



# Looking Eastward Emerging Geopolitics

**Journal of International Relations**

Vol. 7, No.1  
Spring 2005

Sponsored by Sigma Iota Rho and  
the International Relations Undergraduate  
Student Association

## Articles

**The Middle East and the West: Emerging Politics**  
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**National Borders: Politics and Conflict**  
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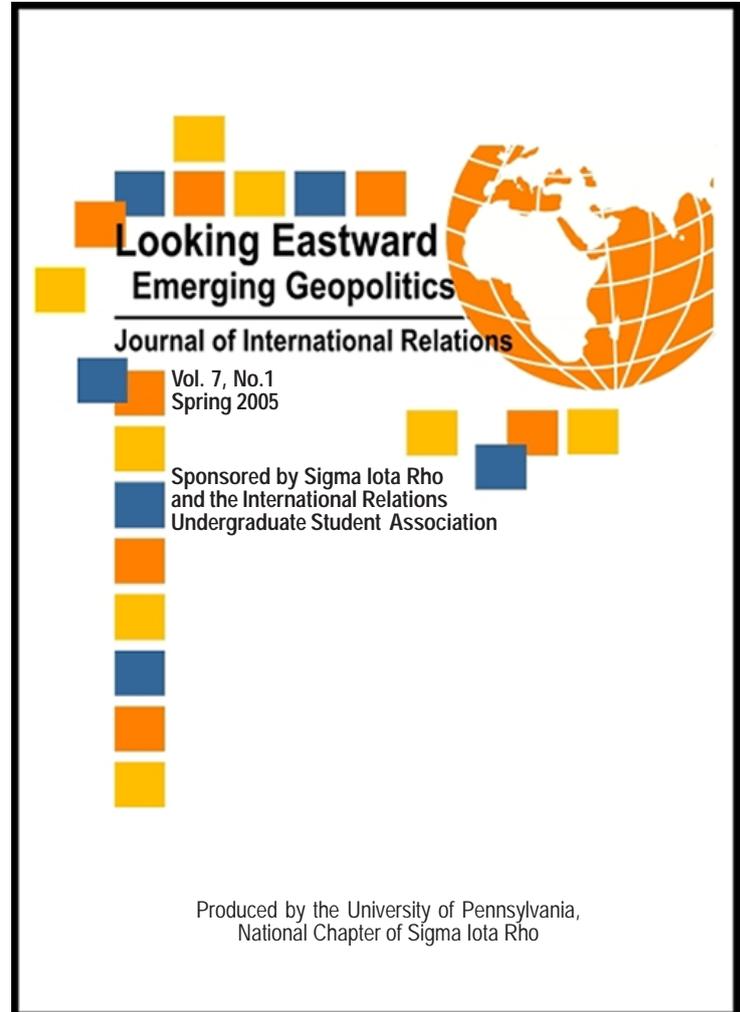
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National Chapter of Sigma Iota Rho

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**LETTER FROM THE EDITOR**

Dear Readers,

It is my pleasure to present the seventh edition of the annual Journal of International Relations, produced in partnership by the Epsilon Chapter of the Sigma Iota Rho (SIR) International Relations Honor Society and the International Relations Undergraduate Student Association (IRUSA). The Spring 2005 edition of the Journal represents the work of select undergraduate students of international relations from across the country. Not only were submissions solicited from a nationwide applicant pool, but our production staff was broadened to include the participation and input of students from numerous universities. These efforts represent the Journal's continued steps to develop a publication that integrates and links SIR university chapters throughout the country in cooperation with the broader mission of SIR of creating a national community of participating chapters.

This edition of the Journal predominantly focuses on political trends, developments, and history related to regions in the Middle East and Asia with one counterpoint perspective on Latin America. These two areas of the world have become increasingly important in the field of international relations in recent years. Thus the regional focus of the 2005 Journal represents an effort to present the original ideas and research of undergraduate writers in the highly relevant fields of Middle Eastern and Asian political studies. The articles are divided into four themes, including *The Middle East and the West: Emerging Politics*, *The Politics of Islam*, *Political Economy and Development*, and *National Borders: Politics and Conflict*. Through these themes, the writers in this edition explore and examine important issues facing the countries, citizenry, and organizations in these regions. This issue of the journal includes an array of increasingly relevant and pertinent issues ranging from emerging security concerns to the consequences of economic development to the cultural consequences of political integration to role of religion in politics.

In addition to topical, insightful articles, this year's edition of the Journal also stands out due to its increased length, new exterior, and broadened publication staff which includes students from five different universities across the country. Overall, the Journal's new look, increased content, and broadened staff demonstrate our continued commitment to producing and distributing a professional publication to showcase the work of talented undergraduate writers in the field of international relations from around the country.

Finally, I would like to thank the Editorial Staff, the Peer Reviewers, and other essential contributors for their help and continued support in the publication process.

Sincerely,

Amitis Khojasteh  
Editor-in-Chief

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### Joining the Club:

#### Contemporary Identity Crisis in Turkey: Effects on EU prospects

Charles Maffey  
University of Pennsylvania

#### Introduction

By virtue of history, geography and culture, Turkey occupies the central position between two distinct societies, the East and the West. Its pivotal situation implies that changes in Turkish posture toward either side are critical to politics in the region, and for that matter, the world. Just as Turkey is conflicted in the international setting, it is also subject to internal controversy as its people struggle to find a Turkish identity. The country's current priority, the quest for accession to the European Union (EU), will place added pressure on both its geopolitical equilibrium and internal evolution. Moreover, the stakes are appropriately high for such a critical nation, as admittance to (or rejection from) the EU will have repercussions not only for the full spectrum of Turkish society; it will also shape the future of East-West relations. "Turkey is simply the most important country in the Middle East. What Turkey does or does not do will critically affect the course of events, including stability, not only in the Middle East but also in the Caucasus, Central Asia, the Balkans and the West."<sup>1</sup>

To fully comprehend Turkey's path to accession and its potential repercussions, one must first understand that Turkish identity, like that of many other Middle Eastern peoples, is in flux. A framework that models Turkish politics must therefore take into account the competing and sometimes complimentary strains of Turkish identity. To be a Turk, or any ethnicity, for that matter, is to differentiate oneself from one's neighbors. It is to create and reinforce cleavages between groups. Here Turkey's Kemalist legacy becomes problematic, when the values of Islam are also included in the calculus of Turkish identity. While "Turkish-ness" distinguishes Turkey from its Arabic and other neighbors, a shared belief in Islam brings them together, and for many a discrepancy exists in the priority placed on these competing values. Finally, a drive for modernization, and sometimes a complicit desire for Europeanism, further complicates the matter. Thus, while the Turks attempt to differentiate and retain their own distinct culture, they follow a religion that dominates the Middle East, and simultaneously aspire to be included in a dramatically different Europe. To Turkish society, tension is endemic as its various elements struggle to be Turkish, Islamic and European at the same time.

By analyzing each of these strains of Turkish identity and their respective proponents it becomes obvious that joining the European Union will be a major step toward Turkey's "European" identity. This step will not be made easily, and, if it is

made, it will be accompanied by serious criticism from the competing strains of Turkish identity. Reconciliation of these exacerbated tensions will be difficult. Moreover, the international community has much at stake in Turkey's bid for the EU. The success or failure of its aspirations may change Turkey from a pivot to a partner, permanently. If it is accepted to the EU, Turkey may no longer be considered a Middle Eastern country, and will instead delineate the "end of Europe." Oppositely, if rejected, Turkey may never reconcile with Europe, and reorient itself toward its Islamic neighbors. One conclusion is certain: Turkey's bid to join the EU will hinge on reconciliation of competing strains in Turkish identity, and its results, for better or worse, will be global in scale. The world is watching as Turkey attempts to resolve its identity crisis.

#### Turkish Identity: Three Influences

Turkish identity, while truly an amalgam of cultures, ethnicities and political philosophies, is defined by three fundamental influences.<sup>2</sup> Originally, under the Ottoman Empire, the identity and politics of present-day Turkey were founded on the basis of Islam. Institutions such as courts and government were legitimized by Sharia law, as were interpersonal relationships. As the Ottoman Empire declined and Europe progressed, Western influence borrowed from the Europeans was couched within Islamic precepts. The Young Ottomans, for example, argued for "a defense of liberal values with Islamic arguments."<sup>3</sup> With the advent of the "Young Turk" movement, Islam faded further from the political scene as there was little or no effort to reconcile modernization with Islamic law. However, Islam was still very present in Turkish politics and identity until it was dealt a near-death blow by Mustafa Kemal Atatürk, the founder of the modern Turkish nation-state. In 1923 Atatürk overthrew the Ottoman Empire in the Independence War and set out to strip Turkish institutions of their Islamic foundations. He abolished the caliphate and Islamic courts, and developed a unified, secular education system. In addition, he "eliminated the visible symbols of the past and Islamic tradition" by outlawing traditional Islamic dress, changing to a Latin alphabet, the Gregorian calendar and removing from the constitution the clause "the religion of the Turkish state is Islam."<sup>4</sup>

While Atatürk is responsible for vast liberalization in the Turkish political and social arena, he is also the architect of the new *Turkish* identity. He developed a history of Turkic people that predated Islam, claiming "The Turks were a great nation even before they accepted Islam. However, after they had accepted the religion, it loosened their national ties and numbed their national feelings."<sup>5</sup> As a finishing touch to his reforms he invented and emplaced a national anthem. Now, instead of identifying themselves primarily as Muslim or Ottoman, Kemal's people had become *Turks*. This reorientation of identity away from Islam and towards a progressive, nationalist, Turkish identity is known today as Kemalism, and it remains the most powerful force in contemporary Turkish identity.

Although Atatürk is hailed by the vast majority as a national hero, it is important to note that Kemalism has its share of discontents. "Kemalism... has always been more of a theory *for* society than one which has grown *out* of society."<sup>6</sup> Indeed, the change to Turkish identity was created and enforced by new military and political elite

that had appeared and multiplied during the Independence War. Today, many of those elite entities still identify strongly with Islam. "Turkish realities are not monolithic. Many Turks have never really separated themselves –openly or covertly- from their Islamic cultural heritage, nor from Islam's religious practices. Many Turks consider Islam as the powerful counter-identity to the totality that Kemalists have applied to Turkey."<sup>7</sup> Contemporary Turks have subscribed to these two contentious components of Turkish identity, Islam and Kemalist nationalism, to varying degrees. Each has had its moments of supremacy over the other. Most notable was the recent Erbakan administration, in which the Islamic Welfare Party was elected into office in 1996. In this case the administration spoke loudly against Turkish cooperation with the United States in Operation Provide Comfort, which involved the strategic bombing of Northern Iraq, a fellow Muslim nation. After eleven months the Turkish military, seen as the custodian of Kemalism, stepped in and forced Erbakan to resign in 1997. Thus Islam and Kemalist nationalism have competed and continue to compete as part of Turkish politics and identity.

The fact that Turkey is a Muslim nation is widely accepted around the world. Likewise, Turkey is respected today as a secular sovereign nation-state. These two facets of Turkish identity, Islam and Kemalist nationalism, while they may have been contentious in the past are today taken for granted. As a part of Ataturk's legacy, Turkey has a serious desire to be recognized as European. Kemal once remarked, "The Ottoman Empire began to decline the day when, proud of her successes against the West, she cut the ties that bound her to European nations. We will not repeat this mistake." In addition to nationalism, Ataturk's reforms were also clearly of a European orientation. Likewise, today's champions of modernization also seek to emphasize that "European-ness" is a part of Turkish identity, however, acknowledgement from the de facto members of Europe has been less than unanimous. As noted in the *The Times, London*, "Turkey has so little in common with the current member states that further policy integration would be almost impossible. The prospect of allowing an almost entirely Asian developing country to become the biggest member of the EU prompted the former French President, Valéry Giscard d'Estaing to predict 'the end of Europe.'"<sup>8</sup> Judging by the tone of d'Estaing's reproach, more is at stake than simple logistics. Many Europeans doubt the actual European character of Turkey itself.

In addition to some European skeptics, the European-oriented side of Turkish identity has been rejected by other parties as well. Clearly there is a strong reaction from right wing proponents of Kemalist nationalism. *Turkish Daily News'* Gunduz Aktan criticized these new Turkish liberals by saying, "the basis of being a Turkish liberal means that you believe in everything the West says and treat your country as the enemy."<sup>9</sup> Although it is aspired to by many Turks, being counted as "European" is by no means assured, abroad or at home.

### Accession to the EU: Who Wins and Who Loses

Turkey's bid for accession to the European Union has augmented the already serious tensions that exist between the competing strains of Turkish identity. In addition, the repercussions of Turkey's envisioned membership are positive for some tiers

of Turkish society, and negative for others. Regardless of whether or not Turkey succeeds in joining the EU, the European Union's decision in December of 2004 (at which point the EU will decide if it will begin accession negotiations) will affect nearly everyone in Turkey.

Some of the greatest proponents of Turkey's admission to the EU are the mainstream political elite. By far the most popular party today, the Justice and Development Party (AK Party) led by Prime Minister Recep Erdogan has succeeded in appealing to all the areas of the new Turkish identity. The administration represents a pro-Western version of the Erbakan government that was forced out of office by the military in 1997. It even includes Foreign Minister Abdullah Gul as second-in-command, who was a member of the previous administration. The coalition government has as its primary objective accession to the EU, but Western analysts believe that Erdogan is out "to show the world's Muslims that you can be both a good Muslim and believe in Western values."<sup>10</sup> As will be covered later in the essay, the AK Party is responsible for major policy changes that have brought Turkey a long way towards the eventual accession. The fruition of the AK Party's plan would bring it tremendous support from all but the most radical, and the Erdogan government itself would wield tremendous power within the EU as Turkey's projected eighty million people would make it the largest nation in the EU by 2015, and thus the one with the most votes.

For other parties, the benefits of Turkey's accession are less certain. One of these is the Turkish military. On the surface, as the guardian of Kemalism and thus a proponent of modernization and Westernization, the Turkish military would logically support accession. Nevertheless, the reality is not so simple. Although Turkey's military has always been at the forefront of its relations with the West, in part because of its central role in NATO during the Cold War, civilian-military relations have recently undergone much scrutiny. As is evidenced by its various forays into politics, the Turkish military is clearly not under civilian control, an arrangement that has proven fundamental in the doctrine of Western armed forces. Currently the National Security Council, composed primarily of Turkey's top generals, is an incredibly powerful force on the Turkish political scene. Finally, not only would accession to the EU necessitate placing the military under firm civilian control, it would also bring about a nearly complete withdrawal of troops from Cyprus, where they have been positioned en masse since 1974, a move that army officials are reluctant to make. Although it will increase ties with the West and help with regional security, the Turkish military may also lose considerable political and physical jurisdiction if Turkey enters the EU.

Turkey's Kurdish population faces a similar interesting dilemma. Already the Kurds have seen some benefits of EU membership as the AK Party has loosened restrictions and strived to eliminate human rights violations committed against its Kurdish population. Recently Erdogan lifted "state of emergency" status off of four provinces being kept under tight security. He also has permitted the Kurdish language to be spoken and even aired on television, and for expressions of Kurdish culture to go unrepressed. Conversely, the Kurds are not entirely innocent victims. One of their militant wings, the Kurdistan Worker's Party (the PKK, and more recently its splinter, KADEK) has continuously resorted to violence and is engaged in ongoing conflict

with the Turkish military. The Turkish government considers the PKK to be a terrorist organization, however it was not until recently that it was classified as such by several EU members, such as the German government. If Turkey joins the EU, it may mean greater rights for the mostly peaceful Kurds, but also a more concerted and better executed effort to destroy the militant PKK.

### Turkey-EU Relations: A Brief Overview

Turkey's strategic value in the Cold War played a pivotal role in defining Turkey-EU relations, enticing the West to strengthen bonds with Turkey. "With the end of the Cold War, many in Turkey and the West assumed a much reduced role for Turkey as a regional actor and ally of the West. These assumptions, however, proved unfounded. Rather than declining, Turkey's strategic importance has increased."<sup>11</sup> Nonetheless, although Turkey has been seeking membership in the European Union since the 1987, it was never officially a candidate until 1999, and prior to its candidacy, diplomatic relations between Turkey and the EU were by no means cordial. While Turkey began relations with the EU in 1963 with the Ankara agreement, a sustained trade relationship did not develop until Turkey entered the EU Customs Union in 1995. This delay was primarily due to territorial conflicts with Greece, an EU member, in which the Turkish army actually invaded and occupied Cyprus, a situation that continues today and will be discussed in the following section. In 1997 relations grew even colder as the EU offered candidacy to "include the former socialist states of Central and Eastern Europe, but not Turkey, whereupon Ankara suspended political relations with the EU."<sup>12</sup> This move by the EU was a direct blow to Turkish pride, as it had been a crucial NATO ally to the West in providing security *against* those very countries the EU was now prepared to accept.

At the Helsinki European Council in 1999, the EU reversed its decision and accepted Turkey for candidacy, but, citing concern over human rights violations, mandated that Turkey fulfill the 1993 Copenhagen Criteria before accession talks could begin. While the Helsinki Agreement did not allow Turkey to immediately begin accession talks, the change in EU rhetoric has put the ball in Turkey's court. If Turkey can successfully implement and enforce measures that align it with the Copenhagen Criteria, the EU will have little choice but to accept Turkey into the Union.

### Present-Day Prospects: Identity as Leverage

Today, the EU member nations have mixed responses to the prospect of Turkish membership. Opinion tends to be divided on several issues. Most obvious involves Turkish identification with Islam. Allowing Turkey into the EU is anomalous simply because its population is nearly entirely Muslim, and EU members are either wary of this development, or eager to promote diversity across the Union. Currently the AK Party is attempting to use Turkey's Islamic identity as a bargaining chip for accession. "If Turkey (a Muslim country) is admitted, then the dividing line between the EU and other countries will not be along religious lines. Those arguments (of a clash between civilizations) will be taken out of their [Islamic militant's] hands."<sup>13</sup> If the Erdogan administration is successful in its pitch, perhaps Islam will be seen as a blessing and not a curse on the road to accession.

In addition, incorporating Turkey will create a strategic dilemma for the EU. For the first time the EU will share borders with regional hot-spots such as Iraq, and less-than-predictable states such as Syria and Iran. Moreover, Turkey has been the target of numerous terrorist attacks, most notably the double synagogue bombings on November 15 and the UK embassy and HSBC bombings on November 20, 2003. By including Turkey, the EU would inherit these problems. Here, proponents of Turkey's accession are quick to emphasize solidarity between Turks and Europeans. One such proponent, the United Kingdom's foreign minister Jack Straw, "reminded that both Turkish and British citizens lost their lives in last year's suicide bomb attacks in Istanbul," and added that "international terrorism respected neither countries nor women and children, adding that all humanity was obliged to fight against international terrorism."<sup>14</sup> As a counterpoint to the "increased obligations" argument, these proponents suggest that an EU-backed Turkey has the potential to stabilize the region either by acting as a go-between in negotiations between Europe and the Middle East, or by bringing its considerable military force to the proposed European Strategic Defense Initiative, the EU version of NATO.

### Regional Support?

Enlargement Commissioner Gunter Verheugen, a major proponent of Turkish membership, argued:

"We need Turkey as a reliable partner in foreign and security policy. We want Turkey to be a stable democracy, respecting the rule of law and human rights. Our interest is that Turkey plays a constructive role in our common efforts to contribute to peace and stability in the region."<sup>15</sup>

Taking the opposite position are right-wing hardliners, such as French President Jacques Chirac, who, citing both human-rights and strategic objections, recommended that Turkey be considered for a "privileged partnership" with the EU instead of full membership. Prime Minister Erdogan was joined by the EU Parliament in rejecting the offer. It seems now that Turkey will have all or nothing.

While there are cases made in Europe both for and against Turkey's accession to the EU, it is certain that Turkey's Islamic Middle Eastern neighbors are in opposition to the plan. Turks and Arabs have had a stressful relationship in recent history, mostly due to the fact that just as Turkish identity changed from predominantly Islamic to predominantly nationalist, so too did many Arab identities, such as that of the Iraqis. Thus there is less religious solidarity between Turkey and its Islamic partners now than ever before, while the line drawn between Turks and other Muslim ethnicities is increasingly stark. Especially important are the Iranians, whose Islamic government is in complete contradiction of Kemalist values. "With some exceptions, Turks tend to see the Middle East more as a sphere of risk than a region of opportunity."<sup>16</sup> Furthermore, Turkey has a history of supporting Israel, even to the point of developing a military partnership with the nation. This speaks to the fact that both see the Middle East in the same strategic light, and thus ties to each other for security's sake, and obviously not religion, rules the day. "The common security prism on inter-

national relations in general, and on the Middle East, in particular, reinforces the balance of power perspective that brings Turkey and Israel together.<sup>17</sup> Finally, Turkey separated itself still further from the community of Islamic nations by allowing the US to use its Incirlik airbase to attack Iraq in 1990, and to enforce “no-fly” zones for a decade after, even though it had extensive economic agreements with Iraq. Joining the European Union will further drive the wedge between the Turks and other Muslim nations.

### Joining the Club: Can Turkey Play by the Rules?

Although most Turks aspire to join the European Union, it is no simple process as the country’s political and economic institutions must be harmonized with those of the current member states. This reorientation is no small undertaking, and experts project that it will take at least another decade before Turkey will have even come close to incorporating the *Acquis Communautaire*, or set of common laws that govern the European Union. Currently the EU has pointed to two major issues that Turkey must resolve before joining the EU, both of which have special significance to the way in which Turkey understands its European identity. The first is the fulfillment of the Copenhagen Criteria. Although every member state must fulfill these standards of democracy, human rights and a free market, only Turkey has been mandated to fulfill them *before* it can begin accession talks. Second, the current confrontation between the Turkish and Greek populations on Cyprus continues to defy a solution, and must be resolved for Turkey to enter the EU. Ultimately, even a closure of these two important issues may not be enough to guarantee Turkey’s membership, as it will ultimately come to a question of Turkish identity.

### The Copenhagen Criteria

One thing that both the European support and opposition of Turkey’s accession agree on is that Turkey needs serious domestic reform in order to even be considered for membership. “Turkey’s internal evolution matters a great deal and will influence the character and extent of European... engagement with Ankara.”<sup>18</sup> In order to begin accession negotiations, the EU has ruled that Turkey must comply with the Copenhagen Criteria, the measure by which the EU determines a nation’s suitability for membership. Developed in 1993 at the EU Copenhagen conference, the criteria stipulate that a nation seeking membership must “be a stable democracy, respecting human rights, the rule of law, and the protection of minorities; have a functioning market economy and adopt the common rules, standards and policies that make up the body of EU law.”<sup>19</sup> In order to demonstrate to Turkey (and other nations seeking membership) the areas in which it needs reform, the EU publishes annual, country-specific “Accession Partnerships”; however the EU stance is not entirely critical. “Regular Reports” cover the areas in which Turkey has made progress in adopting the Copenhagen Criteria.

Following the Helsinki Summit, the Copenhagen Criteria took on added significance as it became a blow to Turkey’s European identity. The Helsinki decision fell short of placing Turkey on equal footing with other aspiring nations, even the former

Soviet states. While Poland, the Czech Republic, Cyprus, Hungary, Slovenia, Estonia, Romania, Bulgaria, Lithuania, Latvia and Slovakia have all begun negotiations for *full membership*, the EU stipulated that Turkey must first fulfill the 1993 Copenhagen Criteria before full membership talks can begin. In an editorial for the *Turkish Daily News* Ilnur Cevik displayed that while Turks are eager to enter the EU, they still want to be seen as a peer nation and treated equally:

We feel this [EU decision] is understandable in view of the serious concerns about the quality of democracy in Turkey but still feel the cause of democracy in our country can only be served if Turkey receives the same treatment as the other candidate countries, which means accession talks should start with Turkey irrespective of whether we comply with the Copenhagen criteria.<sup>20</sup>

The blow to Turkish pride stings worse today. On May 1, 2004 the other nations present at the Helsinki conference were allowed to join the EU, while Turkey’s accession talks have not even been scheduled.

Nonetheless, the Erdogan administration has taken the onus upon itself to bring Turkey into compliance with the criteria. Since the AK Party’s election to power, huge strides have been made in achieving the goals of the criteria, however EU monitors report that implementation of Turkey’s recent legal reforms is still lagging. The 2003 Regular Report notes serious progress has been made:

Four major packages of political reform have been adopted over the past year...Some of the reforms carry great political significance as they impinge upon sensitive issues in the Turkish context, such as freedom of expression, freedom of demonstration, cultural rights and civilian control of the military.<sup>21</sup>

In August 2002, for example, the Turkish government legally recognized Kurds as a minority, and granted them the ability to broadcast and practice Kurdish language and culture.<sup>22</sup> The development is an unprecedented breakthrough, since Ataturk himself never recognized the Kurds as a distinct people. While Turkey’s institutions are certainly in the process of liberalization, more legal reform and restructuring must occur in order to fulfill the criteria. The authors of the 2003 Turkey Accession Partnership pointed repeatedly to various abuses of human rights as a main source of concern. The document calls for the Turkish government to “implement measures to fight against torture and ill-treatment [of the Turkish people] by law enforcement officials,” and to “ratify the International Covenant on Civil and Political Rights.”<sup>23</sup> Furthermore, Turkey must go farther in actually implementing these changes. The EU’s 2003 Regular Report stresses a strengthening of Turkish judiciary and law enforcement agencies in order to ensure that these new developments are put into effect.

## Cyprus

Even if Turkey is successful at developing and implementing the reforms necessary to fulfill the Copenhagen Criteria, it must also resolve the tension on Cyprus in order to be considered for EU membership. Cyprus has been a major point of contention between Greece and Turkey since 1960, when it became independent from British rule. The island is controlled by two distinct populations: Greek Cypriots, who make up over 80% of the population, and Turkish Cypriots, who compose 13% of the population. Although these inhabitants were by no means friendly, major hostilities did not begin until 1974, when Greek Cypriots, with help from Athens, staged a coup d'état attempting to turn the entire island over to Greek control. The vastly superior Turkish military responded and soon controlled over 40% of Cyprus. A demilitarized zone was established between the northern Turkish population and the Southern Greeks. In 1983, the Turkish portion of Cyprus declared itself independent from the Greek portion. Relations between the two sides remained frosty, particularly after the capture of Kurdistan Workers' Party (PKK) leader Abdullah Öcalan. "The discovery that Greece had sheltered Öcalan... Turkey's public enemy number one in its embassy in Nairobi, Kenya, enraged Turks, whose leaders had long accused Greece of supporting PKK terrorism against Turkey."<sup>24</sup> Ironically, just when the complete fallout of Turkish-Greek relations seemed inevitable, it was abruptly reversed by a tragedy on both sides. A devastating earthquake on Cyprus left both populations in dire need, and the two sides provided mutual aid in order to overcome the disaster.

The Cyprus issue has become a major stumbling block in Turkey's relations with the EU. Since they began in 1999, both the EU's Accession Partnerships and Regular Reports on Turkey have continuously demanded the peaceful settlement of hostilities in Cyprus. In addition, as a member of the EU, Greece has the ability to veto any new nation from joining as it is currently threatening to do. Moreover, due to Greek pressure in the EU Parliament, Cyprus became a candidate for EU membership in 1997 based on the condition that if the island remained divided on May 1 2004, *only the portion controlled by Greece would be admitted*. The situation presented Turkey with a moment of opportunity, for if the conflict was resolved, Turkey would have had its foot in the door for access to the European Union. A flurry of political and diplomatic activity surrounded Cyprus in the months leading up to the accession date. On March 28 2004, the AK Party, which has consistently advocated a solution on Cyprus, won decisive victories in almost all local elections:

Mr. Erdogan's centre-right, socially conservative, moderately Islamist government has won praise for its handling of the Cyprus issue. The prime minister has staked his political credibility on searching for a solution with the expectation that Turkey will be rewarded later this year when the EU is to decide when, or if, to start negotiations on joining the union.<sup>25</sup>

In addition, the UN became increasingly involved in the Cyprus conflict when Kofi Annan submitted several plans for reunification to both the Greek and Turkish sides. Interestingly, while reunification was continuously rejected by the Greek Cypriot pub-

lic and leadership, the plan had a very different reception on Turkish Cypriot side. Although Rauf Denktas, the 80-year-old Turkish Cypriot Prime Minister, was directly opposed the Annan plan, the Turkish mainland, as well as the Turkish Cypriot public, approved it. Thus, when put to popular vote on April 24, 2004, the Annan plan was strongly rejected by the Greek side, and accepted by the Turkish side by a margin of over sixty percent, despite Denktas's disapproval. This disconnect between the Turkish Cypriot electorate and its leadership has its roots in the changing Turkish identity. Denktas and proponents of Kemalist nationalism, are increasingly being seen as the old guard, while those who are willing to give up some sovereignty in the prospects of expanding their European identity are becoming more popular. The vote for accession on the part of the Turkish Cypriots has changed the international community's view of the Turkish position, which was once thought to be irreconcilable. "The uncompromising Turks have suddenly become pro-unification and the Greek Cypriots, who have accused Turkey of dividing Cyprus, have become separatists."<sup>26</sup> Not surprisingly, while the Turkish Republic of Northern Cyprus has already experienced an easing of EU sanctions against it as a reward for voting "yes" to the Annan plan, there have been calls for Denktas to resign. *The Hurriyet*, the most popular Turkish daily, summed up this change in orientation:

The supporters of the status quo are suffering one blow after another. First in Turkey on 3 November 2002 and 28 March 2004 elections and now in the TRNC self-declared Turkish Republic of Northern Cyprus on 24 April, it has become apparent that the nation does not respect them those who support the status quo to the slightest degree. 24 April has brought two results that cannot be reversed: Rauf Denktas should resign the presidency, and new elections should be held in the TRNC.<sup>27</sup>

While the reunification was rejected and on May 1 only the Greek Cypriots entered the EU, the vote on Cyprus proves that Turkish identity and increasingly, popular politics, are leaning farther towards Europe. Although Turkish Cypriots are still not included in the EU, in Turkey the vote is seen as a tremendous success, for it has proven to the world that Turks see themselves as European.

## Conclusion

Turkish identity and its political manifestations are incredibly intricate. At present, while there is growing evidence that the values of Islam, Kemal and Europe can coexist, history has shown that existence to be by no means tranquil. Turkey's attempt to officially join Europe has served to exacerbate the inherent tensions in Turkish identity, and to project them to the world outside. Nonetheless, the Turks themselves deserve serious praise for their perseverance as they enact reforms. Because of this tenacity to their goal of joining the EU, Turks have also raised the stakes of rejection from it. If accession talks do not begin as hoped in December 2004, there is a growing fear that Turks may see all of the AK Party reforms, the capstone being the vote on Cyprus, as time wasted pandering to the West. Erdogan himself warned, "If

negotiations are not started in 2004, [the AK Party] will be in a situation that goes beyond disappointment. We would not be able to explain this to the Turkish people.”<sup>28</sup> If the EU rejects Turkey, the Turks may become so disenchanting that there is a resurgence of their other identities, Kemalist or Islamic, and a subsequent change in orientation, perhaps to the East.

December 2004 therefore marks a point that will lead to a dramatically different Turkish identity, one that is, perhaps, no longer in flux. If the EU agrees to begin talks, Turkey will officially be considered European, not only by its own citizens, but by the member states as well. However, if Turkey is rejected yet again, the very opposite may occur. Faced with an EU refusal, Turkish identity may undergo yet another reorientation, this time to another extreme. While at present Turkey is mutable, the time is fast approaching when a new identity will be assumed.

### Endnotes

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<sup>3</sup> Bozdaglioglu 41.

<sup>4</sup> Ibid 48

<sup>5</sup> Ibid 47

<sup>6</sup> Ibid 50.

<sup>7</sup> Nachmani 87.

<sup>8</sup> Browne, Anthony. *Europe Will Rue the Day That it Admits Turkey to the Club*. The Times, London. March 26, 2004. Lexis Nexis.

<sup>9</sup> <http://www.turkishdailynews.com/FrTDN/latest/gunduz.HTM> (MENIC)

<sup>10</sup> <http://news.bbc.co.uk/2/hi/europe/2125827.stm> BBC WEBSITE

<sup>11</sup> Larrabee and Lesser, 1

<sup>12</sup> Gunduz, 27

<sup>13</sup> Bowcott, Owen. *Turkey warned of EU ban over jailed Kurds*. The Guardian, London. April 22, 2004. Lexis Nexis.

<sup>14</sup> UK FOREIGN SECRETARY EXPRESSES SUPPORT FOR TURKEY'S EU ENTRY, VIEWS CYPRUS, IRAQ. Financial Times, Copyright 2004 BBC Monitoring International Reports. March 2, 2004.

<sup>15</sup> Gunter Verheugen, "The Challenge of Enlargement." Speech made in 2000. <http://www.elegans.com.tr/50/yaz2000/html/gunter.html>

<sup>16</sup> Larrabee and Lesser, 127

<sup>17</sup> Radu 176

<sup>18</sup> Larrabee and Lesser, 44

<sup>19</sup> Official European Union Website, <http://europa.eu.int/comm/enlargement/enlargement.htm>

<sup>20</sup> Editorial by Ilnur Cevik, October 15, 1999. Copyright © Turkish Daily News (MENIC)

<sup>21</sup> 2003 EU Regular Report on Turkey, 15

<sup>22</sup> Nachmani, 57

<sup>23</sup> 2003 Turkey Accession Partnership, 3

<sup>24</sup> Bahcheli, 131

<sup>25</sup> "Commanding Win for Turkey's Ruling Party in Local Elections." Financial Times, March 29, 2004.

<sup>26</sup> The Turkish Press, Section: *The Arab World*. No title. 28 Apr. 2004. Lexis Nexis.

<sup>27</sup> Mideast Mirror, April 26 2004, *From the Turkish Press*. Lexis Nexis.

<sup>28</sup> Black, Ian. *Unspoken Cultural Fears Cast Shadow on Turkey's EU Expectations*. Feb 4 2004, Manchester Guardian. Lexis Nexis.

### **Impasse or Opportunity? Relations between Iran and the United States**

*Samier Ahsan Mansur<sup>1</sup>*  
James Madison University

Since the Islamic Revolution of 1979, relations between Iran and the United States, complicated even under the best of circumstances, have been considerably strained. With the exception of a brief period during the Iran-Iraq War of the 1980s when American warships escorting reflagged Kuwaiti vessels through the Gulf came under fire from Iranian naval units, the conflict between the two nations has thus far not escalated beyond diplomatic disagreements and stern policy opposition. Presently, the main sources of contention stem from Iran's dual policies, apparently driven by Islamic hard-liners within the regime, of sponsoring what are perceived to be terrorist activities while simultaneously pursuing advanced technologies capable of producing weapons of mass destruction (WMDs). These actions have been interpreted in the light of the unconcealed ideological hostility of the Islamic Republic's leaders to Western interests in general and the U.S. in particular.<sup>2</sup> Consequently, to understand the current state of Iran-U.S. relations as well as to discern the choices that lie ahead, it is important to put the current impasse in historical and political perspective.

#### **Historical and Political Background**

While it is conventional in the study of Iran-U.S. relations to take the events of 1979—the overthrow of the U.S.-allied monarchy of Mohammad Reza Shah Pahlavi and the establishment of an anti-Western regime led by hard-line Islamic clerics loyal to the Ayatollah Ruhollah Khomeini—as a prism through which subsequent diplomacy has been viewed by both sides, this was not the America's first dealings with the country.

The modern roots of the present day scenario stretch back to the beginning of the last century. The Qajar Dynasty, which had ruled then Persia since the end of the 18<sup>th</sup> century began to lose its autocratic foothold as the people called for a constitutional government. The threatened shah agreed to a constitutional monarchy, which led to the formation of the Majles (Parliament) and granted suffrage to landowning males over the age of thirty. The foundations of a modern democratic state were slowly coming together. In 1907, however, Britain and Russia, seeking to expand their influence and secure the repayment of past loans, signed the Anglo-Russian Agreement and divided Iran into three spheres of influence. The British controlled the south, the Russians took the north, and the weakened monarchy governed a central band of territory.<sup>3</sup> During the First World War Iran was used by the British and Russians to protect supply lines and oil from the Turkish armies to the west. The Tehran govern-

ment itself never got involved. Directly after the war, Britain tried to make the country a protectorate, taking over its finances and dictating the nation's trade laws. The economy was ultimately left in shambles as the British withdrew from the mess they created.<sup>4</sup>

An army commander, Reza Khan emerged to fill the power vacuum left by the British. Seizing power from the Qajars in a 1921 coup, Reza Khan was installed as shah in 1923 by the Majles, taking on the royal name Reza Shah Pahlavi—the dynastic name “Pahlavi” being the Middle Persian language of the pre-Islamic Sassanids—and eventually rebaptizing his country “Iran.”<sup>5</sup> Reza Shah's main focus was to centralize and modernize the nation—which he was successful at, seeking help from the British and the U.S. to achieve his plans. His downfall, however, came as the British and Soviet governments feared he was developing close ties with the Nazi Germany before and during the Second World War even as they saw the value of Iran's location to establish supply routes into Russia. When Reza Shah refused a request to give control of Iran's rail and port facilities to the two Allied powers, British and Soviet forces consequently invaded in 1941 and set up his son, Mohammad Reza Shah Pahlavi, on the Peacock Throne. At the Tehran Conference of 1943, the United States, Great Britain, and the Soviet Union agreed to pull out and economically assist Iran once the war was over in return for the hardship incurred on the nation for their services.<sup>6</sup> The year before, the three nations recognized the sovereignty and territorial integrity of Iran in the Tripartite Pact of 1942.

During the post-war years, Iran proved once again to occupy a strategic geopolitical position, this time for containing the spread of Soviet influence into the Middle East. The new shah's anti-Communist stance won him alliances with many European nations and fostered a stronger relationship between Iran and the United States. In 1955 Iran joined the Central Treaty Organization (CENTO) to act as a buffer to the Soviet Union and receive military and economic aid from the U.S. The relationship worked for both parties, as the Shah sought to westernize Iran.

The year 1953 marked the first major disruption in Iran-U.S. relations as the newly appointed prime minister, Mohammad Mosaddeq, drove the shah into exile and began implementing extreme nationalistic policies.<sup>7</sup> Many Iranians had long felt cheated by the lack of revenues they were receiving from the dominant British oil company, and demanded a greater percentage. When the Anglo-Iran Oil Company (AIOC), the predecessor of British Petroleum, refused to accept Mosaddeq's terms—terms which, it should be noted, were criticized by members of his own parliamentary commission—he nationalized the company and ended Western control over the oil fields.<sup>8</sup> The shah's exile did not last long however: a sustained effort by British secret services and the U.S. Central Intelligence Agency, as well as Mosaddeq's own political overreach (he “won” an unconstitutional referendum to dismiss the recalcitrant Majles by a farcical 99 percent), led to his own overthrow in a military coup and his subsequent arrest as the shah regained control.

Meanwhile the restored shah's Westernization program met significant resistance, as the conservative Shi'i clerical establishment voiced its staunch opposition to what they perceived as cultural betrayal.<sup>9</sup> The shah took steps to marginalize the

cleric voice and for a little over a decade was successful, in large part because of petroleum-financed economic expansion. The stability was not to last, as an economic downturn in the mid-1970s, coupled with popular social discontent and cultural alienation, led to protests that eventually drove the Pahlavi dynasty into exile again in late 1978. In February 1979, the Islamic Republic of Iran was formally proclaimed with the return of the Ayatollah Khomeini, a Shi'i cleric whom the shah had exiled for nearly two decades for his advocacy of the concept of *velayat-e faqih*, the "rule of the [Islamic] jurisprudent."<sup>10</sup>

The deterioration of relations between the new Iran government and the U.S. was almost immediate and became further strained with seizing of the American embassy in Tehran in on November 4, 1979, and the holding of fifty-two diplomats and Marine guards hostage for 444 days. The assault led to the severing of diplomatic ties in 1980 and the poisoning of relations thereafter. To add to the bitter political realities of bilateral relations, the Beirut barracks bombing of 1983 took the lives of more than two hundred U.S. Marines—with indications that Iran may have been complicit in the act—and other episodes throughout the Middle East, further dimmed American views of the regime. Not surprisingly, the U.S. State Department categorized Iran as a state sponsor of terrorism.<sup>11</sup> Nor were the Islamic Republic's relations with its neighbors in the Middle East any better: not only did it fight a costly decade-long war with Iraq (admittedly one started by the Iraqi dictator Saddam Hussein), but it was implicated in attempts to subvert the governments of half a dozen other Arab states.<sup>12</sup>

### Iran's Nuclear Ambitions

Keeping in mind the political realities of Iran—its radical ideologically-driven policies and the anti-Western attitude of its clerical ruling class—the U.S. is not without justification for its concerned stance. When analyzing recent developments regarding the nuclear capabilities of Iran, there are many issues that remain to be clarified. The intentions of Iran's use of nuclear technology have been debated for quite sometime now. In the last two years, however, this debate has grown from speculation about Iran's true capabilities to concerns regarding the actual nature of its intentions.

During the late summer of 2002, while attention was focused on the looming confrontation between the United States and Iraq, the National Council of Resistance, the political arm of the armed Iranian opposition group *Mujahideen-e Khalq* (MEK), announced that Iran had secretly built two facilities capable of producing fissile material for nuclear weapons: a gas centrifuge plant to enrich uranium at Natanz and a heavy-water producing center to extract plutonium at Arak. U.S. intelligence confirmed the report later that fall.<sup>13</sup> On February 9, 2003, the Iranian president, Hojjat-ol Islam Sayyid Mohammed Khatami Ardakani, publicly acknowledged Iran's ability to independently manufacture nuclear fuel. The announcement came as a surprise to most international observers who had not expected that level of maturity in the project. What was not mentioned, however, was its ambition to weaponize nuclear components.

Iran's program is not a new endeavor—it was originally established in 1959 when the shah purchased a research reactor from the U.S.—although its activity has

not been consistent over the years. At that time of its start, Iran was a key ally so the sale was not as extensively scrutinized and the Iranian government did not publicly declare its ambitions to go nuclear until 1972.<sup>14</sup> In 1967, the Tehran Nuclear Research Facility was built and operated by the Atomic Energy Organization of Iran (AEOI).<sup>15</sup> The next year, in 1968, Iran signed onto the Non-Proliferation Treaty (NPT). According to the NPT, Iran has the right to "the use of nuclear energy for peaceful purposes without discrimination, and acquire equipment, materials, and scientific and technological information."<sup>16</sup> As long as Iran does not embark on a nuclear weapons program and allows for inspections by the International Atomic Energy Agency (IAEA), it is acting within the legal parameters set by the NPT. Presently, Iran has maintained that its acquisition of nuclear materials is for peaceful purposes, keeping in line with its commitments to the NPT. Iran's rational for nuclear capabilities are that it needs such technology in order to efficiently supply their domestic energy needs. Although critics point out that Iran is sitting on one of the world's largest oil and gas reserves and to put so much investment in the nuclear project would not be cost effective, Tehran maintains it is saving its non-renewable resources to sell at market prices for an alternative source of revenue.<sup>17</sup> The U.S. remains skeptical, and has been lobbying world powers to take an appropriate stance against Iran.

The strained condition of Iran-U.S. relations plays a significant role in the concern coming out of Washington. U.S. officials argue that Iran has a history in sponsoring terrorist organizations such as Hizballah, HAMAS, and Palestinian Islamic Jihad, among others,<sup>18</sup> and that allowing Iran to develop the means to produce WMDs could lead to an international crisis if the weapons fell into the wrong hands. President George W. Bush famously included Iran as part of the "Axis of Evil" in his State of the Union Address in 2001. Israel, the closest U.S. ally of the region, joined in the condemnation of Iran's policies, ranking the Islamic Republic high on its security threat index. Washington has called upon the rest of the world to take a tougher stance against Tehran, and has indicated that it will take the case to the United Nations Security Council if the Iranians do not halt their uranium enrichment program. While some nations have heeded the call, Russia and China have investments tied to Iran—Russia has a contract to complete the Bushehr nuclear facility estimated at \$800 million, while China has sold missiles and weapons capability to the Iranian armed forces as well as contract for Iranian oil.<sup>19</sup> Both nations have made it clear they would veto any motion to take the issue to the UN Security Council unless direct evidence cited Iran was found in violation of the NPT.

### Recent Developments

There has been a flurry of activity in recent months. In May 2004, the U.S. Congress adopted a resolution condemning the purported weapons development program, calling for "all appropriate means"<sup>20</sup> in dealing with the situation. The U.S. has repeatedly voiced concern about the secrecy of Iran's program. In late 2003, Iran disclosed many nuclear related developments that had not been reported to the IAEA. Instead of facing sanctions, a resolution was adopted criticizing the actions of the government.

The IAEA has been instrumental in leading investigations into the declared Iranian nuclear facilities, and thus far has found Iran in full compliance with the established safeguards. The most recent investigation has found no verification to support the claims of a weapons program. The question remains as to how many, if any, nuclear related sites Iran may be concealing from the international observers.

Most recently, a diplomatic effort led by the so-called "EU3"—Britain, France, and Germany—resulted in significant compromise with Iran agreeing to suspend its uranium enrichment program.<sup>21</sup> The IAEA is planning to send another team to the region to verify Iranian cooperation. The U.S. government remains cautious, as it monitors the situation for further revelations. Iran has indicated that any suspension of their enrichment program would be short-lived.<sup>22</sup> Thus far the Iranians are sending a mixed message as it converts remaining raw uranium into uranium metal—legally they have permission to convert thirty-seven tons of yellow cake,<sup>23</sup> but are taking advantage of a loophole in the recent agreement in order to do so. Washington views this as evidence of Tehran's unwillingness to cooperate fully to reach a meaningful compromise on the nuclear issue, calling for greater diplomatic pressure on Iran.<sup>24</sup> Meanwhile, the Iranian government claims that it is being transparent, citing that it had no legal obligation to participate in the recent suspension, but did so in order to build trust.

The U.S. retorted, however, that it has heard such commitments from Iran before. In 2003, Iran made a similar proposal to abandon enrichment of uranium, which subsequently fell through a few months later. Despite the lack of evidence coming from the IAEA, the Bush administration cites that intelligence linking Iran's nuclear program to a weapons program. Washington has yet to specify the details of those claims. Nevertheless, the recent suspension comes after tense negotiations and is seen as a positive step for Tehran. This year saw the opening of bilateral talks with Libya which concluded with Tripoli's abandonment of its WMD program and many in Washington remain hopeful for a similar response from Iran.

### Theoretical Perspectives

In policymaking, it is often helpful to take into consideration the major schools of thought and how they interpret different situations. With regard to Iran-U.S. relations and the former's nuclear ambitions, useful insight can be had from the "Realist" and "English School" perspectives.

The Realist tradition most always has a voice in international political issues. With the situation in Iran, there are two very different realist viewpoints: one breaks down the rhetoric coming out of Tehran, while the other translates the motives of Washington.

Iran's nuclear ambitions can be understood in terms of Hans Morgenthau's tripartite schema of political phenomena as being aimed at keeping power, increasing power, and demonstrating power.<sup>25</sup> For many decades now, Iran's pursuit of nuclear technology has been a priority national objective. The current Iranian regime's policies—which do not fundamentally differ from that of the Pahlavi monarchy—reflect a

desire to preserve its government, become the regional power in the Gulf, and deter perceived threats. The leadership has also tried to present itself as the leader of the Islamic world, establishing its legitimacy through scientific and military prowess.

From an historical standpoint, it can be argued that Iran's desire for WMDs, including nuclear weapons, came as a result of the threat of the same from Iraq. The two nations fought a bloody war that exacted a terrifying toll: Iran alone suffered more than one million casualties, in a population of then slightly less than fifty million.<sup>26</sup> The war left Iran politically and militarily exposed, as it found itself isolated while Iraq received tactical and logistical aid from France, Britain, Russia, and the U.S. To counter Iraq's extensive weapons program, Iran found it in its interest to pursue capabilities which could be used as a deterrent against future aggression. Now that Iraq's desire to establish regional hegemony under Saddam Hussein is out of the picture, the weapons that Iran could potentially produce could be used as a deterrent against the U.S., which Iran perceives to be the main obstacle in pursuing its goals of a stronger regional influence. Voices from Tehran express concern at the thought of hundreds of thousands of U.S. soldiers massed in Iraq and Afghanistan—this coupled with the Bush administration's constant call for regime change leaves Iranian realists advocating the need for a bargaining leverage.

A third realist rationale for Iran's weapons program is to counteract Israel's undeclared nuclear arsenal. This idea is reinforced by the anti-Israeli rhetoric from Iranian leaders and their support for groups which Washington considers terrorist organizations. Israel is also perceived to be a threat to Iranian regional power with its Dimona reactor site at the heart of its own nuclear program. Israel's capabilities remain undisclosed,<sup>27</sup> and Israel is not a signatory to the NPT, thus not bound by any legal obligation regarding use or weaponization of nuclear materials that Iran is bound to by its adherence to the anti-proliferation pact. In addition to Israel, Russia, India, Pakistan, and China are all states relatively close in proximity to Iran that have nuclear weapons. As a security measure and deterrent, Iran sees it in its interest to achieve nuclear weapons capabilities as well.

Iran also has an economic incentive in establishing nuclear capabilities. Since the time of the Shah, the population of the county has doubled, and its reserves of oil and gas, although still plentiful, have decreased. Oil and gas are non-renewable resources, and to depend on them forever would be irrational. Iran plans to power domestic needs through nuclear technology, and set aside the oil and gas for export revenues. To date, oil and gas constitute eighty percent of the nation's export revenue and nearly half of the government income.<sup>28</sup> If Iran were to pursue its own interests, the three patterns of behavior anticipated by realism—maintaining and preserving its Islamic government while exporting its ideologies abroad; using capabilities as a deterrent against nations which pose a threat; and supplying domestic energy efficiently while exporting oil and gas—appear more comprehensible.

Realism also explains American apprehension about Iranian actions and the perception that the Islamic Republic continues to represent a considerable security threat to the U.S. and its interests. For nearly three decades the U.S. has been highly critical of Iran's regime. In June 2000 the National Commission on Terrorism chaired by

Ambassador L. Paul Bremer, later head of the Coalition Provisional Authority in Iraq, indicted Iran once again for its state sponsorship of terrorism.<sup>29</sup> With the current situation in the Middle East with regard to terrorism, the U.S. government has been keeping close tabs on the activities of Iranian regime. While Ayatollah 'Ali Husayn Khamene'i, the supreme religious leader of Iran, has denounced the use of nuclear weapons as contrary to the tenets of Islam and, consequently, thus not in the interests of Iran, from a realist viewpoint, such rhetoric should be taken with a healthy dose of salt, especially since Iran continues to pursue policies aimed at establishing itself as the main Islamic power in the region. Iran's goals conflict with the current U.S. policy in democratizing the Middle East and undertaking necessary precautions to prevent the proliferation of nuclear weapons, especially the possibility of their falling into terrorist hands.

The issue of Iraq is also important to this discussion. When Saddam Hussein was in power, he oppressed the majority Shi'i population, inflaming populations of both Iran and Iraq.<sup>30</sup> With the U.S. currently trying to forge stability in Iraq, one of the fears remains destabilization by fundamentalist forces supported by an Iran that continues to seek to spread the ideologies of hard-line clerics and their brand of Islam. Because of the majority Shi'i population in both Iraq and Iran, the concern is of Iran gaining political influence over the people of Iraq. Realists would call attention to this and press for U.S. military forces to secure the borders, once again emphasizing the need to monitor the movements of Iran—for both the stability of the new Iraqi government and the safety of U.S. troops.

Returning to the nuclear question, it is once again required to consider Israel. Israel is a key strategic and ideological ally of the US. Realists would argue that it is of national interest to preserve and protect the state of Israel if the long-term goal of the U.S. is to bring democracy to the Middle East and counter terrorism., Israel is one of few stable functioning democracies in the Gulf region and is a nation committed to America's "global war on terror." It has made its protests of the Iranian regime clear, and has indicated it would not hesitate to take out Iranian nuclear weapons capabilities if it were discovered that Iran was indeed pursuing such avenues.<sup>31</sup>

Given the realities of current U.S. global engagements in the "War on Terror," Iran falls in a precarious position. Iran is holding key al-Qa'eda terror suspects in custody—suspects whom the U.S. wants to interrogate. The regime has assisted international terrorist groups responsible for U.S. and allied military and civilian casualties. Likewise, both the regime's historically hostile attitude toward the United States and the fact that it has lied to the international community in the past about its nuclear program have tarnished Iran's reputation in the United States. These combined factors understandably lead realists in Washington to advocate any appropriate means necessary to contain or deal with the aggressive Iranian regime.

While the realist perspective tends towards a call for policy which attends to the interests and goals of the U.S., the "English School" of international relations would argue for a more global solution. Emphasis here would be on international cooperation through the forging of a collaborative set of laws or institutions—or at least mechanisms—to which Iran and other nations involved in diplomatic efforts

could abide by, an effort manifested in recent developments between the "EU3" nations and Iran.<sup>32</sup>

Proponents of the English School would applaud Iran's new commitment and collaboration with the IAEA, reaffirming its obligations under the NPT. As long as Iran is in compliance with the mandates of the international organization and it treaty obligation, Adherents of this perspective would not see much reason to pressure Iran to discontinue their programs. The IAEA has in the past investigated declared facilities and have found "no smoking-gun" evidence to support the claims of those who accuse Tehran of harboring a clandestine nuclear weapons program.<sup>33</sup>

Another factor that the English School would address would be the issue of Iran's isolation from the surrounding international community. Since the Revolution of 1979, Iran has been isolated from the West and other regimes in the Middle East who have adopted friendly relations with the U.S. Since that time, Tehran has adopted an isolationist attitude; while certainly not as closed as North Korea, Iran has remained relatively closed in comparison to its neighbor states. Some European nations have favored the idea of economic incentives in the form of trade agreements if Iran agrees to halt uranium enrichment on a permanent basis, the goal of this program being to incorporate Iran slowly into international treaties and agreements in order that it slowly abandons its current ideological policies and consequently become a lesser threat. Because much of the English School doctrine speaks to solutions involving the global community as a whole, strategies that would work to bring Iran into the international community are favored.

### Policy Options

In order to develop an effective policy towards Iran, there are certain factors that need to be addressed. Faced with the threat of potential nuclear weapons, the U.S. and the international community should work under the premise that Iran is indeed developing a nuclear weapons program. Past rhetoric as well as support for terrorist groups and the regime's drive to become a regional power suggest possible motivations to adopt a nuclear program. . Despite Iran's denial of such programs, it is prudent to assume that Iran is developing clandestine nuclear weapons.. There are many possible policy solutions to the nuclear question. Because of the long history of the conflict, there are many lessons to be learned from the past. Studying the experiences in dealing with nations such as Iraq, Libya, North Korea, India, and Pakistan, one can revise the successes and failures using these case studies as a reference. The proposals formulated here address a wide range of possibilities and projected outcomes.

To begin, policies that would be counterproductive to the goal of disarmament need to be explored. Military solutions often seem to provide an attractive option, especially to those who view Israel's destruction of the Osiraq Reactor in Iraq as a prime example of preemptive measures. Although such a reaction from the U.S. or Israel might provide a swift and devastating blow to the Iranian program, the success of such action would be short-lived. Destruction of nuclear facilities would only temporarily postpone nuclear development, giving rise to related confrontations in the future. Furthermore, an attack similar to the raid on Osiraq may not take out all the

nuclear sites as intelligence on the nation is limited,<sup>34</sup> providing the pretext for retaliation against U.S. or allied targets by Iran with possible WMDs. Any attack on Iranian facilities would only strengthen the nation's resolve to go forward with nuclear weaponization and at the same time any nation involved in such action would face severe international scrutiny and objection since Iran has not been found to violate the NPT. From a strategic point of view, for the U.S. to engage in unilateral strikes would be a strategic blunder keeping in mind the stretched resources currently deployed in Iraq. Iran is a nation with three times the population and four times the land mass as neighboring Iraq<sup>35</sup>—it is a different arena altogether. A military option seems inconceivable in Iran to produce desired results and should be reviewed only as a very last resort.

The application of economic sanctions is another policy option that presents itself as a vehicle for reining in nations engaged in undesirable activity. Iran has been under various sanctions for several decades now by the U.S. with no significant outcome. Sanctions have been successful in isolating the regime to only U.S. investment and economic cooperation, although the U.S. has been lobbying to take Iran to the UN Security Council in hopes of creating greater diplomatic pressure through international sanctions. These demands appear to have only limited international support, however, as many European nations as well as China and Japan have investment deals with the current government in Tehran, and are more interested in a diplomatic resolution through high-level negotiations. Iran views sanctions as aggressive maneuvers by the U.S. (and Israel) to affirm their dominance over the Middle East region. Sanctions have been used as a rallying cry to support Iranian national pride, which their nuclear program is closely associated with.

Washington believes that Tehran's nuclear weapons program is the brainchild of a hard-line regime and that any attempts to rid Iran of the program would require an uprooting of the regime of the mullahs. The current White House administration (and its predecessor) has expressed a desire to realize such a transition, supporting anti-government student-led activism and other political dissent. This approach would be conceivable if the people of Iran had enough resolve and determination to rise up against the regime, but there is little evidence to conclude that resentment has reached the levels necessary to induce such a revolution. Realistically, Iran is more likely to reach its nuclear ambitions before a stable Iranian government, presumably friendlier to American and international interests, comes to power, and so the U.S. should adopt more pragmatic policies given the complexity of the situation. Rather than create or promote regional instability and power struggle—which translate into reason for the Iranian regime to acquire nuclear weapons—there should be a bilateral approach emphasized through diplomacy and international agreements.

The diplomatic approach towards Iran should come as economic or security incentives. To be truly effective in finding a solution, there must be creative approaches. As one prominent scholar of Iranian politics has noted, "combining both incentives and threats, in conjunction with internal debate regarding the benefits and costs of nuclear capabilities is the most effective approach."<sup>36</sup> These incentives should not be confused as "appeasement." The goal of these incentives would be to make the regime

realize that the packages proposed by the international community and/or the U.S. would be more attractive than Iran's current position as an isolated state. Iran has been working on its nuclear project for over five decades now—they are not likely to give up on their project unless they can be convinced that the benefits of abandoning their ambitions outweigh the cost that went into it. This will be a difficult endeavor, as Iran has spent billions of dollars and invested many years into the project that has come to be seen as a symbol of national pride.

Sanctions have not produced the desired results in Iran. Instead of penalizing the regime for their choices, which consequently fuels the nationalistic drive for weapons, Washington needs to take into serious consideration the opening of bilateral talks with Tehran through formal diplomatic channels. This situation can no longer be dealt with indirectly. There needs to be formal negotiations between the two nations where Washington should make it clear that it is willing to offer economic packages to Iran if it gives up its uranium enrichment program, and commits to never adopting a nuclear weapons program. Iran would have to allow transparency, and would have to cooperate fully with international organizations regarding nuclear safeguards. Further, Iran must denounce its ties to terrorist organizations. If Iran can comply with these conditions, the U.S. should openly lay out its incentives which would be as follows: the U.S. would drop its objections for Iran to join the World Trade Organization and welcome the participation of Iran into the international community, whose rules would have the double advantage of inevitably force hard-liners to undertake liberalizations that they have thus far resisted. Sanctions should be dropped, and commerce should begin between the two nations. Nuclear fuel would also be supplied to Iran granted they do not seek to produce their own. Any combination of these would be an appropriate gesture. Europe is currently exploring different trade options as incentives to Iran, and so far the response from Iran has been promising. The objective of such incentives is not to bribe the regime, rather open up Iranian society to the international community and allow for economic liberalization of its political sphere—with the long-term goal of democracy. The younger generation of Iranians will respond well to these initiatives as the clerical regime has failed in all attempts to bolster the Iranian economy.<sup>37</sup>

While engaged in diplomatic talks with Tehran, Washington should address the situation to Moscow and Beijing in order to have their cooperation in case the situation does need to go before the U.N. Security Council. To date, Russia and China have maintained they would veto the move, so the U.S. needs to emphasize the gravity of the situation and the political (and economic) consequences of siding with the Iranian regime. Because the U.S. has not worked out a clear position in dealing with Iran,<sup>38</sup> the key for the time being should be to buy time. The recent suspension is a move in this direction; Washington needs to formulate a policy before its expiration.

Besides the offering of economic incentives, Iran needs assurance of regional security. One of the factors driving Iran's nuclear program is the perceived threat coming from Israel. If the U.S. is concerned about nuclear weapons in the Middle East, it should be seen as more even-handed in its objections. Iran needs to be reassured that Israel's weapons are for use only as deterrents. Another approach would be

to adopt a more balanced policy in which Israel should be scrutinized for its own clandestine actions—the absence of this only plays into the Iranian paranoia—not entirely unrealistic—that neighboring and other states are at the least hostile to the Islamic Republic’s existence, even if not actively conspiring against it.

The most effective solution would hold the entire region to a nuclear weapon-free pact where nations denounce their intentions and need for nuclear weapons. Essentially the Persian Gulf would become a nuclear weapon free region. If implemented, this would be a success in establishing regional security. Countries who do not sign onto such an agreement would be viewed as a threat to peace, and subject to pressures, fines, and appropriate coercion. This would show a genuine effort and concern on the part of the U.S. and the international community to take on a meaningful policy regarding WMDs in the Middle East and surrounding regions. The plan does not single out any nation, rather holds all regional nations accountable to the same standards.

When it comes down to the real issue, the main security factor motivating Iran is the U.S. itself—a conundrum, as former National Security Council Director for Gulf Affairs Kenneth Pollack concluded at the conclusion of his tome on Iranian-American relations, that is “even more frustrating because it derives largely from the psychological and political taboos that have calcified around the idea of the United States in Iran’s collective psyche over the past fifty years.”<sup>39</sup> In absence of improvement in Iran-U.S. relations, the regime in Tehran will not give up its nuclear ambitions. Washington needs to ease its harsh rhetoric and regional actions, which are seen as acts of aggression in Tehran. Calling Iran a part of the “Axis of Evil” only reaffirms the Iranians in their anti-U.S. stance, especially when the U.S. military has set up positions in Afghanistan and Iraq, countries on either side of Iran. This once again highlights the need for normalization of bilateral negotiations between the two nations. The slightest mixed signal or misinterpreted move may set off a series of unintended—and, undoubtedly, undesirable—consequences.

Regardless of any policy implementation or agreements reached between the world community and Iran, it should be presupposed that any agreements reached with Iran should be viewed guardedly. In the past Iran has deceived the IAEA about the progress of their program. No matter what incentives or agreements are reached, Iran’s program has been imbedded in national doctrine for over half a century, so changes will not come easy. Trust building through dialogue and good-willed gestures would be appropriate to further cool not only the current volatile confrontation over Tehran’s nuclear ambitions, but also go a long way toward easing the conflicted relations between Iran and the United States. If the U.S. and the international community can reach a consensus with Iran on the nuclear issue, it will be an international victory in which all sides can celebrate the value of creative diplomacy.

## Endnotes

<sup>1</sup> Samier Ahsan Mansur would like to thank Professor J. Peter Pham for his helpful comments and guidance.

<sup>2</sup> Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton, 2003), 144.

<sup>3</sup> Kenneth M. Pollack, *The Persian Puzzle: The Conflict Between Iran and America* (New York: Random House, 2004), 22.

<sup>4</sup> *Ibid.*, 26.

<sup>5</sup> *Ibid.*, 27-31.

<sup>6</sup> See Avalon Project at Yale Law School, “The Tehran Conference,” at <http://www.yale.edu/lawweb/avalon/wwii/tehran.htm> (last accessed December 23, 2004).

<sup>7</sup> Sandra Mackey, *The Iranians: Persia, Islam, and the Soul of a Nation*, (New York: Penguin, 1996), 196

<sup>8</sup> Pollack, *The Persian Puzzle*, 75.

<sup>9</sup> Mackey, *The Iranians*, 186.

<sup>10</sup> Pollack, *The Persian Puzzle*, 143-146.

<sup>11</sup> Robert S. Litwak, *Rogue States and U.S. Foreign Policy: Containment After the Cold War* (Baltimore: Johns Hopkins University Press, 2000), 161.

<sup>12</sup> Pollack, *The Persian Puzzle*, 280-286.

<sup>13</sup> Michael Eisenstadt, “Iran’s Nuclear Program: Gathering Dust or Gaining Steam?” Policy Watch no. 707, Washington Institute for Near East Policy (February 3, 2003).

<sup>14</sup> Nuclear Threat Initiative (NTI), “Iran Nuclear Chronology,” at [http://www.nti.org/e\\_research/e1\\_iran\\_nch\\_1957-1985.html](http://www.nti.org/e_research/e1_iran_nch_1957-1985.html) (last accessed November 11, 2004).

<sup>15</sup> *Ibid.*

<sup>16</sup> Treaty on the Non-Proliferation of Nuclear Weapons (NPT), art. IV, at <http://www.fas.org/nuke/control/npt/text/npt2.htm> (last accessed December 15, 2004).

<sup>17</sup> Muhammad Sahimi, “Iran’s Nuclear Energy Program, Part IV: Economic Analysis of the Program,” *Payvand* (December 7, 2004), at <http://www.payvand.com/news/04/dec/1056.html> (last accessed December 17, 2004).

<sup>18</sup> Bob Graham with Jeff Nussbaum, *Intelligence Matters: The CIA, the FBI, Saudi Arabia, and the Failure of Americas War on Terror* (New York: Random House, 2004), 147.

<sup>19</sup> Mackey, *The Iranians*, 286.

<sup>20</sup> United States Congress, *Resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons*, (H. Con. Res. 307, 108<sup>th</sup> Congress), at <http://www.congress.org/congressorg/bill.xc?billnum=H.CON.RES.307&congress=108> (last accessed December 16, 2004).

<sup>21</sup> Kasra Naji, “Iran Confirms ‘Final’ Uranium Deal,” *CNN* (November 29, 2004), at

<http://edition.cnn.com/2004/WORLD/meast/11/29/iran.nuclear.1227> (last accessed December 17, 2004).

<sup>22</sup> Associated Press (AP), "Iran: Nuclear Freeze 'Temporary,'" *CNN*, (November 30 2004), at <http://www.cnn.com/2004/WORLD/meast/11/30/iran.nuclear/index.html> (last accessed December 12, 2004).

<sup>23</sup> Reuters, "Iran Atomic Work Breaks Spirit of Accord—Diplomats," *MSNBC*, (December 21 2004), at <http://www.msnbc.msn.com/id/5786847/> (accessed December 25, 2004).

<sup>24</sup> *Ibid*

<sup>25</sup> Hans Morgenthau, *Politics Among Nations*, 5<sup>th</sup> rev. ed. (New York: Alfred A. Knopf, 1973), 40-41.

<sup>26</sup> Pollack, *The Persian Puzzle*, 238.

<sup>27</sup> Gordon Thomas, *Gideon's Spies: The Secret History of the Mossad*, (St. Martins Press: New York, 1999), 95.

<sup>28</sup> "Still Failing, Still Defiant," *The Economist* (December 9, 2004).

<sup>29</sup> Graham, *Intelligence Matters*, 107-108.

<sup>30</sup> James Fallows, "Will Iran Be Next?," *The Atlantic Monthly* (December 2004): 102.

<sup>31</sup> *Ibid.*, 104.

<sup>32</sup> Edward Luttwak, "Governing Against Type," *The New York Times* (November 28, 2004): Section 4 (Week in Review), 11.

<sup>33</sup> "IAEA Finds no 'Smoking Gun' in Iran," *Al-Jazeera* (September 14, 2004), at <http://english.aljazeera.net/NR/exeres/C56EB1EA-9CEF-4C6E-A0EC-CC24BBCA34AC.htm> (last accessed December 16, 2004).

<sup>34</sup> Fallows, "Will Iran Be Next?," 104.

<sup>35</sup> "Still Failing, Still Defiant."

<sup>36</sup> Gawdat Bahgat, "Iranian Nuclear Proliferation: The Trans-Atlantic Division," *Seton Hall Journal of Diplomacy and International Relations* 5, no. 2 (Summer/Fall 2004): 139.

<sup>37</sup> Zakaria, *The Future of Freedom*, 148.

<sup>38</sup> Pollack, *The Persian Puzzle*, xxiii.

<sup>39</sup> *Ibid.*, 423.

## Hamis and Violence: A Comparative Analysis of Islamist Movements

Nathan Piper  
University of Pennsylvania

### Introduction

The formal establishment of Hamas, the Islamic Resistance Movement, in December 1987 opened a new era in which Islamic fundamentalism played a heightened role in Palestinian politics. Unlike the Muslim Brotherhood from which Hamas had emerged, Hamas took an active role in politics, jumping headlong into the struggle against Israel with its direct participation in the intifada. Since Hamas' inception, armed struggle has been central to the organization's theory and practice: as its Charter clearly states, "There is no solution to the Palestinian problem except through struggle."<sup>1</sup> Hamas' use of violence against Israeli military and later civilian targets has helped it achieve popularity and distinction among the Palestinian population because of its contrast with the Palestinian Liberation Organization and then the Palestinian Authority, both of which have sought peaceful negotiations with Israel since the early 1990s. Many Israelis and Westerners have perceived Hamas as an intransigent Islamic terrorist group that will continue its military activities without end and obstruct a peaceful resolution of the conflict. As United States Secretary of State Colin Powell's asserted, for peace to occur, "We ultimately have to reach a point where the capability for terrorism that exists in these organizations [Islamist groups] is removed."<sup>2</sup> The view that Hamas will use violence until it is no longer capable of doing so is based on certain ideological declarations by Hamas that the organization has not been dogmatically bound to, such as its 1988 Charter which renounces peaceful negotiations, and by ignoring the complex evolving and pragmatic character of the movement. As Hamas' roots are the Muslim Brotherhood, and it is part of the broad wave of Islamism that emerged throughout the Arab world, Hamas demonstrates similarities to other Islamist groups that have sought power in their respective countries. Analysis of the course of Islamist movements in North Africa in Egypt, Algeria, and the Sudan can be informative in understanding the use of and forgoing of violence by Islamist groups. This comparative analysis can be used in tandem with examination of Hamas' history to help determine under what conditions violence will likely be used and when it would be renounced. It will be seen that a pragmatic weighing by Hamas leaders of the potential costs versus incentives of using violence is decisive in determining action. Primary considerations for Hamas in using violence include its popularity and legitimacy among the Palestinians, the level of repression Hamas faces from the Israelis and the PA, and the perceived fairness of the overall system in which it finds itself. Crucial to Hamas is its survival and continued relevance in Palestinian politics, as it is more concerned with long term rather than short term goals. Thus, while its Islamic ideology

and principles are held dear to many members of Hamas, practical and realistic concerns play an important role in decisions about armed struggle. In addition, intra-organizational processes impact decision-making and at times result in unclear policies, which may affect how violence is used.

Before turning to the main focus of the paper, which is Hamas and its use of violence, Islamist movements in Egypt, Algeria, and Sudan will be analyzed for comparative purposes. Similarities and differences can be found in all of these movements. What links them is their Islamist nature. Martin E. Marty and R. Scott Appleby discuss the relationship between various Egyptian organizations, which can be applied to Islamist groups in general:

Despite these ideological and tactical rifts between the Muslim Brotherhood and the radicals, the groups share basic goals, and, at times, resources. All those who are described as fundamentalist, fringe radicals and mainstream politicians alike, believe that the ruling party should systematically apply Islamic law (*Shari'a*) and advance a program of moral reconstruction guided by the Qur'anic principle 'Command what is right and forbid what is wrong.'<sup>3</sup>

Although Islamist groups may have similar conceptions of the government and society they want to establish, organizational interests also play an important role in policies. To understand the actions of a particular Islamist organization, it must be analyzed in the context of the political environment in which it finds itself. As Andrea Nüsse writes:

Politics based on Islam are no simple product of some essential, historically given body of beliefs and practices, but the result of particular constructions of discourses related to current situations.<sup>4</sup>

Islamist groups in Egypt have been influential in politics since the beginning of the 20<sup>th</sup> century. Hasan al-Banna founded the Muslim Brotherhood in Egypt in 1928, and the group has since spread. The group's original goal was to create an Islamic society free from Western influence through political means. In Egypt, the Muslim Brotherhood was at first a violent organization that sought political power. It challenged the Arab nationalist forces throughout the 1940s and early 1950s. After Nasser achieved power in Egypt and an assassination attempt on him failed, the Muslim Brotherhood faced severe repression, with thousands imprisoned, and lost its popularity. Violence was therefore given up by the Brotherhood because, "Its very aspiration to be a mass organization, which required government tolerance to permit legal activities, discouraged radical activity."<sup>5</sup> In 1964 Nasser freed the Brotherhood prisoners in order to balance against Marxists. This freedom did not last long, though, as Sayyid Qutb, a Muslim Brotherhood leader, developed a theory under which the Nasser regime was deemed *jahiliya*, or infidel. Walid Mahmoud Abdelnasser writes, "Qutb ascribed to the Islamic vanguard the task of eliminating the powers of *jahili* societies and leaders," including Arab governments in which "laws were imported from infidel

countries to be imposed on Muslim peoples."<sup>6</sup> Following this announcement, Nasser again repressed the Muslim Brotherhood, which lasted until Anwar Sadat's rise to power in 1970. Sadat released the Islamist prisoners, who did not challenge him until the 1977 Camp David Accords with Israel. The Egyptian Islamist movement, which had been almost entirely led by the Muslim Brotherhood, split at this point. The Brotherhood continued to renounce violence, focusing on education and becoming involved in parliamentary politics. Its members saw the costs of using violence as too great, as it put the organization's future survival and prosperity at risk. Smaller groups, however, designated the Sadat regime as *jahiliya* because of its betrayal in making peace with Israel, and sought to organize a violent revolution. John Esposito notes,

While the older generation of Muslim Brothers had moderated their voices during the early Sadat years, this new generation of Islamic militants, some of whom had been younger members of the Brotherhood, espoused a more aggressive, anti-government strategy. Because they developed as secret societies, little notice was taken until they began to engage in violent, anti-government attacks.<sup>7</sup>

There was no popular backing for such a revolution, but when Sadat sought to repress radical Islamist groups in 1981, he was assassinated by the group al-Jihad.

The assassination of Sadat did not result in a popular uprising or revolution and instead horrified most of the population. This, coupled with the policies pursued by the succeeding president Hosni Mubarak, bolstered the Muslim Brotherhood in its resolve to avoid violent and revolutionary activity. Unlike Nasser and Sadat in later years, Mubarak was more nuanced in his approach to Islamist groups. Smaller extremist groups such as al-Jihad faced severe repression for attempting violence, while Mubarak tried to reconcile with the peaceful Muslim Brotherhood. Under these conditions, the costs of violence for the Muslim Brotherhood would have been substantial, while some incentives existed for taking part in the system. It was hoped that through parliamentary participation the Muslim Brothers could bring about Islamic reforms. At the same time the Muslim Brothers distanced themselves from and criticized the radical groups that continued to use violence. The Muslim Brotherhood has shown in this regard that it is a pragmatic political organization. As Barry Rubin writes:

Criticism of the government and society is still sharp, but it is also constrained by a fear of persecution. The very gains made by the Brotherhood, including its lucrative links with the Islamic investment companies, give it a stake in the stability of the existing system.<sup>8</sup>

Conversely, the revolutionary groups continued the use of violence throughout the 1990s. Unlike the Muslim Brotherhood, these groups, called the *Jama'at*, do not see themselves as having any stake in the current system. They believe it is too corrupt to change by working from within. Most of these groups have had little long-term strategies instead focusing on immediate destructive attacks. Yet, the group al-

Jihad developed an ability to conduct a longer and more effective struggle. It has a more disciplined organization and a more refined approach to using violence than other members of the Jama'at. The level of violence utilized and the targets of the violence hit by al-Jihad have been varied depending on conditions at the moment. Whenever lessening violence would serve to increase popularity for al-Jihad, it has usually done so. Barry Rubin notes that long, patient work to build a mass base, however, can also lower the immediate level of violence and terrorism. Rather than an integral part of a revolutionary strategy, the assassination of Sadat was a quick reaction to the massive arrests of a few months earlier.<sup>9</sup>

Also, each act of violence undertaken by al-Jihad has been justified not under the framework of holy war, but as a last resort and defensive measure against the anti-Muslim's regime's actions. In this regard, al-Jihad, like the Muslim Brotherhood, shows a degree of pragmatism in its political decisions, as neither are strictly bound by ideology. The difference between the two is that the Muslim Brotherhood has determined that it is possible to work from within the system and that this will bring the best chances of success. On the other hand, al-Jihad sees the implementation of an Islamic state as hopeless under the current political system in Egypt. These two modes of action are options that Hamas faces, and the incentives for each will be addressed later in this paper.

Another North African country in which Islamism has been influential in politics is Algeria. Algeria was under French colonial rule until a revolutionary war broke out in 1954. Although Algeria was a Muslim society, the organization that led the revolution and took power, the National Liberation Front (FLN), was more nationalist than religious. "The regime was quite similar to the Arab socialism of Abd al-Nasser of Egypt—plainly, middle class-socialism," and thus did not embody the characteristics hoped for by Islamists.<sup>10</sup> From its victory against France onward until 1989 the FLN had a single-party monopoly over Algerian politics and continued its secularist nature. Islamist groups were marginal under the tightly controlled political atmosphere, as "the regime was forced (and succeeded in doing so for 20 years) to prevent everyone, whether individual or group, from gaining any kind of privileged access to the religious scene."<sup>11</sup> The Muslim Brotherhood had little influence, as it had cooperated with the French, while Islamic groups that had played a role in the revolution were denounced and overpowered by the secular left of the FLN.

There was a general discontent that arose due to the failure of the regime's economic and agrarian policies which coincided with the rise of Islamists. Beginning in the 1970s, Islamists undertook small acts of violence, such as vandalizing stores selling alcohol, but in the 1980s Muslim activism began to escalate. Islamists held public prayers and issued documents calling for the implementation of Islamic laws and an Islamic constitution. The first death occurred September 28, 1981 when 30 Islamists overran a mosque to protest an arrest and a policeman was killed.<sup>12</sup> This was followed by increased government repression, bringing the Islamists, who were previously relatively unknown, to the forefront of the national scene. Mustapha Bouyali led the Algerian Islamist Movement which began gathering firearms and explosives and carrying out small acts of armed struggle, while the authorities attempted to counter

the movement through arrests. In analyzing this first Algerian Islamist group and its use of violence, Francois Burgat and William Dowell write, "The armed option which it had chosen (and which the tendency's majority and "center" were far from adopting) was perhaps nothing more than a reaction to the initial violence that the government had directed towards it."<sup>13</sup>

A combination of the regime's moderate repression and preempting Islamist demands held off significant additional violence for several years. Yet, in October 1988 riots occurred that resulted in the end of the FLN's monopolization of government. The riots arose due to great economic pressures and discontent among the population, while divisions in the regime weakened it. The government's response in putting down the riots lacked all proportion. The military was called in, and automatic fire left over 200 people dead. The Islamist group of demonstrators, which represented the only distinct component of the rioters, came under direct fire. The government lost its legitimacy with these measures, and in order to gain this back, it initiated constitutional reform allowing pluralism. A multitude of parties were created, but the Islamic Salvation Front (FIS) emerged as the leading religious party. The FIS' rise was not a sudden phenomenon, but the culmination of a longer process, as Rabia Bekkar describes:

There was a progression: from the mosque regulating social conflicts, to a semiorganized system of neighborhood committees, to a national organization after the legal incorporation of the FIS in 1989. The local groups were easy to pull in. All the FIS had to do was to incorporate them politically, ideologically. They were already doing the work. Before 1989 there was already this base.<sup>14</sup>

As a result of this situation, "though they were not the initiators of the events of October 1988, the leaders of the Islamist opposition were its main beneficiaries."<sup>15</sup> Prior to elections, the FIS showed a great amount of support in the streets during mass demonstrations. "The FIS occupied the street and transformed that space into a privileged arena for the diffusion of its message."<sup>16</sup> In the first free election of independent Algeria, held on June 12, 1990, the FIS won an overwhelming majority. These were local and provincial elections. In order to prevent a repeat of the FIS victory in the national government's legislature, the FLN changed voting laws to drastically favor itself, using extreme gerrymandering. The FIS organized strikes and demonstrations to counter this, because, "for the FIS to accept the principle of such a vote would be the equivalent of approving of its own public execution."<sup>17</sup> This resulted in the declaration of martial law by the head of state. Extreme levels of repression and arrests of leaders occurred, causing disruption of the infrastructure. Nevertheless, the ability of the FIS to mobilize large numbers of people continued. Elections were scheduled for December 1991, and the FIS leaders who were free decided to participate.

The Algerian FLN did not expect the massive victory that the FIS achieved in the election. In fear of an FIS seizure of power, the president dissolved the parliament and resigned, and a military takeover occurred, establishing the command of the High

Council of State. At first the FIS used only public declarations against the actions of the army, seeking to avoid violence. It faced suppression upon each of these, however, and was banned in March 1992. Bekkar describes the situation after the elections:

There had been the feeling that a breath of liberty was coming, and then—it collapsed. There was incredible restraint on the part of the Islamists, which was much more important than what happened afterward: the coup d'état, military takeover, and then the punishing of the FIS. Police and soldiers kept a close watch on the associations and the mosques. They tried to push them to extremism. Then there was violence, imprisonment. This is all classic.<sup>18</sup>

The FIS then began to use violence to attack the government, while levels of repression rose until a state of civil war emerged. The 1990s was characterized by violence between Islamists and the government, with thousands dying yearly. The FIS has continued to be excluded from elections, but by 2000 largely gave up armed struggle, as its military wing, the Islamic Salvation Army, disbanded itself in January 2000 due to President Bouteflika's "Civil Concord" policy granting amnesty for those who had revolted against the government. Still, small numbers of Islamist militants continue to wage armed struggle against the government.

The experience of the Islamists in Algeria shows an evolution in the use of violence against the regime. As Islamist groups first arose, there was no prospect for participation in the government, as it was monopolized by a single party. Thus, low-level violence was utilized, although armed attacks were generally avoided. Islamists only undertook killings after they faced violent repression from the government. Initially, violence was used also to gain recognition and bolster support for the movement. Once a broader base of support was established, demonstrations were organized by the FIS, but a military struggle was not adopted. Even following the extreme repression of the October riots, the FIS avoided violence in hope of taking part in the new pluralism that the regime was forced to adopt after losing legitimacy. When the FIS won the local and then national elections, it hoped to gain power peacefully. The intervention of the army prevented this from occurring. Still, leaders of the FIS tried to forestall violence by Islamists, hoping for peaceful negotiations. Once the High Council of State systematically repressed and banned the FIS, however, it became apparent that nothing could be gained by continuing a reformist route and working within the system. Violence thus broke out between the Islamists and the Algerian government. In Algeria, it can be seen that Islamists generally adopted violent measures only when the option of gaining power peacefully was not feasible.

In Egypt, Islamists were unsuccessful in their attempts to gain power in the government either through revolution or parliamentary participation. In Algeria, the Islamist group FIS was successful in winning elections, but was unable to gain control of the government after a military takeover prevented this. Sudan, however, provides an example in which Islamist groups succeeded in rising to power. The early history of Islamists in Sudan is similar to that of Egypt. Local Islamic groups joined in 1954 to

form the Sudanese branch of the Muslim Brotherhood, which was a reformist organization, eschewing violence. Although the Brotherhood lost influence with the rise of Arab Socialism in the region, it remained a significant member of the opposition group to the Sudanese leader Numeiry, which attempted a coup but failed. In 1977-78 Numeiry undertook a "national reconciliation" and leaders of the Brotherhood became active in the regime.<sup>19</sup> Thus, as John O. Voll writes, "While there was conflict between the chief articulator of Arab Socialism and the Sudanese Brotherhood, in the end Numeiry and the Brotherhood cooperated in a way that Nasser and the Egyptian Brotherhood never did."<sup>20</sup> The Muslim Brotherhood did not gain complete control of the government, but the head of the military government Omar Hassan Ahmed Bashir, who took power in 1989, continued to promote an Islamic identity to the state, especially in light of the civil war with the secular Sudan People's Liberation Movement. Voll notes:

Organized nonviolent fundamentalism has been very successful in the Sudan. Under Numeiry and during the parliamentary period in 1964-69 and 1985-89, the Brotherhood was legally recognized and was becoming an increasingly significant political force. . . . Brotherhood influence in the Bashir regime represented an important continuation of this development at the beginning of the 1990s.<sup>21</sup>

Voll also points out that with the success of nonviolent Islamism in Sudan:

There has been virtually no organized activity of the Jihad type in the Sudan. . . . Instead, the militant, violent revolutionary group is that which advocates a secular state and the de-Islamization of society.<sup>22</sup>

Yet, the case of Sudan cannot be considered a perfect example of the rise of Islamism to power by groups such as the Muslim Brotherhood. As has been described, a military regime was responsible for the Islamization of Sudan. The Islamized regimes under Numeiry and Bashir,

did not alter their fundamentally discipline-centered antipolitical character. This character has been manifested not only in their distrust of the political movements that supported their Islamization programs and whose leaders aspired to play the roles of its theoreticians and organizers, such movements include the Muslim Brotherhood in the Sudan. . . .<sup>23</sup>

Marked differences in Islamist groups' use of violence can be seen in the cases of Egypt, Algeria, and the Sudan. The largest group in Egypt, the Muslim Brotherhood, gave up the use of violence completely from the mid-1960s and onward. It adopted a reformist strategy and attempted to work within the parliamentary system to Islamize Egypt. The hope to gain broad support with a more moderate ideology, while avoiding repression from the government which could threaten the group's survival, led to this nonviolent course. Others in Egypt were not satisfied with a reformist

course of action and continued a revolutionary struggle, as they viewed the Egyptian regime as corrupt and beyond reform. These smaller Jama'at groups such as al-Jihad used violence initially in order to gain notoriety and garner support. The repression that these groups faced following attacks, however, oftentimes rendered them ineffective and disrupted their ability to act. Al-Jihad has been distinguished in its strict organization and pragmatic use of violence based on analysis of political conditions, but has still been far from successful in challenging the regime. In Algeria, Bouyali's Algerian Islamist Movement used low levels of violence such as vandalism to try to affect change in the political system dominated by the FLN. Once the authorities reacted with increased repression such as large numbers of arrests, this group increased its arms supply and the level of violence. This movement operated for only a short time, as government measures reduced its effectiveness and popularity. The FIS emerged following the 1988 riots. It was originally a political group that sought to take advantage of the increasing openness of the Algerian political system. Its popularity in elections and challenge to the regime led to a military takeover, and the FIS was eventually forced to develop an armed wing to remain relevant and continue its existence, as it was banned and its members faced severe repression. The FIS and other Islamists were engaged in armed struggle throughout the 1990s until most members were convinced to agree to a cessation of violence in 2000. In Sudan, the Islamists in the Muslim Brotherhood participated in a violent campaign only for several years as a member of a broad opposition to the Arab Socialist regime. The Brotherhood was able to gain power and take part in the leadership of the Sudan, however, in a nonviolent parliamentary manner. Thus, violent revolutionary Islamist groups never formed to any significant extent in the Sudan.

The examples of Islamist movements in Egypt, Algeria, and the Sudan demonstrate that Islamist groups have approached the use of violence in a wide variety of ways. While all of these groups have sought to establish an Islamic state and society, their approaches to achieving this have differed largely due to the situation in which they found themselves. Thus, the use of violence by Islamist groups varies across groups, but also is not constant within particular groups over time. Political rather than ideological concerns are dominant, especially in the larger groups that seek broad-based support. While there may always be smaller radical groups that refuse to give up violence and revolutionary goals, larger organizations such as the Muslim Brotherhood and FIS have demonstrated that they will use violence only when the costs of employing peaceful means are too great to bear, as there is a fear of engendering repression by the regime and losing popular support.

Such considerations must be taken into account when analyzing Hamas and the conditions under which it will continue to use violence, or become a peaceful political organization. The perception shared by many that Hamas is inherently violent conflicts with its historical development. The history of Hamas before 1987 is essentially the history of the Muslim Brotherhood in Palestine. Muslim Brotherhood members first took action in Palestine in the Revolt beginning in 1936. Brotherhood membership and activity grew rapidly in the years before the 1948 War, and upon the war's outbreak, Brothers participated in the fighting. Thus, in its early form in Palestine, the

Muslim Brotherhood did engage in violence, though not to the degree of other groups such as the Qassam Brigades. Following the war, the Gaza and West Bank branches were separated. The Gaza branch, though influenced by Egypt, was independent and continued a revolutionary and military struggle to end the occupation. In the West Bank, military action was avoided by the Muslim Brothers, as they became united with the Jordanian branch and did not want conflict with the Jordanian regime.

The rise of Nasser and Arab Socialism changed things, however, as the Muslim Brotherhood was made illegal in 1954 in Egypt, affecting the Gaza branch. The group adopted a new strategy, which was to strengthen its chances of survival by withdrawing from politics. It would instead seek to prepare Palestinian society to liberate Palestine in the future through education and "the upbringing of an Islamic generation."<sup>24</sup> Certain members of the group were unhappy with this solution, which they saw as ineffective, and broke off in 1958 to form Fateh, or the Palestinian National Liberation Movement, in order to continue the struggle. Except between 1968 and 1970 in which guerilla operations were conducted by the Brothers before the PLO's withdrawal to Lebanon, the Brotherhood continued to abstain from politics and avoid violence until the mid-1980s and the formation of Hamas.

While Hamas became operational in 1987, the structural development of the organization was already largely intact. By 1984 leaders of the Palestinian Muslim Brotherhood began to discuss moving from the organization's educational focus to taking a more active role in the struggle against the Israeli occupation. This was partly due to the rise of Islamic Jihad, an Islamist group which pursued armed struggle and drew members away from the Muslim Brotherhood. Leaders such as Sheikh Ahmad Yassin argued that the Brotherhood must prepare for a violent uprising, and this led to the formation of a "small and secret military apparatus to acquire a cache of arms and to prepare for military action."<sup>25</sup> Brotherhood documents show that the organization's role had three primary thrusts: "cadre formation and mobilization, passive resistance, and military action."<sup>26</sup> Cadre formation and mobilization involved attempts to garner popular support in universities and elections, passive resistance included involvement in demonstrations and protests, while military action involved preparation for armed struggle by building up infrastructure, intelligence, and weapons supplies. Military cells organized by Hamas carried out small attacks even before the outbreak of the intifada. Thus, when Hamas was created, it was basically a continuation of the new focus of the Muslim Brotherhood that emerged in the mid-1980s.

A variety of factors led to the outbreak of the intifada in December 1987. One of the contributing elements was the rise of political Islam in Palestine, as expressed by al-Jihad's rise and the Muslim Brotherhood's decision to take part in the armed struggle. This decision was formalized by the Political Bureau of the Muslim Brotherhood in Gaza by creating Hamas the day following the intifada's outbreak, a decision which was "a product of the new circumstances imposed on al-Mujamma' al-islami [the Palestinian branch of the Muslim Brotherhood] by the Palestinian civil uprising."<sup>27</sup> The political activation of the Muslim Brotherhood was based on "organizational needs" rather than "ideological imperatives."<sup>28</sup> Many of the wings and leadership within the organization were carried over from the Muslim Brotherhood, such as its Security

Wing which was formed in 1986 and targeted Palestinian collaborators. At this point, early in the intifada, Hamas leadership saw its main priority as facilitating the mobilization of the Palestinian people in their uprising. The organization encouraged low levels of violence, such as stone throwing or even stabbings, but mostly avoided the use of firearms and explosives. The Events Unit of Hamas had one of the most important roles in the first years of the intifada, which, as Anat Kurz and Nahman Tal describe, included, "initiating and enforcing strikes, inciting street riots and demonstrations, blocking roads, writing nationalist and religious graffiti on walls, assisting families that suffered losses in the uprising, and burying the people killed during the clashes with the Israeli security forces"<sup>29</sup>.

While armed struggle is a central element in the early documents of Hamas, which are among its most radical in ideological terms, a focus is accorded to popular uprising, and mass demonstrations rather than highly organized military operations or suicide bombings that were later utilized. For example, a Hamas leaflet dating November 10, 1988 stated,

Our struggle with the Zionists is not a campaign for partition of borders, and it is not a dispute over the division of land; it is a campaign over existence and destiny. In this position, we see the hope and aspiration of our people everywhere to arouse in you the spirit of the struggle, the spirit of the outbreak of the revolution of 1965. We call on you to take under your wing the spirit of the children of the stones and the continuation of the armed struggle, no matter what the cost.<sup>30</sup>

At this point in time early in the intifada, the Palestinian masses showed high levels of participation and their action was effective as a means of struggle and raising awareness about the oppression of the occupation. Khaled Hroub describes beginning of the intifada:

For approximately three years, mass demonstrations, throwing stones, closing streets, and burning tires were the important methods used. During this period, the intifada reached the peak of its effectiveness by succeeding in recruiting masses of ordinary people to participate and by managing to draw international support.<sup>31</sup>

As time progressed, levels of mass involvement fell, causing a shift in focus by Hamas. Even beforehand, however, isolated cases of military force were employed by Hamas—notably two abductions and killings of Israeli soldiers in 1989. A new era of heightened military operations began with the establishment of the Izz al-Din al-Qassam Brigades in 1992, although the apparatus for these brigades already existed. The Brigades carried out attacks on military targets soon after its inception. In 1994 Hamas launched a number of suicide bombing attacks which, for the first time, targeted Israeli civilians. A large wave of suicide attacks on Israeli buses also occurred in 1996, in response to the assassination of Hamas member Yahya Ayyash, 'the Engineer.' In

the years following the Oslo Peace Accords, from 1993 to 1996, the overall incidents of violence, such as large-scale riots and stone throwing, fell. Yet, the more intense military operations by Hamas which resulted in greater casualties per attack increased during these years.<sup>32</sup> Although public support for such attacks was low, Hamas' violence contributed to the stagnation of the peace process and the election of the right-wing Israeli Prime Minister Netanyahu in 1996. This dissolution of the peace process beginning around 1997 in turn led to greater disillusionment among Palestinians about the benefits of negotiations with Israel and an increase in Hamas' popularity because of its intransigence. While Hamas exerted effects on the peace process, Khalil Shakiki describes how the course of the peace process also impacted Hamas:

The second change brought about by the peace process was in Hamas, the most powerful opposition force in Palestinian politics. The unfolding reality of the peace process began to bring changes within Hamas, created by the PA's policies and actions. These include changes of public opinion reducing support for Hamas. Between 1993 and 1997, Hamas lost something like 40% of its support. Not surprisingly, Hamas did make some gains in mid-1997. These seem to a large extent to reflect changes in public opinion regarding the question of violence.<sup>33</sup>

Analysis of Hamas' actions during the first intifada and the years following the Oslo agreements shows that violence has been used as a political tool. Hamas initially mobilized the masses in large-scale demonstrations in which low-levels of violence were used. As this lost its effectiveness and Israelis used more repressive measures, smaller but more intense military operations were carried out by Hamas. These were in response to both Israeli violence and in order to thwart the success of the peace process. As Ziad Abu-Amr writes,

Hamas's military activities are intended not only to strike at the occupation, but also to embarrass the negotiating factions and to bolster its own position as a major Palestinian force that cannot be ignored and without which no agreement can be reached.<sup>34</sup>

Hamas saw both the interests of the Palestinian people and Hamas' own popularity and political relevance at stake if the PA succeeded in negotiating with Israel. Violence was the most effective means of preventing this from occurring.

A variety of distinctions must be made in analyzing Hamas' use of violence. First of all is the question of who the broad targets of Hamas' attacks are. Similarities here can be seen with revolutionary Islamist groups in Egypt, which found it necessary to differentiate between the types of targets it attacked, as each had certain implications that could undermine the Islamists' cause. As Barry Rubin writes:

Killing Arabs and Muslims challenged both nationalist and traditional Islamic thinking and was unpopular: Copts were at least fellow Egyptians, and

striking them seemed to undermine national unity. Murdering tourists—though they be foreigners and non-Muslims—damaged the livelihood of many Egyptians.<sup>35</sup>

Although there are a wide variety of actors that Hamas could feasibly consider attacking, including Israel, the Palestinian Authority or PLO, other Arab regimes, and the U.S. or other Western nations, it has been discriminating in its decision to target only Israel with violence. While the other actors could be justified as legitimate targets under Hamas' Islamist ideology, political considerations have led to pursuing non-violent relations with them. The limit of Hamas' power in the face of Israel's superiority has made it necessary that Hamas keep its number of enemies as low as possible, while seeking cooperation with a wide variety of groups, particularly other Palestinian, Arab, and Muslim groups or nations. Hamas has avoided denoting the PA, other Palestinian opposition groups such as the PFLP, or other Arab regimes as *jahiliya*, or pagan, and deserving of having holy war waged against them. This is in contrast to the Palestinian Islamist group, Islamic Jihad, which calls both Israel and other Arab regimes, "two faces of the same coin; they are both the fruit of the Western invasion of the Arab world."<sup>36</sup> Hamas has also sought to achieve international legitimacy and has avoided undertaking or supporting violent operations outside of the borders of the Occupied Territories and Israel.

Perhaps the greatest restraint of Hamas in its use of violence can be seen in its relations with the Palestinian Authority. Strong tension has existed between the two, but Hamas leaders have sought to maintain a degree of solidarity and have not attempted to directly challenge the leadership of the PA or the PLO. It has avoided attacks on the PA and has eschewed political assassination as a policy. Yet, under strong Israeli pressure to crack down on Hamas for attacks against Israeli targets, the PA carried out repressive measures against Hamas, using mass arrests. Hamas has resisted retaliation, which could result in a Palestinian civil war, further weakening the Palestinians in the face of Israeli power. Thus, perceiving Israel as the foremost enemy to the Palestinian people and to the establishment of an Islamic Palestine, all efforts of armed struggle have of yet been directed against Israel. Within the broader distinction of Israel as the target of violence, Hamas has made several shifts in its strategy and tactics over time, reflecting the changing political environment. Some parallels can be seen between Hamas and the Algerian FIS in this regard. The FIS originally avoided military attacks against the regime, instead seeking to mobilize the population, fostering riots and large demonstrations, which it could use to its advantage in elections. Once the military takeover occurred, the election results became irrelevant, and the FIS faced higher levels of repression, it reverted to military action, as the conditions it faced made a more peaceful option ineffectual. Though not directly parallel to this, conditions have forced Hamas to shift strategies. Of course, for thirty years the Muslim Brotherhood in Palestine avoided violence and political action. With the outbreak of the intifada, Hamas was established with armed struggle as central tenet to the organization. This was justified in Hamas' unofficial journal, *Filastin al-Muslima*, stating that "as the enemy closed all roads to a peaceful solution, the only means to

realize this peace that remained was the use of our hands."<sup>37</sup> It initially favored low-level uses of violence through mass action. This was not due to a lack of military capabilities, as these had been established by the Muslim Brotherhood in the 1980s even before Hamas' formal creation. Rather, it was based on what was most effective politically and what could be justified as a legitimate target of violence. Whenever the PLO used the intifada as a bargaining chip in coming to an agreement with Israel, which occurred with the Oslo agreements, Hamas increased the level of violence it employed. This was to challenge the PLO's legitimacy and to derail the peace process, which Hamas saw as forfeiting Palestinian rights, as the PLO leadership "exploited the gains of the intifada by making concessions to American and Zionist claims."<sup>38</sup> Oslo, and any peace with Israel, could also hurt Hamas in terms of the organization's interests. Popularity for Hamas has been greater when chances of concluding a successful peace with Israel was perceived as low. Yet, Hamas leadership has also had to consider that using violence to disrupt the peace process could lead to the organization's isolation and marginalization, while a successful peace initiative could have the same effect. Kurz and Tal describe how this dilemma has produced "harsh intra-organizational debates" in Hamas about using violence and challenging the PA in the peace process with Israel.<sup>39</sup> A general division is found between leadership in the Occupied Territories, which has become more pragmatic and willing to cooperate with the PA and would consider the idea of concluding an armistice with Israel. Sheikh Ahmad Yassin on different occasions voiced this program. On the other hand, Hamas leaders stationed abroad have tended to be more ideologically motivated and less willing to discontinue armed struggle, as their separation from the conflict affords them the ability to be more dogmatic without facing direct consequences.

Hamas also altered its policy of targeting Israeli civilians over time. The shift to attacking civilians was brought about by Hamas leadership's conviction of the need to retaliate against Israeli attacks upon Palestinian civilians, beginning with the Hebron massacre of 29 Palestinians by an Israeli settler in February 1994. Hamas described its killing of civilians as the product of extreme circumstances, and that such policies were an undesirable last resort. Even though it could have justified such suicide attacks on civilians in terms of Islamic holy war, Hamas has attempted to characterize its use of violence as legitimate using the language of international law and liberal norms. It calls the violence a form of defense against a vastly superior enemy and necessary evil in a war for national liberation. Thus, attacking civilians is not a strategy that Hamas will inevitably employ, and attempts have been made by Hamas leaders, such as Yassin, to establish a mutual armistice on civilian targets with Israel. In carrying out and continuing a violent course of struggle, there are a number of important considerations that the Hamas leadership must weigh. Although there are deep differences, these considerations are much of the same issues that Islamist groups in Egypt, Algeria, and Sudan faced. The revolutionary Islamist groups in Egypt had difficulty convincing the population as a whole that the regimes they lived under were legitimate targets of attack because of their infidelity to Islam. Even if the Egyptian government under Mubarak is primarily secular in nature, those in office are still for the most part Muslim Arabs. This fact is part of what led the Muslim Brotherhood in Egypt to become reformist. Hamas'

view of Israel as the “Zionist Enemy” that has infringed upon Islamic lands, though radical, is more readily accepted in mainstream Palestinian thought.<sup>40</sup> This is bolstered by the fact that Israel is occupying the Palestinians’ land and therefore has no legitimacy as a governing body in the eyes of Palestinians in the Occupied Territories. While in theory, then, Palestinians may be more likely to support violence against Israel, only a small percentage of the population is motivated purely by ideological considerations. Instead, most Palestinians are concerned with the more concrete circumstances of their lives. Thus, if it seems that negotiating a peace agreement with Israel will bring improved circumstances in terms of security and economic conditions, a majority of Palestinians will support the peace process, and groups that continue to use violence will lose backing. This has been shown empirically through public opinion polls taken in the West Bank and Gaza Strip by the Palestinian Center for Policy and Survey Research from 1993 onward. From February 1995 until June of 1998, when the peace process was at its height following Oslo, a greater percentage of the population opposed rather than supported armed attacks against Israel. Likewise, support for Hamas was down at this time. By June of 1998, when the process seemed to be stagnating, 50% of the population supported armed attacks, while 45% opposed them.<sup>41</sup> Since then, with the outbreak of the second intifada, hopes for successful peaceful negotiations have diminished, and support for violence has risen. Khalil Shikaki writes:

The loss of confidence in the ability of the peace process to deliver a permanent agreement on acceptable terms had a dramatic impact on the level of Palestinian support for violence against Israelis, including suicide bombings against civilians. In July 2000, after U.S. President Bill Clinton’s failed attempt to broker a final peace settlement at Camp David but before the eruption of the second intifada, already 52 percent of Palestians approved of the use of violence; a year later, that figure reached the unprecedented level of 86 percent.<sup>42</sup>

The outbreak of the second intifada bolstered Hamas’ position in terms of its public support. As Shikaki continues:

By July 2001, the Islamists’ popularity had increased to 27 percent. And for the first time ever, support for Islamist and nationalist opposition groups, combined at 31 percent, surpassed the 30 percent garnered by Fatah and its allies.<sup>43</sup>

The fact that Hamas has continued its armed struggle throughout the 1990s and into the second intifada can thus be seen as a strategy motivated by political considerations over ideological ones. The violence that Hamas has used has continued to make the organization politically relevant. Hamas has yet to directly challenge the PLO or PA as the legitimate representative of the Palestinian people, either through elections or violent revolution. Through pursuing the armed struggle, however, Hamas has provided the Palestinian people with an alternative hope in the face of widespread

feelings of failure by the PA and the peace process. Hamas’ military operations have so far been effective in their consequences and contributed to Hamas’ popularity, and can be seen as part of a larger strategy for Hamas’ hope to eventually rise to power in Palestine and liberate it from Israel. Yet, it is conceivable that Hamas would give up the use of violence under the right conditions. Indeed, in an interview in 1997 Sheikh Yassin stated, “Hamas’ policy is one of realizing the goals of the Palestinian people. If these goals are achieved by peaceful means, then there would be no need for other sorts of action.”<sup>44</sup> Statements have also been made by Yassin and other Hamas leaders that it would potentially agree to an interim agreement or armistice. Hamas would not fully renounce its aspirations of liberating Palestine from the Jordan to the Mediterranean, as this would contradict its ideology. Yet, Hamas regards the struggle for the complete liberation of Palestine as a long-term historical process which will only occur in the future when the time is ripe. There are allowances for short-term concessions based on temporal political conditions, as long as the historical solution is still viable. This provides Hamas with a great deal of flexibility within a larger ideological framework. Hamas has on several occasions made entreaties of peace. In 1995, when Israel planned a withdrawal of troops from West Bank cities, Hamas made assurances to the PA that it would stop attacks. Yet, the peace ended after Israel’s assassination of Yahya Ayyash and Hamas launched a series of bus bombings. Still, “After the first two bombings . . . Hamas publicly announced its willingness to cease terrorist activities in return for a moratorium on future Israeli assassinations of Hamas leaders.”<sup>45</sup> On another occasion, Ahmad Yassin, on July 22, 2002, promised to stop suicide attacks in return for an Israeli withdrawal from the Occupied Territories. This was followed by an assassination of Hamas leader Salah Shehade by Israel, however, and thus received no consideration. Andrea Nüsse affirms that Hamas will not necessarily be an obstacle to peace, as, “The oft-proven pragmatism of the Islamic Resistance Movement makes it probable that the armed struggle might be abandoned when their political influence is secured otherwise.”<sup>46</sup> Actions and statements by Hamas, such as its June 29<sup>th</sup>, 2003 “Declaration of Ceasefire Initiative,” in which “suspending military operations against the Zionist enemy for three months” was announced further lead one to conclude that the organization is not inevitably bound by its ideology to continue armed struggle.<sup>47</sup> Yet, the current position of Hamas in Palestinian politics is a gray area, and its future is uncertain. With the death of Arafat and upcoming elections, there is renewed hope among Palestinians that benefits can be reaped by pursuing peace with Israel. The continuation of the second intifada for over four years has left the Palestinian people tired of its costly violence and ready for change. The public’s support for Hamas and armed tactics have fallen in the most recent polls.<sup>48</sup> Hamas leadership has decided to act as it did in the 1996 elections and boycott the upcoming January 2005 elections, although not taking any measures to disrupt or challenge the results. The outcome of the elections, though, may exert a strong effect on Hamas’ future and its continuing use of violence. If a new Palestinian leadership comes to power that is able to effectively pursue a peaceful negotiation with Israel, Hamas may be forced to renounce an armed struggle or face political isolation. There are two fears among Hamas leadership that makes the decision about whether to continue violence a difficult one. This di-

lemma could in fact lead to a breakup of the movement. One fear is that, if armed struggle is renounced and Hamas seeks to take part in the PA and the peace process, it will lose its credibility and distinctiveness as a Palestinian resistance organization. Its role will then become like that of the Muslim Brotherhood in Egypt, which, though it takes part in parliamentary politics, has little real political power. If this option is taken, more radical elements of Hamas such as the Qassam Brigades might decide to break off and continue the armed struggle separately. Conversely, if Hamas decides to continue its violent course, it could face problems as well. Its support could dwindle in the future as people look to the peace process for hope and see Hamas' violence as detrimental to that. This could lead to Hamas' political isolation and decreased importance. Hamas would also likely face increased repression by both Israel and the PA. While Hamas has been effective in continuing to operate while facing repressive measures, such as under Israel's targeted assassinations, this may not continue to be true in the future. In this scenario, Hamas could become more radicalized like the Jama'at groups in Egypt and mount attacks on the PA. Also, repressive measures could be severe enough that Hamas becomes forced to give up armed struggle, as the costs of continuing them might become too great to bear, or the measures are disruptive enough to impede its ability to organize attacks. These options do not bode well for Hamas' political future.

Yet, if the peace process under the new Palestinian leadership fails, Hamas will likely continue to occupy an important role in Palestinian politics. Shaul Mishal and Avraham Sela assert:

As long as negotiations between Israel and the Palestinian Authority for a permanent peace settlement are marred by rivalry and disagreement, mistrust and mutual recriminations, Hamas will be able to continue mobilizing wide popular support and to maintain its public image as a standard bearer of Palestinian national values. As long as Yasir Arafat and the Palestinian Authority fail to translate Israeli-Palestinian peace negotiations into tangible territorial achievements and economic benefits, Hamas will be able to continue playing its role as the guardian of Islam and the champion of authentic Palestinian aspirations.<sup>49</sup>

If a situation as Mishal and Sela describe continues, it is uncertain whether Hamas would proceed with armed struggle. It could attempt to use the support it might garner from the failed peace to facilitate its conversion to a peaceful political party and thus take a large share of the PA's power. In this case Hamas could be seen as acting in a fashion analogous to Sudan's Muslim Brotherhood. The Brotherhood's power was enough of a challenge to Sudan's regime that Numayri was forced to reconcile with it. Under certain conditions the PA could be forced to make acceptable concessions of power to Hamas. In conclusion, though, perhaps Hamas' most likely strategy at the moment is that which Hamas leader Mahmud Zahhar espoused in 1994:

Time is the remedy. Those who are in a hurry try to eliminate their rivals so

they can monopolize the stage. Hamas is not in a hurry. We know that the PLO's practice will inevitably lead to its downfall. There is no need therefore to bring this about through confrontation. It is enough to wait.<sup>50</sup>

Hamas has shown that it is generally pragmatic and realistic in its actions, adapting to conditions that arise in order to consolidate its power and influence. The organizational debates occurring between the more pragmatic leadership inside the Occupied Territories, and the ideologues outside of the Occupied Territories have yet to be resolved.<sup>51</sup>

The arguments between the two, though, have given Hamas flexibility, though at times inefficiency in its actions, because many of its decisions have been the result of a mixture of ideological and pragmatic concerns. This has allowed the group to adapt, survive and remain relevant since its establishment in 1987. For the near future, Hamas will likely adhere to Zahhar's above statement and wait for the ripe moment to make any significant changes in strategy, as neither the outside nor inside leadership has gained a decisive advantage over the other. At the moment, most of Hamas does not consider it necessary, or even possible, to carry out a single-minded course of action to take control of government in Palestine and liberate the nation from Israel immediately. Thus, while Hamas very well may give up the use of violence for political purposes, it cannot be stated precisely under what conditions this will be. The best that can be done is to analyze the history of Hamas, as well as other Islamist movements, and realize that Hamas will seek to adapt to the changing circumstances of internal Palestinian politics and Palestine-Israel relations to ensure its survival and continued support among the Palestinian population. Hamas' overall concern, then, is slowly consolidating its position for the future, rather than seeking only temporary gains in power and prestige.

## Endnotes

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- <sup>34</sup>Abu-Amr, 15.
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- <sup>37</sup>Filastin al-Muslimima, March 1990, in Nüsse, 70.
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- <sup>50</sup>Mahmud Zahhar; Hussein Hijazi, "Hamas: Waiting for Secular Nationalism to Self-Destruct. An Interview with Mahmud Zahhar," *Journal of Palestine Studies*, Vol. 24, No. 3. (Spring, 1995), 83.
- <sup>51</sup>"Those on the outside can consolidate their leadership over Hamas only if Hamas continues to resort to violence. If Hamas becomes a political organization, those on the inside can therefore be elected, mobilize support for their leadership, and marginalize the outside leadership. The reason there has been so split despite this clear-cut change is because, to a large extent, the leadership on the outside still controls Hamas's financial resources and logistics, making it very difficult for the leadership on the inside to have a clear break from the leadership in the outside." Shikaki, "The Peace Process and Political Violence."

### Islam and the Nation-State in Southeast Asia: The Defeat of Political Islam?

Edward W. Wee  
University of Pennsylvania

"Islam is a complete way of life. It covers the entire spectrum of human activities. Hence, Islam is both religion and politics, church and state, joined in a single goal of serving God and implementing His commandments."<sup>1</sup>

#### Introduction

How Islam and the state should evolve together has been an essential yet unresolved question in the political development of Muslim-majority Southeast Asian nations, particularly Indonesia and Malaysia, since their independence from colonial rule. More recently, the increasing role of Islam in national political discourse within Indonesia and Malaysia, the identification of the region as "a major center of operations for al-Qaeda"<sup>2</sup> and a possible second front in the United States-led war against global terrorism, have put the issue of political Islam in Southeast Asia under growing scrutiny. In this context, the defeat of the fundamentalist Islamic Party of Malaysia (*Parti Islam SeMalaysia* or PAS) in the Malaysian General Elections in March 2004, and the apparent silence over religious issues, such as the introduction of Islamic law, by Islamic-based parties in the run up to Indonesia's General Elections in April 2004, have been interpreted by some observers as the "triumph of secularization over political Islam."<sup>3</sup> This paper aims to show that observers should not confuse silence for acquiescence. In spite of the recent political developments in Indonesia and Malaysia, political Islam is far from defeated. On the contrary, political Islam has been co-opted by mainstream political parties and has achieved a permanent foothold in both countries. This strengthening of political Islam may pave the way towards a moderate synthesis between "secular nationalism and Muslim universalism"<sup>4</sup> and if sustained in the long run, would have a positive spillover effect on the type of Islam that will evolve in Southeast Asia and the larger Muslim world.

#### Political Islam and its Origins

In order to effectively discuss the state of political Islam in Southeast Asia today, it is important to first understand its origins and objectives. Political Islam is a term originally adopted by Western scholarship to identify the involvement of Islamic tenets and beliefs in the supposedly "secular domain of politics, and to distinguish these practices from forms of personal piety, belief and ritual conventionally classified as religious."<sup>5</sup> This identification is based on the assumptions of Western liberal democratic thought that politics and religion are incompatible, and should thus assume

distinct and separate spheres in society. For many Muslims, however, this is an alien idea. Instead, Islam constitutes more than a theological or ritual system, and does not clearly separate the spiritual and temporal. There is an adage within Muslim societies, "*Islam ad-din wa daulah*" (Islam is the religion and politics of the state).<sup>6</sup> Historically, Islam has also been a "universalist ideology"<sup>7</sup> socially, geographically and politically. Muslims perceived themselves as the *ummah* (universal community), who lived in the *dar al-Islam* (abode of Islam) separate from the *dar al-harb* (abode of war) and who found political unity under the *khalifa* (caliphate). As such, the idea of the modern, post-colonial, secular nation-state seems incompatible with basic Islamic beliefs. Thus, the key question within contemporary Muslim societies is not whether there should be a political relationship between Islam and the state, but to what extent that relationship should develop. As a result, two schools of thought have emerged. At one end of the spectrum, there are those who believe that Islam entails "the complete subordination of all aspects of life to God."<sup>8</sup> They argue that Islam should be the basis of the state and that the state should adopt *Shari'a* (Islamic law) as the constitution and law of the land, thus "reviving the Prophetic model of the Islamic state."<sup>9</sup> The other school of thought stresses the substance rather than the formal or legal aspects of the state, emphasizing the promotion of Islamic principles and values by the state. These two schools of thought are generally referred to as fundamentalist and moderate respectively. Political Islam is typically but inaccurately only used with reference to the efforts of Islamic fundamentalists to further their goals within the political process. We must be clear that political Islam should not be directly associated with fundamentalism or radicalism; in fact, Islamism aims to "restore Islam's place as a central reference point for social, cultural, economic and political life in Muslim society."<sup>10</sup> Both fundamentalists and moderates subscribe to this belief, albeit to varying extents. They are both opposed to a purely secular state, in which religion is restricted solely to the realm of personal belief. Therefore, a more accurate definition of political Islam, for the purposes of this paper, would include all groups who are against a purely secular order and seek to promote to varying extents the Islamic characteristics of a state or society through the established political process.

#### Political Islam in Southeast Asia

Islam was spread to Southeast Asia by Arabian and Indian merchants and had gained a foothold by the thirteenth to fourteenth century AD. As with all other great religions, the practice of Islam was and still is non-homogenous, with elements of *adat* (local customs) and *sufi* (mysticism) influencing Islamic practices and beliefs. Even today, differences in religious practice still exist, particularly in Indonesia where the Muslim population is divided into two groups, the *santri* and the *abangan*. The *santri* are considered to be devout Muslims who observe all the orthodox practices of Islam, while the *abangan* are nominal Muslims who practice Islam together with parts of the religions of their ancestors. However, Southeast Asia has been increasingly influenced by the tide of global Islamic revivalism, characterized by an "upsurge in Islamic self-awareness and political activism in the Muslim world,"<sup>11</sup> and an emphasis

on returning to authentic Islamic practices. Such ideas reached Indonesia and Malaysia through returning pilgrims who had performed the *hajj* (pilgrimage) to Mecca or students who had been sent to Middle Eastern *madrasahs* (Islamic schools) or Islamic universities for a religious education. In addition, Islamic revivalism was catalyzed by the Iranian Islamic revolution in 1979 and the war against the Soviets by the Afghan *mujahideen* during the 1980s. These events raised the confidence and consciousness of Muslims throughout the world, including Southeast Asia, and strengthened support for political Islam as a means of achieving Islamic political ideals and freeing Islamic states from Western influence.

In addition to external influences, internal factors played a pivotal role in the strengthening of political Islam in Southeast Asia. It is a common misconception that fundamentalist or radical groups are solely responsible for increased political and social Islamization. In reality, the cause of political Islam has been most effectively promoted in Indonesia and Malaysia by existing governments for political rather than religious reasons. Until the early 1990s, the Indonesian state, which was guided by Sukarno's secular ideology of *Pancasila*, gave no special role to Islam and strongly resisted attempts by Islamists to play a role in politics. The *Darul Islam* rebellion from 1948-62, which aimed to establish an Indonesian Islamic State in place of the secular republic, was brutally crushed with nearly 25,000 deaths and the destruction of 120,000 homes.<sup>12</sup> After 1965, Suharto's New Order regime continued to tame political Islam by denying Islamic interests any political space to advance their demands. Mass Islamic organizations such as *Nahdlatul Ulama* and *Muhammadiyah* were confined to purely social welfare functions. However, in the later years of the New Order, Suharto sought to cultivate Muslim support as a countervailing force to the increasingly powerful military and to gain electoral support. This "greening"<sup>13</sup> of the New Order involved the construction of thousands of mosques and *madrasahs*, the intensification of Islamic education through the State Institutes of Islamic Studies (IAIN), and most importantly the establishment of the Association of Muslim Intellectuals (ICMI), which for the first time mobilized Muslim intellectuals and laid the "ideological and political foundation of the post-Suharto upsurge of political Islam."<sup>14</sup>

In Malaysia, political Islam has similarly been promoted by the "Islamization race"<sup>15</sup> between the United Malays National Organization (UMNO)-led government and the fundamentalist opposition party PAS, greatly inflating the level of Islamist discourse in the country. UMNO, which is the predominant member of the multiracial National Front government, has responded to PAS's challenge for the Malay majority vote since the 1980s by devising an Islamization program of its own, known as the *Penerapan Nilai-nilai Islam* (Inculcation of Islamic values).<sup>16</sup> This has resulted in "more Islamic laws and regulations, the expansion of the Islamic bureaucracy and the empowerment of religious authorities in Malaysia."<sup>17</sup> Unfortunately, in trying to prove its Islamic credentials, UMNO has become "...hostage to the PAS agenda and framework of Islam..."<sup>18</sup> to the extent whereby PAS's and UMNO's stand on Islam seem almost identical. For years PAS has called for punishments for so-called "apostates"<sup>19</sup>, Muslims who were seen as deviating from Islamic beliefs. In 2000, the UMNO-controlled state of Perlis even attempted to pass the Aqidah Protection Bill that would

have given state religious authorities the power to prosecute Muslims accused of "heresy, deviation or other crimes related to their beliefs", be incarcerated in "faith rehabilitation centers" for up to a year, while "those deemed unredeemable would be declared apostates and lose their rights as Muslims."<sup>20</sup> As such, issues that were once considered extreme demands by PAS, now constitute government policy.

### Elections 1998/1999: Political Islam ascends

As a result of these factors, political Islam had firmly established itself in Indonesia and Malaysia before the most recent elections. With the collapse of the Suharto regime in 1998, political forces that the New Order had suppressed or controlled were unleashed with extreme force. The rising tide of political Islam saw the formation of forty-two Islamic political parties in the six-month period following Suharto's resignation, and there were renewed calls advocating a greater role for Islam in the state.<sup>21</sup> Although the Islamic bloc was generally defeated by secular-nationalist parties such as the Indonesian Democratic Party - Struggle (*Partai Demokrasi Indonesia Perjuangan* or PDI-P) and GOLKAR in the June 1999 Parliamentary Elections, some of the new Islamic parties gained enough votes to become a powerful political force within the new and unstable democracy. Together with Suharto's former party GOLKAR, the Islamic parties formed the *Poros Tengah* (Central Axis) alliance to prevent the election of Megawati Sukarnoputri, the leader of PDI-P and daughter of former president Sukarno, as president. Instead, Abdurrahman Wahid, the head of Indonesia's largest Islamic organization, *Nahdlatul Ulama*, emerged as a compromise choice, thus reinforcing the position and power of political Islam in Indonesia. The secular nature of the Indonesian state also quickly came under attack from Islamists. In August 2000, the Islamic parties and thousands of demonstrators called for a constitutional amendment to include the Jakarta Charter, which obliged "adherents of Islam to carry out Islamic law."<sup>22</sup> Despite the eventual rejection of the proposed amendment, the "rising tide of political Islamism"<sup>23</sup> was unmistakable.

The Malaysian elections of 1999 proved a watershed for political Islam as well. As a result of the Anwar Ibrahim affair and public discontent over government corruption, it saw huge gains for PAS at the expense of UMNO, with UMNO's share of the Malay vote falling from 62 percent to only 49 percent.<sup>24</sup> It also marked the first time since independence that two Muslim-dominated states, Terengganu and Kelantan had fallen to the opposition. More importantly, it seemed to be an endorsement of PAS'S fundamentalist brand of Islam and a defeat of UMNO's comparatively more moderate approach. Shortly after, the PAS-led state government of Terengganu attempted to fully implement the Islamic criminal code or *Hudud*, which advocates physical punishments such as the amputation of limbs. These efforts came as a shock to Malaysians and the rest of Southeast Asia as it represented the most extreme form of political Islam - the desire to create a completely Islamic State. The culmination of these events led some observers to fear that Malaysia was on the "slippery slope"<sup>25</sup> to Talibanism.

### Elections 2004: Political Islam Entrenched

In light of the gaining strength of political Islam in Indonesia and Malaysia over the past few years, and the uncovering of al-Qaeda linked terror cells in South-east Asia such as *Jemaah Islamiyah* (JI) and *Laksar Jihad*, the 2004 elections in both countries were seen as a litmus test for the direction of Islam in Southeast Asia. The Indonesian election campaign was marked by a surprising lack of religious rhetoric, with the issue of implementing *shari'a* law hardly articulated. Instead, the Islamic parties focused on an anti-corruption, pro-social welfare platform. Vice-President Hamzah Haz, leader of the strongly Islamic United Development Party (*Partai Persatuan Pembangunan*), which has been at the forefront of efforts to incorporate *shari'a* into the Indonesian constitution, surprised many by declaring that his party "did not support turning Indonesia into an Islamic state."<sup>26</sup> In Malaysia, the elections resulted in a landslide victory for the multiracial National Front coalition against the opposition Islamic party, PAS. PAS's use of extreme religious rhetoric such as promising supporters a place in heaven and condemning detractors to hell proved disastrous.<sup>27</sup> It not only failed to make widely expected gains in "Malay-Belt" states such as Kedah and Perlis, but lost the state of Terengganu to the National Front as well. Its representation in the Federal Parliament decreased from 27 in 1999 to only 7, thus losing its place as the leading opposition party to the Chinese-based Democratic Action Party (DAP). Even in its stronghold Kelantan, which it had controlled since 1990, PAS's victory was by a whisker-thin margin of three seats

At first glance, the results of both elections may seem to mark "the rise of secular politics to halt the advance of political Islam."<sup>28</sup> However, upon closer observation this could not be further from the truth. In Malaysia, Islamic issues and rhetoric dominated the entire election campaign for both UMNO and PAS. In particular, for the first time in its history, UMNO fielded candidates with strong Islamic backgrounds including *ulema* (Islamic clerics)<sup>29</sup> in an attempt to counter support for PAS. It matched PAS's call for an Islamic state with a declaration that Malaysia was already one in practice.<sup>30</sup> UMNO's biggest selling point to Muslim voters was undoubtedly new Prime Minister Abdullah Badawi's strong Islamic credentials and his vision of *Islam Hadhari*, a moderate and progressive version of Islam, which emphasizes "the universal substance and principles of Islam rather than legal trappings and political structure,"<sup>31</sup> as an alternative to PAS's more fundamentalist view. Some observers such as Bridget Welsh, assistant professor of Southeast Asian Studies at John Hopkins University's School of Advanced International Studies, are confident that "PAS has been decimated."<sup>32</sup> This is far from reality in many ways. Despite UMNO's extensive efforts to out-Islamize PAS, PAS's share of the total vote actually rose slightly from 15 percent in 1999 to 15.8 percent, with 45 percent of Malay voters still supporting PAS. PAS may have experienced a major setback, but is certainly not defeated. As *The Economist* correctly perceived, "the result was a victory for PAS's ideas, though not for its party."<sup>33</sup>

Similarly, despite the lack of interest over religious issues, the elections in Indonesia reinforced the political influence of Islamic-based parties. Their percentage of the vote rose from 32.4 percent in 1999 to 38.8 percent, while support for the main

secular-nationalist parties, GOLKAR and PDI-P, fell sharply from 56.2 percent in 1999 to 40.6 percent.<sup>34</sup> Due to the fact that no one party has enough votes to form a government on its own, the main nationalist parties would undoubtedly have to seek alliances with the Islamic-based parties. Already, before the elections began, secular politicians such as President Megawati Sukarnoputri, and her main rival GOLKAR's Akbar Tanjung, have been "playing up to powerful clerics to gain their support."<sup>35</sup> As such, the Islamic-based parties have attained the role of "kingmakers"<sup>36</sup> in Indonesian politics. The elections also saw the rise of a new Islamic-based party to prominence, the Prosperous Justice Party (*Partai Keadilan Sejahtera* or PKS), whose share of the vote increased from only 1 percent in 1999 to more than 7 percent, placing it sixth in the electoral result. Already it has formed the National Salvation Alliance with the Islamist National Mandate Party (*Partai Amanat Nasional*). The PKS is "synonymous with *santrinisasi* (the phenomenon of greater piety among Indonesian Muslims)"<sup>37</sup> and is also well known for its hard-line stance on morality, most recently indicated by its declaration to shut down massage parlors and other fronts for prostitution<sup>38</sup> in Jakarta, where it has won the highest percentage of votes for the Jakarta Provincial Parliament. It is therefore clear from recent political developments that political Islam is far from defeated; in fact it has been strengthened and permanently entrenched as a formidable political force in both countries. Political Islam is no longer monopolized by fundamentalist Islamic parties, but has been co-opted by previously secular parties such as UMNO, PDI-P and GOLKAR for reasons of political expediency. The conflict is no longer between secular nationalism and political Islam, but between moderate and fundamentalist interpretations of political Islam. For now, moderate political Islam has gained the upper hand against the forces of fundamentalism, but this cannot be taken for granted. PAS is far from being completely defeated and the Indonesian Islamic parties may use their influence to push for a fundamentalist agenda, should the political situation allow for it. Efforts must continue in both countries to promote moderate Islam in order to ensure that fundamentalism does not enjoy resurgence. What is certain, however, is that Islamization will continue in both countries. A prime example is Malaysia, where *Islam Hadhari* has been overwhelmingly endorsed not only by Muslims, but also by the entire multi-ethnic and multi-religious population. This is a guarantee that political Islam will continue to be on the rise in Malaysia, and a more Islamic society will be an increasing reality, just that it will be the UMNO version. In Indonesia, the support given by young, urban voters in Jakarta to the PKS is indicative of a trend towards greater spiritual devotion and intensity of religious belief that simultaneously adopts a moderate and modernist outlook on the world.

### Effects of moderate Political Islam

"In meeting the threat of terrorism, a critical aspect will be the use of soft power, the use of non-military strategies to respond to this threat... It is a battle for hearts and minds."<sup>39</sup>

Political Islam has been frequently and mistakenly vilified by the west as indicative of rising Islamic fundamentalism and militancy. On the contrary, moderate political Islam can be a positive force in dealing with a range of problems faced by the Muslim world today. The victory of moderate political Islam sends out a clear message against Islamic radicalism. Islamic radicals are defined as those who “combine fundamentalist interpretations of Islam with violence”<sup>40</sup> and include terrorists. Through mass support by Muslims, moderate and progressive Islam is able to discredit radicals who claim to champion the Islamic cause through violent means. Already in Malaysia, the government has taken its victory as a public endorsement to crack down upon suspected militants and other deviant groups. Furthermore, by emphasizing a comprehensive but moderate Islamic education in national schools,<sup>41</sup> the Malaysian government aims to shield young Muslims from extremist influences and radical interpretations of Islam that are present in some *madrasahs*. Similarly, mainstream Islamic organizations in Indonesia such as *Nahdatul Ulama* and *Muhammadiyah* with a combined membership of nearly 80 million members<sup>42</sup> have been essential in ensuring a wide subscription to a moderate and tolerant interpretation of Islam. Thus, the most important weapon in the battle for Muslim hearts and minds is a clearly progressive and moderate, yet coherent and powerful Islamic faith, which will nip radicalism and terrorism in the bud.

Politically, Malaysia and Indonesia are both moving toward a moderate synthesis between secular nationalism and Muslim universalism, albeit to varying extents, which could be an answer to the ever-unstable relationship between religion and the state in Muslim-majority countries. Being the largest Muslim country in the world, with 88 percent of its population of over 230 million subscribing to Islam, a moderate, stable, and democratic Indonesia could become a model for conservative and authoritarian Middle Eastern states. The success of its recent democratic elections sends a strong signal that Islam is not incompatible with democracy. Similarly, should its vision of *Islam Hadhari* succeed, Malaysia being a multi-racial and multi-religious state, could be a model for other Muslim-majority states with large non-Muslim populations such as Lebanon or Nigeria, who have faced years of inter-religious conflict.

Finally, political Islam is a powerful force against corruption and poverty. “Fundamental class antagonisms,”<sup>43</sup> such as the widening gap between rich and poor have been instrumental in gaining support for Islamic parties such as PAS, who espouse social equality in addition to religion. Indonesian Islamic parties have also gained massive support for their anti-corruption stance especially since the main secular parties are seen as irredeemably corrupt. This has galvanized governments into action, particularly in Malaysia. Before the elections in 2004, Prime Minister Abdullah Badawi took strong and decisive action against corruption within the government. Several high-ranking political and corporate figures, including a minister, have been arrested and charged with corruption. He has also reoriented government economic policy towards the poor, halting several large and expensive infrastructure projects in order to focus on alleviating poverty. These measures proved effective in undermining support for PAS, but more importantly serve to improve the socio-economic position of the people.

## Conclusion

With recent developments, political Islam has unquestionably taken root and become an integral part of the socio-political structure in Indonesia and Malaysia. The victory of moderate political Islam over fundamentalist opponents is a powerful and positive force for stability and social justice throughout the modern Muslim world, and should be encouraged instead of feared. Yet, this victory is by no means guaranteed in the future as the political situation in both countries, especially Indonesia, is still unstable and subject to change. Thus, efforts must continue to ensure that moderate Islam is fully developed and sustained. With the threat of Islamic terrorism hanging over the world, moderate political Islam is the single most powerful force for change within the Muslim world to de-radicalize and disarm terror organizations by providing a viable religious alternative to fundamentalism and radicalism. Most importantly, by synthesizing Western concepts of secular nationalism with Islamic universalist religious beliefs, a workable compromise between Islam and the democratic nation-state could emerge, potentially having a strong influence over the rest of the Muslim world.

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## Laos: A Study of the Last Dinosaur in Southeast Asia

Robert Burritt  
James Madison University

Laos is a country that lacks development, foreign investment, stable political parties and an atmosphere that enables sustained economic growth. If you travel to Laos via Thailand or Vietnam, you will wonder why Laos is in a world of its own where most of the streets are still unpaved and people roam the streets looking for food or meager work. Laos is not a country that makes the top news in the United States, therefore, little research has been done on this developing country. Bourdet even calls Laos the “forgotten land because the country is seldom mentioned in the world press.”<sup>1</sup> This study will focus on the factors that are vital to Laos if it is to overcome the economic challenges it faces. I argue that investor confidence is the most important factor that is keeping Laos from developing at the same rate as the other nations in Southeast Asia. Investor confidence is a crucial element to foreign direct investment. This paper will track FDI flows and will ultimately demonstrate that foreign investment is the single most important factor in a nation’s development.

Countries like Thailand and Vietnam have both benefited from foreign investment and liberalized trade laws. I will compare and contrast these two nations with Laos since they share borders and have closely linked economies. The Asia Crisis of 1997 is still fresh in investors’ minds, but while money still flows to Thailand and Vietnam, Laos’s economy remains stagnant and undeveloped. Why is Laos still reeling from the 1997 crisis while other countries in the region have recovered or are still in the process of recovering? I aim to shed some light on Laos and its lack of foreign investment, a deficiency that has crippled this resource-rich nation. This paper will cover the period following the 1997 crisis until 2003. I will prove that Laos is in its current predicament because investors are weary to invest in an unstable country that lacks a political and economic infrastructure capable of producing sustained profits.

I argue that Laos is far behind the rest of the world because of a combination of factors—communist political system, lack of adequate infrastructure, partially closed economy, and corruption—that create an atmosphere of neglect and distrust, leaving the nation crippled and in need of foreign aid. The factors all point to the most important reason why Laos is struggling to develop: it does not inspire investor confidence.

By determining what makes Laos unattractive to investors, I hope to strengthen understanding of why some developing countries have greater levels of investment than others. Also, if we can determine the factors that are hindering Laos’s development, then we can encourage policies to make Laos more attractive to potential investors. Until we identify these factors, investors will continue to avoid Laos, limiting its development.

## General Overview

According to the World Bank Group, “Lao People’s Democratic Republic (Lao PDR) is the poorest and least developed country in the East Asia Region, and the country’s social indicators are among the worst in the region.”<sup>2</sup> Of the 177 countries in the world, Laos is ranked 135 on the Human Development Index with the United States ranked seventh.<sup>3</sup> Laos is the only land-locked country in Southeast Asia, bordered by Thailand, Vietnam, Burma (Myanmar) China and Cambodia. This is an important fact since Laos does not have readily access to ports and economic trade zones, which could give Laos the needed resources for a progressive economy.

Laos has been the site of conflict (the Vietnam War) and communist rule since 1975. It has been unable to grow at an equal rate as its neighbors due in part to sanctions and high tariffs on imports and exports—45 percent— imposed by the United States after the Vietnam War.<sup>4</sup> These problems were compounded by the isolationist attitude of the communist regime, which maintained that it alone could provide for its citizens. When East Asia experienced a crippling, destabilizing economic crisis in 1997, Laos once again found itself in economic peril.

Laos is primarily an agrarian society. More than 80 percent of the population works in agriculture. The agriculture sector accounted for 50 percent of the gross domestic product (GDP) in 2003.<sup>5</sup> The average income of the Laotians is 300 dollars a year and much of the population struggles daily to afford even the simple necessities of food, clean water and medicine. Since its government is known for corruption, foreign investors are wary to invest in Laos.<sup>6</sup> Laos is poor, shut out, and in need of assistance. To explain the current lapse of investor confidence in Laos, I will briefly describe Laos’s political structure, economy, infrastructure, internal conflicts and external relations.

## Political Structure

In 1975, a communist regime took over power from Laos’s weak royal family, which was previously supported by the United States. Since then, Laos has had a one-party system, despite the introduction of suffrage in 2002. On the day of the first elections in 2002, a journalist asked Khamtay Siphandone—the president of Laos—if elections would change the government system, and he replied, “There won’t be any change.”<sup>7</sup> In the same *Economist article* the authors claimed that the Laotians were too poor to be concerned about politics. This sense of helplessness has given the communist government the ability to obtain complete control over the nation.

The Lao government “...does not tolerate any political opposition or independent media.”<sup>8</sup> This hard-line rule explains the lack of revolt in Laos, since its citizens are discouraged by the threat of imprisonment and death. This Soviet-style leadership has maintained control over Laos for 30 years; even though Laotians do not benefit economically from its policies, they still allow the Lao government to exercise totalitarian control.

In comparison, Vietnam is also a communist country with a similar government structure. The Communist Party gained control from the French in 1954 and quickly attempted to unite the North and South under a single communist regime. After the Vietnam War, Vietnam made great strides in developing its economy with the help of Russia and China, who helped to rebuild the battered infrastructure with funding and political guidance. Political dissent is also punished and any attempts to demonstrate against the government are quickly quelled. It is clear that Laos and Vietnam share similar political systems, but these nations are easily distinguishable by their levels of development and degrees of economic freedom. Also, Vietnam has seen a steady amount of FDI while Laos has seen very little.

In contrast, Thailand has a political system with checks and balances that give investors the confidence needed for investment. Thailand has a parliamentary system whose Prime Minister is elected by Thai citizens. In addition, Thailand has many political parties in the government that share power and act as a counterbalance when one party becomes too large. Thailand, unlike Laos and Vietnam, is a United States ally and attracts significant quantities of foreign investment. Despite the shattering of this confidence in the aftermath of the Asian financial crisis in 1997, Thailand has, unlike Laos, been able to regain foreign investment and undoubtedly, learned from its previous mistakes of allowing banks to carry a large percentage of NPLs (nonperforming loans).

It is important to note the differences and similarities of political structures between Thailand, Vietnam and Laos. Laos shares a common political system with Vietnam, but still lacks the same level of investment. In contrast, Laos has a different political structure from Thailand and again falls short of its level of foreign investment. Significant variations in political systems influence the level of investor confidence toward recipient countries, affecting their degree of development.

### Economy

In 1986, the Laotian government introduced its “*New Economic Mechanism (NEM)*,” a reform intended to decentralize the country’s economy by gradually transferring state-owned enterprises (SOE) to the private sector so the government could attract more foreign direct investment (FDI). The lack of foreign investment prior to the reform—investment increased from less than one million US dollars to 180 million after the reform—shows that government control over industry hampers investment, and the only way to boost confidence was to allow private enterprise to grow unabated.<sup>9</sup> The NEM was implemented at the same time Vietnam was reforming its economy in the *doi moi* (reform) period. In Vietnam, however, the level of FDI was greater than Laos, suggesting that numerous factors that impeded confidence are still preventing economic growth. I intend to find out why Laos is still struggling, and why Vietnam is growing, despite the similarities in their economic systems.

According to the *Economist*, “. . .the [Lao] government, too, is poor. A third of its income comes from foreign aid.”<sup>10</sup> A principle cause of these astounding poverty levels in Laos is the fact that revenue from trade and business does little to help its ordinary citizens of Laos since the government is unable to channel money down

through social programs. Instead, corruption is rampant and the government frequently misuses its resources. Often, poor countries are not good investment ventures and high levels of corruption tend to lower the confidence of investors.

Laos currently has three state-owned banks that are loosely controlled by a central bank. These banks are primarily used by the government to fund social and infrastructural projects, frequently without careful budget planning.<sup>11</sup> They are insolvent, profit-losing institutions. They possess NPLs, which the government passes to them from the failing SOEs. They can be described as personal banks for corrupt government officials from which money is taken and misused; this removal of funds causes banks’ capital holdings to fall below required levels.<sup>12</sup> The 1997 Asian Crisis made it clear that similar NPLs were detrimental to Thailand and South Korea; Laos still has a large amount of NPLs, suggesting that Laos has experienced a fall in investor confidence similar to the confidence lapses inspired by non-performing loans during the crises in Thailand and South Korea.

The government has also implemented policies of agricultural diversification in order to emphasize regional specialization and the improvement of domestic output.<sup>13</sup> While it is good to invest in this largest sector of the economy, the volatility of the agricultural sector may keep potential investors away. Aside from agriculture, the export of hydroelectric power is the leading revenue-producer for Laos. Laos exports power to Thailand and Vietnam, countries dependent on such power for internal development. In turn, Laos is heavily dependent on Thailand, China and Vietnam for imports since Laos lacks the industry and capital resources to purchase more expensive imports from developed nations.<sup>14</sup> If Laos can strengthen this trade relationship, then investors may increase their FDI, which could be a turning point in its economy. It is important to have strong trade relations since investors will tend to invest in nations with open economies

According to the *Economist*, “Almost half of Laotian children are stunted; more than half of Laotians adults are illiterate and half of the population as a whole lives below the government’s own poverty line.”<sup>15</sup> Lao poverty levels have increased since 1994; approximately 50 percent of the rural and 30 percent of the urban population is below the poverty line.<sup>16</sup> After the 1997 crisis, the Lao Kip (Laos’s currency unit) was crippled, which has made it difficult for the average citizen to earn a decent living with a deflated currency.

Development indicators suggest that Laos is worse off than Thailand or Vietnam, but why is it that Laos is so far behind economically? Both Thailand and Vietnam also face high levels of poverty and malnutrition, but both have growing economies and a higher level of development in terms of government support for citizens. Laos’s development has also been stifled by a history of resource exploitation by Thailand and Vietnam. Since Laos has many resources like lumber, minerals (gold and semi-precious gems) and cheap labor, nations stand to benefit from Laos’s weak state apparatus and porous borders. Foreign investors would be wary to invest in a nation facing frequent exploitation of resources; a nation whose government could not control its revenue from cross-border transactions. Confidence is crucial; if Laos wants to expand its economy, it will have to tighten control of its resources and show investors that it is in firm control of its revenues.

## Infrastructure

Laos is a country with poor infrastructure; it has no railroads, a rudimentary road system and limited telecommunications. Electricity is available in only a few urban areas. The roads that do exist are poorly maintained and require yearly upkeep. According to the *Economist*, "...20 [percent] of the roads are paved and 99.9 [percent] are potholed."<sup>17</sup> In fact, when one drives from Thailand or Vietnam to Laos, road conditions dramatically deteriorate. Thailand and Vietnam have well-structured roads and utility networks. In contrast, Lao infrastructure is intermittent and unreliable. Although this article was written a decade ago, it still holds true for the internal structure of Laos today. Japan and Vietnam are the primary road builders in Laos and they have built the only road from Vientiane to Vietnam. Japan has even "paid for nearly every bus, park bench and rubbish bin in the capital" (*Economist* 2001, 28 April).<sup>18</sup> This suggests that Laos is incapable of financing and developing its own infrastructure. Investors see this as a weakness in stability since Laos depends on other nations to strengthen its internal networks. If Laos were able to build roads on its own, this would be a positive sign for investors that Laos is on the path of recovery. Until then, foreign investors will limit their FDI into Laos.

The rural areas of Laos are isolated from the rest of the country and from the international community by a lack of good roads and telecommunications. The Lao government does not have the financial resources to connect this country of six million to the outside world by developing such infrastructure. This limited economy—limited by the isolation of resources—tells investors that this nation would be a black hole for investment. The only way to boost investor confidence would be to link the entire nation with proper roads and lines of communication which would speed the gathering and dispersal of resources and allow the Lao economy to grow.

Even the police force in Laos is rudimentary in comparison to Thailand and Vietnam; in Laos, police officers use any vehicle they have to include bicycles and antique mopeds, while the more modernized police forces of Thailand and Vietnam use marked cars and trucks to enforce national laws. Police officials in Laos have been known to take money from the public to pay for their own lunch or liquor. Again, investors see this lack of effective law enforcement as a sign of weakness on the part of the government.

## Internal Conflicts

Laos has been plagued by political and military opposition ever since the communist regime took power in 1975. During the Vietnam War, the United States allied with the Lao Hmong, a minority group, to undermine the influence of the Vietnamese and Lao People's Revolutionary Party (LPRR) in Laos. When the communists gained control, the Hmong were persecuted, hunted and killed by the Lao government. Continued resistance by Hmong insurgents has done little to change the course of the regime. According to Thayer, "At most, small bands fired upon military guard posts or took potshots at passing army trucks."<sup>19</sup> These uprisings indicate to investors that the Lao government is not in control of the nation, thus hampering confidence.

The oppressive regime has also declared war against Laotian Christians, demanding that they renounce their faith. In 2004, the Lao government called the "Bible an illegal document," and accused the Christians of attempting to overthrow the government.<sup>20</sup> Currently, only two percent of the population claims Christianity as its religion.<sup>21</sup> The government has frequently taken the Christians away to labor camps and attempted to re-educate them in Buddhism. If they refused, they would be put in jail until they renounced their faith.

Once again, the Lao government is repelling foreign investors; foreign investors do not want to see internal struggles that weakens by draining money from an already bankrupt government. In contrast, the Thai government accepts minority tribes and most internal issues are usually settled in court. Investors are reassured by the circumspect handling of internal disputes and therefore confidently invest in Thailand. Vietnam, however, has a similar history of battling insurgents and persecuting Christians, but is still able to attract FDI. This study will uncover the reasons why Laos and Vietnam, are developed to different degrees in spite of similar internal conflicts.

## External Relations

The Lao government's foreign policy is anchored in ties with Communist and former-Communist nations. Historically, the majority of trade and aid has come from Vietnam, Russia and China. Furthermore, Thailand and Vietnam also exploit Laos's natural resources. Investors care about international relations since international patterns of aid and conflict can influence countries' economic growth and development.

### Vietnam

The Communist Lao and Vietnamese governments have shared a close relationship since the end of the Vietnam conflict. Laos considers Vietnam an ally and mentor and each year the two countries hold joint military and economic conferences. At the most recent meeting, Laos and Vietnam "emphasized the comprehensive nature of the bilateral ties, and gave particular stress to trade and economic cooperation."<sup>22</sup> Military cooperation has also continued against Hmong rebels along the Lao-Vietnam border.

### Thailand

The relationship between Laos and Thailand has been inconsistent throughout the history of the region. During the Vietnam War, Thailand and the United States secretly sent troops into Laos to undermine the Vietnamese communists. Two decades later, Thai lumber companies moved into Laos to exploit its rich forests.<sup>23</sup> Later, in 1989, Laos and Thailand had an armed border skirmish.<sup>24</sup> Despite tensions between Thailand and Laos, however, the two nations have expanded trade and opened a new bridge across the Mekong River to promote closer economic relations.

Thai foreign policy towards Laos has a long history of scandal and occupation. Recently, however, the Thai government has seen the potential economic benefits of strengthened ties with Laos. The two countries have signed numerous treaties and Thailand seems to want Laos to succeed. When I interviewed numerous Thais about the situation in Laos, however, they emphasized that Laos is a good place to visit and that they can obtain many cheap products there. This attitude is consistent with the idea that Laos is exploited nation. Notwithstanding its 1997 market crash, Thailand's economy continues to strengthen. This took place, however, at the cost of Laos, whose development has been stunted by exploitation by corrupt Thai officials.

#### *United States*

The actions of the United States directly affect investor confidence; if the United States were to refuse trade with Laos, then foreign investors would more than likely follow suit. Recently, however, after 30 years, the United States began to normalize relations with Laos. A trade bill was introduced in Congress to lower the tariffs on Lao goods from 45 percent to below five percent.<sup>25</sup> The bill was delayed in part because Hmong living in the United States demanded that relations be terminated based upon the treatment of Hmong Lao by the Lao government.<sup>26</sup> Laos is the last country in the region to normalize its trade relations with the United States. When the United States formalizes trade relations with Laos, I believe investor confidence will increase. This was shown when US-Vietnam trade relations resumed and US investment increased. Until then, I feel the lack of confidence is the primary reason for Laos's stagnant economy.

#### *Literature Review*

Is Laos in a recovery, still in a financial crisis, or even heading into another crisis? The goal of this section is to identify certain relevant factors determining a nation's economic growth or collapse. I will focus on two main themes: First, we will consider factors that lead to a financial crisis and stagnant development (Crisis Analysis). Second, I will identify factors conducive to recovery and progressive development (Recovery Analysis). I will further divide these themes into two sub-points—economic and political-economic. In considering economic factors, I will focus on banks, capital, and government monetary policy. The political-economic factors discussed will include the International Monetary Fund (IMF), the social contract and corruption.

#### **Crisis Analysis**

We will focus for a moment on the Mexican crisis of 1994 and the Asian Crisis of 1997. The events leading up to these crises are similar in nature, and, in each crisis, certain steps were followed or avoided contributed to economic collapse.

#### **Economic Considerations**

Foreign capital is vital to countries for prosperity and development. It can spell disaster, however, if it is allowed to leave the country *en masse*. Many experts agree that capital flight, the rapid withdrawal of short-term capital, is a primary cause of financial crises (see Dornbusch 1997; Ffrench-Davis and Ocampo 2001; Griffith-Jones 2001; Haggard 2000; Hale 1997; IMF 1997; MacIntyre 1999; Naim 1997; Winters 2000)<sup>27</sup>. Three factors discussed in their literature are investor confidence, exchange rates, and liberalization of financial markets.

Investor confidence is the most significant assurance against capital flight. Such assurance is essential to foreign investment. Certain events frequently arise, however, that create an atmosphere of lessened confidence. Hale details four main issues for investors and their decision to invest their capital in a country.<sup>28</sup> First, he considers the quality of Central Bank supervision of state and private banks, particularly in cases where banks were recently privatized and opened to foreign capital inflows. Lee and Kim further emphasize the importance of strong supervision stating that a central bank must be powerful enough to supervise those banks that violate regulations in place.<sup>29</sup>

Second on Hale's list is the condition of the country's financial regime. According to Hale, it is important to investors that banking transactions remain transparent, effective, and independent of political actors.<sup>30</sup> Third is the attitude of local investors who could potentially withdraw capital from their investment venues. Foreign investors often mimic the actions of these internal actors who may be better aware of domestic politics and economics. Last, in the event of a financial crisis, it is necessary that there be a lender of last resort that will secure investors' assets in the case of a sudden downturn. It is clear from the research that investor confidence is crucial to stable investment in developing countries.

Problems arising from countries' liberalization of their banks and markets can also affect investor confidence, sometimes leading to capital flight. Privatization and the elimination of controls on foreign investment can create an atmosphere of uncertainty. When the banks begin to privatize, they generally "relax capital controls" and "created a scene where a few banks concentrated the capital and created an oligopolistic structure."<sup>31</sup> Privatization thus can create an uncertain investment atmosphere that fails to assure potential investors that their ventures will be lucrative.

Another outcome of liberalization of the markets in many countries was a massive inflow of short-term capital from foreign sources. This highly volatile condition is what MacIntyre called a "precondition for [a] crisis" given that increased dependence on short-term flows can lead to financial collapse if such flows are withdrawn.<sup>32</sup> However, this is not always a time bomb if governments are able to control the speed of capital liberalization. Lee and Kim declare that a "...state must do [liberalization] in controlled steps...to prevent monopolies" and that a "...state must be powerful enough to supervise and punish violators."<sup>33</sup> When a state lacks the fundamental ability to control the liberalization process, investor confidence will weaken and the short-term capital will be withdrawn.

Exchange rate volatility also influences foreign investors. If a nation overvalues its currency, then the potential for deflation is forthcoming. Before liberalization, currencies Mexico and several East Asian countries were pegged to the U.S. dollar. Given this peg, increases in lending following privatization prompted currency overvaluation.<sup>34</sup> In light of fixed exchange rates, this overextension of credit proved fatal as the governments soon had to float its currency to avoid depletion of reserves. In both cases, the value of the currency fell drastically after floating.<sup>35</sup> This spurred foreign investors to panic and pull their short-term capital holdings out of the affected countries.

It is important to understand that many factors affect investor confidence and that any one factor could trigger a downturn. Much academic literature stresses the importance of investor confidence and suggests that liberalization and exchange rates are independent variables influencing investors' decisions. A nation's approach to liberalization and exchange rate policies deeply affects speculators' decisions to invest in that nation.

### Political-Economic Considerations

This section will focus on the role of domestic and international political actors in the development of crises. I will examine three factors: regime type and policymaking, the role of the IMF, and other issues such as corruption and the social contract.

Government structure is important to understanding and predicting a crisis as the composition of political systems influences nations' economic success and failure. If a nation's political parties were so divided to the point where laws cannot be passed, then the economic reform process would stall.<sup>36</sup>

The IMF also revealed that an "overly expansionary monetary and fiscal policy have spurred lending booms" (1998, 81).<sup>37</sup> This policy, coupled with insolvent state-owned banks that have a large number of NPLs, also creates potential for an emergency.<sup>38</sup> A boom can also be detrimental to the economy. As Birdsall pointed out, "if the adjustment process is not carefully managed, then a boom can lead to a crisis."<sup>39</sup> If the government structure cannot allow for rapid response to an emerging crisis, then an overly expansionary policy will do further harm than if the government structure were sound and able to effectively control policy.

Inflation management is critical to maintaining healthy economic growth. Prior to the crises, the East Asian and Mexican governments implemented a fixed exchange rate in order to control soaring levels of inflation. Dornbusch emphasizes that this type of policy is wrong and damaging to the economy since it often leads to currency overvaluation.<sup>40</sup> The government's ability to control monetary policy is important to sustained growth, but when a weak government fails to act, "policy paralysis" leads to ineffective policies.<sup>41</sup>

The International Monetary Fund was created at the Bretton Woods Conference in 1944 in order to provide development-assistance loans to countries facing financial difficulties. It is those loans and conditions that Sharma claims produces a "moral hazard."<sup>42</sup> Reynolds asserts that low interest loans are

hazardous as they are "encouragement for politicians to take imprudent and excessive risk," and ultimately create an unstable basis for growth.<sup>43</sup> In most cases IMF loans and conditions were catalysts for capital flight and weakened investor confidence.

IMF loans carry strict conditions that a country must implement upon receiving a loan. These conditions generally include liberalization and increased foreign access to markets. Bullard, Bello and Malhotra suggest that the IMF increases the vulnerability of a nation by encouraging the liberalization of its financial sector.<sup>44</sup> In each case—Mexico and Asia—they claim that the IMF "failed to recognize the nature of the underlying problems" and "insisted on the wrong policies," policies which intensified financial crises by creating more volatile capital markets.<sup>45</sup>

Political economic literature frequently focuses on corruption as a phenomenon that delays reforms and undermines the legitimacy of governments. Corruption is very common and occurs in a variety of contexts. For example, when the IMF grants an interest free loan to a country, sometimes its leaders misuse funds and channel them towards their political supporters rather than towards the improvement of conditions within their own countries.<sup>46</sup> This action downgrades a government's legitimacy and hinders investor confidence. Corruption has also been documented to lower the GDP; Azfar, Y. Lee and Swamy concluded that if a country could "improve the integrity...of its bureaucracy...would increase investment by almost [five] percent and GDP would increase by over .5 percent."<sup>47</sup> Corruption thus can deepen financial crises and stifle economic growth.

Birdsall and Haggard point out one last factor influencing crises, a phenomenon they call the 'social contract.'<sup>48</sup> The social composition of a nation is an important factor influencing countries' financial stability. A social contract is an agreement between a government and its citizens guaranteeing "insurance...for personal circumstances like old age, bad luck at the market..."<sup>49</sup> Birdsall and Haggard argue that developing nations do not have a social contract, creating an atmosphere of uncertainty if economic indicators should become negative.

In this section, I covered the political factors revolving around a crisis. It is clear that when a government is unable to act properly, a crisis could follow if negative external economic pressures are too strong. Poor management of anti-inflation policies, liberalization policies and social programs thus weaken investors' confidence, leaving them less likely to channel their resources towards many developing countries. Also, when the IMF intervenes, investors frequently lose confidence and begin to pull out their capital.

### Recovery Analysis

It would be easy to say that the recovery is opposite of crisis. In part, this is true, but it is best to highlight certain economic factors that drive business cycles. I will briefly lay out the causes of economic recovery and cite advice from experts detailing policies for crisis prevention and recovery.

### Economic Considerations

In the previous section, I argued that investor confidence is crucial to countries' development. The restoration of investor confidence following a downturn is an important indicator of economic recovery (see Abrami 2003; De Dios 1998; Montesano 2001).<sup>50</sup> This re-establishment of confidence can come from a number of factors such as demand-stimulating measures, the elimination of non-performing loans, and government's attempts to combat corruption.<sup>51</sup>

It is essential that the banking sector implement effective policies to ensure a proper recovery. Foreign investors gauge investment risk based upon banks' credibility and efficacy. According to Hale, "Developing countries should improve the supervision of their commercial banking systems in order to enhance the ability of their central banks to conduct credible monetary policies."<sup>52</sup> This increased supervision will limit bank monopolies and the pooling of capital. In turn, increased competition will offer investors a wider variety of venues for their capital.

### Political-Economic Considerations

The international community also plays an important role in the recovery of a nation. It can deliver aid, develop trade agreements and encourage foreign investment.<sup>53</sup> In many cases, a trade agreement with the United States is enough to bolster the economy of a developing country.<sup>54</sup> It is clear that when a powerful nation fails to act in a crisis, the situation worsens, as was the case in Mexico in 1994.<sup>55</sup> Economic ties with the United States, especially open trade relations, can encourage growth and stability in developing countries.

In order to understand the processes governing economic recoveries, one must consider the same variables that determine crises. To prevent crises, one must plan backwards by designing and implementing plans to counteract detrimental economic forces.

### Hypotheses

In this section, I will analyze several hypotheses pertaining to economic development. I will then apply these hypotheses to Laos in order to explain the problems that country currently faces.

*Hypothesis # 1:* The higher the level of investor confidence, the greater the level of development will be.

According to literary sources, investor confidence is the most important independent variable driving development. Nations with large amounts of FDI will thus be better off than countries that lack FDI. This formula is not as simple as it seems since many other variables that affect levels of investor confidence. As I suggested previously, these intervening variables include corruption, political system, the IMF and the strength of the central bank institution.

*Hypothesis # 2:* High levels of corruption de-legitimize governments.

Corruption is widespread among developing countries. Some countries, however, enjoy high levels of confidence in spite of rampant corruption. I will later test this hypothesis by looking comparing both the levels of corruption and the levels of FDI in Southeast Asian nations.

*Hypothesis # 3:* The less flexible a political system structure is, the less likely it will react positively to a crisis.

Existing literature suggests that single party governments are slower to react to crises than more complex systems that have checks and balances. Investors need to know if a government can manage economic problems prior to investing abroad. .

*Hypothesis # 4:* Assistance from the IMF or the World Bank frequently lessens investor confidence.

When the IMF grants loans to developing countries, investors see the recipient countries as high-risk ventures for investment. Historically, nations that accept IMF loans see an increased outflow of investment capital. The risk of misuse of funds deters potential investors and prompts them to withdraw their assets.

*Hypothesis # 5:* Weaker central banks tend to amass higher quantities of wasteful non-performing loans.

NPLs can lead to financial meltdowns and if the central bank does not crack down on them, it risks a significant loss of resources. . A weak central bank that allows the government to fund dead-end ventures will accelerate the loss of investor confidence.

### Plan

I will now re-focus on Laos after the 1997 Asian Crisis. I will examine its political structure and monetary policies. I also will gauge investor confidence by examining the level of foreign investment flowing into Laos and describe the benefits and pitfalls of Laos's current drive towards economic liberalization. Furthermore, I will investigate the IMF and its attempts to aid Laos. Next, I will examine the effect of corruption on Lao development. Finally, I will perform similar analyses using data from Vietnam and Thailand in order to highlight the relatively severity of problems facing Laos.

### Case Study I

The following case studies will focus on two major shifts in FDI experienced in tandem by Laos, Vietnam and Thailand. Data from the United Nations Conference on Trade and Development shows two distinct shifts of FDI inflow and outflow in those countries in 2000 and 2002.<sup>56</sup>

Case study one will focus on the year 2000 for Laos, Thailand and Vietnam. Utilizing articles from the international press, I will determine why these shifts of FDI occurred and determine if the above hypotheses are applicable to Southeast Asia. This same process will also be used for the group during 2002.

### Laos

The year 2000 saw an increase in FDI outflows from Laos and a decrease of FDI inflows. Probable causes for this shift in FDI include several notable political events. First, the Communist Party celebrated its 25<sup>th</sup> year in power by parading Laotian soldiers down the main avenue in Vientiane.<sup>57</sup> This happened shortly after a small bomb exploded in the capital city, possibly ignited by Hmong rebels. This important event reminds investors that Laos is still a communist country with a repressive one-party government. It also shows that there is enough unrest in the country to foment rebellion. If a government cannot effectively control a country, confidence in that country is weakened because political volatility makes investment risky and unprofitable.

The Lao government also reinforced its position on Internet use within the country. It publicly announced that anyone caught rebelling against the government would be severely punished.<sup>58</sup> The current political structure of Laos prohibits freedom of the press. In doing so, the Lao government hopes to strengthen its own popular support and curb political dissent. Foreign investors do not like when governments limit the rights of its citizens because they fear the government will also attempt to suppress their investments. Foreign investors thus become hesitant to channel their resources towards Laos as the countries' poor human rights track record creates an atmosphere of tension and uncertainty.

Additionally, recent events have rendered statements made by Laos's central bank incredible. The Lao central bank recently assured that it would service its debt towards Russia with commodities rather than reach into its scarce reserves (ITAR/TASS News 2000, 28 November).<sup>59</sup> In 2000, however, Laos experienced a large flood that destroyed a large portion of its agricultural sector.<sup>60</sup> Laos thus found itself unable to service its debts with commodities. The volatility of commodity markets and uncertainty regarding recent statements of the Lao bank thus deter foreign investors.

Furthermore, little progress is being made in Laos that would transform the country into a more profitable venture for foreign investment. In 2000, there were no plans by the government to curb corruption or dead-end spending. Furthermore, the year 2000 was marked with reminders that the ruling party cares little about the welfare of Lao citizens. I argue that these reasons are the immediate causes of Laos' low FDI and persistent capital flight.

### Thailand

In 2000, Thailand experienced a large decrease in FDI inflow and a smaller decrease in FDI outflow. This election year realized historic changes. The approval of a new constitution, for example, gave the Thai government powers to combat corruption.<sup>61</sup> May 2000 saw the formation of the *National Counter-Corruption Commission (NCCC)* that had the power to independently investigate government officials and prosecute them for corruption.<sup>62</sup> Consequently, the minister of interior was found guilty of corruption and fired from his post.<sup>63</sup> Thailand's commitment to end corruption thus reassured skeptical investors.

Second, the Central Bank of Thailand installed a new leader in 2000; Puey Ungphakorn was well versed in modern economics.<sup>64</sup> He planned to strengthen the economy by reducing total NPLs from 57 to 40 percent of total loans. He also wanted to reduce foreign debt and tighten controls on foreign loans.<sup>65</sup> After the 1997 Asian Crisis, the IMF set many conditions for Thailand to follow. The new central bank governor followed all the steps. He chose to increase supervision of the banking sector and make what foreign capital they had work better.<sup>66</sup> These changes will greatly increase the confidence of investors in Thailand. Over time, Thailand will benefit from these important reforms, which will be evident in the second case study.

Last, increases in domestic and foreign investment in the Thai technology sector are also notable. The World Bank, supported by Japan, pledged to increase FDI in IT businesses, which will strengthen the technology sector and increase foreign interest in Thailand.<sup>67</sup> Compared to Laos, Thailand has a growing technological sector; a developed industrial sector indicates an advanced economy that Laos lacks. Such an economy will draw more foreign investment in the future.

In the year 2000, Thailand took drastic steps to strengthen its economy and bolster investor confidence. In spite of these changes, however, FDI flow did not increase. It seems Thailand's political structure is able to react to changing conditions and give the investors the confidence they need to invest. Unfortunately, the lag time in policy change did not benefit Thailand in 2000 and only time will tell if the adjustments were beneficial.

### Vietnam

In 2000, Vietnam had a slight decrease in FDI inflow with little or no change in the outflow of FDI. In January, the *Economist* reported that FDI has decreased in the country due to a "rudimentary banking system" and the absence of a stock market (2000, 8 January).<sup>68</sup> It has been roughly ten years since Vietnam first introduced the *doi moi*, but the rigid economic policies supported by Vietnam's Communist regime have stalled progress.

The Vietnamese government has also taken a hard-line towards foreign investors. They did not allow foreign names to be displayed on storefronts and charged foreigners hefty fees for using utilities.<sup>69</sup> The reason for this wariness towards foreigners stems from the 1997 crisis when Thailand and South Korea were crippled by a sudden withdrawal of foreign investment. Vietnam favors a gradual reform process that will minimize the potential for withdrawing investments.

The government has been investing in its own economy and has even developed its own technology sector. It hopes to attract some foreign investment under controlled circumstances so as to minimize the probability of another financial crisis.<sup>70</sup> Despite the fact that the government has impeded Vietnam from developing at a faster rate, large quantities of investment did not flow out of Vietnam in 2000. Essentially, Vietnam's investment has stagnated. Until Vietnam restructures its banking system, most investors will reserve their confidence for a time when Vietnam strengthens its economy and loosens its anti-FDI policies.

## Case Study 2

### Laos

During the year 2002, Laos experienced a large outflow of FDI and a moderate to slight decrease in FDI inflows. This year was very similar to the 2000. The Lao government held elections, but the candidates were pre-selected and the local population had no electoral freedom. Once again, this event served as a reminder that "Laos remains a resolute and unabashed communist dictatorship."<sup>71</sup> The continued predominance of the communist, one-party regime again makes Laos's environment unsafe for foreign investments.

In 2002, also, Laos was approached by the UNDP and the Asian Development Bank (ADB) to begin restructuring its banking sector. The UNDP announced a plan to reduce poverty and reform the political and legal structures of the Lao government.<sup>72</sup> In addition, the ADB provided loans aimed at helping the Lao government to finance the restructuring of the bank sector.<sup>73</sup>

Furthermore, the Lao government, joined forces with China and Thailand to develop a transnational roadway connecting important economic zones in the three countries.<sup>74</sup> However, the Thai government had to loan Laos 1.3 billion *baht* because the Lao government could not fund the project itself even after Laos agreed to pay a third of the total cost of the road.<sup>75</sup> Laos is not in a position to finance large-scale projects and depends heavily on foreign assistance.

Likewise, Laos finds it difficult to provide social safety nets for its fast-growing population. Demographers project that the growth rate of 2.44 percent will place increasing demands on the public sector to provide education and health care to its citizens.<sup>76</sup> Predicted strain on the Lao government makes investors nervous. Laos's prospects are further dimmed by the fact that it has failed to sustain its "commodity production program."<sup>77</sup> This suggests that the commodity-driven economy will experience significant GDP shocks should the commodity program fail. Bleak future prospects spell disaster to investor confidence.

### Thailand

The year 2002 was a bad year for Thailand. It experienced a major increase in FDI outflows and a significant decrease in FDI inflows. The outflow was reminiscent of the 1997 Asian Crisis. In January, the World Bank and IMF reported that the gap between the richest and poorest segments of the population had increased to pre-crisis levels. It seems that recovery is only helping the nation's elites and leaving behind all others. This leaves investors concerned that recovery will not be sustainable and that political unrest will occur in the future.

Also in January, the central bank announced that the number of NPLs has increased significantly.<sup>78</sup> As I mentioned previously, investors lose confidence when the central bank cannot control the level of NPLs in an economy. The new director of the central bank failed to realize his commitment to lower levels of non-performing loans. The central bank's failure to follow through with its promises explains the lapse of investor confidence and thus outflows of FDI.

Furthermore, corruption continues to be a serious problem in Thailand. The Xinhua News Agency suggested that 47 projects funded by the government in 2002 involved corruption and misuse of funds.<sup>79</sup> The crackdown promised two years prior by the new prime minister thus did not reduce the level of corruption in the Thai government. This, coupled with a report from Assumption University that Thailand was ranked second in Asia for corruption, drove investor confidence downward in 2002.<sup>80</sup>

Later in the year, the Thai Bank said it would return to the dollar market (floating their currency against the dollar) like before the Asian Crisis.<sup>81</sup> This was an underlying reason for the 1997 crash. This policy change, then, coupled with weakening confidence in the prime minister, caused concerned investors to withdraw their assets from Thailand. The year 2002 hurt Thailand's economy, causing it to suffer more than Laos's economy due to its deeper integration in the world economy.

### Vietnam

Compared to Thailand, Vietnam experienced a large increase of FDI in 2002. Even though Vietnam is communist, it was able to create 468 FDI projects in nine months.<sup>82</sup> This amount is unprecedented in the region; it seems Vietnam has regained the confidence of foreign investors. The United Nations Conference on Trade and Development reported that Vietnam was "prime for FDI" in the coming years due to new bilateral trade agreements with the United States and Great Britain.<sup>83</sup>

The Vietnamese government took large steps in restructuring its banking sector without the aid of international organizations.<sup>84</sup> It began by giving local banks more authority over their lending practices, mitigating state-imposed controls on foreign investment. The fact that small banks are allowed to function with a degree of independence from the central government implies a strong, relatively stable banking system.

In 2002, Vietnam arrested over 100 officials and suspended 50 police officers for corruption.<sup>85</sup> Beginning in February 2002, Vietnam took unprecedented steps to reduce the level of corruption in the government. This is good news for investors who previously worried that their money would be misused. These reforms were intended to attract FDI into Vietnam and strengthen the growing economy. Lowered levels of corruption increased FDI over previous levels.

Vietnam made positive policy decisions in 2002. Together, trade agreements, bank reforms, and anti-corruption policies served to enhance investor confidence. Despite the similar regimes of Vietnam and Laos, the two countries had markedly different experiences: Vietnam was able to increase its FDI and actively promote development where Laos remained stagnant and isolated. Vietnam even outperformed Thailand which, despite its democratically elected government, is still riddled with corruption and NPLs.

In both cases, many events affected investor confidence. For example, Laos was unable to supplement its own projects and reforms. Despite aggressive policy changes, Thailand was unable to prevent capital flight. The only country that experienced steady FDI growth was Vietnam, a country whose government is still a

one-party system. I will now begin my analysis of these events, testing my previously posited hypotheses to determine their relevance in the cases of Laos, Thailand, and Vietnam.

### Reconsidering Selected Hypotheses

*Hypothesis # 3:* The less flexible a political system structure is, the less likely it will react positively to a crisis.

In order to offer evidence supporting this hypothesis, I will have to define the flexible political structure more precisely. Both Laos and Vietnam have Communist governments that are not elected by their citizens; Thailand, on the other hand, does elect its prime minister and other government officials. In general, Laos and Vietnam have been slower to modernize while the Thai government was quicker to react to crisis situations and pass laws developing a safe environment for investment.

Laos is a nation ruled by one party with a firm socialist vision. Its rigid belief system is one reason for its lack of flexibility in controlling the economy. Instead of reacting positively to threatening economic situations, the Lao government frequently fails to react altogether. Vietnam is also ruled by one major party, but has made a stronger push toward modernization than Laos. Still, however, this push is gradual since the government tends to control the amount and direction of FDI into the country. In the case of these two countries, the hypothesis thus applies.

Thailand, in contrast, has flexible government that, according to this hypothesis, should enable it to react to crisis situations. Nevertheless, the Thai government did not engender high levels of investor confidence. The model does not fit this situation, implying that this hypothesis cannot be applied to every nation.

*Hypothesis # 5:* Weaker central banks tend to amass higher quantities of wasteful non-performing loans.

Of the five hypotheses I previously stated, this one is best supported by my analysis. The quantity of NPLs is directly related to the strength of the central bank. The data from Thailand proved to be more conclusive than the data from Laos and Vietnam.

Thailand had a large amount of NPLs before the Asian Crisis; these were the result of a weak central bank that failed to supervise its subsidiaries. When the government passed measures to strengthen the central bank, investors increased their FDI flows into the nation. When the central bank failed to keep the number of NPLs down two years later, investors quickly pulled out a large percentage of FDI. Thus, as the hypothesis suggests, Thailand's weak central bank accrued large amounts of NPLs which led, in turn, to asset withdrawals.

Laos banks, too, financed a large number of failed projects. I have already disclosed the weakness of the Lao banking system in my previous analysis. Given the low FDI inflows into Laos, we can assume that these factors weaken investor confidence.

### Conclusion

Laos is the least developed country in Southeast Asia. This analysis attempts to determine what factors kept Laos from developing like Vietnam and Thailand. I considered these three countries in particular since they share similar cultures, and resources. Furthermore these countries have a shared history of war and internal struggle. Why is Laos different from its neighbors? Through my research, I have concluded that low investor confidence is the primary cause of Laos's underdevelopment.

Furthermore, when we compare Laos to Thailand and Vietnam, we find that Laos has no interest or ability to invest in its domestic economy. If Laos could finance its own projects and make them productive, then investors would be more likely to invest in Laos. When the government of Vietnam to strengthen its hi-tech sector, investors flocked to the nation since they could make a relatively risk-free profit. By contrast, Laos has a government that fails to cultivate potentially lucrative sectors that would attract significant foreign investment. If Laos were to develop, its government must invest in the domestic economy in order to modernize industry and set an example to foreign investors.

In conclusion, this project revealed the nature of many problems facing Laos. However, Laos is a complex country and detailed data tends to be elusive. Laos is a forgotten land; you seldom hear about it in the papers. I hope that my research will spur interest in this forgotten land and that, in the near future, people will develop ways to help it overcome these challenges. In some ways, this paper raised more questions than answers. One thing is certain, however: if Laos experiences significant domestic reforms, then investors will come. Until then, Laos will remain the least developed nation in Southeast Asia.

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### Oppositional Politics in the Narmada Valley

*Eamon Lorincz*  
University of Pennsylvania

Arguably the most publicized and heavily criticized internationally coordinated development projects in modern history, the ongoing dam construction in the Narmada Valley in India has created a firestorm of controversy that has united supporters and critics in the local, national, and global arenas. Numerous issues, such as environmental impact, population growth, media coverage, and the role of international organizations in local politics, surround the debate over the Narmada Valley and the symbolic Sardar Sarovar, the largest of the more than 3,000 dams that now dominate the region's geopolitical landscape. But perhaps the most incendiary of these issues has been the forced resettlement of the tribal population that currently lives in the Narmada Valley due to the massive reservoirs flooding this Western Indian region. This paper will chart the evolution of that aspect of the Narmada controversy throughout the development project and make three important conclusions. Firstly, while a certain amount of criticism will always accompany a project of this magnitude, hindsight indicates that most of this controversy could and should have been avoided with appropriate planning. In this situation, however, the financial and political backers disregarded the rights and needs of this community during the project-planning period and were thus unprepared to effectively respond to the local backlash when it inevitably arose. Secondly, many of the tensions that resulted from a bungled displacement policy could have later been assuaged through moderate shifts in attitude and policy. Yet instead of exploring these measures, many of those aforementioned backers addressed the concerns of the protest only when under extreme political duress and only in such a manner as to temporarily relieve pressure rather than to finally solve the underlying problem. Thirdly, and perhaps most troubling, India's national and regional governments, the current driving forces behind the continuation of the project, have made no indication that the appropriate lesson has been learned from their mistakes in the Narmada Valley; namely, that their policies of oppositional politics and development at any cost and through any means have often resulted in little more than a deeper stalemate and a greater future costs to overcome.

The origin of the Narmada Valley controversy can be traced back half a century; damming the Narmada River was discussed as early as 1946 and debated by the Narmada Water Disputes Tribunal for an entire decade during the 1970's. When the Tribunal finally approved the project, its political supporters found hundreds of millions of dollars in funding surprisingly quickly and construction of the dam began almost immediately after funding was procured. The entire planning and approval process occurred in a top-down fashion and thus many of the hundreds of thousands

of project-affected people were only informed of the details of the project after it had been approved. William Fisher notes this point in "Development and Resistance in the Narmada Valley," stating:

...local community groups often have little voice in the policymaking process. If they are heard at all, it is in resistance to policies already decided elsewhere and implemented locally. The Narmada case is no different: local people had no voice in the policymaking process.<sup>1</sup>

Disenfranchising the peoples most affected by the construction during the project assessment phase immediately creates an adversarial relationship between the developers and the tribal leaders and the non-governmental organizations (NGO's) that publicly defend them on local, national, and international levels. This initial antagonistic relationship can often, and in the case of the Narmada Valley controversy did, set the tone for later negotiations and protests. During this period, the dam supporters viewed the project-affected peoples as selfishly standing in the way of development and social justice and the project-affected people viewed the government as oppressors. The language used by proponents and critics of the dam, which may seem like a minor point at first, gives clear insight into the mindsets of the two groups as they determine appropriate courses of action to fulfill their objectives. Fisher writes that "Officials have been blunt about the degree to which the anti-Sardar Sarovar protests have occupied their time and effort, tied their hands, and frustrated their efforts."<sup>2</sup> Fisher's usage of the words "occupied" and "frustrated" gives a very telling description of the oppositional mindset of many of those officials. Through both his choice of words and thousands of vignettes in the international media, one can suppose that a significant number of officials are less concerned with finding a just solution to the problem of resettling project-affected people and more focused on continuing the project by any means necessary.

The World Bank commissioned Independent Review of the Sardar Sarovar project made an even harsher assessment about the policymaking process, suggesting almost complete ineptitude and lack of preparation. In his letter to World Bank President Lewis Preston, Chairman Bradford Morse writes:

In 1985, when the credit and loan agreements were signed, no basis for designing, implementing, and assessing resettlement and rehabilitation was in place. The numbers of people to be affected was not known; the range of likely impacts had never been considered; the canal had been overlooked. Nor had there been any consultation with those at risk. Nor were there benchmark data with which to assess success or failure. As a result, there was no adequate resettlement plan, with the result that human costs could not be included as part of the equation. Policies to mitigate those costs could not be designed to accord with people's actual needs.<sup>3</sup>

Morse goes so far as to suggest that this “original sin”, in his view “the failure to appraise and provide basic data”, has resulted in fundamental failures in the project and considers any *pari passu* recommendations to be irresponsible. Rather he believes that the Bank must halt all construction and funding and conduct a complete and thorough initial assessment in order to appropriately address the resettlement and environmental concerns of the project. Some NGOs and academics take the Independent Review’s assessment a step farther and claim that large-scale, top-down development projects, such as Sardar Sarovar project, are inherently oppressive because the frame of reference is dominated by those in power: the politicians, the industry leaders, the upper classes. While the extent to which those statements accurately characterize the development situation is debatable, it seems evident that those large-scale, top-down projects are inherently fraught with difficulties and complications that do not occur to the same extent with other, community-based development projects that those NGOs and academics recommend. For that reason, in order to undertake those projects justly, efficiently, and effectively, it is imperative that they begin with a well-funded, comprehensive initial report that includes not only an accurate assessment of the human costs concerning project-affected people but also well-planned resettlement policy created by project planners in conjunction with tribal leaders and state politicians.

While specific NGOs, academics, and media sources may enter any globalization debate with a hardened and uncompromising viewpoint, the vast majority of project-affected people will judge the project backers, in this case the regional and state governments of India, as just or unjust relative to the treatment they receive. For this reason, the project backers should have been able to mitigate the effects of their initial mistakes and win over the hearts and minds of the project-affected people by admitting to their past mistakes and adjusting their policy accordingly. First, this course of action would be viewed almost universally as a more socially just policy and would more closely align the project’s *modus operandi* with the Indian government’s official policy toward tribal peoples, groups accorded special protection under the law. Second, this course of action would most certainly benefit the project backers themselves as the project construction would no longer be stymied by the anti-dam protesters, who have “occupied their time” and “frustrated their efforts.”<sup>4</sup>

In fact, the alliance between local and global NGO’s has proven to be an extremely formidable opponent, a point that Fisher highlights when he writes, “the Sardar Sarovar Project has certainly made more headlines and been more widely debated in the public sphere than any World Bank-funded project.”<sup>5</sup> Thousands of vignettes detailing the suffering of individual families have littered the international media, and this media exposure, combined with direct pressure from appeals, protests, marches and hunger strikes (which are themselves well publicized), has made a startling impact on the future of the project. This pressure directly resulted in World Bank funding of the unprecedented Independent Review quoted above and indirectly resulted in the cancellation of the World Bank loan to the project, a matter which will later be discussed in greater detail. The World Bank is not the only international

organization that could not withstand the international scrutiny. A 1999 newswire reports:

In April this year, following a 21-day fast by the dam displaced [persons] at Maheshwar, two major German banks, Bayernwerke and VEW Energie, withdrew the 19 percent equity they were to have contributed saying they did not want to be a party to blatant human rights and environmental violations.<sup>6</sup>

Efforts have been made to address the initial failures and limited success has been achieved. For example, the state of Gujarat, after negotiations with project-affected people and NGO’s such as Arch-Vahini, offered a more generous resettlement than the one initially recommended by the 1979 Tribunal or the World Bank.<sup>7</sup> Some Sardar Sarovar proponents view this as an example of the effectiveness of the *pari passu* approach, in which “studies are done concurrently with the construction of the dam”, but the approach as a whole, whether through a fundamental flaw or a simple lack of desire by the project backers to implement it fairly and wholeheartedly, has failed the projected-affected people (not to mention the surrounding environment). Firstly, as the Independent Review exhaustively describes, Gujarat’s policy in itself is still far from perfect. “Gujarat’s policies,” the Review states, “have not thus far been extended to potential oustees who are not resident in submergence villages,” such as those in canal-affected areas or those affected by the resettlement of oustees.<sup>8</sup> Furthermore, while Gujarat has been successful at physically relocating a large number of projected-affected people, the undertaking has not been without its tribulations. Although improvements have been made since then, the reviewers write:

Officials in Gujarat told us that from 1988 to 1990 problems of land acquisition, land allotment, and staff morale within the resettlement division of the Nigam all combined to create a multitude of difficulties at every stage of the resettlement process and at virtually all resettlement sites.<sup>9</sup>

In the other two states, Madhya Pradesh and Maharashtra, the situation is much more dismal, as they have resisted intense pressure to offer relocation packages similar to the state of Gujarat. For this reason, the Independent Review predicts that 60% of the project-affected peoples in those regions “will not receive adequate land on resettlement.”<sup>10</sup> Although Gujarat has agreed to accept project-affected peoples from Madhya Pradesh and Maharashtra, the Independent Review firstly doubted the ability of Gujarat to accommodate those extra oustees and secondly countered that “many oustees do not wish to go to Gujarat, for reasons which have to do with language, culture, and other ties to their region. It would be, for many of them, a long cultural journey.”<sup>11</sup>

In this statement, the Independent Review touches on a larger issue in terms of the resettlement controversy. The resettlement packages offered by the project backers, as well as being poorly timed, poorly reasoned, and economically inadequate, focus solely on individual plots of land. While land issues are central to the struggle over the Narmada, a case study of India for the World Commission on Dams lists some

of the other negative social impacts that construction of large dams can have on project-affected people: "loss of common property resources, loss of cultural heritage sights and monuments, loss of home and hearth, loss of familiar social and geographical surroundings, loss of preferred or familiar sources of livelihood; trauma, uncertainty, and insecurities; adverse affects on physical health, adverse impacts on living standards, social alienation from (and conflicts with) host communities, and loss of infrastructure and access."<sup>12</sup> The Independent Review noticed that these extra-monetary factors were completely ignored in the planning process, writing:

A society's wellbeing cannot be reduced to yields per hectare. Indeed, agricultural production is itself dependent on a whole set of social and cultural factors. When people at even the most successful relocation sites raise questions about grazing and privacy, or wonder what will happen when their population grows, or foresee the impossibility of maintaining their traditional houses in new surroundings, they are implicitly, if not explicitly, raising issues of great importance.<sup>13</sup>

In this way, the Independent Review condemns even Gujarat's relatively enlightened resettlement policy because it fails to address these negative impacts; even there, the project planners failed to understand the difference between resettlement and rehabilitation. Furthermore, these negative impacts, an expected natural result of forced relocation procedures, are exacerbated by the cultural differences between the project planners and the people whose futures have been jeopardized by the Sardar Sarovar project, most of whom are members of scheduled tribes and scheduled castes that ostensibly receive special protection from the Indian government. For this reason, one should further highlight the importance of engaging the indigenous peoples in the decision making process before the construction project, and failing that, mitigating that initial error by addressing their grievances in dialogue fairly and efficiently.

The initial failure of project planners to consult with project-affected people and their continued inability to redress the resulting issues by creating a more economically and culturally appropriate policy can shine light on the extent of local and global protest. Any forced relocation policy will inherently incur a tremendous amount of anxiety and insecurity on project-affected peoples; continued apathy from a large proportion of project backers and their supporters will only further deepen their trauma. Faced with a choice between accepting a decreased standard of living (an extremely difficult proposition for subsistence level agricultural workers) and addressing their concerns to an oftentimes uncompromising and unsympathetic government, many inhabitants of the valley decide to simply stay put no matter what the cost, and over the past decade many have. A newswire in 1999 reports:

...Domkhedi and 50 other villages will be submerged as a result of the massive Sardar Sarovar Dam project. But the Domkhedi villagers, with the support of activists ... are holding their ground. If New Delhi does not halt work on the nearly completed dam, the locals say that they will drown in a forlorn

defense of their ancestral lands. Domkhedi is a tragic chapter in a sadly familiar story.<sup>14</sup>

A 2003 newswire tells of local response to broken promises, an oft-cited grievance of project-affected peoples:

At least 15 persons were arrested from the Sardar Sarovar dam site on Friday afternoon for allegedly trying to commit suicide. Official sources said they were project-affected people who had been demanding that one person from each family be given a job as promised by the government before acquiring their lands.<sup>15</sup>

These newswires provide two of thousands of scenes of protests that have resulted in worldwide condemnation, pullout by financial backers, and incessant delays. Fisher writes how the protesters and NGO's that support them have "forced the dam proponents to exert considerable energy and divert resources from project implementation to project justification" and notes that "this strategy can lead to a kind of paralysis."<sup>16</sup> As a result of this paralysis, nearly two decades after construction of the Narmada Dam and the canal that will hopefully become "the lifeline of Gujarat" began, the project has still not been completed. Yet, more frustrating than the lack of human rights considerations and the ponderous rate of construction is the sad truth that the government of India does not seem to have learned from its mistakes on the Sardar Sarovar and other large dam projects.

First of all, India has a history of marginalizing the scheduled tribes and scheduled classes that purports to protect. A World Commission on Dams report comments on a survey of large dam construction projects in India:

Altogether, nearly 62% of the population displaced were tribals and members of the scheduled castes. Considering nationally they make up only a little over 24.5% of the population, then clearly their representation among those displaced is disproportionately high. For tribals, this is particularly significant as their proportion in the national population is only a little over 8%, while their proportion among the displaced was over 47%.<sup>17</sup>

Many in the Indian government view the marchers and protesters who refuse to leave their lands as obstructionists who selfishly pursue their own interests at the expense of millions of their countrymen. Yet the same few people, traditionally the most disenfranchised and the most impoverished, must continually sacrifice for greater good of an already much wealthier community. Furthermore, as the construction of smaller dams in the past had already resulted in socioeconomically and culturally based protests and conflicts—including an 1984 incident in Gujarat that resulted in five deaths<sup>18</sup>—that should have served to foreshadow the effects a negligent displacement policy would have for an undertaking on the scale of the one in the Narmada Valley.

Second of all, the Indian government has proven too stubborn to correct its mistakes, instead deciding to continue construction despite all obstacles. This decision backfired, however, simply embroiling them in further controversy. In 1992 the World Bank amended their \$450 million dollar loan to include more stringent provisions for human rights and environmental concerns. The Indian government chose to forgo the World Bank loans rather than improve their resettlement and environmental impact plans and submit themselves to “time-consuming monitoring from the World Bank,” citing “inordinate influence” by the World Bank over their project given the extent (15%) of their financial investiture.<sup>19</sup> Yet the World Bank pullout served as a symbolic blow to the political legitimacy of the Sardar Sarovar project and a morale boost to the protesters and NGO’s who opposed it.

In his work on the Narmada Dam controversy, Fisher notes,

Even in cases where project benefits make it possible to offer attractive resettlement and rehabilitation packages, high awards are opposed by politicians and development planners who fear setting a precedent of high awards that could not be met by all future projects.

Again, his language speaks tellingly of the mindset of these politicians and planners, who often view project-affected people as their opposition. Yet the oppositional politics that result from this mentality have both damaged the credibility and reputation of the Indian government and slowed the creation of the “lifeline of Gujarat,” that as of the summer of 2004, has still not come into fruition. One must hope that the Indian government will one day heed the lessons that oppositional politics in the Narmada Valley has provided. Perhaps during India’s next multi-billion dollar development project, the project planners and their political and financial backers will avoid fostering an oppositional relationship with project-affected people and instead constructively engage those peoples in dialogue and work towards a mutually agreeable solution. Then India’s leadership, and our international leadership, will understand that just politics can be good economics.

### Endnotes

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<sup>2</sup> Fisher, W. F. [28]

<sup>3</sup> Morse, B., *Sardar Sarovar: Report of the Independent Review*, H. Jarman, Editor. 1992, Resource Futures International (RFI) Inc.: Ottawa, Canada. [xv-xvi]

<sup>4</sup> *ibid.*

<sup>5</sup> Fisher, W. F. [7]

<sup>6</sup> Ranjit, D.R., *Narmada Dam Displaced Protest at German Embassy*, in *Environment Bulletin*. November 30, 1999.

<sup>7</sup> Morse, B. [xvi]

<sup>8</sup> Morse, B. [89]

<sup>9</sup> Morse, B. [132,133]

<sup>10</sup> Fisher [32]

<sup>11</sup> Morse, B. [xviii]

<sup>12</sup> Rangachari, R., Sengupta, N., Iyer, R.R., Banerji, P., and Singh, S., *Large Dams: India’s Experience, a WCD case study prepared as an input to the World Commission on Dams*. 2000: Cape Town. [125-129]

<sup>13</sup> Morse, B. [133]

<sup>14</sup> Kripalani, M., *Dammed If You Do, Dammed If You Don’t*, in *Business Week*. August 30, 1999: Indore, Madhya Pradesh.

<sup>15</sup> *PAPs held for suicide bid at Narmada Dam*, in *The Times of India*. December 6, 2003. <http://timesofindia.indiatimes.com/articleshow/342435.cms>.

<sup>16</sup> Fisher, W. F. [27]

<sup>17</sup> Rangachari, R. [145]

<sup>18</sup> Rangachari, R. [115]

<sup>19</sup> Wagstyl, S., *India to drop World Bank dam loans: Government refuses to meet stiff conditions on \$3bn project*, in *The Financial Times Limited*. March 30, 1993: London, England.

### Does External Income Really Result in State Autonomy?

Neil F. Rudisill  
University of Pennsylvania

External income is a double-edged sword for any country. While it provides the state with the strength required to mitigate internal conflicts, dependence on its availability and constant flow can threaten the very existence of the recipient state. This dual nature of external income, and, in particular, its important implications for the Middle East, has been noted by many authors.<sup>1</sup> Notwithstanding the danger of dependency, external income provides Middle Eastern countries with the rare and irresistible opportunity of developing completely autonomous state apparatuses. In theory, infinitely accessible external income could result in unbounded state autonomy. However, since Middle Eastern states are subject to fluctuations in the value and reliability of their external incomes due to dependency on oil and gas market fluctuations, their reality deviates considerably from theory. In the absence of infinite external income, the state loses some of its autonomy to the civil society (e.g. private sector). One can thus conceptualize the relationship between external income and state autonomy as a continuum, wherein *limitless* external income gives the state free reign, and *limited* external income passes power to the civil society.<sup>2</sup>

For this essay, clear definitions of both “external income” and “autonomy” are essential. “External income,” encompasses a wide range of revenues in the Middle East such as transit fees for oil (in the cases of Jordan and Syria, and rights to use the Suez Canal for Egypt), loans, aid or grants from foreign countries (prominent in Israel, Jordan, Syria, or Egypt), workers remittances (chiefly from Gulf states to Egypt, Yemen, Syria, Lebanon, Tunisia, Algeria, and Morocco), and, most important of all, oil rents.<sup>4</sup> Using evidence from Algeria and the rentier states of the Gulf, this essay will demonstrate a positive relationship between external income and state autonomy. When I refer to a “rentier state,” I am following the definition posited by Beblawi, of a state whose rent (1) originates from abroad, (2) funnels into the government directly without any intermediary and (3) whose rent production is attributable to only a minority of the population.<sup>5</sup> In addition, rent must be the *primary* source of income for the state in order for it to be considered a rentier state.<sup>6</sup> When I refer to an “autonomous” state, I mean a state which is free to make its own policy decisions without regard to societal pressures.<sup>7</sup> “Autonomy” therefore, is the degree to which a state’s decision-making is insulated from the influence of its society.

To demonstrate that external income furthers states’ autonomy, I will first describe three devices by which states reliant on external income preserve their autonomy, namely: avoidance of taxation, expenditure, and social formation control. In each case, I explain the use of these devices in rentier states and provide examples. Afterward, I will address two glaring cases in which states succumbed to societal pressures as support for my hypothesis that so long as external income remains elevated and constant, state autonomy is sustainable.

Rentier states generally use limited taxation, generous government expenditures, and clever controls of group formation as means to maintain their autonomy. In pursuit of these policies, rentier states employ patrimonial power distribution and kinship networks to construct an informal organizational framework for the state’s rent distribution apparatus. Accomplishing each of these three government agenda necessitates a robust and consistent supply of rent, and in the last case, the application of rent toward repressive state organizations.<sup>8</sup>

It is often noted that Gulf States have astonishingly low levels of taxation, and indeed, a quick look at tax revenues as a percentage of total revenue confirms this idea. For example, between 1982 and 1992, Kuwait, did not even acquire seven percent of its revenue from taxation. During the same period, Bahrain averaged around only twenty percent, and Algeria, around fifty percent.<sup>9</sup> The average tax revenue for the Middle East in this period was only 11%. By comparison, the world average for the same period was sixty-three percent.<sup>10</sup> The reason for such remarkably low levels of taxation stems from the alluring idea that without taxation, there is no need for representation.

As Henry and Springboard point out, taxation is risky business. A state’s taxation of its citizens renders its government accountable to its population base for its actions and policies. Taxation also exposes the limits of a state’s authority, because taxation requires legal enforcement measures which test the juridical and military resolve of the state to confront domestic opponents.<sup>11</sup> Naturally then, a rentier state, given the option, will neither test its authority and risk revealing the parameters of its power, nor obligate itself to its citizenry. Admittedly, the intervening variables to the taxation representation phenomenon are not clearly articulated in rentier literature, and some scholars have even questioned the existence of any real relationship,<sup>12</sup> but in an overwhelming number of historical examples, those intervening variables (whatever they are) have been present.<sup>13</sup> Instinctively wary of this taxation – representation phenomenon, rentier states or regimes steer clear of direct taxation methods.

When rentier states do tax, their taxes tend to be inconspicuous or easily enforceable. Taxes on international trade (principally non-petrol goods) are popular because they export economic stress to other countries. However, they also increase domestic prices (in the case of import tariffs) or hurt domestic producers. Property taxes are also common because given the difficulty of evading such taxes, they do not significantly test the government’s tax collection abilities. Similarly, excise taxes on domestic goods provide a way to conceal tax within daily purchases without raising the suspicion of the citizenry.<sup>14</sup>

Examples of rentier state taxation can be seen in Algeria's fiscal crisis of 1990, when the government imposed a 0.25 dinar sales tax on a liter of petrol, as well as taxes on alcohol and satellite dishes.<sup>15</sup> In Bahrain, between 1982 and 1991, income tax amounted to only one half of the annual revenue retrieved by customs taxes.<sup>16</sup> For the region as a whole, income taxes bring in less than a third of the annual revenue that they do in western countries.<sup>17</sup> Consequently, because Middle Eastern rentier states ask little in financial terms from their populations, they remain relatively impervious to Western clamoring for democratization.

Similarly, by providing their publics with a wide array of social services, government jobs and grants, rentier states can satiate the society's demand for democratic reform by supplying their daily needs in full. This practice turns the rentier state into a distributive mechanism, whereby rents are effectively doled out across the population.<sup>18</sup> While the policy warrants no further explanation, examples of the extent to which this practice is prevalent in the Middle East are illuminating.

Kuwait was the first state in the Middle East to become a true welfare state, where education and health costs were covered completely by the government.<sup>19</sup> Saudi Arabia has followed in its wake, expanding the breadth of government expenditure. Saudi Arabia commonly rewards clients with land grants, electricity and water are heavily subsidized, and health care and education are free. In fact, so much money has been poured into the educational system that excess capacity has developed and even with the bulge in the population under fifteen, Luciani believes that education could withstand cutbacks if necessary.<sup>20</sup> In times of hardship, as after the Gulf War, the Saud family has reacted with gestures of extreme generosity to its public, as when King Fahd cancelled two years worth of mortgage payments to the state, amounting to losses in the billions for the Saudi government.<sup>21</sup> In addition, he briefly reinstated a program of agricultural subsidies whereby the state purchased wheat from local growers at five to six times the cost of imported wheat.<sup>22</sup> In Saudi Arabia, as elsewhere in the Middle East, oil revenue is used to pacify the public during hard times and to postpone any difficult decisions on property rights or resource allocation.<sup>23</sup> The downside to this strategy is that the state also becomes shackled to its policy. For example, when President Sadat of Egypt attempted to reduce Egypt's large food subsidies in 1977, riots erupted on the streets. Rather than push through with reforms and test the mettle of his government, he applied for external income in the form of American aid.<sup>24</sup>

Finally, rentier states use external income to maintain autonomy by controlling the associations and relations of social groups. Rentier states' populations tend to form associations based upon tribal relationships rather than by social class.<sup>11</sup> Sometimes this works in favor of the state's goals, but oftentimes it does not. Rentier states have thus devised methods of monitoring their societies and channeling dissent that stifles the formation of opposition groups.

The simplest strategy of preventing such group formation and assuring loyalty to the state is through "buying off" alternate leadership such as local emirs. Often, however, this is not enough, and more formal methods of control are required.<sup>25</sup> In Kuwait, the creation of the parliament commonly serves as an example of

democratization in the Gulf States; however, this assessment could not be further from the truth. The parliament, though representative of the many of different sub-groups of Kuwaiti society, under-represents workers and over-represents tribal elements.<sup>26</sup> This reflects the fact that the ruling family is not so much concerned with the democratic nature of its parliament as with assuring that the strongest voices of the society are channeled into one controlled venue. While elections may be widely viewed as undermining al-Sabah family autonomy, the ruling family maintains tight control of the cabinet, and a limited definition of citizenship prevents much of its opposition from voting.<sup>27</sup> The al-Sabah family has, therefore, evolved a complex way of managing Kuwaiti groups while maintaining a seemingly democratic orientation.

A common way in which oil rents were used to control group formations in the Gulf States manifested itself in the late 1980's and early 1990's when every Gulf State attempted to reduce or purge the populations of foreigners (Palestinians and Yemenis) from its soil. Due to the small size and relatively uneducated nature of their populations, many Gulf states came to the conclusion in the 1970s that they would need foreign workers to accomplish their desired levels of industrialization, investment in infrastructure, and expansion of social services.<sup>28</sup> By 1990, foreigners composed the majority of the population in every Gulf state. Saudi Arabia was 59.8% expatriate, Oman 70.0%, Kuwait 86.1%, and Qatar 91.6%.<sup>29</sup> Nationalization policies of the 1990's resulted in what Luciani refers to as "economic self-mutilation."<sup>30</sup> Thousands of workers were kicked out of Gulf states to create work for nationals who could no longer find jobs in the government. In 1996, 167,000 immigrants left the U.A.E. In Bahrain, the Ministry of Labor subsidized 75% of the cost of training fees so as to eventually replace foreign employees in private enterprise with national workers. The government passed on to the private companies the remaining twenty-five percent of the cost.<sup>31</sup> In all of these attempts to replace foreign with national workers, the governments expended great sums of money to redefine the constitutions of their populations and to ensure the survival of their nationals.

To give one last example of the importance of group formation to state autonomy, we can turn to Saudi Arabia, where an extensive network of security services monitors the population. Some of these organizations have been around before the oil boom such as the descriptively named, *Organization for the Enforcement of Good and the Prevention of Evil*, established in 1929. Others are newer and more sophisticated such as the *mutawwā'in*.<sup>32</sup> These groups help monitor and block the movements of underground political or religious groups. The coup attempted in 1979 by *Juhaiman al-Utaibi* was instrumental in awakening the al-Saud family to the threats looming against their regime. After this date, the government effected liberal measures by creating a consultative assembly and limiting royal corruption. Despite these reforms, surveillance and renewed attention to anti-governmental activity persisted.<sup>33</sup> Military expansion was a salient part in this process, especially during the Iran-Iraq war during which Saudi military expenditure as a percentage of total government expenditure burgeoned from 29% percent in 1984 to 46.3% in 1987.<sup>34</sup> Availability of external income allowed such complex defensive mechanisms to thrive.

As 1995, 1996 and 2004 terrorist attacks in Riyadh and El-Khobar demonstrate, the Gulf States have failed to achieve complete control over societal groups.<sup>35</sup> But, having such large quantities of external income allows rentier states a selection of repressive or economically extreme measures that most states would find either unfeasible or unpalatable.

If one turns now to the examples of Iran and Algeria, one can see the results of two distinct pitfalls in the relationship between external income and state autonomy. In Iran's case, the state failed to apply its revenues toward the control of its diverse social and economic groups, either through benevolent expenditures or group formation control. As a result, Iran's coercive policies were doomed to failure. In the Algerian case, problems arose when the government based its budget off of predicted oil revenues that failed to materialize. An unequal distribution of government funds only intensified these problems for Algeria.

Although a variety of factors precipitated the Iranian Revolution in January 1979, Reza Shah Pahlavi's failure to incorporate the old middle class into his rent-based government was an especially important driving force. After Reza Shah returned to power in 1953, oil revenue as a part of total revenue climbed to forty-one percent by 1960 and to fifty-five percent by 1970. From 1973 to 1979, income from oil increased four hundred percent. Despite its contribution to state revenue, the oil industry employed less than 0.6% of the labor force.<sup>36</sup> Meanwhile, government expenditure as a percentage of GNP grew from twenty-one percent in 1971 to forty-eight percent in 1976.<sup>37</sup> The government promoted growth of the bourgeoisie with low-interest loans, minimal taxes, and subsidized building materials. As a result, the number of private companies increased by a factor of six between 1957 and 1974. The *Bazaaris*, the traditional merchant class of composing 6.8% of the work force, also benefited from the rentier state, but not due to any deliberate effort on the part of the shah.<sup>38</sup>

The *Bazaaris* remained on the periphery of governmental control. They were never effectively taxed, and sixty-seven percent of them were self-employed.<sup>39</sup> Starting in 1975, however, Reza Shah decided to incorporate government into the lives of the *Bazaaris* as never before. He instituted anti-profiteering squads to monitor prices in the *souk* markets, while simultaneously implementing a one-party system to expedite his reforms.<sup>40</sup> The results of these repressive measures on a social group living on the fringes of the government, and largely independently of government expenditures, were disastrous. *Bazaaris* reorganized themselves in their mosques, began distributing polemical pamphlets, and started a religion-based grassroots campaign against the "modernizing" government.<sup>41</sup>

In early 1979, it was the revolution inspired by the *Bazaaris* rather than the shah's reforms which transformed Iran. From exile, the shah wrote, "...it remains my conviction that the [Bazaaris'] time is past."<sup>42</sup> These words qualify the shah's actions; he did nothing to effectively bring the *Bazaaris* under government control prior to the imposition of drastic reforms. Luciani warns of this situation stating: "...whenever the state is fiscally independent of such a bourgeoisie it may well avoid democratization, though the reverse is never the case."<sup>43</sup>

In Algeria, the *Front de Libération Nationale* (FLN), which had governed since 1962, succumbed to the *Front Islamique de Salut* (FIS) in 1990 on account of its inability to meet expectations of government expenditure. The FLN expanded the role of government in society in the 1970's through the social services of education and health care. It even subsidized urban living costs. All of these expenditures were supportable in the booming oil-market of the 1970's. However, during the recession of the 1980's, the government budget became overstretched. The FLN decided to divest itself from its industries and promote private sector commerce. Simultaneously, it sought to increase government revenue by increasing oil production. But when the government attempted to reduce its expenditure by cutting subsidies, it ran into broad opposition.<sup>44</sup> In October 1988, riots broke out across the Algerian coast. While protests initially focused on declining urban living conditions, the riots came to embody general frustrations with the FLN. For five days, FLN court-houses, police stations, and city halls were ransacked by mobs.<sup>45</sup> Despite the FLN's fiscal efforts, budget deficits reached close to sixteen percent of annual revenue in 1986.<sup>46</sup> Efforts to liberalize the economy actually resulted in increasing red tape and the accumulation of greater government benefits in the hands of fewer men. Government workers became divided into those who benefited from the reforms and those who suffered. Private sector small businesses saw transaction costs increase due to corruption.<sup>47</sup> The failure of the FLN to control the direction of its expenditures (i.e. corruption) along with its inability to decrease expectations of government expenditure in accordance with the fall in 1980's oil prices resulted in a demand for democratic elections in 1990 in which the FIS won 54.25% of the popular vote.<sup>48</sup> The results from these elections were so damning for FLN that President Chaldi Bendjedid's own cabinet forced him to dissolve the newly elected Parliament and then resign so that the FLN would stand a chance for electoral survival.<sup>49</sup> In the Algerian case, the relationship between external income and state autonomy is stark. By progressively having to abandon its social programs, the FLN engendered the social unrest that emerged in the FIS. While the FIS did not gain control of the government immediately after their 1990 electoral victory, the 1990 elections indisputably demolished the FLN monopoly in Algerian politics and instigated an Islamist backlash against the FLN's failed democratic and "western" reforms.

In this paper, I have demonstrated that there is a strong positive relationship between the availability and consistency of external income and the degree of a state's autonomy. Specifically, I have described this relationship through the examples of rentier states whose existence depends primarily on external income. By making comparisons with states that gain significant portions of their budgets from non-oil sources, the relationship may hold true as well, but I would predict that on the continuum of democratization, with the completely autonomous state on the far right and the completely democratized state on the far left, non-oil states would fall somewhere to the left of the rentier group. Due to their lucrative geological endowments, rentier states are capable of preserving their autonomy so long as they apply their external income toward low taxation, high government expenditure, and pervasive social formation policies. As seen in the cases of Iran and Algeria,

when a rentier state fails to fully accomplish any of these goals, or its rents significantly decrease, democratic pressures ascend. To prepare for the inevitable dwindling of these perishable resources, rentier states ought to develop significant forms of political power away from their oil wells, if they desire to remain in control in the long run.<sup>50</sup> Otherwise, the question of democratization becomes one put forward by reggae lyricist, Peter Tosh: "Whatcha ya gonna do when your well runs dry?"

#### Endnotes

<sup>1</sup> Shambayati, Hootan, "The Rentier State, Interest Groups, and the Paradox of Autonomy: State and Business in Turkey and Iran." *Comparative Politics*. Vol.26, No.3 (April 1994) p.309.

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<sup>3</sup> *Ibid.* p.137; Ross, Michael. "Does Oil Hinder Democracy?" *World Politics*. Vol. 53, April 2001, p.329.

<sup>4</sup> Herb, Michael. "No Representation Without Taxation? Rents, development and democracy." Georgia State University. 2003. p.2, URL: [http://www.gsu.edu/~polmfh/herb\\_rentier\\_state.pdf](http://www.gsu.edu/~polmfh/herb_rentier_state.pdf)

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<sup>6</sup> Ozbudun, Ergun. "The Continuing Ottoman Legacy and the State Tradition in the Middle East." Edit. Carl Brown. *The Ottoman Imprint on the Balkans and the Middle East*. Columbia University Press: New York, 1996. p.2.

<sup>7</sup> Ross. pp.332-334.

<sup>8</sup> Luciani. p.139.

<sup>9</sup> Shambayati. p. 307.

<sup>10</sup> Henry, Clement and Robert Springboard. *Globalization and the Politics of Development in the Middle East*. Cambridge University Press: Cambridge, 2001. p.8. ; see also Clement and Springboard. p.77-78. Egypt receives only about 200,000 tax returns from its population of 19 million.

<sup>11</sup> See Waterbury, John. "Democracy Without Democrats?: The potential for political liberalization in the Middle East." edit by. Ghassan Salamé. *Democracy Without Democrats? The Renewal of Politics in the Muslim World*. I.B. Tauris: London, NeW York, 1994. p.30.

<sup>12</sup> Ross. p.332.

<sup>13</sup> Luciani. p.133.

<sup>14</sup> Chhibber, Pradeep K. "State Policy, rent seeking, and the Electoral Success of a Religious Party in Algeria." *The Journal of Politics*. Vol.58. No.1. Feb. 1996. p.139.

<sup>15</sup> Luciani. p.140.

<sup>16</sup> *Ibid.* pp.140-1.

<sup>17</sup> Owen, Roger. *State, Power and Politics in the Making of the Modern Middle East*. Routledge: London and New York, 2004. p.122.

<sup>18</sup> Winckler, Onn. "Gulf Monarchies as Rentier states: The Nationalization Policies of the Labor Force." in *Middle East Monarchies: The Challenge of Modernity*. Lynne Rienr Publishers: Boulder, CO and London, 2000. p.238.

<sup>19</sup> Luciani. p.142.

<sup>20</sup> Okruhlik. pp.304-5.

<sup>21</sup> *Ibid.* p.305.; see also Vassiliev, Alexei. *The History of Saudi Arabia*. Saqi Books: London, 2000. p.456. for Saudi agricultural subsidy.

<sup>22</sup> Okruhlik. p.296.

<sup>23</sup> Anderson, Lisa. "Peace and Democracy in the Middle East: the constraints of soft budgets." *Journal of International Affairs*. New York: Summer 1995. Vol.45, Iss.1. par.34.

<sup>24</sup> Okruhlik. p.295.

<sup>25</sup> Ayubi, Nazih. "Arab Bureacracies: Expanding in Size, Changing Roles." edit. Giacomo Luciani. *The Arab State*. Routledge: London, 1990. p.251.

<sup>26</sup> *Ibid.* p.242.

<sup>27</sup> Luciani. p.144.

<sup>28</sup> Winckler. p.239.

<sup>29</sup> *Ibid.* p.240.

<sup>30</sup> Luciani. p.144.

<sup>31</sup> *Ibid.* pp.250-1.

<sup>32</sup> Ayubi. p.231.

<sup>33</sup> Okruhlik. p.299.

<sup>34</sup> Cordesman, Anthony H. *Military Balance in the Middle East XIII: The Southern Gulf: Saudi Arabia, the UAE, and Yemer*. *Center for Strategic and International Studies*. 28 December 1998, p.9 ; Luciani. p.143.

<sup>35</sup> Henry and Springboard. p.181.

<sup>36</sup> Shambayati. p.318.

<sup>37</sup> *Ibid.* p.319.

<sup>38</sup> *Ibid.* p.322.

<sup>39</sup> *Ibid.* p.321.

<sup>40</sup> *Ibid.* p.324.

<sup>41</sup> *Ibid.* p.324.

<sup>42</sup> *Ibid.* p.323.

<sup>43</sup> Luciani. p.135.

<sup>44</sup> Chhibber. p.130-5.

<sup>45</sup> *Ibid.* p.140.

<sup>46</sup> *Ibid.* p.136.

<sup>47</sup> *Ibid.* p.133.

<sup>48</sup> *Ibid.* p.127.

<sup>49</sup> for an excellent summary of modern Algerian politics, see *A Country Study: Algeria*. Federal Research Division, Library of Congress, Chapter 1: Independent Algeria, 1962-1992. President Bendjedid resigned on January 11, 1992.

<sup>50</sup> Mahdavy. p.467.

## An Evaluation of U.S. Actions Along Its Southern Border: An Examination of International Legal Obligations

Dillon M. Kuehn  
*University of Pennsylvania*

While multinational corporations, the internet, and increased free trade have encouraged many academics to write about and to redefine the frontiers of an emerging global community, the physical borders that define states remain afflicted with the problems of the past. One needs only to look toward the West Bank or Tijuana to believe in the importance and problems of a wall. Indeed, the events of September 11<sup>th</sup> have reminded the world that becoming more economically and digitally enmeshed does not necessarily mean a more secure global environment. It comes as little surprise then that the United States recently has begun to look toward its north and south with increasingly skeptical eyes. Nevertheless, the border problems of the past remain in many instances unchanged. Undocumented illegal immigrants still pursue what they hope to be more prosperous futures in the United States and cross dangerous and often lethal terrain to realize that dream. Sadly, what many of those undocumented immigrants have met upon crossing the border has been a violation of their human rights at the hands of United States governmental officials.

Despite the opinions of those skeptics who consider international law to be nothing more than an unenforceable corpus of vagaries, international law creates explicit obligations on states and provides substantive remedies for injured parties. In recent years, various human rights watch groups have condemned the United States on several bases. Yet, this literature appears to be more interested in compiling that evidence than in analyzing it under an international legal framework. Presenting evidence, horrific as it may be, is not sufficient to demonstrate that the United States has violated international laws and the human rights of undocumented immigrants crossing its borders.

The majority of the legal analyses presented by those human rights groups fail to consider a variety of discussions essential to international law. Even when human rights groups focus on a specific issue which they argue to be a human right, they habitually neglect to determine whether or not the right in question is actually considered a human right under international law. Current analyses generally begin with the assertion that the United States has violated international legal obligations to respect human rights but nevertheless proceed with lines of argumentation resting solely on violations of constitutional due process or violations of the internal codes of conduct of the government agencies overseeing immigration. To that end, the current literature fails to establish the connection between international law and U.S. municipi-

pal law and falls short of presenting a convincing case against the United States in violating human rights along the border.

The following examination will fill the significant voids in the human rights groups' analyses and evaluate their conclusions in light of an honest discussion of international law and the United States' actions toward illegal immigrants along the U.S.-Mexico border. First, a brief appraisal of the U.S.-Mexico border will given in order to highlight the relevant issues of immigration and border control. Putting all the pieces together, an assessment of U.S. obligations, in light of international law and suspected abuses by U.S. officials, will establish the legality of U.S. actions along the border. As will be revealed, the actions of government officials along the border have in a variety of instances have violated the human rights of illegal aliens. Finding the United States responsible for those violations in general, as have so many human rights watch groups, may not be so simple once all the evidence and debate has been presented.

### **I. The Border and Its Issues**

#### *A Brief History of the Border*

Although the matter of immigration has always been of particular importance for the United States, the focus on guarding its natural borders has not always been so prominent. In the nineteenth century, immigration issues were primarily concerned with peoples arriving from various areas in Europe.<sup>1</sup> In 1899, only four U.S. administrators were assigned to work on the U.S. Mexican border.<sup>2</sup> With the Mexican Revolution of 1910, thousands of Mexicans fled across the border to safety in the United States. In the subsequent years following the revolution, 89,000 Mexicans immigrated to the United States in 1924 alone in search of a better life. Congress passed the Immigration Act of 1924 in an attempt to curb the increasing numbers of immigration arriving from non-European areas. In 1924, Congress additionally established the Border Patrol and border stations to collect taxes on Mexican workers entering the United States, a development which represented a watershed moment in the development of U.S.-Mexican border relations. With the creation of the Border Patrol, the immigrants were now refugees and the term "illegal alien" emerged.<sup>3</sup>

Although the depression in the U.S. created significant national pressures to reduce the numbers of Mexicans working inside the U.S., the Second World War reversed the tide. In 1942, the Bracero Program was established in an effort to bring Mexican workers across the border to work in the agricultural areas left with insufficient labor forces as a result of the domestic demographic shift toward the production of industrial goods for the war effort.

While World War II had given Mexican workers the opportunity to migrate legally and illegally, the end of the war would lead to attempts to shut that door. Throughout the late 1940s and early 1950s, political pressures to reestablish the pre-war border order gained momentum resulting in Operation Wetback of 1954. Operation Wetback was formulated by General Joseph Swing in 1954 to find and deport illegal aliens within the border of the United States. Hundreds of thousands of Mexicans were deported in months.<sup>4</sup> Following the completion of Operation Wetback, domestic

pressures regarding immigration subsided to some extent. In the early 1960s, domestic pressures once again resumed as they had in the late 1940s. In 1964, the Bracero Program was terminated and quotas by national origin were established. In all, between 1942 and 1964 over four million Mexican workers had crossed the border to work under the Bracero Program.<sup>5</sup>

Naturally, the termination of the Bracero Program did not spell the end of Mexican immigration, either legal or illegal. Illegal immigration is still an important issue for both countries. Although estimates of illegal immigration have been subject to debate, the Department of Justice estimated that in the early 1990s around 275,000 undocumented workers were added to the U.S. population annually. It was estimated that fifty-four percent of this growth rate could be attributed to those undocumented immigrants arriving from Mexico.<sup>6</sup> For good or bad, there will no doubt continue to be individuals willing to risk the dangers of crossing the border as long as the economic opportunities are significantly divergent between the two countries.

### **U.S. Agencies Responsible for Controlling the Border**

As will be demonstrated in the legal analysis below, international law is not only concerned about what happens in states, but also how states respond to credible evidence of concerning issues. For this reason, it is important to identify the framework that the United States has in place for regulating immigration and its mechanisms to deal with complaints and remedies that invariably arise in any such environment. The analysis would be relatively more straightforward if September 11<sup>th</sup> had not occurred. Nevertheless, the changes to the immigration agencies occurring in the wake of September 11<sup>th</sup> do not create substantial obstacles for the legal discussion.

Prior to September 11<sup>th</sup>, the principal agencies responsible for excluding undesirables from United States territories were the Immigration and Naturalization Service (INS), the Bureau of Consular Affairs, and the U.S. Custom's Service. Each agency has its own history and its own responsibilities in the combined effort to curb illegal immigration, though it is the INS which is of particular interest in the context of this paper. In the aftermath of September 11<sup>th</sup>, the responsibilities of the INS became part of the new Department of Homeland Security (DHS). While the two eras of immigration oversight must be recognized, the nature of the recent governmental restructuring allows the argument to follow with relative ease. As will be seen shortly, most allegations regarding human rights abuses have been directed toward the actions and administrative structure of the Border Patrol. Given the fact that the Border Patrol was not only the enforcement branch of the INS but also operates as the current enforcing arm of the newly created DHS, the argument may proceed. Furthermore, immigration legislation enacted in the wake of September 11<sup>th</sup> has primarily concerned the modification of criminal aliens' rights. Since the majority of allegations concerning human rights abuses pertain to U.S. actions during simple apprehensions and detention, the reorganization does not present considerable impediments for the present discussion.

### **The INS and the Border Patrol: A Brief Overview**

Created in 1924 for the Department of Labor, the Border Patrol has a long history of guarding America's borders. The Border Patrol, as the enforcement arm of the Immigration and Naturalization services, is granted significant powers in conducting their work. In accordance with the Code of Federal Regulations, the Border Patrol is allowed to detain and interrogate aliens,<sup>7</sup> to use deadly and non-deadly force,<sup>8</sup> to make arrests, to transport individuals, to engage in vehicular pursuits, and to make on-site inspections.

In 1994, the 2,000 mile U.S.-Mexican border was overseen by thirty-two patrol stations and 2,543 Border Patrol agents.<sup>9</sup> Under the Clinton Administration, the Border Patrol increased its coffers and manpower. The 1995 Mexican fiscal crisis had worsened the economic status of many Mexicans and consequently made crossing the border relatively more attractive for numerous individuals.<sup>10</sup> The policies implemented under Clinton's administration came to be known as "prevention through deterrence" and characterized the immigration policy for the southern border during the nineties.<sup>11</sup> Congress passed the Illegal Immigration and Immigrant Responsibility Act of 1996 making significant changes to the status of illegal immigrants within U.S. borders hoping to dissuade potential illegal immigrants by decreasing the possible civil benefits to be had. 1,000 Border Patrol agents were added annually for the following five years in order to facilitate effective "deterrence." Moreover, funding was passed in the same year that intended to triple the INS budget by fiscal year 2002.<sup>12</sup> Over the course of the 1990s and until 2001, the INS realized these increases in funding and manpower.

While the INS and Border Patrol kept growing, the number of immigrants attempting to cross the border was not reduced in any year by any significant amount. One can imagine the frustration felt by the Border Patrol in their daily efforts to curb the flow of illegal immigrants. As one supervisor of the Border Patrol stated, "You catch the same guide, and you catch him again, and you know he's a guide, and he keeps walking. And he maybe even sits up there and laughs at you."<sup>13</sup> The same supervisor noted that sometimes "[the Border Patrol agent] sees so many people get away with so much that he starts administering street justice."<sup>14</sup>

### **II. The Border under the Scrutiny of International Law**

Allegations of human rights abuses and violations of international law along the U.S.-Mexico Border are relatively numerous and revolve around several common themes. The following allegations are representative samplings of the familiar themes made in the majority of criticisms against U.S. actions along the border:

Human rights abuses by Immigration and Naturalization Service border patrol agents violate Article 7 (the right to be free from torture or cruel, inhuman or degrading treatment) and Article 9[1] (the right to liberty and security of the person) [of the International Covenant on Civil and Political Rights].<sup>15</sup>

Human rights abuses on the US-Mexico border are of international concern, not just because some of the victims are foreign citizens, but also because these abuses violate international standards and principles of human rights protection to which all states should be held accountable.<sup>16</sup>

[The International Covenant on Civil and Political Rights] could offer greater protection against human rights abuses than the current interpretation of U.S. law. However, the Bush administration, through a series of reservations, declarations and understandings... nullified every provision of the treaty that it believed would have granted expanded rights to Americans... Border Patrol agents of the Immigration and Naturalization Service violated Article 7... and Article 9(1) [of the International Covenant on Civil and Political Rights]...<sup>17</sup>

The criticism of U.S. actions along the border may be separated into two categories: those that allege that the United States has violated the obligations of treaties it has ratified and those that contend that the United States has violated international legal standards, or customary law. While both claims are usually made concurrently, at least one of those two criticisms can be found in the preponderance of arguments made against U.S. actions along its southern border.

Those arguments contending that the United States has violated its treaty obligations invariably point to the United States' ratifications of the International Convention on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The extent to which these treaty-based claims analyze actual covenant obligations and their effects in U.S. municipal law varies. While a few criticisms recognize the constraining reservations made by the United States to the CAT and the ICCPR, others are content to assert that the United States has violated its obligations under the covenants without any consideration of those reservations. As exemplified in the last criticism presented, there exist some allegations that while recognizing the existence of the United States' reservations simply proceed to accuse the United States of violating the obligations of those covenants without giving due consideration to the provisions of U.S. reservations.

Morality and politics aside, an accurate assessment of U.S. compliance with international obligations under the ICCPR and the CAT must be analyzed vis-à-vis those limited obligations to which the United States has given its positive consent. Although the resulting conclusion may indeed find that the United States has violated its international obligations under those covenants, a meaningful and comprehensive analysis of obligations must include all relevant issues, including the reservations the United States has made to those treaties. The history and nature of international law demands such an analysis.

The second theme of criticism made against the United States' actions along the U.S.-Mexico border has been characterized by similarly vague legal analyses. It is neither sufficient nor convincing to take as *a priori* the existence of certain "international standards and principles of human rights" that the United States has violated. Even when those arguments alleging violations of international customary law specify the "international standard" that the United States has violated in its actions along the border, they consistently put the burden on the reader to research whether or not the "standard" is indeed a norm of international customary law. When analyzing whether or not a nation has violated international customary law it is necessary to demonstrate that the norm is observed in the general practice of nations and that those states observe that norm out of a sense of legal obligation, or *opinio juris*. Only when those two requisite attributes have been demonstrated may a worthwhile legal analysis of state's compliance with that norm take place. The treaties signed by the United States may indeed provide evidence of customary norms, but human rights groups fail to initiate any meaningful analysis to that effect.

As a result of the positivist limitations that the United States made in its ratification of the ICCPR and CAT, customary law may provide the best case against U.S. actions and for that reason deserves a satisfactory analysis. Additionally, a comprehensive analysis of pertinent customary law is especially important as it may provide illegal immigrants with protections and rights broader than those agreed to in treaty law but nevertheless enforceable in U.S. courts. Prior to the evaluation of customary law, the discussion of U.S. obligations and compliance with international law will begin with an examination of the validity of the first theme of claims regarding U.S. compliance with international treaty law.

### Exercises in Reservation Part One: The CAT

The United States Senate ratified the CAT on October 27, 1990.<sup>18</sup> Articles 1 and 2 of the CAT read as follows:

#### Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>19</sup>

## Article 2

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Articles 12 and 13 of the CAT create obligations for the prevention of torture and ill-treatment within the territorial jurisdiction of signatories.<sup>20</sup> Perhaps the most important Article of the CAT for the present discussion is Article 16:

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official....

Keeping true to the U.S. tradition of inevitable reservations, declarations, and understandings in the ratification of multilateral conventions, the United States introduced the following “understanding which, [applies] to the obligations of the United States under [the CAT]:

... the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering; [...]; (3) the threat of imminent death...<sup>21</sup>

Not only did the United States limit its obligations with respect to the definition of torture, but it also restricted its obligations with respect to the “cruel, inhuman, or degrading treatment or punishment” prohibition entailed in Article 16. The United States’ reservation to Article 16 states that “the United States considers itself bound by the obligation under Article 16...only insofar as the term ‘cruel, inhuman or degrading punishment’ means the cruel, unusual and inhumane treatment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”<sup>22</sup> Furthermore, the United States declared that the substantive articles of the CAT were not self-executing.<sup>23</sup> This important reservation rendered all the rights guaranteed by the CAT unenforceable in U.S. domestic courts. The circumstances surrounding the ratification of the ICCPR are analogous in all relevant aspects.

**Exercises in Reservation Part Two: The ICCPR**

Calling for the Senate’s ratification of the ICCPR in the summer of 1991, President George Bush advised the Senate that “the [ICPPR would] strengthen [the United States’] ability to influence the development of appropriate human rights principles in the international community and provide an additional and effective tool in our efforts to improve respect for fundamental freedoms in many problem countries around the world.”<sup>24</sup> The United States Senate ratified the ICCPR in 1992. Articles 7 and 10 read as follows:

## Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>25</sup>

## Article 10

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>26</sup>

The Senate declared Articles 1 through 27 of the ICCPR to be non-self-executing, consequentially rendering those rights unenforceable in U.S. courts.<sup>27</sup> Furthermore, the U.S. also limited the scope of obligations entailed in the ICCPR’s substantive provisions. The U.S. deposited a reservation to Article 7 stating that “the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”<sup>28</sup> The ratification of the ICCPR was a simple reenactment of the CAT’s ratification conducted on a different legal stage. Although President Bush’s advice to the Senate nodded to natural law’s philosophy of “fundamental freedoms,” the resulting obligations for the United States under the ICCPR were tailored by pure positivist motivations.

As is apparent from the histories surrounding the ratifications of the CAT and the ICCPR, any sincere discussion of U.S. compliance with its international obligations under those treaties must give proper consideration to the general limitations under which the United States provided its consent. By no means should it be assumed that the United States is not obligated by international law to respect the rights guaranteed in the CAT or the ICCPR. While the substantive provisions of the ICCPR and the CAT are not enforceable in the domestic courts of the United States, the agreements nevertheless create international legal obligations for the United States government insofar as they are consistent with the operative reservations. As the renowned international lawyer David Stuart explains, while the substantive articles of the CAT are domestically unenforceable “[the non-self-executing] provision concerns only the domestic effect of the Convention and does not limit or alter the extent of the United State’s international obligations thereunder.”<sup>29</sup>

Although it is insufficient to argue the United States has violated its international obligations under the ICCPR and the CAT without considering its reservations

to those agreements like some human rights groups have, those reservations certainly do not preclude the United States from violating international law. More simply put, a violation of the Fifth, Eighth, or Fourteenth Amendments also constitutes a breach of international law under the obligations of the ICCPR and the CAT. Furthermore, given the important tie between treaty law and customary law, an in depth discussion of rights guaranteed by the ICCPR and the CAT as consented to by the United States provides an important background to customary law, for which illegal immigrants may attain remedies in U.S. courts. With those considerations in mind, we may turn to an analysis of those positivist obligations of the United States under the ICCPR and the CAT presented in tandem with evidence of abuses along the U.S.-Mexico border.

### **Rights to Due Process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments along the Border**

The Fifth and Fourteenth Amendments both provide due process liberties for individuals in the United States. Whereas the Fifth Amendment applies to the Federal government with reference to an individuals' right to freedom from arbitrary arrest and other unjust legal proceedings, the Fourteenth Amendment also affirms the protection of other rights guaranteed in the Bill of Rights and is applicable to State actions. In either situation, the United States has long afforded illegal aliens the right to due process under both the Fifth and Fourteenth Amendments.<sup>30</sup> In *Plyler v. Doe*, the Court recognized the due process rights of aliens:

There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment protects every one of these person from the arbitrary deprivation of life, liberty, or property without due process of the law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.<sup>31</sup>

By ratifying the CAT and the ICCPR, the United States not only reaffirmed the longstanding due process rights of aliens, but also pledged to be bound by those provisions as a matter of international law.

The government of the United States undoubtedly retains the right to control its own borders and admit aliens according to its own dictates.<sup>32</sup> As the enforcing agency of immigration policies, the Border Patrol is granted the power to detain and to arrest aliens entering the United States in violation of immigration laws. Nevertheless, once in the territory of the United States, those illegal immigrants must be afforded due process rights prior to deportation.<sup>33</sup> The following evidence suggests that the due process rights of illegal aliens have not always been respected by U.S. officials.

In a class action suit brought against the INS in the case of *Perez-Funez v. District Director*, children from El Salvador filing suit alleged "that INS policy and practice coerce[d] class members into unknowingly and involuntarily selecting voluntary departure, thereby waiving their rights to a deportation hearing or any other form of relief... [in violation] of the due process clause of the Fifth Amendment to the

Constitution."<sup>34</sup> The Court elaborated on the particularly troubling situation of juveniles in detention proceedings:

Their interrogators are foreign and authoritarian. The environment is new and the culture completely different. The law is complex. The children generally are questioned separately. In short, it is obvious to the Court that the situation faced by unaccompanied minor aliens is inherently coercive. Moreover, the INS' policy of allowing border patrol agents to explain rights but prohibiting the giving of advice does nothing to alleviate the problem.<sup>35</sup>

The plaintiffs argued that INS officials gave the children voluntary departure forms "without any explanation of rights and were told to sign...[and the children signed them] but only because they did not understand they were waiving their rights to other possible forms of relief."<sup>36</sup> The Court ruled that "The processing environment [was] inherently coercive and [the] current procedures [did] not address the problem adequately."<sup>37</sup> As a result of that finding, the Court presented various options to the INS for resolving the issue.<sup>38</sup> It is easy to understand why immigration officials prefer that illegal immigrants sign voluntary departure waivers from a bureaucratic standpoint given that it is undoubtedly less costly than the continuation of legal proceedings. At the same time, the United States must afford illegal immigrants with the right to due process. Even if those rights were not afforded under U.S. domestic law, they certainly are under the ICCPR and the CAT. The right to due process cannot exist in an "inherently coercive" environment, as affirmed in *Perez-Funez v. District Director*.

Related to the issues in the previous case, allegations of due process rights violations resulting from the inherently confusing legal documents occasionally reach the courts. In *Walters v. Reno*, the Court noted that "the [United States] government is not free to deport an alien from the United States unless it has first accorded him the most basic procedural protections" and that "an [alien's] waiver of either of these basic rights is valid only if the government demonstrates that the alien intentionally relinquished a known right or privilege."<sup>39</sup> In *Walters v. Reno* the Court described the significant and problematic consequences of misunderstanding one such legal document pertaining to deportation:

The [document] does not state that the alien understands that by waiving his right to a hearing as to the document fraud charges he also waives his right to challenge his deportability and excludability on that account, and he will in most instances be permanently barred from re-entering the country. The [document] only asks the alien to acknowledge that he is agreeing to pay a fine and ... It does *not* ask him to acknowledge that he is consenting to his deportability and that the deportation hearing he will receive will in most instances be rendered meaningless.<sup>40</sup>

The operative section of the document in question was written solely in English while the remaining portions of the fourteen page document were available in both English and Spanish. While recognizing that the due process clauses of the Fifth and Fourteenth Amendments do not require that forms be written in Spanish as well as in English, the Court ruled that “because the government elected to provide some information in a language other than English, however, it created the possibility that the partial use of bilingual forms would result in greater confusion than if it had used monolingual forms exclusively.”<sup>41</sup> The Court found the forms to be “not only confusing, [but also] affirmatively misleading.”<sup>42</sup> Additionally, the Court noted that “the constitutionally deficient forms were in widespread use across the country...[and] there [was] no evidence to suggest that more than a handful of agents and one or two branch offices adopted procedures that attempted to remedy the inadequacy of the forms.”<sup>43</sup> Given the circumstances of the case, the Court ruled that “[it] is reasonable to presume that class members involved in document fraud proceedings did not receive due process because of the inadequate forms” and ordered a nationwide change in policy.<sup>44</sup>

Violations of the due process rights of illegal immigrants crossing the U.S.-Mexico border are not limited to procedural concerns such as those presented. A violation of due process rights may also occur when an individual acting in an official capacity “willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens.”<sup>45</sup> In *Cruzan v. Harmon*, the Court acknowledged that “no right is held more sacred, or is more carefully guarded . . . than the right of every individual to the possession and control of his own person . . .”<sup>46</sup> In the case of *U.S. v. Lanier*, a federal grand jury indicted Judge David Lanier for violating the Fourteenth Amendment due process right to bodily integrity by committing coerced sexual battery and sexually motivated physical assault.<sup>47</sup> Lanier’s victims were afraid that the judge would rule against them in their own personal cases under Lanier’s jurisdiction.<sup>48</sup> Although the circumstances of Lanier’s case are far removed from the environment of the U.S.-Mexico border, the implications of Lanier’s coercion are entirely germane to the present discussion. The following incidents are illustrations of violations of the due process right to bodily integrity that have occurred along the border region in violation of both domestic law and international law under the provisions of the ICCPR and the CAT.

In the case of *The United States v. Toothman*, it came to light that “between November 1991 and August 1994, [INS agent Frederick L.] Toothman had made sexual overtures to at least eight women seeking entrance to the United States.” Toothman had been seeking sexual favors from undocumented women in return for “helping them regain their immigration documents.”<sup>49</sup> Through a plea bargain, Toothman pleaded guilty to “a misdemeanor civil rights violation and to seven felony bribery violations.” Frederick Toothman received a sentence of nine years for his crimes committed against the Mexican female nationals.<sup>50</sup> Analogous to Lanier’s exploitation, Toothman had

violated the due process right to bodily integrity of numerous women by exploiting his position of authority.

When Alicia Ortíz and another female entered the United States illegally, they surely could not fathom what awaited them across the border. The events of their encounter with the Border Patrol are recorded in the case of *The United States v. Davila*.<sup>51</sup> Once in United States territory, the van in which the two women were driving was stopped by two Border Patrol agents. The agents decided that detention was not enough for the two women. The agents “exact[ed] a price for [the women’s] liberty.”<sup>52</sup> The officers decided that the price would be sexual favors and intercourse in return for the women’s freedom. The two agents were later charged with sexual abuse and conspiring to deprive the women of their liberty.<sup>53</sup> The agents were found guilty of the crimes and the court made it clear that the two agents had abused their positions of authority and violated the women’s rights to due process.<sup>54</sup>

Coercion and violations of the due process right to bodily integrity have not been limited exclusively to sexual abuses. The Justice Department’s Office of Inspector General (hereinafter OIG) relayed the following incident to Congress:

A federal grand jury indicted a Border Patrol agent assigned to the Tucson Border Patrol station on charges of deprivation of rights under color of law and tampering with a witness.<sup>55</sup> An investigation by the Tucson Field Office developed evidence that the Border Patrol agent physically assaulted an illegal alien who had been apprehended and detained by another Border Patrol agent. After the assault, the Border Patrol agent threatened the illegal alien with prosecution if he did not say that his injuries resulted from a fall.<sup>56</sup>

The physical beating of illegal immigrants crossing the U.S.-Mexico border most likely comprises the majority of situations in which concerns over due process rights to bodily integrity are at issue. The extent to which physical abuse of illegal immigrants crossing the borders occurs is difficult to ascertain; however, the violence appears common enough to have developed into a joke amongst the ranks of the Border Patrol and other immigration officials. The periodical *The Nation* reported the discovery of a memorandum in which an INS agent explained why illegal immigrants were commonly referred to as “tonks” within the agency:

Finally, in December of 1987, Agent Larry Moy, after testifying that it was a derogatory term used by some I.N.S. agents for “illegal aliens,” said, “I don’t know the origin of it. I’ve asked other people how that term came about, so I can only repeat what other people have said to me. That’s why I said I don’t know the origin of it.” Pressed by the lawyer, Moy said, “They told me that it’s the sound of a flashlight hitting somebody’s head: ‘tonk’.”<sup>57</sup>

As illustrated in the various incidents presented, violations of the due process rights of illegal immigrants do indeed occur along the U.S.-Mexico border. Additionally, since the events of the preceding incidents are documented in court cases arising after the abuses the question of the true extent of abuses must be addressed. The scope to which violations of due process rights guaranteed by domestic and international law occur along the U.S.-Mexico border is naturally debated. The Border Patrol often responds to criticisms of their conduct by emphasizing the low number of official complaints it receives.<sup>58</sup> Nevertheless, absence of evidence must not be misconstrued as providing evidence of absence. There is reason to believe that official complaints may be systematically underreported.

As noted by a member of the Mexican-American Legal Defense and Education Fund, illegal immigrants may be “terrified to file complaints against abusing officers” out of fear of being deported.<sup>59</sup> Other legal scholars have suggested that illegal immigrants are likely to assume that because they have entered the United States illegally they consequentially have few rights and that reporting abuses would be senseless and ultimately fail to lead to any significant result.<sup>60</sup> In the case of *The United States v. Davila*, several of these considerations were decisive factors in the two women’s hesitancy to report the sexual assaults.<sup>61</sup> We simply do not know the reasons why the eight women sexually assaulted by INS agent Toothman never reported their abuses. While an accurate quantitative analysis of abuses of the due process rights of illegal immigrants along the U.S.-Mexico border is beyond the scope of the present discussion, the incidents already discussed are sufficient to demonstrate that violations do exist and are most likely significantly underrepresented in official complaint tallies. Even as defined by the CAT and the ICCPR, abuses have indeed occurred. In ratifying the CAT, the United States is obligated under Article 16 of the CAT to “undertake to prevent” these violations given that they do indeed represent violations of the Fifth and Fourteenth Amendments of the Constitution.

### U.S. Compliance with the Obligation to Prevent Border Abuses

When allegations of human rights abuses by the Border Patrol and other immigration agents became increasingly prevalent in the early 1990s, the initial responses to those allegations were primarily defensive in nature. In response to the mounting criticism of border abuses, Justice Department spokeswoman Ana Cobian was quoted as saying that “We [at the Justice Department] do not believe that INS officers commonly abuse legal or illegal immigrants.”<sup>62</sup> Cobian’s reply was eerily inappropriate in view of the Justice Department’s obligation to seek out truth in their investigations. Since the mid 1990s, the Office of the Inspector General has become increasingly more open in its investigations of border incidents. The Office of the Inspector General plays a key role in preventing and investigating the abuses such as those already described. According to the Department of Justice, the OIG has three primary responsibilities:

- (1) [C]onducting criminal and non-criminal investigations of certain complaints,
- (2) ensuring that persons with complaints know where

and how to report them, and (3) tracking the disposition of all complaints among the various Department components that have responsibility to investigate such matters.... The OIG compiles a monthly... civil rights report that is distributed to the Attorney General, Deputy Attorney General, INS, FBI, Civil Rights Division, Executive Office for U.S. Attorneys (EOUSA), and USAOs along the Southwest Border. The report tracks the status of all significant INS civil rights matters.<sup>63</sup>

Although various legal scholars and politicians severely criticized the OIG throughout the 1990s, the OIG has responded by increasing the openness of its investigations.

Under Article 3 of the CAT the United States is obligated by international law “[to] shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.” As part of the basic training course under which all Border Patrol agents must complete, the United States has incorporated training in ethics and conduct.<sup>64</sup> Additionally, a special group of immigration agents receives training in human rights and asylum law.<sup>65</sup>

The courts of the United States have also sought to prevent and to prosecute abuses along the U.S.-Mexico border. When a violation of due process rights is discovered, the courts of the United States are allowed significant discretion in providing remedies.<sup>66</sup> Whether that remedy entails the implementation of a videotape explaining voluntary departure forms to detained children as in the case of *Perez-Funez v. District Director* or orders a comprehensive and systematic ban of widely used deportation documents as in the case of *Reno v. Watson*, the courts of the United States are certainly not afraid of reaffirming the rights of illegal immigrants with respect to due process concerns. Congress has also taken issue with the due process concerns and actively pursues the maintenance of those rights for illegal immigrants. Congress receives reports from the Department of Justice and sporadically debates new legislation in view of developing concerns over due process rights.<sup>67</sup>

When the United States ratified the ICCPR and the CAT it agreed to respect the “fundamental principles that inhere in due process of law” as guaranteed by the Fifth and Fourteenth Amendments for all individuals within U.S. territory.<sup>68</sup> As affirmed in *Zadvydas v. Davis*, “once an alien enters the country, the legal circumstances changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”<sup>69</sup> Officials of the United States have at certain times violated the international obligation to refrain from “cruel, inhuman, and degrading treatment” as prohibited by the ICCPR and the CAT and as defined by U.S. reservations to those agreements.

By ratifying the CAT and the ICCPR, the United States considered itself bound to the obligations entailed in those acts. The confusion surrounding the defi-

nitions of cruel, inhuman, and degrading treatments under the CAT and the ICCPR encouraged the United States to limit the scope of its own obligations. Whether or not one disagrees with the morality or political implications of the reservations made by the United States to those conventions, it invariably remains the prerogative of nations under international law to make positivist reservations insofar as they do not contravene the object and purpose of the treaty at hand. As a result, any analysis of U.S. international obligations under the CAT and the ICCPR must accept *a priori* the U.S. reservations limiting "torture" and "cruel, inhuman, and degrading treatments" to be defined as those rights protected by the Fifth, Eighth, and Fourteenth Amendments and must take into consideration the efforts of the United States to curtail those abuses.

In various incidents along the U.S.-Mexico border, agents of the Border Patrol and other U.S. agencies have indeed violated the rights of illegal immigrants guaranteed by the Fifth and Fourteenth Amendments and protected under the ICCPR and the CAT. Despicable as those abuses are, the courts of the United States actively prosecute the offending individuals while the legislative branch pursues more effective measures to prevent future abuses. Despite the good intentions of those crying foul, the argument that the United States has violated its international obligations under the ICCPR and the CAT fails under closer scrutiny. On the other hand, customary international law provides broader definitions of cruel, inhuman, or degrading treatment and may provide a more reasonable case against border incidents insofar as it can be demonstrated that the United States is not a "persistent objector" to the development of that broader definition.

### Customary International Law and the Border

The United States has long recognized the importance and applicability of customary international law in its own domestic courts.<sup>70</sup> Unlike the non-self-executing obligations of the ICCPR and the CAT, customary law is enforceable in the domestic courts of the United States and may be applied whether or not domestic statutes to the same effect exist.<sup>71</sup> Whether a customary international law exists is subject to the verification of the general practice of that norm by nations and that nations act in that way out of a sense of legal obligation, or *opinion juris*. If a state has "consistently and manifestly" opposed the development of a customary norm since its development, it may claim to be a "persistent objector" and refuse to be bound by that norm so long as the norm is of a character other than *jus cogens*. The following discussion examines the existence of pertinent customary law, the obligations of the United States under customary law, and whether the United States has violated any of those obligations in the treatment of illegal immigrants crossing its border with Mexico.

### The General Practice of Nations and *Opinio Juris*

The international community has overwhelmingly sought to eliminate torture and other inhuman and degrading treatment. The number of treaties pertaining to torture and ill-treatment provide evidence of the general practices of states. Over one hundred and fifty states have ratified the ICCPR and more than one

hundred and thirty have ratified the CAT.<sup>72</sup> There also exist a significant number of regional conventions prohibiting torture and ill-treatment. The American Convention on Human Rights (hereinafter ACHR) and the European Convention for the Protection of Human Rights and Freedoms both contain articles establishing that "no one shall be subjected to torture or to inhuman or degrading punishment or treatment."<sup>73</sup> Given the vast number of treaties and state ratifications concerning torture and ill-treatment, there is sufficient evidence to demonstrate a general practice among nations to refrain from those abuses. It is also clear that states respect the prohibition of torture and ill-treatment out of a sense of legal obligation.

In ratifying the ICCPR, more than one hundred and fifty nations undertook the "responsibility to strive for the promotion and observance" of the rights guaranteed by that convention and to recognize that those rights are "[derived] from the inherent dignity of the human person."<sup>74</sup> Regional human rights agreements and the CAT also contain language similar to that of the ICCPR's preamble. President George W. Bush recently stated that "Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law."<sup>75</sup> To that end, the ratification of those conventions under the view of their object and purpose demonstrates the requisite *opinio juris* for the existence of customary law.

While the earliest pronouncements regarding torture and cruel, inhuman, or degrading treatment seemed more akin to Justice Potter Stewart's "I know it when I see it" test, the international community has had the opportunity to make rulings on a wider array of issues pertaining to the definition of torture, and cruel, inhuman or degrading treatment. The United Nations Human Rights Committee (hereinafter Committee) monitors the compliance of states party to the ICCPR. Noting that the ban on torture was intended to protect both "the dignity and the physical and mental integrity of [individuals]", the Committee maintained that the determination of torture must take into account the physical and mental effects on the victim *a propos* considerations of the duration and nature of the treatment as well as the age and sex of the victim.<sup>76</sup> The Committee has maintained that physical beatings, abductions, deprivation of food, threats to kill family members, and threats to amputate limbs constitute abuses consistent with the definition of torture.<sup>77</sup> The Inter-American Court on Human Rights monitors the compliance of states party to the ACHR and also assists in the clarification of the scope of torture as prohibited by international customary law. The Inter-American Court has recognized the application of electrical shocks and intention burning alongside those already mentioned as violations of torture under customary.<sup>78</sup>

In addition to clarifying the scope of torture as prohibited by international customary law, international committees and courts have also clarified the range of activities that are forbidden under customary law. Actions that are considered to be in violation of the customary norm banning cruel, inhuman, and degrading treatment include incommunicado detention, threats of physical harm, and beatings and abuses by police officers.<sup>79</sup> Prior to an examination of U.S. compliance with customary law in its treatment of illegal aliens, it is necessary to see whether or not the United States is

a persistent objector to the customary norms against torture and ill-treatment as they have developed in recent years.

### The United States is not a Persistent Objector

As previously noted, the United States lodged its reservations to the ICCPR and the CAT partially as a result of the ambiguity surrounding the distinctions between the various types of treatments prohibited. It is hardly accurate to say that the United States has “consistently and manifestly” objected to the development of the customary norms previously described. In fact, President Bush relayed to the Senate that the ratification of the ICCPR would “strengthen [the United States’] ability to influence the development of appropriate human rights principles in the international community and provide an additional and effective tool in our efforts to improve respect for fundamental freedoms.”<sup>80</sup> The advice given to the Senate by President Bush certainly does not resemble a renouncement of the ICCPR’s object and purpose. More recently, President George W. Bush condemned the violation of freedom from torture:

The United States is committed to the world-wide elimination of torture and we are leading this fight by example... I call on all nations to speak out against torture in all its forms and to make ending torture an essential part of their diplomacy<sup>81</sup>

While some might disagree that the United States is “leading [the] fight by example,” it is clear that the executive branch of the government has not objected consistently to the development of “torture in all its forms.” Instead, the courts of the United States have recognized the prohibitive customary norms banning torture<sup>82</sup> and ill-treatment.<sup>83</sup> In *Xuncax v. Gramajo*, the Court ruled that “ill-treatment” was certainly separate from torture and although “[fill-treatment] present[ed] a closer question,” it should also be recognized as prohibited under international law.<sup>84</sup> Congress has stated that “torture or cruel, inhumane, or degrading treatment or punishment, prolonged arbitrary detention without charges, or other flagrant denial to life, liberty, and the security of person” are violations of human rights.<sup>85</sup> Given the totality of the evidence, the United States has not “consistently and manifestly” objected to the customary norms in question and is consequentially obligated to respect those norms and to prosecute and to prevent violations within its territory.

### International Customary Law and the Border

It should be relatively clear from the earlier discussion of treaty law that officials of the United States have at various times violated the rights of illegal immigrants under customary international law. All the violations of the due process right to bodily integrity described in the earlier section also constitute violations of customary law prohibiting ill-treatment. The agent described in the OIG report who assaulted an illegal immigrant and then threatened him in order to keep the indi-

vidual from reporting the abuse violated the rights of that immigrant under international customary law prohibiting cruel, inhuman, and degrading treatment.<sup>86</sup>

The sexual assaults committed by Border Patrol agents and other government agencies along the U.S.-Mexico border were also clear violations of international customary law. While it remains to be determined whether or not rape constitutes the requisite severity to be considered as a violation of the customary law prohibiting torture, international legal scholars agree that at the very least it constitutes cruel, inhuman, and degrading treatment and is therefore prohibited by international law.<sup>87</sup> The female illegal immigrants sexually assaulted by government agents like those in the case *The United States v. Davila, Toothman*, or the numerous others reported by the OIG all experienced unquestionable violations of their rights under international customary law prohibiting ill-treatment.

Once again, it should be noted that a quantitative assessment of the abuses of customary law along the U.S.-Mexico border is recognized to be beyond the humble scope of the present discussion. We simply do not know how many illegal immigrants may have chosen or currently choose not to report possible abuses by government officials. Even so, the United States is obligated to observe the norms of customary international law prohibiting torture, and cruel, inhuman, or degrading treatment. From the review and revision of complaint procedures to the increasing emphasis on providing human rights and ethics training for those controlling our borders, the United States has made substantial efforts to protect the rights of illegal immigrants under customary law. The courts of the United States are not only allowed to enforce customary international law, but have also recognized and reaffirmed those norms in various decisions.

### Conclusion

As with all states sharing a common border, the United States and Mexico have developed a unique relationship over a long history as neighbors. The border between the United States and Mexico has produced both benefits and tribulations for the two states. With the end of World War II in Europe, the United States’ attention to immigration flows became increasingly more concerned with its southern border than with those arriving from across the Atlantic Ocean. With the end of the Bracero Program, the United States sent thousands of agricultural workers home to Mexico. Nevertheless, the Bracero Program had permanently altered the immigration framework between the two countries. In response to growing immigration enforcement needs, the INS and the Border Patrol increased their share of the government’s budget and their presence on the border.

Established in 1924 to enforce the immigration laws of the United States, the Border Patrol is not unfamiliar with complaints concerning abusive tactics. Complaints against Border Patrol abuses span more than half a century. Nevertheless, criticism of the Border Patrol and INS reached new heights during the late 1980s and throughout the 1990s. Despite the reorganization of immigration agencies following September 11<sup>th</sup>, the Border Patrol has continued its immigration enforcement responsibilities. The Border Patrol also remains a favorite target of human rights watch groups

alleging human rights abuses of illegal immigrants. Those human rights groups argue that the United States has violated its international obligations under the ICCPR and the CAT and also those recognized in international customary law. Those condemning the actions of the United States provide detailed accounts of incidents which they claim to be violations of international treaties and customary law. Nevertheless, the arguments made by those groups fail to take their legal analyses seriously.

By ignoring reservations made by the United States to the treaties in question, the human rights groups ignore not only the fundamental relationship between international law and U.S. domestic law, but also the longstanding and respected tradition of positivism in international law. Under the scrutiny of those reservations and understandings, violations of international law have indeed occurred at the hands of U.S. officials. Nevertheless, the United States has respected its obligations entailed in the CAT and the ICCPR in seeking to limit those violations. The treaty based arguments simply ignore too many considerations *a propos* international law and U.S. actions that have attempted to limit any derogation from those obligations.

The second theme of criticism provided by human rights groups rests on customary international law and the obligations that states have to respect those norms. In the majority of cases that this argument has been made, the allegations turn to international legal standards without establishing that any such standard exists. In the absence of demonstrating the norm's place in the general practice of nations and the observance of that norm out of a sense of legal obligation, the argument is clearly incomplete. Nevertheless, international norms do exist that prohibit torture, cruel, inhuman, and degrading treatment or punishment. Various individuals acting in their authority under the United States government have violated these norms over the years. Even so, the United States has taken substantial measures to prevent and to mitigate these abuses through the judiciary and the legislature. To that end, the United States has fulfilled its obligations under international customary law.

The recent speech by President George W. Bush during the United Nations International Day in Support of Victims of Torture must have raised a few eyebrows around the world considering the reservations the United States has made to the CAT and the ICCPR. Nevertheless, even if the United States is not "leading the fight [to eliminate torture] *by example*," the United States has indeed made substantial efforts to prevent torture, cruel, inhuman, and degrading punishment along its shared border with Mexico.<sup>88</sup> There should be little doubt that the majority of those who allege that the United States has violated "international standards of decency" and treaty obligations in its actions along the border do so out of good intentions. Nevertheless, with more than a million illegal immigrants crossing the U.S.-Mexico border annually, abuses to some of those individuals are bound to take place.<sup>89</sup> The expansive and open environment of the border makes supervision of all government employees particularly difficult. On the other hand, the United States is obligated by international customary law to undertake measures to prevent and prosecute violations of international norms to the best of their abilities. Given the totality of the evidence available, the United States has made sufficient efforts to mitigate the abuses and as such, does not qualify

as the egregious abuser of international obligations that some individuals and groups have deemed it to be.

## Endnotes

<sup>1</sup> For example, the Immigration Act of 1891 focused especially on those immigrants arriving "by water."

<sup>2</sup> *Early Immigrant Inspection along the US/Mexican Border*, U.S. Citizenship and Immigration Services website, <http://uscis.gov/graphics/aboutus/history/articles/MBTEXT.htm>, accessed October 13, 2003.

<sup>3</sup> The Mexican Government has often made it clear that they disagree with the term "illegal immigrants". "Mexico Leader Wants Immigrants Made Legal", *Augusta Chronicle*, July 29, 2001; also see, *Immigration Legislation and Issues in the 107<sup>th</sup> Congress*, May 10, 2002.

<sup>4</sup> Robert W. Tucker, Charles B. Keely, and Linda Wrigley, *Immigration and U.S. Foreign Policy*, (Boulder: Westview Press, 1990) p. 155.

<sup>5</sup> Ginger Thompson, "Mexican 'Guest Workers': A Project Worth a Try?" *The New York Times*, April 3, 2001.

<sup>6</sup> *INS Releases Newly Revised Estimates of U.S. Illegal Population*, United States Department of Justice, February 7, 1997, available at <http://uscis.gov/graphics/publicaffairs/newsrels/illegal.htm>.

<sup>7</sup> 8 C.F.R. 1287.8, cited as 8 C.F.R. 287.8 in Westlaw.

<sup>8</sup> Non-deadly force is defined as "any use of force other than that which is considered deadly force. Accordingly, deadly force "is any use of force that is likely to cause death or serious bodily harm" and may be used when the officer "has reasonable grounds to believe that such force is necessary to protect the designated immigration officer or other persons from the present danger of death or serious bodily harm." See C.F.R. 287.8 (a)(2)(i)(ii).

<sup>9</sup> *Report to Congressional Committees: Border Patrol Staffing and Enforcement Activities*, United States General Accounting Office, March 1996.

<sup>10</sup> Todd Robberson, "Peso Crisis Spurs Migrants' Quest for Dollars", *The Washington Post*, January 28, 1995.

<sup>11</sup> U.S. GAO, *Supra* note 52.

<sup>12</sup> U.S. GAO, *Supra* note 52.

<sup>13</sup> Agent as quoted in Rotella, p.105, the quote continues "And there are some people that, under the circumstances, just get carried away. If they get away with it a few times, then OK, it becomes a way: I'm the judge."

<sup>14</sup> As quoted in Sebastian Rotella, *Twilight on the Line: Underworlds and Politics at the U.S.-Mexico Border* (New York: Norton, 1998) p.107.

<sup>15</sup> *American Civil Liberties Union and Human Rights Watch Report on U.S. Human Rights Record*, The National Newsletter of the American Civil Liberties Union, Number 380, Spring 1994, available at <http://www.skepticfiles.org/aclu/380inter.htm>, Accessed November 2, 2003.

<sup>16</sup> *Human Rights on the U.S.-Mexico Border*, Amnesty International Canada, available at <http://www.amnesty.ca/usa/border2.htm>, Accessed November 2, 2003.

<sup>17</sup> *Human Rights Watch World Report 1995*, Amnesty International, Available at <http://www.hrw.org/reports/1995/WR95/HRWGEN.htm>, Accessed November 2, 2003.

<sup>18</sup> *136<sup>th</sup> Congressional Record* S17486-92 (daily ed., Oct. 27, 1990).

<sup>19</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, 1965 U.N.T.S. 85.

<sup>20</sup> Article 12 of the CAT states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”; Article 13 requires that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

<sup>21</sup> *U.S. Reservations, Declarations, and Understandings, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, 136<sup>th</sup> Congressional Record, S17486-01 (daily ed., October 27, 1990).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Letter from President George Bush to Senator Claiborne Pell*, Chairman of Senate Committee on Foreign Relations Aug. 8, 1991 31 ILM 645 (1992).

<sup>25</sup> *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, *entry into force* March 23, 1976. General Comment 20 of the Office of the High Commissioner for Human Rights elaborates on Article 7 stating that “The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” *General Comment 20 (replacing general comment 7) from the Office of the High Commissioner for Human Rights*, Forty-Fourth Session, 1992, UN Treaty Bodies Database.

<sup>26</sup> Comment 21 states that “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of

such persons must be guaranteed under the same conditions as for that of free persons.” *General Comment 21 (replacing General Comment 9) from the Office of High Commissioner for Human Rights*, Forty-Fourth Session, 1992, UN Treaty Bodies Database.

<sup>27</sup> *138<sup>th</sup> Congressional Record*, S4783-84 (daily ed. Apr. 2, 1992); “[T]he United States declares that the provisions of Articles 1 through 27 of the [ICCPR] are not self-executing.”

<sup>28</sup> *Third Reservation by the United States to the International Covenant on Civil and Political Rights*, UN Treaty Bodies Database, available at [http://www.unhchr.ch/html/menu3/b/treaty5\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm), Accessed November 21, 2003.

<sup>29</sup> David Stuart, *The Torture Convention and the Reception of International Criminal Law Within the United States*, 15 *Nova Law Review* 468 (1991).

<sup>30</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 359 (1886); also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) stating that “[E]ven aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.”

<sup>31</sup> *Matthew v. Diaz*, 426 U.S. 67, 77 (1976).

<sup>32</sup> The right of states to control their borders is also reaffirmed by international law, see *Fong Yu Ting v. The United States*, 149 U.S. 698, 705 (1893) stating that “It is an accepted maxim of international law, that every sovereign nation has the power...to forbid the entrance of foreigners within its dominions...”

<sup>33</sup> *Shaugnessy v. The United States*, 457 U.S. 202, 210 (1981).

<sup>34</sup> *Perez-Funez v. District Director*, 619 F. Supp. 656 U.S. Dist. (1985); LEXIS 15425.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, the Court stated that “[In] addressing the proposed safeguards in order, the Court believes that a simplified advisal would be of some value. It was evident from the trial that class members understood neither the INS’ notification of rights (form I-274) nor the Court’s own so-called ‘Perez-Funez Advisals.’ Moreover, plaintiffs proposed simplified advisal (Plaintiffs’ Exhibit 52) fared little better. The evidence was contradictory concerning its effectiveness, and in content, it is both incomplete and partially incorrect. Nonetheless, both sides seem to agree that a written advisal is appropriate, and thus the goal should be to devise the simplest and most accurate advisal possible”; the Court also suggested a videotape explaining the legal significance of the documents.

<sup>39</sup> *Walters v. Reno*, 145 F.3d 1032 (1998); LEXIS 9846, the Court quotes *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir. 1991) stating that these “constitutional rights may ordinarily be waived [only] if it can be established by clear and convincing evidence that the waiver is voluntary, knowing, and intelligent.”

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, the court elaborated stating that “Although the OSC specifically promises the alien an opportunity to be heard as to whether or not he should be deported, in document fraud cases such a promise is frequently illusory... nowhere does the OSC even hint at the need for the alien to request a separate hearing. To the contrary, it expressly informs him that a hearing at which he can contest the charges on which deportation is threatened will be scheduled automatically. By making that assurance, the government lulls the alien into a false sense of procedural security.”

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> 18 U.S.C. § 242 (1994).

<sup>46</sup> *Cruzan by Cruzan v. Harmon*, 760 S.W.2d 408, 427 (Mo. 1988), quoting *Union Pacific v. Botsford*, 141 U.S. 250, 251 (1891).

<sup>47</sup> *United States v. Lanier*, 33 F.3d 639, 645 (6th Cir. 1994), *rev'd*, 73 F.3d 1380 (1996) (en banc), *rev'd and remanded*, 117 S. Ct. 1219, 1224 (1997).

<sup>48</sup> See *United States v. Lanier*, 33 F.3d at 648, regarding a child custody case of his victim.

<sup>49</sup> *United States v. Toothman*, 137 F.3d 1393, (1998); U.S. App. LEXIS 4044.

<sup>50</sup> KSDO-AM News, ABC affiliate, San Diego, California, December 17, 1996, available at [http://proxy.library.upenn.edu:8166/universe/document?\\_m=d5a4548249fe3d762fd0a5aac362e1a&\\_docnum=1&wchp=dGLbVtz-zSkVb&\\_md5=37e5f75a6ae7565d083b15ee156d9ec1](http://proxy.library.upenn.edu:8166/universe/document?_m=d5a4548249fe3d762fd0a5aac362e1a&_docnum=1&wchp=dGLbVtz-zSkVb&_md5=37e5f75a6ae7565d083b15ee156d9ec1), accessed November 10, 2003.

<sup>51</sup> *United States v. Davila*, 704 F.2d 749 (5th Cir. 1983).

<sup>52</sup> *The United States v. Davila*, at 751.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> The definition of “deprivation of rights under color or law” is defined in 18 U.S.C. § 242 (1994) and relates to the violation of due process by governmental authorities.

<sup>56</sup> *Semiannual Report to Congress*, Office of the Inspector General, April 1, 2002 –September 30, 2002, OIG report available at the Department of Justice webpage <http://www.usdoj.gov/oig/semiannual/1102/inv.htm#inv>, Accessed November 13, 2003.

<sup>57</sup> Earl Shorris, “Raids Racism and the I.N.S.,” *The Nation*, May 8, 1989. The term is apparently still used frequently. See Sebastian Rotella, *Twilight on the Line: Underworlds and Politics at the U.S.-Mexico Border* (Norton: New York), 1998.

<sup>58</sup> See Laura Laughlin, “Agent’s Arrest Hailed”, *Dallas Morning News*, September 13, 1992, in which a Border Patrol Agent states that “We feel we have an outstanding human rights record and civil rights record based on the number of complaints we receive.”

<sup>59</sup> Linda Wong, as quoted in, Lee May, “Violence by Border Agents Against Aliens Grows, Coalition Charges”, *Los Angeles Times*, November 21, 1987.

<sup>60</sup> Michael J. Nuñez, *Violence at our Border: Rights and Statutes of Immigrant Victims of Hate Crimes and Violence Along the Border Between the United States and Mexico*, 43 *Hastings Law Journal.*, p. 1577 (1992).

<sup>61</sup> The two assaulted women were very reluctant to make an official complaint. It was only when the fiancé of one of the abused women was informed of the assaults that a complaint was made. Claudia Smith, as counsel from the California Rural Legal Assistance explained the women’s hesitance stating that “the reluctance to report [the] sexual abuse by the Border Patrol was based upon the women’s fear and their unfamiliarity with United States immigration laws.” As quoted in, “U.S. Border Agents Accused in Sexual Assault on an Illegal Alien”, *New York Times*, December 22, 1995.

<sup>62</sup> Ana Cobian quoted in, Michelle Mittelstadt, “‘Abysmal’ Situation on Border: Group says Agents Abuse Immigrants”, *Houston Chronicle*, April 12, 1995.

<sup>63</sup> *Semiannual Report to Congress*, United States Department of Justice, Office of the Inspector General, October 1, 1998 - March 31, 1999.

<sup>64</sup> *Consideration of Reports Submitted by State Parties under Article 19 of the Cat*, CAT/C/28/Add.5, February 9, 2000; available at <http://www.hri.ca/forthecord2000/documentation/tbodies/cat-c-28-add5.htm>, Accessed November 25, 2003.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990).

<sup>67</sup> *107th Congress*, 2<sup>nd</sup> Session, 2002 H.R. 3894; 107 H.R. 3894., introduced March 07, 2002; *107th Congress*, 1<sup>st</sup> Session, 2001 S. 955; 107 S. 955, introduced May 24, 2001.

<sup>68</sup> *Japanese Immigrant Case* (Yamataya v. Fisher), 189 U.S. 86 (1903).

<sup>69</sup> *Zadydas v. Davis*, 121 S.Ct. 2491, 2493 (2001).

<sup>70</sup> See *Glass v. The Sloop Betsy*, 3 U.S. (3 Dall.) 6, 16, (1794); *Miller v. The Ship Resolution*, 2 U.S. (2 Dall.) 1,4 (1781); as law of the United States, federal courts are granted jurisdiction over disputes via 18 U.S.C. § 3231 (1994).

<sup>71</sup> 11 *Opinion of the Attorney General*, 297, 299-300, 310 (1865) stating that “[The laws] of nations...exist and are of binding force upon the departments and citizens of the Government, though not defined by any law of Congress.”; see also *The United States v. Meese*, 712 F. Supp. 756, 771 (N.D. Cal. 1989).

<sup>72</sup> *Status of the Ratification of the Principle Human Rights Agreements as of November 2, 2003*, Office of the United Nations High Commissioner for Human Rights, available at <http://www.unhcr.ch/pdf/report.pdf>, Accessed November 24, 2003.

<sup>73</sup> *European Convention for the Protection of Human Rights and Freedoms*, November 4, 1950, Article 3, 213 U.N.T.S. 222; *American Convention on Human Rights*, November 22, 1969, Article 5(2), O.A.S.T.S.

<sup>74</sup> *International Covenant on Civil and Political Rights*, at preamble.

<sup>75</sup> *Statement by President George W. Bush at the United Nations International Day in Support of Victims of Torture*, Office of the Press Secretary, released June 26, 2003, available at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>, Accessed November 24, 2003.

<sup>76</sup> United Nations Human Rights Committee, General Comment 20, U.N. Doc. HRI/GEN/I/Rev.5 (2001); *Vuolanne v. Finland*, United Nations Human Rights Committee, Communication, 265 (1987).

<sup>77</sup> *Muteba v. Zaire*, United Nations Human Rights Committee, Communication, 124, (1982); see also *Estrella v. Uruguay*, United Nations Human Rights Committee, Communication 74, (1980).

<sup>78</sup> Inter-American Commission on Human Rights, Report number 5/94, case Number 10.574, El Salvador, February 1, 1994, available at <http://hejwww.unige.ch/humanrts/cases/5%5E94elsa.pdf>, Accessed November 27, 2003.

<sup>79</sup> *Mukong v. Cameroon*, United Nations Human Rights Committee, Communication Number 458 (1991); see also *Ribitsch v. Austria* European Court of Human Rights, Series A, No. 336, (1995).

<sup>80</sup> *Letter from President George Bush to Senator Claiborne Pell*, Chairman of Senate Committee on Foreign Relations Aug. 8, 1991 31 ILM 645 (1992).

<sup>81</sup> *Statement by President George W. Bush at the United Nations International Day in Support of Victims of Torture*, Office of the Press Secretary, released June 26, 2003, available at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>, Accessed November 24, 2003.

<sup>82</sup> *Abebe-Jira v. Negewo*, 72 F.3d 844, 845 (11<sup>th</sup> Cir. 1996); *Kadic v. Karadzic*, 70 F.3d 232, 243-44 (2d Cir. 1995); *Najarro de Sanchez v. Banco Central de Nicaragua*, 770F.2d 1385 (5th Cir.1985); *Paul v. Avril*, 901 F. Supp. 330 (S.D. Fla. 1994); *Jama v. U.S. I.N.S.*, 22 F. Supp.2d 353, 363 (D.N.J. 1998); *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1541 (N.D. Cal. 1987).

<sup>83</sup> *Mehinovic v. Vuckovic*, 2002 WL 851751 (N.D. Ga. 2002); *Estate of Cabello v. Fernandez-Larios*, 157 F. Supp.2d 1345, 1360-61 (S.D. Fla. 2001); *Xuncax v. Gramajo*, 886 F. Supp. 162, 187 (D. Mass. 1995)

<sup>84</sup> *Xuncax v. Gramajo*, 886 F. Supp. 197 (D. Mass. 1995).

<sup>85</sup> 22 U.S.C. § 262 d (a).

<sup>86</sup> Office of the Inspector General, *Semiannual Report to Congress*, April 1, 2002–September 30, 2002, OIG report available at the Department of Justice webpage <http://www.usdoj.gov/oig/semiannual/1102/inv.htm#inv>, Accessed November 13, 2003.

<sup>87</sup> Evelyn Mary Aswad, *Torture by Means of Rape*, 84 Georgetown Law Journal 1913 (1996); Aswad argues that the legal protections available to “torture” victims are greater in number than those for “ill-treated” individuals.

<sup>88</sup> *Statement by President George W. Bush at the United Nations International Day in Support of Victims of Torture* (italics added), Office of the Press Secretary, released June 26, 2003, available at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>, Accessed November 24, 2003.

<sup>89</sup> Victor Romero, *Whatever Happened to the Fourth Amendment?: Undocumented Immigrants' Rights After INS v. Lopez-Mendoza and United States v. Verdugo-Urquidez*, 65 Southern California Law Review (1992).

## Afghanistan-Pakistan Relations: The Pashtunistan Frontier Dispute

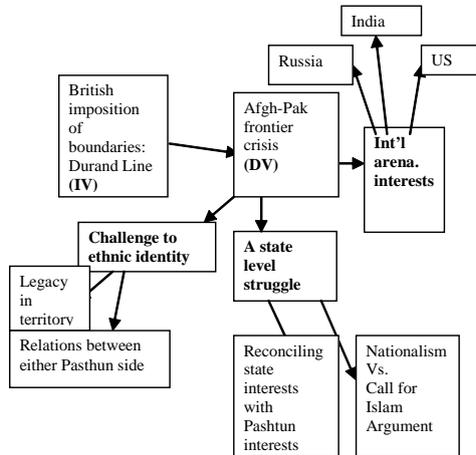
Megha Narayan  
University of Pennsylvania

### Introduction

As a relation characterized by contention and clashing demands, the joint story of Afghanistan and Pakistan begins with the imposed frontier by the British Empire in 1893. Since this boundary was established, tensions have run both high and low, and borders have been disregarded between the two neighboring states. The Durand Line, the fundamental cause of tension, assigned a partition of territory and accordingly divided a common ethnicity, Pashtuns, which straddle across the border of either country. Given this ethnic group’s sheer presence in the region, claims for a homeland distinct from Pakistan have emerged, and amidst the contrived frontiers—all products of the same force of imperialism—the question of where the land of the Pashtuns belongs has remained just as prevalent, just as discordant, and just as complex. In order to understand, then, the nature of the Afghan-Pak frontier, the conflict over Pashtunistan must be dissected along with its integrated causes of action, forces involved, and global perceptions. Piecing together the genesis of this dispute does much for Afghan-Pak relations, and consequently, this study aims to shed light upon the connection between the local need for self-determined boundaries and its place within the international arena.

To be sure, the frontier dispute between Pakistan and Afghanistan goes far beyond its local boundary lines—this thesis, then, serves to assert that though the Pashtunistan crisis is regional in nature, it ultimately extends itself towards the global level of analysis. Given this design, this paper will inquire into the Afghan-Pak interactions upon its demarcation, the way in which these imposed boundaries caused a territorial division of ethnicity, thereby forcing several confrontations with what was a legitimate frontier; moreover, given the absence of its colonial creators, who was to confirm or deny this legitimacy? As hope for territorial sovereignty steadily dissipated and Pakistan gained more economic and military leverage, the Afghan-Pak regional arena acted as a reflection of the growing influence of global actors’ strategic interests, and thus played host to the relationship between global and regional developments.

## Research Design



According to the above linkage chart, the boundary imposition acts the proposed independent variable, or the crux around which the actual and perceived Afghan-Pak relationship is altered, and, in turn, around which the actors on every level rearrange themselves and their demands. In such an argumentative structure, the stated hypothesis is contingent on the notion of contrived boundaries, and will fail to hold true if, and only if, the contentious relations between and associated with Afghanistan and Pakistan do not stem from the Durand Line demarcation and its division of the Pashtuns, and instead that such demands for an independent Pashtunistan are based more on the influence of global actors or, simply, a fixation for more territory. Understanding the reality of the ‘domino effect’ of the Durand Line helps to reveal that despite cultural, historical, linguistic, and geographic oneness, there still exists the problem of self-assertion faced by similar ethnic groups who, having endured colonial legacies, find themselves in a neo-colonial international arena of many strategic interests; in other words, the hostilities and tensions of the local system were initiated by a colonial actor and are presently perpetuated by contemporary, post-colonial actors. If the ‘imposition’ of and involvement in such frontiers was indeed the cause of such relations between Afghanistan and Pakistan, it follows that without such international involvement, the frontier crisis would not be as severe, the Afghan-Pak development not as problematic.

Since its induction, the existence of this dividing line between two countries and one ethnic group, the Pashtuns, has had a pervasive hand in any and all Afghan-Pak relations, and in order to comprehend the Afghan demand for a united Pashtun homeland and the equally fervent Pakistani objections, this paper is faced with the task of answering several questions about territorial demands and the various strategic interests surrounding them. First and foremost, what are the intended territorial aims of Afghanistan in regards to Pushtunistan, and how have these ‘needs’ evolved alongside or in response to Pakistani development? Given this Pashtun question, how has Pakistan responded to the perceived threat of Afghan reform on ethnic, state, and international levels? To be certain, the Pashtunistan question is imbedded in a complex strategic arena, and to analyze the perceived roles of international actors is to understand where the said conflict is today. How, then, has the changing world situation—namely, the balance of power—interfered with the course of frontier relations between Afghanistan and Pakistan? In other words, how have the two countries’ perceived roles in the international system in turn affected this regional dispute? Answering, or the attempting to do so, the aforementioned questions forms the framework of this paper, and in turn places the demands of the Pashtun people, the Afghan-Pak states, and the international system all in one context.

### Historical Background: The Durand Line

Long before the frontier was established between Afghanistan and British-occupied India, international influences prevailed in the early 19<sup>th</sup> century. Having come into contact with Afghan territory after its occupation of the Sikh empire in 1849, the British recognized the nation’s vaguely-defined boundaries, and accordingly moved northwest towards this region with the intention of exploiting the independent and strong nature of the Pashtuns against the border-state Russia. Well aware of Afghanistan’s status as the only country between their own Empire and that of the British, the Russians advanced towards the same frontiers and thusly Afghanistan’s territorial claims were placed in between two great powers and their expansionist strategy. The crisis, then, developed slowly with the demarcation of boundaries without the total consent of the very people it was confining. For Afghanistan, every border was subjected to the complete jurisdiction of other actors, and as a result, its northern and northwestern frontiers were established after agreements between Russia and Great Britain, and its southern borders emerged out of British arbitration.

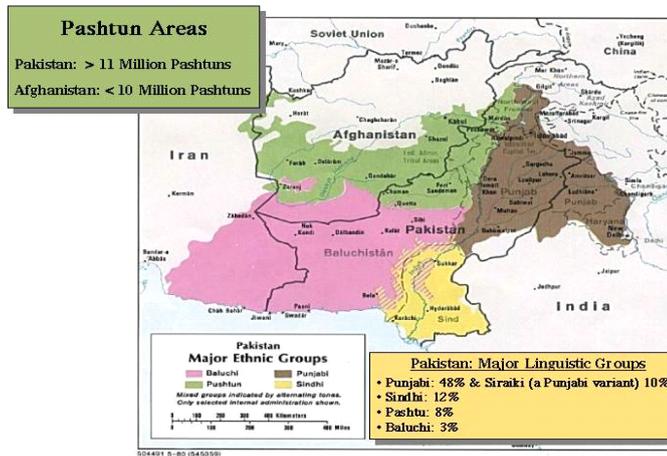
As such, Afghanistan was regarded “as a Zone of Interpretation”<sup>1</sup> whereby its borders remained ill-defined until the establishment of the Durand Line. Despite having endured international interference in every important boundary differentiation, Afghan protests have been most consistent in regards to this colonial decision, one in which British officials decided to define the Indo-Afghan boundaries before the latter nation gained more ground in consolidating tribe support in the region. In that sense, the demarcation was motivated primarily by the British ambition to control the tribal sphere of influence, and in 1893, Henry Mortimer Durand succeeded in

convincing the Afghan Amir of the 'well-intentioned' nature of British policy. Later developments reflect the Afghans' immediate dissatisfaction with the treaty's dictates, deeming it unequal and imposing. As Kaur relates, "the tribesmen were hostile to the idea of delimitation of the boundary because they considered it as an interference with their independence;"<sup>12</sup> many, it was observed, saw the Durand agreement as a precedent to an eventual annexation to British India. Opinions on either 'side' of the treatise were mixed, with some calling it 'illogical', others deeming it ethnically absurd, and all else seeing as it a triumph in diplomacy whereby "tribes would know their exact position and therefore shape their conduct accordingly."<sup>13</sup> Whatever the case, such diverse reactions reflected that however 'settled' the boundary was on paper, "the meeting of minds between the two contracting parties did not take place."<sup>14</sup> East of the Durand Line, in what had formerly been Afghan tribal territory, the British had minimal success in dominating and finding acceptance. Violence, uprisings, and disturbances in administration were directed at the British, and despite every occurrence of disobedience, the ruler of Afghanistan was refused any hand in leadership. The frontier between the two nations, then, established itself as politically unstable, habited by tribal groups whose dissatisfaction diminished any British hopes for unimpeded Afghan-Indo relations.

### The Birth of a Nation *and* Conflict

The frontiers in question, known on paper as the Northwest Frontier Province (NWFP) and Baluchistan, were quoted by one source as housing as many as six million Pashtuns, whereas the Afghani side numbered—depending on the source—from three million to five million of the same group. The numbers, regardless of their accuracy at the boundary's inauguration, have grown considerably in contemporary NWFP and Baluchistan, and yet the proportions of Pashtuns in either state have remained remarkably similar. In other words, the boundary of 1893 has had a significant hand in the long-standing division of the Pashtun tribes inhabiting the disputed region. As noted by the contemporary map of the 1990s, the Pashtuns are one of many tribes involved and affected by the territorial decisions; in particular, the presence of Baluchistan and its non-Pashtun tribes in the frontier dispute summons question about the Afghan demand for a 'Pashtun homeland'. The call for this independent state of Pashtunistan not only "provided the Afghan government with an opportunity to denounce the 1893 treaty"<sup>15</sup> but also put into tangible, somewhat ambiguous terms the claims of Afghan legitimacy. In 1947, Afghan prime minister Mohamed Harkim Khan stated that the frontier province rightfully extended from "the Indian Ocean to Gilgit, and from the Durand Line to the Kashmir border;"<sup>16</sup> whereas other sources, official and not, define the boundaries with slight alterations according to the local actor's strategic interests. Looking at this territorial demand in terms of Pakistan, Khan's vision of Pashtunistan would "deprive [Pakistan] of more than 50 per cent of its territory," and accordingly hinder one of Pakistan's outlets to the sea.<sup>17</sup>

This demand for the hypothetical state of Pashtunistan did not emerge until the partition of India and the subsequent establishment of Pakistan in 1947. Much like Afghanistan, the role of Pakistan, from the very beginning, founded itself from within a most contentious geopolitical environment. "Situated at the meeting point between Central, South, and West Asia, surrounded by India to the east, China to the north, Afghanistan and Iran to the west, and separated from the USSR only by the narrow Wakhan corridor,"<sup>18</sup> Pakistan felt compelled to stand its own ground against any perceived threat, especially from that of a neighbor. Its regional situation, then, would be in large part dominated by its relatively vulnerable status in the international system and its exposure to the Afghan conflict very soon after its 'independence.' Before partition, the demand exercised by Afghans focused on uniting a forcibly separated tribe in the face of colonial rule. The introduction of Pakistan into the geopolitical environment, then, changed both the ruler-ruled relationship implied by the British as well as the dynamics of the Afghan demand structure. "When it seemed inevitably [in 1944] that India was going to acquire her independence," Frederic Grare observed in 2003, "the Afghan government reminded the British to be mindful of the fate of the Pashtuns living on the side of the Durand Line."<sup>19</sup> When these demands were met with the answer that "the problem [of Pakistan] did not concern the Afghans," the two neighboring states were steeped in "a veritable covert war."<sup>10</sup> In other words, the news that the British Empire was leaving its claims in the hands of Pakistan provoked a renewed rejection by the Afghans in regards to the Durand Line.



Afghanistan's protests against the Durand Line are based on the belief that Pakistan, the bigger and more powerful nation, has unfairly imposed upon Afghanistan a boundary of which neither state had any say in or agreement with. This continued demand for recognition and territorial legitimacy can be broken down further into three categories. As a *historical* point, the Afghans claimed, as they still do, that the areas in question—namely, the NWFP and Baluchistan—were under their jurisdiction prior to the interference of Russia and Great Britain who, some reformists claim, “usurped [the area under dispute] under the threat of force.”<sup>11</sup> Speaking on a *legal* basis, the Afghans stated firmly that the “1893 treaty was obtained under duress,” and that the tribal territories within the frontier of what was *once* British-occupied were no longer under colonial jurisdiction; namely, Afghanistan saw Pakistan with no claim to the rights and authority of “an extinguished person,” or the British Empire.<sup>12</sup> *Ethnically* speaking, Afghans perceive Pashtuns in both countries as one single unit, and accordingly consider the Durand Line to be an unnecessary and artificial division of culture whereby the group was faced with choosing between nation-state identities. At the induction of the boundary agreement, “the Paktoons were given the limited choice to join either India or Pakistan only and not the option to unite with their motherland or to establish a small independent state of their own.”<sup>13</sup> To the Afghan government, the boundaries imposed more than a choice between two nations—it was a choice between a Hindu India and a Muslim Pakistan. Their choice to integrate into the latter country, then, was expected, but was still not representative of the Pashtun identity, which is why, it was argued, a separate, sovereign homeland should have been offered as an option. Notably for Afghanistan, the *demand* is in regards to self-determination, and focuses supremely on the idea that the Pashtuns in Pakistan do not ‘belong’ there. The Afghan government showed support for this small nationalistic cause under the guise of support for the “oppressed Pashtun people in Pakistan. It therefore considers its duty to support the secession of Pashtuns from Pakistan and to allow them to form the independent state.”<sup>14</sup> Afghan officials have refused to relinquish these fundamental demands, in part because the Pashtun nationalists were already difficult to control, and having this issue at the forefront of its foreign policy helped to generate support and curb any extremist behaviors in the tribal territories.

Having inherited from the British a nation-state status as well as a mounting frontier conflict, Pakistan first responded to Afghan protests with several points of confusion. Pakistan's response verifies the ‘legitimacy’ of the Durand Line, and goes as far to say that Afghan cries for a Pashtunistan represents a breach in international law. The Durand Line, after all, was an *international* boundary agreement, and was affirmed and reaffirmed by successive Afghan government leaders. Such an argument becomes both incrementally more contentious and difficult to settle when a fictional homeland is carved out of two nations for one ethnicity because the land of the Pashtuns is never consistent in the debate between Afghanistan and Pakistan. The very vagueness of the Pashtunistan demand forms the basis of every Pakistani response, for they claim that:

The political status of the hypothetical entity...remained [unknown]. At one time, it was conceived as forming a part of and united to Afghanistan, at another to be within Pakistan but to be granted autonomy, still at another time it was demanded that it should be allowed to be independent.<sup>15</sup>

Seeing little consistency in demand, Pakistani officials accused Kabul of having deceptive sincerity towards its Pashtun brethren, and perceive Afghan support to represent a more exploitative, expansionist policy. Beyond the ambiguous rationale behind Afghan irredentism—defined by scholars as the *policy of seeking the recovery and reunion to one country of a region or regions for the time being subject to another country*—Pakistan asserted that in theory, an independent land of the Pashtuns was not feasible and accordingly, would crumble without support. A state based on “race, language, and culture”<sup>16</sup> could not maintain itself without economic potential, and as a land of barren, rocky terrain, the frontier was very much dependent upon the financial support Pakistan had been providing them with since independence. As such, Pakistan focused on diminishing the ethnic demand and posing their argument against Pashtunistan in a way that reconciles the interests of all parties involved, via the ‘call of Islam.’ By advocating the permanent inclusion of this territory in the name of a contiguous Islamic state, Pakistani officials were intending to downplay the nationalist sentiment in favor of a more extreme, united cause. Thusly, to reject Pakistani policy, boundary matters included, would be to reject the larger, religious-centric cause. Such tactics of diplomacy were meant to compel Afghanistan to reevaluate its motivations for boundary reform.

### Afghan-Pak Frontiers in a Global Lens

On a purely regional actor level, the frontier conflict posed by Afghanistan is not one in which Pakistan was initially threatened by; after all, Afghanistan continues to be economically and militarily weaker. As Ali notes:

Kabul's disregard of the Durand Line, taken on its own, represents a...futile threat, for it questions an internationally-recognized frontier, and though it impedes the maintenance of normal ties, does not alter the historically established reality.<sup>17</sup>

Despite its unsuccessful refusal to accept the Pushtun division, Afghanistan has recognized Pakistan's relative strength, and has not attempted to respond with force. Furthermore, because of their geopolitical positions, both nations shared borders with countries whose strategic interests and ‘regional matrix’ “only embittered relations between Pakistan and Afghanistan.”<sup>18</sup> The significant breakdown of relations between neighbors hit a low with the heightening of the Cold War, whereby each state was forced to align with one side or another in this post-WWII international arena.

Based less on ideological preferences and more so on security maximization, Pakistan and the United States joined hand with regards to the Afghan situation: "Pakistan was, in [the U.S.'s] view, the most important state of the region, and Afghanistan was considered to be an negligible entity."<sup>19</sup> Knowing also that the Soviet Union's interests lay primarily in Afghanistan, especially after its invasion of Kabul in 1979, the United States saw it as necessary *and* vital to protect the Pakistani borders from what could be a dangerous spread of Communism. In 1961, Presidents Kennedy and Ayub of Pakistan both openly explained and justified the use of American arms and military aid over a span of 1400 miles along the Durand Line. While having to deal systematically with threats from the frontier, Pakistan became increasingly concerned about its status in regards to India, a state that not only challenged Pakistan with its nuclear development plan, but also had few qualms about declaring its support for the Pashtunistan cause. Pakistan felt caught between "the jealous and dominating rancor displayed by India and Pashtun irredentism... with the Soviet Union [looming]."<sup>20</sup> More than anything, both Afghanistan and Pakistan have witnessed firsthand the way in which their frontier crisis is utilized to the strategic advantage of the various actors, whether it was in regards to the USSR's imperial interests, the United States' alliance against terrorism, or India's leverage in other conflicts.

In accordance with the constructivist theory of international relations, the integration of the Durand Line crisis into the international order meant that *perception* of the actor's strength, legitimacy, and alliances was most important, driving certain actions in the arena. As both states were considered "weak or middle level powers,"<sup>21</sup> their positions of security were low relative to their superpower allies and thusly Afghanistan and Pakistan were apprehensive about any occurrences that might delegitimize them or their alliances. This has been an increasingly pressing concern for Pakistan in the post-9/11 setting. Since the 1970s Soviet interference in Afghanistan, over 3.2 million refugees had settled in or around NWFP. The sheer number of refugees along with the armed potential of the resistance groups—members of the Taliban included—represented a direct challenge to the Pakistani political arena. Such a combination of a refugee community and resistance groups calling for reform could compel support by Pakistani Pashtuns, which makes Pakistan appear fragmented and significantly weakened in the eyes of international actors. Pakistan's struggle to balance its strategic relationships abroad with those at home came to a head in 2001 with America's declaration of the war on terror. Having initially supported the Taliban, a predominantly Pashtun group, Islamabad was forced to switch sides and ally with the United States to "bring about the downfall of the Taliban regime."<sup>22</sup> As the American campaign touted its fight as benefiting the national integrity of Pakistan, Afghanistan has begun again to question the 'call for Islam' argument used by Pakistan to argue against Pashtun nationalism. This demonstrates that Pakistan continues to be haunted by the Durand Line agreement, and is forced to make different, often contradictory decisions depending on the actor. Taking the border conflict to the global level, then, has turned strategy on its head, and has made it such that the Afghan-Pak issue can never be separated from the situation of all other actors.

Identifying the historical progression before and after the Durand Line treaty is an important, necessary process in the larger scheme of understanding the international arena. The Afghan-Pak crisis—from its genesis onwards—has manifested itself on every level of interaction, thereby proving the extent to which colonial policy has an effect. The almost consistent friction in Afghan-Pak diplomacy seems irrevocably rooted in the Pashtunistan territorial demand, a notion that has both "poisoned the relations... and proved so detrimental to the security and peace of the Middle East."<sup>23</sup> In turn, this contemporary call for an independent homeland finds its origins in the colonial legacy; it is this process, then, of linkage whereby colonial decisions with regards to territory led almost immediately to a torrential regional arena. As both Afghanistan and Pakistan still face the problem of political assertion "regarding their identity, culture, language, religion, et al,"<sup>24</sup> the ambiguity of their border represents a very dangerous consequence of British decision. When considering the role of colonialism in this frontier development, it is necessary to note that the 'ruled' state is not, however consciously, allowed a natural development—"most of these states," Singh notes "were arbitrarily carved out by the colonial rulers... without taking into consideration either the geographical contiguity and compactness of concentrated population of minorities—cultural, linguistic, religious, ethnic, tribal, or any other type."<sup>25</sup> Given such a power construct, both Afghanistan and Pakistan are left to coexist with 'artificial' boundaries and, as this paper sought to illustrate, are forced to take the regional dispute into a most unsympathetic, strategic international arena.

#### Endnotes

<sup>1</sup> Kaur, Kulwant. *Pak-Afghanistan relations*. New Delhi : Deep & Deep Publications, 1985. pg. 9.

<sup>2</sup> Ibid pg. 25

<sup>3</sup> Ibid pg. 26

<sup>4</sup> Ibid pg. 25

<sup>5</sup> Grare, Frédéric. *Pakistan and the Afghan conflict, 1979-1985 : with an afterword covering events from 1985-2001*. Oxford ; New York : Oxford University Press, 2003. pg. 3.

<sup>6</sup> Ibid pg. 3.

<sup>7</sup> Ibid pg. 3.

<sup>8</sup> Ibid pg. 1.

<sup>9</sup> Ibid pg. 2.

<sup>10</sup> Ibid pg. 2-3.

<sup>11</sup> Kaur, Kulwant. *Pak-Afghanistan relations*. New Delhi : Deep & Deep Publications, 1985. pg. 56.

<sup>12</sup> Ibid pg. 56.

<sup>13</sup> Ibid pg. 46.

<sup>14</sup> Ahmed, Feroz. "Pushtoonistan and the Pushtoon National Question." *Pakistan Forum*, Vol. 3, No. 12. (Sep., 1973). pg. 8.

<sup>15</sup> Kaur, Kulwant. *Pak-Afghanistan relations*. New Delhi : Deep & Deep Publications, 1985. pg. 59.

<sup>16</sup> Kaur, Kulwant. *Pak-Afghanistan relations*. New Delhi : Deep & Deep Publications, 1985. pg. 62.

<sup>17</sup> Ali, Mehrunnisa. *Pak-Afghan discord : a historical perspective : documents, 1855-1979*. Karachi: Pakistan Study Centre, University of Karachi, 1990. pg. 43.

<sup>18</sup> Grare, Frédéric. *Pakistan and the Afghan conflict, 1979-1985 : with an afterword covering events from 1985-2001*. Oxford University Press, New York: 2003. pg. 5.

<sup>19</sup> Ibid pg. 5.

<sup>20</sup> Ibid pg. 17.

<sup>21</sup> Grare, Frédéric. *Pakistan and the Afghan conflict, 1979-1985 : with an afterword covering events from 1985-2001*. Oxford University Press, New York: 2003. pg. 17.

<sup>22</sup> Ibid pg. 195.

<sup>23</sup> Montagno, George L. "The Pak-Afghan Détente." *Asian Survey*, Vol. 3, No. 12. (Dec., 1963), pg. 617.

<sup>24</sup> Singh, Gopal. *Politics of Sikh homeland, 1940-1990*. Delhi : Ajanta Publications, 1994. pg. vii

<sup>25</sup> Singh, Gopal. *Politics of Sikh homeland, 1940-1990*. Delhi : Ajanta Publications, 1994. pg. 2.

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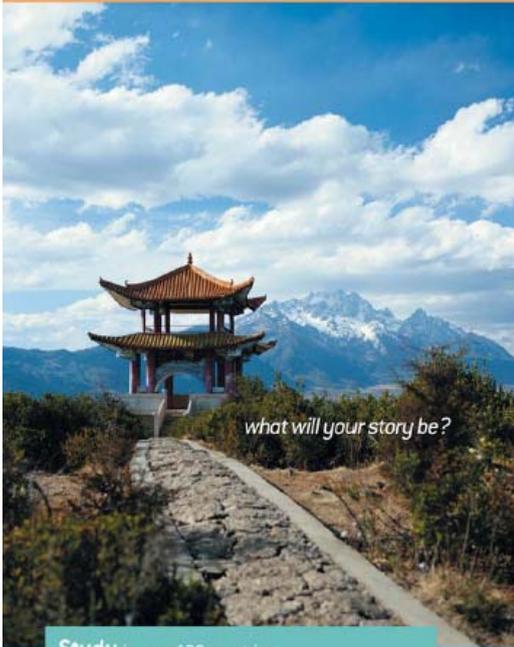
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