of Europe's Steering Committee has pointed out that recourse to the ECJ would insofar have to be considered as a domestic remedy, and that calling upon the ECtHR would only be possible once local remedies are exhausted. It has been criticised that this procedure would effectively subordinate the ECJ to the ECtHR. However, review of ECJ rulings in front of the ECtHR will only extent to cases that include a human rights component. Insofar, the ECtHR will merely be a more specific court, not a superior one (Alber, 2008, p. 329). This does however not exclude that regarding human rights-related cases, the ECJ

will effectively be assimilated to a domestic court.

This development will have implications from an ECtHR perspective especially regarding the reviewability of Community acts against the ECHR standards. In the *Bosphorus* case, in which an airline company brought a charge against Ireland for actions resulting from executing an EC regulation, which in turn had implemented a Security Council resolution, the ECtHR had stated that 'State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides'. The ECtHR subsequently found that this was the case for the European Communities and consequently did not review the regulation in question. This decision, which amounts to a jurisprudence analogous to the famous *Solange*-case of the German Constitutional Court, is expected to be revised once the EU accedes to the ECHR (Griller, 2008, p. 541). Accession to the ECHR will submit the EU to full scrutiny of ECtHR supervision, as is now the case for member states to the ECHR. In such a scenario, the correct addressee of an action would be the Community itself, not the executing member state, and the Community's acts would then be subject to review against the ECHR standards. The ECJ, much like a Constitutional Court in a nation-state, will thus primarily be responsible for ensuring adherence to fundamental human rights as guaranteed by the 'constitutional' treaties, including most notably the Charter of Fundamental Rights. Individuals would then have a possibility to have these 'constitutional' human rights standards measured against the ECHR as a last resort. This illustrates the multi-layered strength of the envisaged human rights system contributing directly to a constitutional vision of the EU, placing the individual right-bearer at its heart. This, so it seems, should be worth resolving the outlined procedural accession issues in a timely fashion.

IV. Concluding remarks

While it seems to be clear that the EU is moving towards a more constitutionalised Union of States placing human rights at the heart of its structure, there are next to the technical questions of accession some substantial issues that still need clarification. With the entry into force of the treaty of Lisbon, the EU will receive a human rights system in its basic treaties consisting of three pillars. Moreover, once accession is completed, the ECHR will equally be binding upon EU institutions. The ECJ will thus have to clarify the exact relation between the different pillars, and between the human rights system contained in the TEU on the one hand and the ECHR on the other hand. The scope of the ECHR and the Fundamental Rights Charter

differ in several points, not only concerning specific rights that the Charter might grant but the ECHR does not (especially social and economic rights), but also in terms of legal limitations to the enjoyment of the rights stipulated in both instruments. The Fundamental Rights Charter only imposes a general limitation clause in its Article 51 (1): A limitation must be provided by law, respect the essence of the right in question and is subject to the principle of proportionality, which includes that the limitation must meet 'objectives of general interest recognised by the Union' or respond to 'the need to protect the rights and freedoms'. The ECHR system provides for right-specific limitations, i.e. each provision stipulating a right which can be subject to restrictions equally defines the conditions for such restriction. In case of corresponding rights, the Charter explicitly states that 'the meaning and scope of those rights shall be the same as those laid down by the said Convention'. Whether this also applies to the interpretation of the rights given by the ECtHR is not clear. In this context, it should be pointed out that the ECtHR and ECJ have in the past interpreted several rights differently. It remains to be seen how dissents between the ECtHR and the ECJ might be solved in the future. However, these questions also arise in the relationship of ECHR and national constitutional law guaranteeing human rights. If discussion focuses on these issues, this might ultimately reinforce the constitutional character of the EU. Lastly, and most importantly, it is crucial that a strict line be drawn between the work of the ECJ as the primarily responsible court for ensuring human rights protection in the Union and the ECtHR as a possibility for review 'as a last resort'. The ECJ has given much attention to the ECHR and the ECtHR's case law in its past decisions, turning the ECHR into a 'symbolic point of reference' (Greer/Williams, 2009, p. 473). While the ECHR forms part of the three-pillar human rights protection as foreseen by the Lisbon Treaty, the ECJ will need to develop an autonomous and clear human rights conception informed by all three pillars in its case law. An autonomous human rights concept in an autonomous legal order this would truly reinforce the idea of a rights-based, constitutional European Union.

Notes:

1. New Article 6 TEU reads as follows: 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.'
2. New Article 218 (6) (a) provides for an exhaustive list of types of agreements requiring consent of the European Parliament. The

Parliament has otherwise a consultative function regarding the conclusion of agreements in accordance with new Article 218 (6) (b).

3. New Article 218 (8) TEU.

4. Steering Committee for Human Rights, 'Technical and legal issues of a possible EU/EC accession' (2002, doc nr. CDDH(2002)010 Addendum 2) 13.

5. *Ibid.*, para. 14.

6. *Ibid.*, para. 49.

7. Steering Committee for Human Rights, *supra* at note 4, 75-77.

8. Joined Cases C-402/05 P and C-415/05 P, Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union, Judgment of 3 September 2008, paras. 348, 351 and 371.

9. See e.g. on this matter Griller, *International Law, Human Rights and the EC's Autonomous Legal Order* (cf bibliography for full reference), pp.537-539.

10. Kadi case, *supra* note 8, para. 281.

11. *Ibid.*, paras. 283/284.

12. Opinion 2/94 on Accession by the Community to the ECHR, ECR I-1759, European Court reports 1996 Page I-0175, at paras. 33/34.

13. Kadi case, *supra* note 8, para. 285.

14. *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v Ireland*, Application no. 45036/98, Judgment of 30 June 2005.

15. *Ibid.*, at para. 155.

16. Article 52 (3) Fundamental Rights Charter.

17. For specific examples see Alber, at p. 328.

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Academic Article

Impetuous growth of China as a Cause to Revise Relations among Europe, Russia and the USA

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An impetuous growth of the Chinese economy, particularly remarkable against the general fall under global crisis conditions, states a problem of renewal of relations among Western countries, also including Russia here, despite of all the interrelating complexity among these countries. For understanding the actions required, one first needs to understand, what China is. Political and military powers, which can soon multiply, will exceed the total capabilities of the Western countries and their allies in case they do not begin to integrate their economies intensively.

In spite of the continuous disputes about how strong China really is and what is ahead for it, the majority of experts, apparently because of their narrow specialization, underestimate its huge potential, which in the course of its exposure becomes unprecedented economic success. By the way, what China is criticized for: backwardness of many manufacturers, routine manual labor, rural areas not involved in modern economies, etc. - are actually its potential resources, which can sufficiently accelerate the evolution in the course of technical and technological basis renewal.

We distinguish three basic components of Chinese prosperity, which are in fact closely related and interdependent, while each of them itself is a sufficient

advantage, and aggregated they provide superiority by far over other countries:

1. Diligence
2. Population
3. Centralized organization

Aggregated these particular three components are the reason for impetuous Chinese growth in the present, which will also persist in the future.

Diligence: the item formulation may probably seem funny and not quite scientific, still diligence (a drive, a habit for working) was molded by centuries of Chinese history, which required an extreme strain in order to simply survive. All socialization institutes starting with family, ending with state institutes for many centuries (by means more and more sophisticated) inculcate this feature.

The population of China initially was as high in relation to the rest of the world, and thereafter its increase was parallel to the first world.

And the most principal component is a specific organizational form, governing large regions with a very powerful center. Only such system could operate on such vast and densely populated territory, coordinating and maintaining stability. The foundation was laid by the

irrigation nature of early Chinese civilization, thereafter, confirming its effectiveness; the system has passed through ages, reaching its present state.

If now we resolve to compare the Western world to China according to these indicators, then we will see a lag everywhere, to put it differently, paucity and dissociation. The West has an advantage only in regard to equipment and technology, which, however, is waning impetuously, and probably the odds will soon be in favor of China.

The leadership loss is fraught with disastrous consequences for the Western countries, for despite they drive most of the international trade among themselves, they supply resources necessary for industries from the third countries. The scantiness of resources automatically launches a struggle for existence among the first-rate economies, as we showed earlier: there are reasons to regard China as more competitive in this race.

Since we admit that on its own none of the Western countries can efficiently oppose China, the only possibility, though quite painful, would be an integration of their economies. Such a system in the form of a giant political organism, in many respects similar to the Chinese model, would be an adequate counterbalance to the growing influence of Peking. At the same time, creation of such Western Union would be directed not against China, but to the preservation of the attained development level, China would be considered not as an adversary, but as an example.

Being keenly aware of the difficulties, yet even better understanding the necessity of such changes, the West should fundamentally revise its relations with Russia in the direction of more openness and mutual aid, despite the sharp contradictions on many questions; in turn, they have a right to reckon on Moscow's reciprocal actions. However, an extreme backwardness of many sectors of the Russian economy and its general lag behind the world's leading nations, require considerable investment. The authoritarian nature of the Russian regime (e.g. oppression of human rights and economical weakness), are very frequently criticized in the Western press. At the same time, all this is not at all a product of elite's greediness and stupidity, rather on the contrary, while the reasons are common poverty of the country, low competitiveness at the world market, absence of capital necessary for economy renewal and development. As to the social dimension, the country is aware of acute instability, the only way to suppress which is precisely an authoritarian nature of the regime.

Integration of Russia into the common Western economy is necessary for itself as well as for the countries of Europe and the USA for reasons of a geopolitical as well as economic nature (first of all, enormous natural resources, so essential to the countries of the EU and the USA). However, this process cannot be effective if it is based on unequal cooperation, in such case an

authoritarian nature of the regime in Russia will preserve, its tendency to cooperate with the West will be quite limited, and a tendency to cooperate with China is not excluded as well, although it is pent up by potential competition of the sides in a region. In case the Western countries want to build a lasting relationship with Russia, they have to pay special attention to its internal problems, which entirely determine its foreign policy, and having resolved them, Russia will inevitably change its foreign line towards closer integration with the West.

Thus, the only possible strategy for the Western countries would be the revision of their interrelations towards intensified integration and also inclusion of Russia into this process, on terms sufficiently favorable for it, in order to prevent Moscow's possible turn for isolation or even cooperation with China. Clearly, this would require economic concessions and considerable investments, many of which would be able to make only long-term profit, and a part of them, apparently, would be of a pronounced political, not economic nature. However thereby in the form of a closely integrated economy of the European countries and the USA an adequate counterbalance to the growing China would be found. It is also necessary to keep in mind that such a union would not in the least be directed against China itself, and would not be of a military nature, since a war as such appears impossible under modern conditions. On the contrary, the purpose of the union would be to stabilize the world situation, to prevent decay of developed societies, to support the developing ones and to keep China from insufficiently considered policy, temptation of which emerges as a result of rapid economic growth.

Academic Article

Turkey's military reform is a big step ahead to genuine democracy

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In Turkey, the military long maintained that they are the sole and the last guardian of the regime. Coup d'états that they experienced also gravely threatened other aspects of life, namely business, academia, and political system. As the violence increased steadily to convert the existing regime into communism during Cold War, the move that the military needed to fulfill was to step up and take over the government.

In the late 70s, Turkey was rushing headlong into an era of political turmoil during the Cold War. Student protests, street clashes and chaos became large and persistent problems facing Western societies. Communism offered bread and butter for impoverished people, better employment opportunities for middle-income citizens. In brief, people pinned their hope on communism for a better life. It was the job of the military to make hopes become unreal.

These entire societal crises decisively weakened the political system and functioning institutions. Citizens questioned the regime, not the policies of running governments. Police brutality and military takeover provided ample testimony to the continuing struggle between citizens and the military. It became almost impossible for communists to run for the government and/or peacefully revolt. Given the varying constraints on

the power of the people across the countries, democracy simply vanished from the entire region for four decades. Only fascist or authoritarian countries were allowed to move from dictatorships to democracy, particularly in Portugal and in Spain.

NATO, particularly the USA has shown itself willing to dance along the edge of non-democracy and military dictatorship, as far as it inhibits communism. These institutions did yield some essential drawbacks and deep flaws in societies. Top-down attempts to make nations modern mostly failed. One of the great policy dangers, in the face of rampant organized regime watchdogs, is to abandon annulment of these organizations right after the demise of communist threat. The system following the collapse of the communism made the field less lucrative but also helped spawn an era of series of crimes to institute chaos and anarchy to ease the process of playing with governments in power. Post-communist organized groups have applied consistent pattern of slaughter and assassinations, with belief that they will help set up conditions for military takeover, as the system would spin out of control. Turkey, many claim, is the only country with a strong politicized military that still maintain one of the strongest and persistent stay-behind forces, named as Ergenekon, a responsible body for most revolutions in the

Turkish Republic's history.

Before every revolution, there had been a marked increase in violence and protests, with a hope to bring communism. With few exceptions, most of the rallies, demonstrations and protests were suppressed brutally. Each turn of events culminated tensions in societies, granting an opportunity for military to topple the governments. Military therefore had - and may still have - widespread grip on many spheres of life. In the shadow of civil war and violence, macroeconomic indicators signaled their impending declines, investments stepped back. In effect, their macroeconomic policies had been haphazard; there were setbacks and crises along the way, both in economy and in political system. Democratic transitions collapsed.

European countries were pretty successful to keep those organizations out of politics; nothing posed an imminent threat in post-Cold War era. In some countries, especially in Italy, organized groups transformed to a more illegal nature, aligning with those groups that carry out illegal activities. Perhaps wiping off the most famous and the largest illegal organization, Gladio, took several years. A glance over most NATO members, one would be tempted to conclude that Cold War era watchdogs faded away or transformed into a new structure, mostly losing its grip and discretion of power. These organizations were set up to prevent revolutions, namely communist ones. However, not in every country, transformation of these organizations took place smoothly. In some, they put countries' politics and thus economy in dire straits. It is still faintly astonishing to see these organizations still operate. Ostensibly, it is driven by the logic of protecting founding regimes.

Since, in this view, communism was the only eventual target, the function of organized groups that extends back from Cold War period, has shifted. For them, now the biggest threat is Islam. The threat that political Islam poses for a secular Turkey, made the presence of military in every aspect of political life necessary.

Turkish Ergenekon case, an ultranationalist organized terrorist group, a criminal extension of communist era watchdog organization, is a case in point. There are many more in other countries waiting to be uncovered. Once their veil is unmasked, the possibility of transition toward democracy would not be a futile topic to debate on. In this context, a revolutionary step would be to erase some of privileges of military. In this context, trying coup planners in civilian courts, as previous rulings of military courts displayed that military was slow off the mark and reluctant to try them, is a giant step to limit military's power discretion and institute democracy in Turkey.

The President of Turkey, Abdullah Gül, approved a bill that includes a change to Article 5918 of the Turkish Penal Code, paving the way for military personnel to be tried in civilian courts and preventing the prosecution of civilians in military courts in August. A statement from the

Presidency's Press Office noted that Gül had approved the bill and sent it to the Prime Ministry so that it can be published in the Official Gazette. President Gül signed the two-article reform to limit the power of military courts, which includes opening the way for military personnel planning coups to be tried in civilian courts and preventing civilians with crimes associated with military affairs to be tried in military courts, a statement on the president's Web site said. The statement also noted that the adjustment is in line with the jurisdiction of military courts regarding the trial of civilian and military personnel and added that the government has to make further legal changes to ease problems because the adjustment may raise possible concerns regarding military service. The president noted that these legal amendments have to be carried out urgently.

Parliament in July passed a bill that grants authority to civilian courts to try military personnel involved in coup planning during peacetime and preventing military courts from trying civilians. The main opposition Republican People's Party (CHP) promised to take the bill to the Constitutional Court if President Gül approves it. Following the approval by the President, CHP Deputy Chairman Onur Öymen said they will turn to the Constitutional Court in a matter of days. The government sent the president a 47-page report to bolster the importance of approving the bill by providing previous Constitutional Court and European Court of Human Rights rulings. The government report underlined that the scope of authority of military tribunals is far too wide in Turkey. "Rather than being independent and impartial in their decisions, military courts seem to be an administrative institution that is dependent on other bodies for its rulings," the report stated.

The report pointed to criticism directed at military tribunals by the EU and the European court to support its thesis. The EU stated in its 2008 Turkey progress report that Turkish military tribunals are among the country's problems that need an urgent solution, noting that Turkey had pledged to settle its problems with military courts.

The widely supported bill aimed to meet EU standards and improve Turkey's democracy. Considerably intense pressure on President Gül to veto the bill for its alleged unconstitutionality came from some media groups, the CHP and the Turkish Industrialists and Businessmen's Association (TÜSİAD).

Finally, Turkey's huge step towards its bid to join EU and democracy, hopefully, will not be overshadowed by the Constitutional Court's ruling to declare it unconstitutional.

Academic Article

The Politics of Foreign Aid and Development: A Re-Assessment of Robert Calderisi's *The Trouble with Africa: Why Foreign Aid Isn't Working*

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Introduction

There continues to be a prolonged discussion about the impact of foreign assistance on Third World countries. Aid has attained some degree of indispensability in most of these countries due to colonial ties, their indebtedness, or sky-rocketing inflation rates. However, there is evidence that decades of foreign aid have done little in changing the destinies of many African states, most of which are still in a deplorable state today. The repercussions of failed or ineffective aid programs are what we are seeing now but there is certainly more to it than meets the ordinary eye. Estimates suggest the West has spent about \$600 billion on foreign aid to Africa so far (Akonor, 2008, p.1071). Yet underdevelopment is widespread, while at same time some states are considered to have collapsed (eg. Somalia). What could be the cause of this gross failure?

A lot has been written about aid effectiveness and the debate among scholars and development experts is ongoing especially since there is no particular consensus or "magic bullet" that seeks to direct how aid can be effective, and under what conditions. While Rostow (1990) sees foreign assistance "external intrusion by more advanced states" (p.6) as a precondition for the 'take-off' into economic success, Teresa Hayter (1971) argues it is a

disguised form of imperialism, and as such cannot result in any desired economic benefits. To her any benefit that could arise from aid would only be incidental, not planned. Recent writers have been divided on these two opposing arguments. Some pursue Rostow's line of arguments (see for instance Fayissa and El-Kaissy, 1999; Collier and Dollar, 2001; Loxley and Sackey, 2008), while others argue aid does not buy growth (Easterly, 2003, p.34) as it offers no long term solution to Africa's problem (Akonor, 2008, p.1072).

It is difficult to ascertain exactly what can help Africa get out of its woes but a point that should be borne in mind at this juncture is that the failure of foreign aid (and development) on the African continent is not only attributable to endogenous factors within the recipient countries, but also there are external influences that impede the positive impacts the application of aid might result in. Thus, any solution should seek to address both the exogenous and endogenous issues that hamper the growth of the continent. This paper is mainly a critical analysis of the reasons put forward by Robert Calderisi (2006) regarding the failure of foreign aid (and development) in Africa. Although we touch briefly on methodology, most of the analysis will concentrate on his main points, particularly why he thinks aid is not working in

Africa. The analysis will lead us to addressing the inherent contradictions in his arguments. The final part will conclude with some suggestions of how we can better understand the politics of aid and development in Africa.

The Crux of Calderisi's Arguments

Robert Calderisi's *The Trouble with Africa* reveals an in-depth explanation of the many problems that confront the African continent. Having worked as a top World Bank officer in most of the countries he speaks about, it is difficult to disbelieve his account which obviously does not shy away from what we can call the 'painful truths' about the African problem. He sets the tone right by stating that Africa's main problems have to do with HIV/AIDS, warfare, and childbirth-related deaths. Calderisi's central argument is that "Africa's handicaps are inbred" (2006, p.143), hence the need for proactive leadership, ideas, approaches, and technologies in order to possibly alleviate them. He argues it is no longer in fashion for African governments and peoples to continually blame the West for the deplorable conditions they find themselves in today: but they should look to their own internal dynamics that have caused the problems.

He replaces the blame put on globalization, unfair international trade, debt, slavery, colonialism, and geography with culture, corruption, and political correctness of donors and multilateral agencies which, for some historical or racial guilt, do not face the facts when dealing with African governments. The point is that many other continents and specific countries have been able to thrive under the same conditions that Africa is using as scapegoat. He thinks after all, the African themselves were involved in the slave trade. And with colonialism, Calderisi asserts the colonial masters left a good legacy that, if well maintained, could have been a blessing to the continent instead of a bane. His case is that all scapegoats are rather blessings that Africa could derive prosperity from. To him, cultural diversity further exacerbates the African problem.

One cannot completely tell where Calderisi stands in terms of whether there should be more aid or not. At one point he advocates for more foreign aid with fewer strings attached, while at the same time he says "if aid is largely ineffective, it is also demeaning" as it "disfigures and corrupts at either end" (2006, p.165). He does not make a strong case for or against aid with these contradictions, and in the end one cannot be sure whether he feels aid will continue to be a part of Africa's future or not. Looking at corruption, bad governments and policies on the continent, he examines Zimbabwe, Tanzania and Ivory Coast. Similar leadership and political crisis were found in other six central African countries, namely, Cameroun, Gabon, Chad, Congo, Equatorial Guinea, and the Central African Republic. Calderisi argues the self-aggrandizing tendencies of the leaders in these countries not only inhibit economic growth, but also stalls efforts towards African unity. Besides, dictatorships, gross

mismanagement, financial malfeasance, protocol allocation, and the abysmal management of the agricultural industry have contributed. This is a point that he hits very hard on, and it is appropriate he does so. To this, he calls for a more open political system and free press. Many African leaders out of selfishness or perhaps wickedness amass the wealth of the nations they are made to lead, and then look to foreigners for help.

The book offers some ten recommendations on how aid can work in Africa but we find most of them not very innovative as they mostly reiterate suggestions that have been made by earlier writers on the topic. One outstanding point, however, is his call for a merger of the World Bank, IMF and United Nations Development Program (UNDP). He notes that "rivalry and conflicting objectives" of these three bodies have led to "confusion in the advice they give to Africa" (Calderisi, 2006, p.216).

Inherent Contradictions and 'Missing Links'

We might share in Calderisi's argument that the finger-pointing game of African governments is no more in fashion. His alternative explanation to the African problem is well taken but we cannot assume his argument is entirely valid. Inasmuch as we do not want to blame slave trade, colonialism, the Cold War and the like in these times, we cannot lose hold of the fact that these historical antecedents had an impact on Africa both positive and negative. Slave trade alone has left so big a mark on the conscience on many Africans that despite the inherent problem of bad governance and mismanagement, some leaders make the people think they can still blame the West. Instead of downplaying the negative effects of this trade in human beings, a one-time therapeutic mechanism could help rid the minds of the African people of the psychological trauma that history sometimes makes them go through.

During colonialism, the rich African chieftaincy institution was sacrificed. Through "indirect rule", chiefs became powerful but also somewhat corrupt as they sought to appropriate land and other communal property. The chief or king was the main source of authority in the early lives of many African countries but with the introduction of formal, western form of government, they have become merely ceremonial figures in some places. Liberal democracy is good as it comes with freedom and conditions under which economic development is possible. But one fact we should take here is that colonialism disfigured the African governance system. It created what Peter Ekeh (1975) calls the "two publics" the civic public and the primordial public representing formal government and the local, chieftaincy level respectively. He believes that many of the political problems facing Africa are a result of the "dialectical relationships between these two publics" (ibid., P.91) which are constantly striving for prominence. This is an argument Calderisi ignores though it holds some amount of water. It is like

telling the people to move on after they have been left confused as to whether to go back to their old system of government, follow the colonial legacy or combine both. Such confusion and dilemma within the African political system is partially why most democracies there are still facing teething problems. Even relatively established democracies like Ghana are having a hybrid of the American presidential model and the British Westminster (parliamentary) system.

Calderisi sees the continuous interest of colonial powers in Africa as “benefit of imperialism” (2006, p.25). This contradicts his claim that African leaders should try and pursue home-grown policies which would only be backed by foreign assistance when necessary. The benefit is probably not been acknowledged, and maybe it is not even there. The colonial masters have left the shores of Africa but still have an eye out to follow and meddle in development on the continent in the form of aid. Aid is meant to help people get out of their woes so they can carve their own paths but if it is perpetual, the people fashion their tastes for more help to the extent that some African states' budget is dependent on what donors have promised to give. This is a new form of imperialism which the Bretton Woods institutions (IMF and World Bank) are spearheading. It seems as though aid is actually not meant to lift African countries out of their poverty; because if that is the motive, despite these inherent problems that Calderisi mentions, there should have been much progress than is evident. This is not to jettison the impact aid has had on areas such as health (HIV/AIDS) and disaster relief. The argument, however, is that the overall impact on poverty alleviation is not felt since it is only a palliative treatment to the problem, not a one-time cure. Dambisa Moyo thinks the vicious cycle of aid chokes off investment, encourages dependency, and facilitates corruption, adding that this cycle “perpetuates underdevelopment and guarantees economic failure” (Moyo, 2009, p.49) in Africa. In this sense, Moyo blames foreign aid for the continent's woes.

As already indicated, the problem is not just an 'African problem' since there are other external factors that add up to the internal misappropriation, dictatorships and sheer negligence. The politics of aid and development is much more complex, making it difficult to accept Calderisi's assertion that “Africa has not been a victim of globalization” (Calderisi, 2006, p.143). This throws into the gutter the broad literature that speaks to the fact that globalization has increased global poverty as a result of the inequality it has brought into the system. There are many ways one can look at this issue but it is worth noting that the developmental gap or boundary is not disappearing even under the “homogenizing forces of globalization” (Bowles, 2005, pp. 428-9), especially when there is evidence of global income inequality, monetary governance and unfair world trade. Although some globalists believe globalization has been “associated with

more rapid growth and poverty reduction in developing economies and with a modest decline in global inequality” (Dollar, 2005, p.170; see also World Bank, 2002), there is no evidence that globalization can reduce poverty (Kacowicz, 2007, p. 566; see also Stiglitz, 2003, p. ix), especially looking at the bottom billion (see Collier, 2007) in many developing countries who wallow in poverty, armed conflicts and diseases. Globalization obviously has both good and bad sides, but we should not create the impression that its conditions are akin to a rosy or cozy umbrella of equal states with equal abilities, interacting within equal terms of trade.

If Africa is constantly in debt, can the reason partially be unfair trade? Unequal terms of trade make some government who still want to indulge in such enterprise borrow to make up for their balance of payment deficits. Huge debts are accumulated; debt relief comes in but the leaders misuse the money; and then the country gets back in debt. This is the cycle many African countries are going through. Browne (2006) for instance argues aid does not match development need because its “size and direction is subjectively determine by donors” (p.7) - institutions and agencies which must serve the interests of their paymasters in the ministries involved, mostly non-developmental interests such as commercial, geopolitical, strategic and historical. Perhaps, a more African-friendly kind of reform that is not superimposed by the Washington Consensus can best lift the continent up.

Africa will be expected to trade its way out of poverty, but for now most countries on the continent experience more of 'dumping' than trade. Due to their indebtedness to developed countries, many African countries allow inferior goods to flood their markets at the detriment of their local industries under the age-old adage that 'you cannot bite the fingers that feed you'. If two parties are trading, there is need for some degree of fairness and the willingness of both parties to indulge in such enterprise. Meanwhile there is evidence that trade is not necessarily the answer (see Berry, 2000, p.68) as it can even undermine development efforts (see Culpeper, 2004, p.5).

Additionally we cannot overlook his perception of the role of culture in development as “it is the foundation on which not only formal, but also informal institutions arise” (Hyden, 2006, p.7). David Landes (2000) insists “if we learn anything from the history of economic development, it is that culture makes almost all the difference” (p.2). In her analysis, Phyllis Pomerantz (2004) states that culture matters, and that whether one views social capital as prerequisite to economic advancement or not trust is an important “social glue” that will engender better two-way-street relationships between donors and recipients of aid. How could anyone even entertain the idea that culture does not matter to development, or that it is rather a hindrance to development? Even if it is should the people simply discard all the beliefs and practices in

the name of 'progress' when they do not understand what this 'progress' will bring them? Unlike Calderisi who sees Africa's diverse cultural traditions as an obstacle to development, Pomerantz argues it is rather a storehouse a place to begin examining how aid can work better on the continent. To her aid has not worked well because donors have not taken pains to understand the socio-cultural context within which the aid is made to work.

Any Way Forward?

The concept of development (or underdevelopment) is rather broad, and in the case of Africa we cannot look at internal factors neglecting the external dynamics as well. Based on his projection that by 2025 Africa's problems will still be unresolved, Calderisi concludes that "Africa's future is hard to predict except to say that...it will be dark indeed" (Calderisi, 2006, p.226). In material sense, he feels Africa may never catch up with Europe or North America or Japan. This kind of future is bleak indeed but is it really how Africa would be? What will happen to the Millennium Development Goals (MDGs), especially that of reducing poverty by half by 2015? It is interesting that a former World Bank official, in whose time these goals were outlined, could have such projection about a continent that the goals seek to better. It only speaks to the fact that either these goals were not determined to be achieved within the set time-frame, or that Calderisi is just short-sighted about developments on the African continent.

Joseph Sweetman (2007) in a review of Calderisi's book argues that although the book reveals many truths about Africa, Calderisi's account is "located within a racist discourse of 'us against them' and undermines the complexities of international relations between Africa and the West" (p,556). This critique brings to mind Huntington's (1993) skepticism about an African civilization due to conflicts and diversity. Instead of 'problematizing' Africa's culture and diversity it could be used for the good of the continent. Many countries have diverse ethnic groups and cultures. Why has it not led to underdevelopment there? If donors understand the culture and context within which aid will be applied they can better fine-tune the programs to suit such contexts, thus becoming more workable. Calderisi clearly ignores the rewards some African countries have received for progress in terms of good governance, encouraging enterprise, and ensuring rights and freedoms. A case in point is the Millennium Challenge Account the ex-US President George Bush initiated to help Africa's development. Countries Calderisi does add to his categorization of "serious" African countries such as Benin, Lesotho, Liberia, and Zambia are part of the over fifteen African countries that have met the US benchmark (see MCC, <http://www.mcc.gov/countries/index.php>).

The debate on whether aid contributes to economic developments seems unending. As Jeffrey Sachs sees

more aid as increasing the possibility "to end extreme poverty by 2025"(Sachs, 2005, p.25), William Easterly (2006) argues concentration on more aid to Africa will not be the best solution as it causes more harm than good. If giving aid to Africa in many cases is like giving money to a drunkard expecting him to spend it on food, then one can argue aid flow to Africa should cease. Yet it remains difficult to decipher what can help Africa. We accept corruption and mismanagement is part of the issue. However we cannot ignore the impact globalization, unfair trade regime, aid conditionality, and dependency have on recipient African countries. There is definitely a problem but it is not as bleak as Calderisi makes it appear. Aid donors need to harmonize in the help they seek to offer, and recipient governments should also put effective measures in place to ensure aid is used for the designated purpose(s). Besides what aid can do, African governments should muster courage to move on on their own with or without foreign assistance, knowing that much of the development the continent will realize will be due to the selfless efforts of its people, not outsiders. In short, aid is far from being the main panacea to Africa's developmental problems. Calderisi's book can remain a good reference point for African governments and aid donors, but not without a prior understanding of the broader dynamics of politics, aid, and development in Africa.

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Academic Article

Women in Peace and Conflict? The Need of Female Representation and Participation.

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Every day worldwide, women and girls are confronted with challenges through gender-related roles. They face disadvantages and suffer from discriminations. „During times of armed conflict, women and girls experience all physical, emotional and sexual forms of violence.” (UN 2002: 15) Thus, types of gender-based violence are multifaceted during conflicts. Women and girls are humiliated. They are forced to work for rebels. They are kidnapped, trafficked, and raped. They are misused for mine finding missions. They are targets in conflicts “simply because they belong to the enemy, but precisely because they keep the civilian population functioning and are essential to its continuity.” (Dombrowski 1999: 345)

Traditionally, the fields of peace, conflict, politics, and security are male-centered. Wars were planned, fought, and won or lost by men. Peace and security was provided and politics conceptualized by men. History shows that brave men were in charge of battles and soft women of peaceful homes. Being a fighter, a soldier, a leader was and still is associated with a heroic and masculine image. Men were/are the warriors and women the worries. This is due to (ascribed) gender-specific characteristics: men represent the stronger sex that is able to live independently, in autonomy, and remote from the

outside world. On the other hand, women are seen as defenseless, somewhat weak, and vulnerable without an active role in conflicts.

The stereotypical view stated above displays a clear androcentric identity perception. It differentiates unambiguously between generalized features and abilities of the two sexes: one can achieve something that the other cannot he can participate in conflicts actively but she can only contribute passively.

Nevertheless, women have always had a significant status within peace and conflict processes. While they used to primarily act in the background by assisting men at the front, they are nowadays involved in the informal as well as the formal sector. The Security Council Resolution 1325 (2000) and its sister resolution 1820 (2008) both on Women, Peace, and Security focus on furthering female participation. Besides “reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building,” they also express “concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict”. (SCR 1325: 1) Thus, the resolutions reveal the double role women obtain in peace and conflict: victims and actors.

In practice, it is important to take both roles into

account. Lives of women and girls are to be protected, rights provided, and needs regarded. On the other hand, female participation must be supported and increased by the international community. In the informal sector, women work in medical service, organize peace marches, dialogs, and support intercultural tolerance. In the formal sector, they are engaged in developing early warning mechanisms, applying preventive diplomacy, and operating in peace consolidation and global disarmament. However, female participation is still less visible and less accepted. (Anderlini 2007: 33-34)

While speaking about women in peace and conflict to a friend, he raised the following questions: Since centuries, peace and conflict have been male matters; why would it need a change? Why is it important to include and increase female representation? Why does this topic become stressed frequently? Does an increase of women mean a reduction of men?

Peace and Conflict as 'Male Matters': Stereotypically, yes, peace and conflict were male matters. Only men possessed active roles. However, peace and conflict are social processes. They occur within or connected to societies in which both sexes are to be involved as much as they are engaged in their societies. Their commitment in informal and formal sectors is crucial to move towards peace. Generalizing men as warriors and women as worriers is inadequate and obsolete. Both sexes suffer from conflicts and profit from peace. Both sexes have the ability to contribute to overcoming violent conditions. If both sexes work cooperatively towards peace, results will appear faster and obtain more sustainable results.

Importance of Female Representation in Peace and Conflict: As stated above, in general the broad fields of peace and conflict were and to some extent still are male matters. The majority of senior-most positions are taken by men. Increasing female participation on all levels is fundamental. Why? 1. Women have greater access to civilians, particularly women and girls that are affected by conflicts. They can therefore ensure that protection is realized effectively and that special needs are taken into account. 2. Female participation shall guarantee that equal consideration and rights for both sexes are included in peace treaties and further agreements. 3. Gender-based violence of male soldiers against the civil populace occurs less often if female fellows are integrated. Thus, women of the same culture as men can stop them from abusing locals. 4. Women are not or less observed as threats but rather as understandable and empathetic. Hence, they appear as suitable candidates for negotiations.

Necessity of Emphasizing the Need of Increased Female Representation: Although we are writing the year 2009, gender-related stereotypes, hierarchies, and inequalities subsist. If external female actors are integrated in conflict management and peace consolidation, they can support the progress of equality.

Although they are unable to initiate the process, they can still strongly support it. Their commitment produces eye-opening effects. By means of that, "local women would have a better chance of being included in formal peace processes". (UN 2002: 68) As an aftermath, fewer conflicts may occur since "Gender inequality increases the likelihood that a state will experience internal conflict." (Caprioli 2003: 18). However, equality is a social development that is linked to a specific identity. According to the cultural memory theory, changing societal identities requires will and at least a period of one to two generations. (Assmann 2002) If the international community stresses the importance of an increased integration of women in peace and conflict, the political will of a country may be influenced. Then, it is about a slow internal modification of the social identity to overcome inequality.

Increase of Women = Reduction of Men?: No, I do not intend to state that this field should become 'female matters' by means of advancing women and repressing men. It is proven that operations have the best outcome when men and women work cooperatively. The two sexes have access to specific areas which supports overcoming the conflict with greater efficiency. (DPKO 2004: 63)

The former United Nations Deputy Secretary-General Louise Fréchette said, "No development strategy is likely to work unless it involves women as central players. [...] Equally, no peace strategy is likely to be durable without the involvement of women." (Fréchette 2001) Peace and conflict as well as equality are linked social processes. If female actors are involved, if they can make their voices heard, if politics stop being a male subjects, hierarchies and gender roles will be modified. Eventually strict inequality will be overcome and fewer conflicts occur which Caprioli proved in a World Bank study. This is a theoretical statement that sounds easier than it is in practical politics. Of course, female roles in peace and conflict are complex and manners of their integration as actors depend on several aspects that need to be adapted and applied to each situation. In spite of that, supporting and increasing female representation will have positive long-lasting impacts on regarding female victims needs, preventing and overcoming conflicts, ensuring their consideration in post-conflict agreements, and underpinning the progress towards equality.

Both Security Council Resolutions 1325 (2000) and 1820 (2008) emphasize exactly that. They obtain publicity effects and leverage mechanisms. Through that, the international community is reminded of the significance of protecting women from discrimination and involving them in all peace and conflict related sectors, former 'male matters' and soon to be 'gender matters'.

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Academic Article

The American Opposition to the International Criminal Court Determination to Stick to a Unilateral Approach or Justified Hesitation to a Flawed Framework?

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Almost all major powers outside of Europe refused to sign the Statute of Rome that founded the International Criminal Court in 1998. The American opposition, however, is particularly extraordinary, since all of America's allies support it. Moreover, the USA has proven to be an advocate of human rights and put a lot of weight and money in the process of exporting its values, especially throughout the recent administrations. One line of argument assumes that international contributions to security must be in favour of American security politics, since they denote a boost for American security as well (Sewall, Kaysen and Scharf, 2000, p. 2). However, the US feels it holds a special position being the only superpower and thus exposed to a larger-than-average amount of danger that uncontrolled hatred could be focused on it (Knowlton and Fuller, 2003).

The basis of the divide the ICC has produced with the US are two very distinct views on enforcement policies for human rights. While the Court exemplifies a collective model, the US prefer a unidirectional enforcement strategy (Mayerfeld, 2003, p. 93). Buzzwords such as 'sovereignty' and 'constitutionality' are chipped into the discourse about the ICC to outplay it (Sewall, Kaysen and Scharf, 2000, p. 13). Ruth Wedgwood has, along with other authors, defended the American view on the ICC, listing

the reasons that keep the USA from supporting the newfound Court. She lists „the problem of amnesties in democratic transitions, the necessary role of the Security Council in UN security architecture (...) the role of consent as a treaty principle and third party jurisdiction, the handling of treaty amendments, and the inclusion of ‚aggression‘ as a crime with no agreement on its definition“, as well as „the necessary role of the United States in providing effective enforcement of ICC judgements“ (Wedgwood, 1999, p. 93) as the main problems demanding further improvement.

Clinton and former foreign minister Albright envisioned themselves as pioneers for a permanent court in 1997 but reversed their views (Schneider, 2002, p. 131f.). The treaty was signed by the USA under the Clinton Administration on the last day it was open for signature, December 31, 2000, who nevertheless dissuaded his successor from ratifying it (Mayerfeld, 2003, p. 95).

Calling the american approach to the ICC under Clinton ‚cautious engagement‘, the Bush Administration's position towards it can be best described with ‚outright opposition‘ (Sadat, 2000, p. 43) or ‚undisguised hostility‘ (Mayerfeld, 2003, p. 95). The deferral of investigation or prosecution according to Art. 16 was misapplied by the US in July 2002, days after the entering into force of the

Statute. By announcing to veto every upcoming peacekeeping missions unless the SC would make use of its power under Art. 16 and exclude persons, whose state had not ratified the Statute, and who were involved in missions authorised by the UN itself from prosecution by the Court, it railroaded Res. 1422. (Schabas, 2004, p. 83). Res. 1422 had been adopted 15-0, after the US had threatened to withdraw its peacekeeping troops from Bosnia (Knowlton and Fuller, 2003). In many legal opinions, this resolution constitutes “an ugly example of bullying by the United States, and a considerable stain on the credibility of the Security Council” (Schabas, 2004, p. 85). The UK and France also signed bilateral agreements with Afghanistan to protect their peacekeeping nationals from prosecution through the Court. However, these agreements are more limited than the American one, which includes also government officials and contract workers (Knowlton and Fuller, 2003).

After Bush withdrew Clinton's signature, congress passed the ‚American Servicemembers' Protection Act of 2002' (ASPA) which blocks the participation of American citizens in peacekeeping operations in countries that have ratified the treaty, as well as cancels military aid to states-parties if they don't agree to sign a bilateral immunity agreement (BIA) with the US on the non-extradition of US citizens to the ICC. Further, ASPA regulates military operations to intervene in cases with US citizens in ward at the ICC. A number of such bilateral treaties has already been established (Status of US Bilateral Immunity Agreements, 2006). The question as to whether it is even possible for a state to sign a bilateral treaty with the US agreeing not to extradite its citizens to the Court without breaching international law is being examined by scholars. In case of a surrender request to the Court, the US could infringe on the Vienna Convention on the Law of Treaties. The US counters this by drawing upon Art. 98(2) of the Rome Statute that was designed with regard to existing agreements, stating that „the Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements (...)“ (Rome Statute of the International Criminal Court, 1998, Art. 98(2)). In fact, however, not the question of how to interpret Art. 98(2) is the real problem, but the legitimacy of the Court altogether that is being circumvented by this attempt.

The European countries immediately took an unequivocal stand on this issue by agreeing not to sign such a treaty (Bindman, 2003). Even future EU-states, though small, such as Latvia and Slovenia, have withheld their cooperation to the US in order to comply with the then ongoing EU-application process (Knowlton and Fuller, 2003). „Aspirant countries must follow the club's rules“ (Diego de Ojeda is quoted in Ibid), so a European Union spokesman on the issue. The US explicitly threatened the EU, in particular candidate countries from the former Eastern Block (Ibid).

The actual benefit of these agreements is not known, they „seem to flout international law merely to show who is master“ (Bindman, 2003). A few European Countries suggested they would accept the US approach, if the US undertook a sign to demonstrate that this would not be equal to granting impunity. Still, even if the US augured to investigate and prosecute possible perpetrators, the ICC's authority and legitimacy would nonetheless be openly peached, as it circumvents its main purpose: to be able to control national governments in their handling of these major crimes. Without acceptance of the US for that principle, its efforts to claim validity of Art. 98(2) for its endeavour constitutes a demand for impunity for American citizens (Roth, 2002). As a comparable example for a compromise in such issues qualifies the matter of murder suspects extradited to the US: This so happens in many cases only under the condition of the non-appliance of the death penalty; something the US shrinks from doing so but still agrees to (Roth, 2002). So similarly, the US could recognize the jurisdiction of the ICC and understand that no state can, with a clear conscience, extradite a US convict to the US when a feigned prosecution is to be expected (Roth, 2002).

The Crime of Aggression A Cause for Hesitation?

To the observer, a reticent attitude of the court towards the USA concerning possible criminal activity in the ongoing war in Iraq is apparent; an approach also advised throughout much of the relevant literature (Kaul, 2006, p. 95f.). Richard Perle, chairman of the Defense Policy Board Advisory Committee from 2001 to 2003 under the Bush administration, publicly admitted that the war against Iraq infringed on international law and many scholars are of the opinion that the war constituted a crime of aggression. This crime, however, lacks a definition and is therefore not within the jurisdiction of the Court (yet) . No action in this matter can be expected before 2010 when the review conference will be held and amendments to the Statute could be made. It is still open whether the US will attend this conference in order to join negotiations over possible further directions the Court will take on issues such as drugtrafficking and terrorism that are up for decision (Cohen, 2008).

In the past, the USA were widely supportive of the establishment of the ICTY and ICTR. These tribunals are generally viewed as predecessors leading to the establishment of a permanent court, in the process of which the USA were similarly intensively integrated (Zwanenburg, 1999, p. 125). During the Cold War, the US were highly in favor and involved in the regularization of the international sphere, a strategy to keep the Soviets under control (Sewall, Kaysen and Scharf, 2000, p. 2). These current attempts to undermine the legitimacy of the ICC sends the signal to the world, that the US doesn't accept international law if it doesn't suit their purpose, and that the US will make use of their powerful standing to

show this (Roth, 2002). Schabas argues that, „in practice, Res. 1422 will probably not prove to be a serious obstacle to the fulfilment of the Court's solemn mission“ (Schabas, 2004, p. 85). How much of a stumbling block it will de facto constitute will turn out in the Court's future work. What Res. 1422 unequivocally signals, though, is that the USA stands firm on its self-conception of a superpower that moves outside of the arena. Objections to the Court by the USA were explained with concerns to the national security and public law and order (Blanke, 2001, p. 151). Naturally, by ratifying the Statute, the ICC is given the power to interfere in the law and order of states, but, to the same degree in all states. By excluding itself from a concession a great number of states agreed to make, it demands its own rules for itself. The biggest harm resulting from this is of a symbolic kind. The Arab League immediately united behind Sudan's president al-Bashir in an attempt to defend what they perceived as an unequal treatment. To criticize that international law makes Sudan discharge its duties while ignoring the war in Iraq and the politics of Israel in the near east is fair enough. Most of all, due to US support for al-Bashir's indictment. Not letting itself be bound by the ICC but supporting its approach in other countries is a position that, not very surprisingly, is met with criticism around the world (Cohen, 2008).

The Role of the Security Council

Regarding the interaction of the ICC with the SC, Wedgwood argues that the latter is not given an adequately significant role in the Statute and thus in the Court, respectively that at the Court's formation the existing ‚security architecture‘ within the United Nations has been neglected. She further criticizes that the decision as to whether or not justice has to step back in order not to endanger the peace process should not be made, prudential and plain political as the answer needs to be, by the Prosecutor. She claims that it seems the whole issue of democratic transitions was left untouched in the Statute, although it is of substantial importance when trying to settle fundamental disputes that have led to large-scale crimes. This is specifically important in matters settled in areas where international law is only just getting started or unclear. Calling this interference with the powers of the SR pretentious, Wedgwood fears that „the wish for an independent criminal court may have come at the expense of the Council's role in peace and security, and so grave a derogation may be too profound for a five-week conference to consider with proper reflection“ (Wedgwood, 1999, p. 96-98). This is particularly controversial considering that the authority held by the SC in matters of international peace is crystal clear when it comes to the GA and the ICJ: for both, it is not in their competence to act in a matter when this matter is either, for the GA, upon the Council's agenda, or, for the ICJ, when the SC has acted under Chapter VII of the Charter (Ibid, p. 97). However, the reproach of the ICC interfering gravely

with the security politics of the UN doesn't fully sustain. The SC can refer cases to the Court as well as suspend investigations (Hafner, Bonn, Rübesome and Huston, 1999, p. 113). To give it even more control over the ICC, „would result in the Security Council exercising a dominating function rather than merely a significant one“ (Ibid).

The SCs allegedly only very limited powers to intervene in the Court's proceedings is, along with the other flaws in the Statute, interpreted by American critics as the result of the rushed establishment of the Statutes in a five-week conference (Wedgwood, 1999, p. 95). This argument has to be countered by recalling the long history of commissions working on drafts for a possible international criminal court, especially the contribution of the Preparation Committee which spent over three years compounding over the interaction between the SR and the ICC (Hafner, Bonn, Rübesome and Huston, 1999, p. 114). The reached compromise is recorded in the Articles 13 and 16, further in Art. 53 (2) and (3), 87(5) and (7) (Rome Statute of the International Criminal Court, 1998). The Preparation Committee left a number of issues openly unsolved until the Conference in Rome, however, a comparable number of controversial issues had been successfully solved in the process that led to Rome. Among others, complementarity accounts for such an issue, as well as the relationship of the Court to national legal orders. For the issues that were left open the Preparation Committee prepared possible solutions in order to be able to accelerate the finding of a compromise in Rome (Kirsch, 1999, p. 1-2).

Third-Party Jurisdiction

In the case of a referral, the otherwise necessary conditions in order to trigger the ICC's exercise of jurisdiction are no longer required. The controversial aspect arising from this regulation is the fact that since the SC acts within Art. VII of the Charter, its decisions are binding in every state that ratified the UN Charter. Thus, the Court's jurisdiction is subordinated to the powers of the SC and hence legally enforceable under valid international law. This means that even states that didn't ratify the Statute fall under the Court's jurisdiction in cases that the SC referred to the Court (Lee, 1999, p. 149). The arrest warrant issued for Sudan's president al-Bashir is the result of this regulation; after intensive lobbying of human rights groups and NGOs, the SC referred the situation in Darfur to the chief prosecutor (Rodman, 2008, p. 529-530). This is tangent to the prohibition of third-party jurisdiction. The SC could refer a situation in which neither the state of the accused, nor the state on whose territory the crime has been committed, are parties to the Treaty. Naturally, a lot of advantages for the Court arise from this regulation, for example an empowerment of the Court's possibilities in internal armed conflicts such as in Sudan (Lee, 1999, p. 149). Essentially, it makes sense that precisely states likely to commit large-scale crimes will probably rather not sign

the Statute of Rome and therefore elude international criminal prosecution (Morris, 2000, p. 219). States critical of the alignment of the ICC with the SC put forth that this connection is in violation of the law of nations. Former prosecutor of the ICTY and ICTR, Louise Arbour, argues that the SC doesn't derive power from the Statute that it doesn't already obtain from the Charter (Arbour and Bergsmo, 1999, p. 130, 139f.). However, she also acknowledges that by referring situations to the Court and affecting third-party states, the law of treaties and thus regulations of the UN Charter and practice is disobeyed.

The reproach towards the SC of acting *ultra vires* by violating the principle of third-party jurisdiction in these premises sustains. However, by imposing its will on states in order to achieve prosecution, the SC reacts to neglect of contractual commitments that the states have made outside of the ICC. The right and duty to punish grave breaches or extradite a convicted person to another country where they will be prosecuted results from the GC and AP II. Furthermore, the Convention on Genocide, ratified by more than a hundred states by now, obliges the parties to the treaty to punish genocide (Ambos, 2001, p. 347). For a number of other crimes, such as hijacking, air piracy and others, the passed conventions include the obligation to prosecute or extradite an accused person (Roht-Arriaza, 2005, p. 8). So to a certain extent it could be argued that the SC merely acts in its function to guard the maintenance of international peace and security. If this peace and security is compromised, the SC interferes, merely using the ICC as a tool it has on hand.

The third-party jurisdiction resulting from the alliance between the SC and the ICC is yet the smaller problem, especially for the USA, since it possesses the right to veto and thus to block referrals disadvantageous to it. Much more objection was raised due to the provisions in Art. 12(2) that regulate the Court's exercise of jurisdiction. According to it, „the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute (...)

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national“ (Rome Statute of the International Criminal Court, Art. 12(2) (a) and (b)).

The objections to this regulation are obvious and, to a very big extent, justified: It does infringe on the Law of Treaties to bind a third-state against their will. However, given the basic aim of the ICC, by regulating its jurisdiction differently it would have completely missed the mark. The goal of an international court is obviously to create a universal jurisdiction. Jurisdiction is characterized by exercising a somewhat binding force on reluctant members of society: appearing in front of the court is not optional. The binding force that results from jurisdiction in

national states is accepted and tolerated as long as it withstands certain criteria that prove its independence and fidelity to the rule of law. Given the logical fact that an international criminal court needs to be able to exercise its jurisdiction internationally, the same pattern of explanation can be applied. If the Court's jurisdiction is limited to international crimes, and further the national court primary in charge has to fail to react in order for the ICC to become authorized to do so, objections to the ICC should be clarified (Morris, 2000, p. 220). On the other hand, the ICC needs to be careful not to interfere with states' possibilities to settle their disputes peacefully in order not to gamble away a principled positive attitude with a hasty pressing ahead that is interpreted as attempted intimidation.

Wedgwood further calls the alleged foundation in consent the lynchpin of the Statute of Rome. True that, the way it is, „it is not perfect, from anyone's perspective“ (Kirsch, 1999, p. 8) By building the ICC on a multilateral treaty rather than have it erected by the Security Council it should be guaranteed that member states explicitly agreed to its foundation. Third-party jurisdiction is contradictory to this. The USA worry that this gives ill-intentioned critics the chance to harm it (Wedgwood, 1999, p. 100-101). Further, reasoning was based on the fact that this regulation constitutes a breach of the Vienna Convention on the Law of Treaties, whilst international treaties are generally not looked upon with as binding by the USA anyway.

The road of consent was not chosen, so the other side, because a compromise would have had to be bought over the most basic principles of fairness, going so far as to even compromise the Court in its purpose as a whole. The US proposal to include the right to veto a prosecution for all permanent members of the SC serves as a good example. The opposition to the US approach led to an attitude of „better no court at all (...) than one so fatally flawed“ (Neier, 1998). In the end, US support couldn't be achieved without a sellout on important values, which is why the international community in support of the ICC went on without it (Ibid).

Peacekeepers under Fire?

Considering the status of peacekeeping-missions under the jurisdiction of the ICC, much concern has been expressed. Especially American peacekeeping troops are stationed in many countries „and so clearly and even uniquely the targets of hatred and antipathy, that the court's mission of trying alleged perpetrators of genocide or war crimes could be twisted for political purposes to punish them wrongly“ (Knowlton and Fuller, 2003). Extra regulations were arranged for peacekeeping missions to prevent intentional abuse of the Court's power to harm states actively involved in peacekeeping. Art. 8(2)(b)(iii) declares “intentionally directing attacks against personnel, installations, material, units or vehicles involved in a

humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict" (Rome Statute of the International Criminal Court, Art. 8(2)(b)(iii)) a war crime. Furthermore, existing agreements concerning peace-keeping missions and the security regulations applicable to them are not affected by the regulations provided by the Statute. And in general, the principle of complementarity doesn't allow for the Court to take over jurisdiction if the affected state is willing to do so itself (Lee, 1999, p. 148). In theory, members of peace-keeping missions of non-states Parties could be indicted in front of the ICC, but considering that peace-keeping has been regulated on national levels so far, there is no concern for this to change. Arbour furthermore argues that states are in possession of other means to prevent the arrest of their peace-keeping nationals (Arbour and Bergsmo, 1999, p. 139). As mentioned above, the UK and France signed bilateral agreements with Afghanistan to protect their peacekeeping forces from prosecution through the ICC (Knowlton and Fuller, 2003). The United States secured the immunity of its troops using Res. 1422, which goes a lot further than the measurements taken by the UK and France.

The problem is that this blackmailing of the USA could not be ignored. The USA is immensely pivotal in multinational peacekeeping measures. Peacekeeping at its momentary level would most certainly not be maintainable after a backdraw of the United States (Zwanenburg, 1999, p. 126-127).

The USA and the ICC an Outlook

In the debate on the ICC, the absence of American support has been the focus of attention. Negotiations on the ICC have taken place with three US administrations, the most recent being the least promising. A heated debate in the international community arose and drove a wedge between the EU and the US that is over to the present administration to fix. The lacking will of the world's current only superpower and the country linked most as advocate of western values moots a series of problems. The new administration under President Barack Obama has been expected with high hopes for a new direction in international cooperation and a significant improvement of US-EU relations. Up until May 2009, however, Obama has been even more cautious in directions of the ICC and US contribution to it after making more direct and semi-assuring statements during the election process, where he commented on the ICC's actions in Darfur by saying: „These actions are a credit to the cause of justice and deserve full American support and cooperation" (Rovenger, 2008). Adding that „the United States should cooperate with the ICC investigation in a way that reflects American sovereignty and promotes our national security interests" (Ibid). In what way he intends to realize this kind of

cooperation is yet unknown. His former advisor Samantha Power commented on the issue by saying that until after the closure of Guantanamo, the end of the war in Iraq, and the renouncement of torture, an American membership in the ICC would be counterproductive for the Court's credibility. According to Power, it would consolidate the Court's reputation as an instrument for America's hegemony and further burden the new president's relationship to the US military. In any scenario, Obama indicated he would thoroughly discuss any decision on ICC ratification with the US military (Center for American Progress Action Fund). Vice-president Joe Biden is strongly in favour of US membership in the ICC (Rovenger, 2008). US support for the prosecution of Sudan's president al-Bashir remains unaltered. In any case, in order for the USA to ratify the Statute of Rome it would have to pass debate in congress, which looks set to become difficult (Cohen, 2008). Meanwhile, countries who refused to sign a BIA with the US have started to look for alternative powers to support them with military aid. „The American idea, grounded in legal principles, has been undermined", and further, „Washington has broken ranks with the Western liberal tradition of which it should be a cornerstone" (Ibid). The politics of double standards that the US is applying is obvious and very unlikely to survive for long.

Mutual policies will be necessary and will yet increase in importance in most globally overlapping fields of politics and economics. A hegemonic power can be one guarantor for a system of mutual interests and benefits, but so can an international regime. In the words of Keohane, „by establishing legitimate standards of behaviour for states to follow and by providing ways to monitor compliance, they create the basis for decentralized enforcement founded on the principle of reciprocity" (Keohane, 1984, p. 245). Keeping one's flexibility regarding one's position in the international community might be an outdated strategy, regarding the possible „substantial hidden costs" that this model of choice could bear (Ibid, p. 243). Even in its position as superpower, the experience of the past years have shown that American resources have been overstrained by two simultaneous wars. The solo run bore the advantage of independence, but a rethinking of foreign politics strategies has been announced and indicated.

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