Commission on Human Rights

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Undersecretary-General

David Bard, *Chair*

The Ivy League
Model United Nations Conference
Ninteenth Annual Session

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ILMUNC 2003
The Ivy League Model United Nations Conference

Delegates,

Hello and welcome to the Economic and Social Council of the 19th annual Ivy League Model United Nations Conference! Over the past year, our staff has been hard at work writing background papers and planning events to bring you a smooth-running, dynamic, and fun conference. This year's Economic and Social Council is led by some of Penn's most experienced staff members, and covers topics that I hope you will find both pertinent and engaging.

To tell you a bit about myself, I am a sophomore from outside of Washington DC studying Management and Real Estate at the University of Pennsylvania. Between high school and college, I have participated in over twenty MUN conferences, in a variety of capacities both on staff and as a delegate. Outside of MUN, I work as a Team Advisor in the Management Department at Penn and I'm active in Penn's South Asia Society.

During conference, I will be working my hardest to ensure that your weekend is productive and stimulating, but it's up to you to truly capitalize on your ILMUNC 2003 experience. Research your country's position on the topics at hand, and be prepared to absorb yourself in intense and captivating debate. Over the course of the weekend, I would love to hear your feedback about the conference, so feel free to introduce yourself and tell me what you think. Between now and January 30th, if you have questions relating to ECOSOC or the conference in general, don't hesitate to email me at ecosoc@ilmunc.org. I look forward to hearing from you and meeting you soon!

Regards,

Anita Butani
Under Secretary General, Economic and Social Council
Ivy League Model United Nations 2003

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ILMUNC 2003
The Ivy League Model United Nations Conference

Delegates:

I would like to welcome you all to the Commission on Human Rights (CHR) for ILMUNC 2003 and prepare you for an unbelievable weekend of diplomacy and discussion (overarched by incredible amounts of fun). Highlighting topics requiring international humanitarian intervention, will serve as a forum for (hopefully vigorous) debate on three issues of continued global significance.

As for myself, I am a Junior in the Jerome Fisher Program in Management & Technology; basically, I am a student enrolled in both the Wharton School and Penn Engineering with no real direction of where either will take me any time in the near future (yeah, my parents are loving that). Specifically, I am concentrating in Finance and Statistics in Wharton, Economic & Financial Systems Engineering and also picking up a math minor and an international relations minor along the way. Outside of class, I am the student liaison for AIPAC at Penn, a large DC lobbyist group, President of a political organization on campus and involved with parliamentary debate (some say I have political ambitions … I don't see it).

My Model UN experience began in high school and has extended throughout my college career. In high school I partook in Rutgers, Princeton and National MUN tournaments and in college, I do what I can to travel on the Penn UN team's budget to schools across the country. To date, I have participated in more than twenty conferences, as both staff and delegate, in a number of different committees in a number of capacities. Overall, I want to extend to you all what I have gained from my UN experiences throughout the year by making CHR one of the most productive and damn fun committees you all have ever seen.

Prior to conference, I hope that you will take the opportunity to research the agenda topics and your country position to ensure lively discussion and innovative solutions while retaining a definite façade of policy (for instance, we should avoid a tri-lateral peace accord among Iran, Iraq and Israel unless there is a radical change in the international scene). The topics chosen were done with the intention of avoiding mindless pleas of, "save the children," by replacing them with insightful debate; I believe that the topics we chose truly impact everyone in some way and can attract everyone's interest.

With that in mind, the staff and I will do our best to make your time in Philadelphia as fun as we possibly can (within the parameters of legality). Please feel free to contact me if you have any questions about our committee, conference, or Philadelphia, and I look very forward to meeting all of you soon.

Sincerely,

David Bard
Chair, Commission on Human Rights
dabard@wharton.upenn.edu

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COMMITTEE HISTORY

Commission on Human Rights

The Commission on Human Rights was officially established in February 1946 under Article 68 of the United Nations Charter as a subsidiary of the Economic and Social Council. It originally consisted of 18 member states whose task was to draft the International Bill of Human Rights. Membership in the Commission grew to 43 member states in 1979, where it remains today. The distribution of states is based on geographic regions. There are eleven African nations, nine Asian nations, eight Latin American nations, ten Western nations, and five East European nations.

The original Commission on Human Rights met to complete the final Bill of Human Rights, which was to consist of the following: The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights and its Optional Protocol.

On 10 December 1948, the Universal Declaration of Human Rights was passed by the United Nations General Assembly. This document was to be used as a "common standard of achievement for all peoples of all nations." What followed was a productive period of further codification in the form of internationally binding treaties, namely the passing of the International Covenant on Economic, Social, and Cultural Rights on 16 December 1966 and the passing of the International Covenant on Civil and Political Rights and the Optional Protocol also on 16 December 1966. There have been a host of other declarations and conventions, about fifty-five in all, which have been passed and are now collectively known as the International Bill of Rights (IBR). They serve as the basis for work in the Commission.

The 43 member states are elected for three-year terms. They meet each year for a period of six weeks and operate under the Rules of Procedure of Functional Commissions of the Economic and Social Council. The Commission has the power to commission studies, prepare recommendations, and draft international instruments relating to human rights. It can also affect certain tasks asked of it by the General Assembly of the Economic and Social Council, such as investigations concerning violations of human rights, as well as handling communications relating to such violations. In addition, it cooperates closely with the other United Nations bodies that related to the field of human rights. Furthermore, it aids the Economic and Social Council in the coordination of activities related to human rights in the United Nations system.

Within the Commission on Human Rights exist various sub-commissions and committees. The topics discussed by the Commission are explicitly incorporated into this myriad of sub-commissions and committees. Some of these include the Commission on the Status of Women, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic and Cultural Rights, the Committee Against Torture, and the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid.

In addition to these sub-commissions and committees, there are working groups and fact-finding experts who are special *rapporteurs*, representatives, or other designees appointed by the Commission to study human rights. They study either specific countries or thematic situations like summary or arbitrary executions, religious intolerance, massive exoduses, and mercenaries.

The Commission has enjoyed some success in its endeavors. The impact of information, education, and training, especially because of advances in technology and science, have reduced distances and borders. The international community has become more familiar with specific problems in human rights, about which little had been known in 1946. Special attention has been given to underprivileged groups and minorities including women, children, the elderly, displaced persons, and the handicapped. Consequently, international years, special decades, and conventions and declarations have been adopted in order to give more recognition to these problems. Thus the Commission on Human Rights has provided an overall sense of heightened awareness relating to problems that currently exist.

Until recently, the Commission on Human Rights has dealt with problems of state abuses against people mainly for their political benefit. But, at a Human Rights Conference in Vienna in 1993, the committee deliberated taking action against two relatively new topics: gender-specific human rights violations and maltreatment of indigenous peoples. Obviously when an emergency violation of human rights occurs, such as in the former Yugoslavia, the committee must take action to deal with the issue. However, such discussion is not carried out to the exclusion of more chronic, everyday human rights violations.

TOPIC ONE

Human Rights of Terrorists

Introduction

This background paper highlights the international law issues surrounding the status and treatment of terrorists. It cites the need for a formal and individualized determination of prisoner of war status where that status is in doubt. This paper also sets out international law requirements governing prisoners of war and so-called "unlawful combatants," including humane treatment, interrogation and prosecution.

Statement and History of the Issue

Since the commencement of U.S. military operations in Afghanistan in October 2001, thousands of persons have been detained by anti-Taliban Afghan forces and by U.S. armed forces. The U.S. military has been screening and interrogating detainees in Afghan custody in order to identify persons whom the U.S. wants to prosecute or detain, or who may have useful intelligence information. It is now in question whether these detainees should be considered as prisoners of war and therefore be subjected to the provisions of the Geneva Convention.

Those supporting the exclusion of terrorists from prisoners of war status argue that the Geneva Convention does not cover terrorists because they are criminals—not soldiers caught as prisoners of war. Since they do not belong to the army of any nation, the Geneva Convention does not apply.

The counterargument is that since the war on terrorism is still a war, any prisoners count as prisoners of war. The fact that they were not fighting on behalf of a specific country should be irrelevant. The Geneva Convention is meant to preserve the human rights of prisoners during war and must be applied here to ensure that these prisoners' human rights are protected.

To date the United States has labeled all persons in its custody captured in Afghanistan as "unlawful combatants," "battlefield detainees," or "illegal combatants," and has indicated that while they may be treated in accordance with the Geneva Conventions, there is no obligation that the United States treat them as such. U.S. Secretary of Defense Donald Rumsfeld stated on January 11, 2001 that those held were "unlawful combatants" and that "unlawful combatants do not have any rights under the Geneva Convention. We have indicated that we do plan to, for the most part, treat them in a manner that is reasonably consistent with the Geneva Conventions, to the extent they are appropriate."[1] Shortly after the policy was announced Vice President Dick Cheney stated, "The basic proposition here is that somebody who comes into the United States of America illegally, who conducts a terrorist operation killing thousands of innocent Americans, men, women and children, is not a lawful combatant. He does not deserve to be treated as a prisoner of war."[2]

Relevant International Action

International Law and the Treatment of Prisoners in an Armed Conflict

International humanitarian law governs the treatment of detainees in an armed conflict. Most relevant are the four Geneva Conventions of 1949, to which most states, including the United States and Afghanistan, are party. (Two Additional Protocols to the Geneva Conventions, adopted in 1977, have not been ratified by the United States, but many of their provisions are considered to be indicative of customary international law.) The Geneva Conventions set out a comprehensive legal framework aimed at protecting captured combatants and civilians during armed conflict.

The protection and treatment of captured combatants during an international armed conflict is detailed in the Third Geneva Convention relative to the Treatment of Prisoners of War, which defines prisoners of war (POWs) and enumerates the protections of POW status. Persons not entitled to POW status, including so-called "unlawful combatants," are entitled to the protections provided under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. All detainees fall somewhere within the protections of these two Conventions; according to the authoritative Commentary to the Geneva Conventions of the International Committee of the Red Cross (ICRC), "nobody in enemy hands can fall outside the law."

There are other international legal instruments outside the Geneva Conventions that also affect the treatment of persons during and after armed conflict. While some human rights standards can be derogated or limited during times of war or national emergency, other human rights standards continue to apply in full force at all times. Persons deprived of their liberty may not be tortured or otherwise ill treated as a matter of customary law and treaty. Article 7 of the International Covenant on Civil and Political Rights, which the United States ratified in 1992, provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Also in force at all times, regardless of engagement in war, is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN Standard Minimum Rules on the Treatment of Prisoners to which the United States became a party in 1994.

Types of Prisoners under International Humanitarian Law

Under international humanitarian law, combatants captured during an international armed conflict should

be presumed to be POWs until determined otherwise. Specified categories of combatants who have fallen into the power of the enemy are entitled to POW status. These categories include members of the armed forces of a party to the conflict, members of militia forces forming part of those armed forces, and inhabitants of a non-occupied territory who take up arms openly to resist the invading forces. POW status also applies to captured members of irregular forces who are under responsible command, have a fixed distinctive sign (such as an insignia, uniform or other marking) recognizable at a distance, carry arms openly, and conduct their operations in accordance with the laws and customs of war.

POWs receive the full protection of the Third Geneva Convention relative to the Treatment of Prisoners of War. POWs may not be tried for the mere act of being combatants, that is, for taking up arms against other combatants. However, they may be prosecuted for the same offenses for which the forces of the detaining power could be tried, including common crimes unrelated to the conflict, war crimes, and crimes against humanity.

Captured combatants who are not entitled to POW status have been described as "unlawful combatants" or "non-privileged combatants," although neither term is found in the Geneva Conventions. Such persons are still protected under the Geneva Conventions, but under the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. This Convention also applies to civilian non-combatants who are affected by the conflict and due special protections as "protected persons."

Status Determination of Prisoners

Article 5 of the Third Geneva Convention states, "Should any doubt arise as to whether

persons, having committed a belligerent act and having fallen into the hands of the enemy," belong to any of the categories for POWs, "such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

No detainee can be without a legal status under the Conventions. According to the ICRC Commentary, "Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, [or] a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands can fall outside the law."[3]

Regulations issued by the four branches of the U.S. military in 1997 set out detailed procedures for tribunals consisting of three commissioned officers to make determinations of status where doubts arise in accordance with the Third Geneva Convention. Under the 1997 U.S. military regulations, persons whose status is to be determined shall be advised of their rights at the beginning of their hearings, be allowed to attend all open sessions and will be provided with an interpreter if necessary, be allowed to call witnesses if reasonably available and to question those witnesses called by the tribunal, have a right to testify or otherwise address the Tribunal, and not be compelled to testify before the Tribunal. According to the regulations, following the hearing of testimony and the review of documents and other evidence, the Tribunal shall determine the status of the subject of the proceeding in closed session by majority vote. Preponderance of evidence shall be the standard used in reaching this determination, and a written report of the tribunal decision is to be completed in each case.[4]

Analysis

Determining the Status of Prisoners in the Afghanistan conflict

The U.S. position is inconsistent with the Geneva Conventions on several counts. First, the U.S. may not classify as a group all detainees from the Afghan conflict as not being entitled to POW status; such a determination must be made on an individual basis by a competent tribunal. Second, there is a presumption that a captured combatant is a POW unless determined otherwise. Third, it is incorrect to assert that only POWs are protected by the Geneva Conventions—all persons apprehended in the context of an international armed conflict, including the types of prisoners the U.S. has labeled as "unlawful combatants," receive some level of protection under the Geneva Conventions.

The U.S. position is inconsistent with its stated national policy as well. In 1948, the United States helped write, and then signed, the Universal Declaration of Human Rights—an international agreement that recognizes the "equal and inalienable rights of all members of the human family" to, among other things, a "public hearing by an independent and impartial tribunal" for anyone charged with a criminal offense. For the past quarter-century, the State Department has used the declaration as the basis of its annual report on human-rights violations in other countries. In fact, on its Web site, the State Department says, "a central goal of U.S. foreign policy has been promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights." In light of this public position, the Bush administration's current policy towards terrorists may seem contradictory or even hypocritical.

In a press conference on January 22 2002, Defense Secretary Rumsfeld seemed to backtrack in part from his earlier statements. He stated that "whatever one may conclude as to how the Geneva Convention may or may not apply," the United States is treating the detainees humanely.[5]

More recently, the Bush Administration has suggested that the Geneva Conventions do not apply to a war

against terrorism, that the government can decide that captured combatants are not POWs without a determination before a competent tribunal, and that treating the detainees as POWs would prevent them from being questioned for alleged criminal offenses.

Such statements from the U.S. government suggest that the U.S. government will apply its own standards to the detainees, determine its own standard of protection outside the Geneva system, picking and choosing those provisions of the Geneva Conventions it wishes to apply. The United States is ignoring important and relevant international standards and is instead applying its own standard of protection outside the Geneva system. This also undermines long term efforts by the U.S. military to incorporate the Geneva Conventions into the operations of the armed forces through its training programs and institutions.

Members of the Taliban armed forces or militia groups that formed part of the Taliban armed forces are likely to be entitled to POW status. It does not matter for determining POW status whether these soldiers were Afghans or foreigners. However, the U.S. government has asserted that members of the Taliban armed forces are not entitled to POW status because the Taliban was not the recognized government of Afghanistan. This is contrary to both international law and long-standing U.S. practice. The Geneva Conventions do not require a formal state of war between two state parties to be applicable; rather, it is only necessary that there be "armed conflict," which does not require formal recognition of one state by another. The Geneva Conventions would have minimal legal effect if states could simply escape their obligations by declaring that an adversary state was not the legitimate government of the country. During the Korean War, the United States considered prisoners from the People's Republic of China (PRC) to be POWs under the Geneva Conventions, although neither the United Nations nor the United States recognized the PRC government at the time.

Al-Qaeda fighters, unless they can show that they were part of the Taliban armed forces, must meet the specific standards for POW status for members of irregular forces. First, they must be members of "militias [or] other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory." Second, they have to fulfill some minimum conditions: they must be under responsible command, have a fixed distinctive sign recognizable at a distance, carry arms openly, and conduct their operations in accordance with the laws and customs of war.

The members of al-Qaeda may not be entitled to POW status because they may not meet all of these criteria; in particular they have made clear that they do not conduct their operations in accordance with the laws and customs of war. While such persons may more appropriately be called "unlawful" or "non-privileged" combatants, it does not follow that they can be denied all protections of the Geneva Conventions, such as humane treatment.

Rights of Prisoners under International Humanitarian Law

The status of individual prisoners determines what rights they are due under the Geneva Conventions. The rights of POWs vary significantly from those of so-called unlawful or nonprivileged combatants. However, all detainees may be prosecuted for war crimes, crimes against humanity, and criminal acts unrelated to the armed conflict. Likewise, all persons in custody, regardless of their status, must be treated humanely. An important measure to ensure humane treatment, provided under the Geneva Conventions, is to permit visits by the International Committee of the Red Cross and for the detaining government to follow their recommendations.

The rights and protections granted to POWs are enumerated in detail in the Third Geneva Convention. "Nonprivileged" or "unlawful" combatants are protected under the Fourth Geneva Convention, customary international law and, where applicable, Protocol I to the Geneva Conventions.

Humane Treatment:

POWs must be humanely treated at all times. They must be protected against acts of violence or intimidation and against insults or public curiosity. POWs must be kept in facilities "under conditions as favorable as those for the forces of the Detaining Power in the same area." In particular, "the premises provided for the use of prisoners of war...shall be entirely protected from dampness and adequately heated and lighted." (Third Geneva, Arts. 13, 25, 34).

Nonprivileged combatants are entitled to humane treatment. While the detainees can be denied certain rights that would endanger security, such limitations should be absolutely necessary and should never amount to inhumane or degrading treatment.

Interrogation:

While the detaining power may interrogate the POWs, POWs are only required to provide their surname, first names, rank, date of birth, and their army, regimental, personal or serial number under questioning. POWs are not required to provide additional information and cannot be punished for their refusal. "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind." (Third Geneva, Art. 17).

While nonprivileged or unlawful combatants cannot claim the same protections under interrogation as POWs, they are, like all detainees, protected from torture and other cruel, inhuman or degrading treatment as set out under international human rights law and customary international law. Relevant international instruments include Article 75 of Protocol I, the International Covenant

on Civil and Political Rights, and the Convention against Torture. For instance, Article 2 of the Convention against Torture, which the U.S. has ratified, states, "No exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Violation of Article 2 is a criminal offense of universal jurisdiction.

Prosecution:

While POWs cannot be tried or punished simply for their participation in the armed conflict, they may be prosecuted for war crimes and crimes against humanity and for common crimes under the laws of the detaining power or international law. POWs are entitled to substantial legal protections during the trial: POWs have the right to be tried before the same courts and facing the same procedures that the detaining power's military personnel would face, offering "the essential guarantees of independence and impartiality." In the case of Afghanistan POWs, that would mean trial before U.S. court martial or U.S. civilian courts. POWs are entitled to competent counsel to represent them at the trial, and must be informed of the charges against them. POWs are also entitled to have an appeal of their conviction and sentence.

POW status provides protection only for the act of taking up arms against opposing military forces, and if that is all a POW has done, then repatriation at the end of the conflict would be required. But as Article 82 of Third Geneva explains, POW status does not protect detainees from criminal offenses that are applicable to the detaining powers' soldiers as well. That is, if appropriate evidence can be collected, the United States would be perfectly entitled to charge the Guantanamo detainees with war crimes, crimes against humanity, or other violations of U.S. criminal law, whether or not they have POW status. As Article 115 of the Third Geneva Convention explains, POWs detained in connection with criminal prosecutions are entitled to be repatriated only "if the Detaining Power consents."

Nonprivileged or unlawful combatants may be charged with criminal offenses arising out of their participation in the armed conflict activity, because they are not entitled to the immunity that is often called the "combatant's privilege." Like POWs, they can also be charged with committing war crimes, crimes against humanity, and common crimes or other serious offenses. While nonprivileged combatants are not entitled to the extensive trial rights of POWs under the Third Geneva Convention, they are entitled to a "fair and regular trial" and the trial protections provided by the Fourth Geneva Convention. It is a fundamental provision of the Geneva Conventions that all detainees are entitled to "all the judicial guarantees recognized as indispensable by civilized peoples." Nonprivileged combatants are entitled to trial before a "properly constituted, non-political military court," to be informed of the charges against them, to present their defense and call witnesses, to be assisted by qualified counsel of their own choice, to have an interpreter, and to mount an appeal against the conviction and sentence.

Possible Solutions

As this paper explains, governments may not use unlimited methods and means to pursue war, even a war against asymmetric enemies. International humanitarian law, also known as the "laws of war," is designed, in principal part, to protect civilians and other non-combatants. Warring forces must distinguish combatants from non-combatants. These forces are required to minimize harm to civilians and civilian facilities and to refrain entirely from attacks that would disproportionately harm the civilian population and from attacks whose effects would be indiscriminate as between combatants and civilians. Today, the United Nations Sixth Committee of the General Assembly is resuming debate on a comprehensive treaty on international terrorism. The following are among the current proposals:[6]

Despite the existence of an armed conflict, certain aspects of international human rights law must remain in force. Even in a state of emergency, it is unlawful to suspend some rights, such as the prohibition on arbitrary deprivation of life, the prohibition of torture, freedom of religion, and guarantee against *ex post facto* trial.

The distinction between combatants and non-combatants is fundamental in international humanitarian law. While it is legitimate under this law to target and use lethal force against enemy combatants and their commanders, it is never legitimate to target civilians and other non-combatants.

"Irregular" troops such as volunteers or militia members—including any units affiliated with al-Qaeda—must be treated as POWs only if they fulfill certain conditions. Under the Third Geneva Convention if questions arise about whether given troops meet these requirements, they should be afforded presumptive POW status until a competent tribunal makes a determination to the contrary. Captured combatants who are found not to meet the requirements for treatment as POWs are considered to be detainees.

Detainees do not receive the protections provided for POWs. For instance, they may be tried for taking part in hostilities. However, they must be treated as civilians in custody and are entitled to the protections for such civilians found under international humanitarian and human rights law.

Some commentators have suggested an international forum to try those accused of the September 11 attacks. Because these crimes give rise to universal jurisdiction, an international forum could be given jurisdiction. However, because the International Criminal Court has not yet come into being, and by its founding statute has only prospec-

tive jurisdiction, it would not be able to take these cases. However, a new international tribunal could be constituted for this purpose. One option would be an ad hoc tribunal created by the U.N. Security Council and patterned on the international tribunals for the former Yugoslavia and Rwanda. Another would be an international panel created by all states whose citizens were victims of the attack.

Bloc Positions

United States: The United States is party to the Geneva Conventions of 1949. It is also bound by those provisions of the laws of war that, through wide state recognition and practice, have become customary international law. United States is not party to Protocol I; however, it recognizes many of its provisions as reflective of customary international law. In addition, by virtue of having signed (but not ratified) Protocol I, the United States is obligated under international law to avoid actions that would undermine the guarantees of that treaty.

European Union: E.U. member states remain vigilant to ensure that all military action against Afghanistan is in full conformity with international humanitarian law, particularly with regard to the protection of the civilian population. The European Union suggests that the status of the terrorists should be decided by a tribunal under Article 5 of the Geneva Convention. The European Union's decision grows out of the European Convention on Human Rights, which was inspired by the Universal Declaration.

Middle East: The Middle East Bloc believes that human rights arguments should not be put forward on all occasions, and that those who carry out terrorist acts have no claim to human rights. Therefore, they support the position of the United States. In particular, Israel and Egypt are key countries for U.S. strategy in the Middle East and can be important forward-supply bases for attacks on Afghanistan.

Russian Federation & Asia: The Russian Federation and the Asian Bloc decided to become a partner in the global fight against terrorism and they assert that the Geneva Conventions should not be upheld in the treatment of prisoners from Afghanistan or any other terrorists who are caught during armed conflict. The Russian Federation particularly favors this position because of its close relevance to the situation in Chechnya.

Conclusion:

After the attacks of September 11, the human rights of terrorists have become an issue of controversy. Of particular concern is whether they should be considered as prisoners of war and therefore be subjected to the Geneva Convention.

The argument in favor of this proposal suggests that any terrorist captured during the fighting in Afghanistan or in any other armed conflict has basic rights that must be respected. And since they were caught in an armed conflict, they should be considered as prisoners of war, and be subjected to the values affirmed by international human rights and humanitarian law. The counter argument claims that terrorists are criminals and therefore cannot be considered as prisoners of war. Whether terrorists have human rights and to which degree the Geneva Convention is applicable to their status is up to this Commission to decide.

Endnotes

1 http://www.defenselink.mil/news/Jan2002/t01112002_t0111sd.html

2 http://news.bbc.co.uk/1/hi/world/americas/1656919.stm

3 International Committee of the Red Cross, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva: 1958), p. 51

4 U.S. military Judge Advocate General Operational Law Handbook (2000). Eds. M. Lacey & B. Bill. International Law and Operational Law Department, Judge Advocate General's School, Charlottesville, Ch 5, p. 7.

5 http://www.defenselink.mil/news/Jan2002/n01222002_200201223.html

6 Comprehensive Convention Against International Terrorism, Amnesty International Press Release, January 28, 2002

TOPIC TWO

Human Rights and the WTO

Introduction

The Commission on Human Rights is the main policy making body on human rights issues in the United Nations. It prepares studies, makes recommendations, drafts international human rights conventions and declarations as well as investigating allegations of human rights violations. Given this Committee's expertise on the topic the committee is in a perfect position to advise the World Trade Organization (WTO) on human rights considerations for accession into the WTO.

Statement of the Issue

The World Trade Organization continues to accept new applicants and admit new members. Accession is a very intricate and complex process that involves several negotiations and can take many years to complete. Each applicant to the WTO is unique and its status as observer varies on a case-by-case basis depending upon the current trade status of the applicant and the amount of time it takes for all negotiations to be settled and all WTO reforms established. The following background guide will analyze the WTO and its Accession process. In particular, this paper will analyze the Human Rights considerations that the WTO takes when considering a country for admission, or lack there of. This will be accomplished through a brief history of the WTO, an analysis of the accession procedure, and a look at three interesting accession case studies: China, the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, and Russia. Human Rights issues are significant in each of the above countries, and this paper will reveal the effects that the WTO could have and has had on human rights in each country. The role of this committee is to make recommendations to the WTO, to increase or decrease its consideration of human rights, and how it should do so.

History and Analysis

The WTO Introduced

The World Trade Organization (WTO) is the only international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their respective parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business in order to improve the welfare of the peoples of the member countries.[1]

The WTO was created on January 1, 1995. It developed out of the old unofficial organization of international trade known as the General Agreement on Tariffs and Trades (GATT). GATT was established in 1948 and developed over the years through several rounds of negotiation. The most recent of these rounds, know as the Uruguay Round (1984-1994), fathered the WTO—thus officially establishing an international organization on trade. The WTO is located in Geneva, Switzerland and boasts a budget of 143 million Swiss francs for 2002. As of January 1, 2002 the WTO has a total membership of 144 countries plus 31 observer countries (those awaiting membership). The current director-general is Mike Moore and there are a total of 550 members of the Secretariat.

The main agreements are General Agreement on Tariffs and Trades (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The major functions of the WTO include: administering WTO trade agreements, providing a forum for trade negotiations, handling trade disputes, monitoring national trade policies, providing technical assistance and training for developing countries, and cooperating with other international organizations.[2]

A few fundamental principles run through all WTO agreements. The first principle is known as the Most-Favored-Nation principle. This states that no country should discriminate between its trading partners nor should it discriminate between its own and foreign products, services, or nationals. The second principle is freer trade. This is achieved by lowering both tariffs and non-tariff barriers such as quotas. The third is predictability; that firms, investors, and governments should always be notified when a country is going to change its trade barriers. Next is the principle of fair trade. The WTO is sometimes erroneously referred to as a free trade institution. This is not completely accurate, the WTO does allow countries to have some level of protection, including low tariffs. Instead, the WTO should be referred to as a fair trade institution because it tries to increase competition by enacting rules to eradicate unfair practices such as subsidies and dumping. The last principle involves the WTO's accommodations for developing countries. That is, developing countries are given more flexibility and time to implement WTO agreements.

The WTO's open trading system based on multilateral rules leads to economic growth. Statistics pooled from the post Second World War period, provide substantial evidence for this claim. The connection between growth and open trade is based on a few economic theories, the most prominent being the theory of comparative advantage. According to this theory, countries prosper when they concentrate their assets on what they can produce best, and then trade these products for products that other countries produce best. But success in trade is not static. A country may become uncompetitive in a product that was once competitive. An open economy allows this coun-

try to move on towards the production of some other competitive product. Protection of this product, on the other hand, forces the country to continue to produce the uncompetitive product and consumers are supplied with unattractive outdated and overpriced products. Ultimately factories close and jobs are lost. The WTO tries to prevent this self-destructing nature of protectionism from occurring.

The WTO and its Accession Policies

According to Article XII of the WTO Agreement, "Any state or customs territory having full autonomy in the conduct of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO Members."[3] The accession process begins when a country submits a request to become a WTO member. At that time, the General Council establishes a Working Party to deal with that country's accession. The country then submits a memorandum to the Working party detailing its legal and trade status. The Working Party uses this memorandum in order to establish the changes that the country must implement in order to become a member. At the same time the country engages in bilateral agreements with specific member countries of the Working Party. These negotiations are also documented. Three documents are then submitted to the General Council for Adoption. The first is the Working Party's Draft Report containing a summary of proceedings and conditions of entry. The second is a Protocol of Accession and the third is a collection of schedules of market access commitments in goods and services negotiated between the acceding country and WTO members. Once approved by the Ministerial Conference or the General Council, the country is free to sign into the WTO.

Are there any human rights stipulations in the acceding procedure? The answer is maybe. The accession procedure is mostly defined by Article XII of the WTO Agreement. Besides describing who can accede and who makes the final decision, Article XII is extremely curt. It leaves most of the stipulations of entry up to the Working Party, and the Working Party may or may not decide to take into consideration human rights.

The remaining sections of this paper analyse three case studies. The first two sections detail the accession of China and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu. Both of these countries are currently members of the WTO and are significant countries to analyze because their accession occurred recently and because their accessions were quite controversial. The last section details an update on the Russian accession process. This country was chosen because it will serve as a good contrast with the already accessed countries of China and Taiwan, and because Russian accession will have a significant impact on the WTO. China and Russia are also interesting cases to consider because they are countries with economies in transition to market economies.

China

China applied for membership to GATT on July 10th 1986. A working party was established in May 1987 to assess China's foreign trade regime, which was still holding on to a planned economy. In 1992, after the Chinese Communist Party announced a platform dedicated to establishing a socialist market economy, China proposed an intensive program of reform in order to strengthen its application. China promised to cut tariffs and open its market for agricultural products and services. It also declared that it would enter GATT as a developing country, and that it would thus fulfill all the requirements and responsibilities of a developing member. China, however, fell short of implementing its promises. Nevertheless, in continued negotiations with the US, China began to show signs of attempting to liberalize its trading system between 1996 and 1999. The country went through four rounds of tariff reductions, and it promised to open up its telecommunications market. However, China's progress was slowed by the Asian financial crisis in 1997 while pressures from both public opinion and a number of industrial sectors and ministries which supported a delay in WTO accession further slowed the process. Nevertheless, China continued to show signs of progress especially in its signing of the China-US WTO Agreement on November 15, 1999. In this agreement, China agreed to officially open its financial and telecommunications markets. This came as a surprise when considering three impasses that occurred between China and the US in the preceding year. The first obstacle occurred in April when Clinton refused to seal an agreement despite Zhu's considerable and politically bold concessions. The second occurred in May as a result of the NATO bombing of the Chinese embassy in Belgrade during its bombing mission in Yugoslavia. The US and its allies claimed that they mistook the Chinese embassy for a Yugoslavian government building. China, however, refused to accept the explanation, claiming that NATO had bombed the embassy in order to exact revenge on China for support of Yugoslavia. The third stalwart occurred days before the signing of the agreement in which both countries faced a deadlock. Nevertheless, negotiations were made paving the way for Chinese accession.

There were many potential benefits attached to China's accession to the WTO. The benefits can be separated into two categories: external and domestic. The external benefits include: overcoming non-trade barriers (such as quotas, anti-dumping, and anti-subsidies), escaping the US Congress's annual review of China's most favored nation (MFN) status, creating a favorable environment for its long-term growth, avoiding a higher price for a later accession, diversifying the regional distribution of China's trade, and increasing China's international competitiveness.[4] The domestic benefits include: establishing the norms for a market economy, stimulating exports and attracting foreign investment, generating growth and jobs, forcing uncompetitive sectors to improve their performance, improving the population's living standard, using international pressure to overcome resistance to re-

form, and forging a closer tie with Taiwan and facilitating unification.[5] While many of these benefits may cause long-term advantages that would create a more stable social environment and thus quell human rights violations, it is not guaranteed. In fact, accession into the WTO has actually removed one annual critique of China's human rights policies. Before joining the WTO, the US Congress reviewed China's most favored nation (MFN) status annually, and considered human rights, religious freedoms, trade deficits, and intellectual property rights as a requirement for renewal. Once China joined the WTO, the US had to grant China a permanent MFN status under WTO rules and principles (as stated above) and the US check on human rights violations through MFN is now eliminated.

While the above reasons list many long-term advantages to joining the WTO, many predict that the short-term affects of accession will bring many disadvantages. Can China make it through these short-term hardships in order to reach the pot of gold at the end of the rainbow? Many are doubtful and worried, and many see a short-term reign of instability that will only exacerbate human rights violations.

The short-term affects begin with the worry that China's Industries will be exposed to crippling competition.[6] Cui Zhiyuan argues that WTO membership, by protecting the intellectual property rights of the US and other advanced capitalist nations, will hurt the development of China's high-tech sector. He bases his argument on the need to protect infant industries from foreign competition; if China agrees to the provisions on trade-related property rights, China's high-tech sectors will not have time to develop.[7] Cao Jianming, on the other hand, argues that continued protection of China's high-tech sectors only prolongs their inefficiency. As an example he sights the color-television manufacturers.[8] This example clearly shows that initially companies will be at a loss, but in the long run they will benefit. Thus Cao Jianming does not disagree that short-term deficit will occur, but he does provide hope for the long-term. Can China wait it out? Many people also worry that farmers will be hurt by the import of cheap (and better quality) foreign wheat and corn, and others are afraid that China as a nation will become entangled in a global capitalist network that will erode the country's sovereignty and, in the worst case scenario, reduce China to an "appendage" of the West.[9] If these worries turn out to be accurate, China can expect social instability on top of social unrest from the rural, urban, and leftist political groups of China. These protests have the potential to evolve into incidents similar to the Tiananman Square in 1989 unless China is prepared to resist a violent response to social unrest. If China can hold out, the long-term advantages will lead to a more stable environment, which will reduce protest, and thus reduce human rights violations. In addition, the long-term affects will increase the privatization of China, which will spur an increase in social capital, and over time this capital can be used to constrain political power and thus protect human rights even further. But is it moral to allow a country to violate human rights for a short period of time on the way to developing a violation free nation? Should the WTO take such violations into consideration in its future accession cases? Should the WTO implement strategies to reduce these expected violations? The WTO should certainly learn from China and implement regulations that will protect human rights while a country adapts the reforms of the WTO. It should be noted that China became a member of the WTO on December 1, 2001 and the world is waiting for the response to the deleterious short-term affects.

The Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu

Chinese Taipei submitted an application to GATT as early as 1965 and was granted observer status. In 1975, this status was revoked when the General Assembly of the United Nations decided that the PRC was the only legitimate government of China. In 1992, GATT finally established a separate working party to coordinate Taiwan's request for accession (Taiwan applied as a separate customs territory). The GATT Council decided that they should "…examine the report of the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei…"[10]

Taiwan applied to GATT as a developed country, and throughout accession negotiations, has gone above and beyond its obligations in order to match or exceed the expectations of the WTO. This meant making sure its foreign trade regime conformed to WTO rules, that its market-opening commitments match or exceed those made by similar economies in the Uruguay round agreements, and that its laws, regulations, and practices are transparent.[11] Some liberalizing reforms that Taiwan has undertaken in order to be up to date with WTO requirements include: undergoing several rounds of tariff reductions, a plan to remove non-tariff barriers after accession (although these are already nominal), and a high degree of market openness in the service sector which was recognized early as being more open than most comparable economies. Other reforms include a promise to accede to the Agreement on Government Procurement, which will further open the domestic market to foreign suppliers and which will also reform the government procurement authority substantially. Yet another important reform consisted of Taiwan's switch to a "negative list" import-licensing system, which will remove administrative burdens on importers, increase transparency in import administration, and, most significantly, bring the system into conformity with the requirements of the WTO Agreement on Import Licensing Procedure. Taiwan will also have to amend a substantial number of laws and regulations in order to accomplish three main objectives. These include: eliminating elements of discrimination in the existing trade regime (particularly in relation to most-favored nation treatment), bringing domestic standards up to legal international standards,

and establishing the legal basis for opening markets previously subject to statutory restrictions.[12]

A significant problem that Taiwan had faced when acceding to the WTO was eliminating discriminatory trading practices without upsetting the favored nations. In order to ensure that existing suppliers were not adversely affected by Taiwan's accession, Taiwan was forced to consider lowering tariffs or increasing market access for foreign products. As a result, Taiwan's tariffs and other barriers in the relevant product areas may be the lowest, when compared with similarly situated importing economies. This in turn put pressure on domestic producers. One example of such reforms included Taiwan's abolition of the monopoly system on tobacco and alcohol trade, which forced Taiwan to lower taxes in order to compensate for the potential loss of market by the supplier who was at that time enjoying preferential tax rates. This may lead to an increase in local consumption of alcohol products and a decline in government revenue.[13]

At face value it does not seem that WTO is forcing Taiwan to violate human rights, but it also does not seem that the WTO is taking any measures to make sure human rights are not violated either. Should the WTO anticipate human rights violations from Taiwan? Or does peaceful solutions to WTO reforms such as lowering taxes lead one to believe that the Taiwanese government is efficient enough to solve problems in the wake of WTO reforms without violating human rights? Would social unrest prove otherwise? These questions should be addressed when assessing Taiwan's accession to the WTO. Again it should be noted that the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu became a member of the WTO on January 1, 2002.

Russia:

Russia applied in June 1993 to join the GATT, and in 1995 its GATT working party was converted into a WTO working party. In order to become a member, Russia must press forward with economic liberalization and reform, expanding even in sensitive sectors such as agriculture and services. Russia must further privatize certain industries, free prices, eliminate monopolies and establish effective monitoring, legislation, and enforcement.[14] In general, WTO members are impressed with the steps Russia has taken thus far. In fact, Director-General Mike Moore stated that Russians have shown "leadership, courage, and vision," throughout their history and that he is confident that WTO membership is "only a question of time and balance, not a question of principle."[15]

Russia provides a good comparison to both China and Taiwan. Like Taiwan, Russia seems to be moving toward accession very thoroughly with little opposition. But can Russia continue on its fast rack to accession? On the other hand, Russia, like China, is an economy in transition. Thus, will the first signs of social unrest trigger a cascade of human rights violations like China in the past? Should the WTO take more precautions and slow the WTO accession process? One thing is for sure, because of the size and importance of the Russian economy, accession to the WTO will strongly influence both Russia and the WTO system.

Conclusion

As indicated above, the WTO is a complex international body. While sustaining roots from over 50 years ago with the establishment of GATT, the WTO is still a young institution that will need to adopt to the growing global market economy. This adaptation will clearly call for a recognition of human rights in the future, if not in the present. How will the WTO account for human rights and how much consideration should be taken? The future development of such countries as China and Taiwan, and the future accession of such countries as Russia, hold the answers to these questions.

Endnotes

1. "Trading Into the Future." WTO Online; Available; http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm
2. Ibid.
3. Ibid.
4. Hongyi Harry Lai, "Behind China's World Trade Organization Agreement With the USA," Third World Quarterly 22 (2001): 248-249.
5. Ibid., 249-251.
6. Joseph Fewsmith, "The Political and Social Implications of China's Accession to the WTO," The China Quarterly (2001): 573.
7. Ibid., 586.
8. Lai, "Behind China's World Trade Organization Agreement With the USA," 250.
9. Fewsmith, "The Political and Social Implications of China's Accession to the WTO," 573.
10. Chulsu Kim, "Process of Accession to the World Trade Organization," Journal of Northeast Asian Studies (1996): 11.
11. Ing-Wen Tsai, "Taiwan's Accession: Meeting the Requirements," Journal of Northeast Asian Studies (1996): 34.
12. Ibid., 40.
13. Ibid., 42.
14. Kim, "Process of Accession to the World Trade Organization," 12.
15. Mike Moore, "Russia's Accession to the WTO," *Presidents & Prime Ministers* (2001): 30.

TOPIC THREE
FTA and Human Rights

Introduction

Traditionally, international bodies use negotiation and binding common commitments to achieve results. The Asian Pacific Economic Cooperation (APEC), however, relies on consultation to create a shared vision that members can implement in an individual, non-binding manner. Since its early days, APEC has progressed owing to the efforts of a number of committees, sub-committees and working groups. Among these was the Customs Procedures Working Group which, in 1994, became the Sub-Committee on Customs Procedures (SCCP), reporting to the Committee on Trade and Investment (CTI). The SCCP's mandate is to facilitate trade by simplifying and harmonizing customs procedures.

Statement of the Issue

The presence of a variety of social, economic, and political structures within the nations of APEC generates several problems in the region and even within APEC itself. These conflicts generally arise from the gap that exists between Most Developed Countries (MDCs) and Developing Countries, which is often the cause of major setbacks, especially in regards to short-term policies and agreements. The committee must investigate the compromises that both Most Developed Countries and Developing Countries must make to ensure the region's economic vitality and sustainability.

Without doubt, trade has played and continues to play a key role in development. Nations became developed because of trade, and depend on it to satisfy many of their needs. Moreover, in a world divided by imaginary, political, boundaries, there is no single country that we can consider as self-sufficient. Thus, countries must trade in order to obtain all the materials needed in order to generate a certain output of goods. In fact, modern economists consider three things to be requisite for economic growth:

1) Markets
2) Property Rights
3) Monetary Exchanges[1]

Reexamination of political and economic boundaries with respect to trade becomes necessary due to a contradiction evident in many governmental economic policies: though governments eagerly enact protectionist measures in order to support local inefficient industries that would be damaged from international competition, they are also keenly aware that in order to sustain growth free trade is necessary and try to form wider areas where goods may be traded in optimal conditions. This paper will focus specifically on the issue of trade, the problems associated with promoting free trade agreements within the Asia-Pacific area, and the action that APEC can and must take to address these problems.

Analysis

The differing needs of APEC nations, creates intense debate as to the benefits and consequences of establishing free-trade agreements. Nonetheless, most member states accept the basic economic principles behind free trade. Perhaps the most widely recognized of these concepts used in support of free trade is that of comparative advantage, developed by David Ricardo, in the early nineteenth century. According to Ricardo's ideas, in order to expand the world's production possibility frontiers (the total amount of a good able to be produced at a given price) a nation must specialize in the production and distribution of goods with which it has comparative advantage—goods that can be produced by the nation with a smaller opportunity cost than if the goods were produced in other nations. However, it may be necessary for countries to make an exception to the comparative rule, producing a good regardless of opportunity cost in the even that other world suppliers cannot fulfill the whole market's quota.

Ricardian Economics, therefore, is based on the presumption of open and liberalized economies. As members of an open and liberalized economic system, small countries (e.g. Brunei) with limited natural resources and inefficient economies will have to turn towards manufacturing those goods in which they hold a comparative advantage, because they will face competition with larger countries (such as China or the United States), that have a great number of resources and more advanced industries.

Aside from comparative advantage, another important concept used to advocate free trade is that of economies of scale. An increase in economies of scales means that an increase in inputs will generate a greater increase in output and more efficiency. Here, it is important to point out a key difference between national and international economies of scale. "Increasing returns to scale are national if average cost depends on the size of the national industry. They are international if average cost depends on the worldwide size of the industry."[2]

The difference between the concepts of comparative advantage and economies of scale rests in the fact that while in former encourages countries tailor their economics to particular roles, the latter contends that if countries specialize in the production of certain goods, they will be able to produce them more cheaply and efficiently thanks to the expertise they gather from mass production of a smaller number of products.

The return on a nation's investment in the principles of Ricardian economics is not immediate. In the short term smaller, less-developed countries may be unable to compete in price and quality with their more-developed brethren. Industries may be forced to close, giving rise to unem

ployment. Unions may demand instant solutions to the resulting unemployment that cannot be provided by the government, resulting in an uncomfortable, yet temporary political and social situation. All of these factors—industry closure, unemployment, union resistance—are likely to undermine the free trade agreement's popularity. APEC must collectively address how these factors affect the implementation of free trade agreements in the region.

While economic theory suggests that poorer countries focus their production efforts on those goods in which they possess comparative advantage, this does not always hold true in reality. For example, no matter what Brunei's competitive advantages are, other larger countries may have an *absolute* advantage, meaning that they can produce Brunei's specialized good more cheaply and efficiently than even Brunei. Brunei, because it specialized in a handful of goods and has a limited range of production, may end up selling very little, because it will cheaper for consumers to buy the same goods from larger countries.

Evidently, in an open economy, the cost of goods will be lowered for consumers, and correspondingly the cost of living will also be reduced. Unfortunately, for poorer nations the effect of a lower cost of living may be largely moot. While the cost of purchasing goods may be lower, the fact that other larger nations are producing these goods means that capital is not flowing into local economies. The possibility of this scenario necessitates a more critical examination by smaller, developing countries of free trade.

Free trade works for developing nations if their products are competitive within the larger world market. One way to achieve this within the context of a free trade agreement is to encourage richer countries to support poorer countries through investment to make the production of their specialized goods both profitable and competitive. In the long term, this would help to alleviate unemployment problems, but it would also create inefficiencies within more developed nations, due to the flow of capital outside the countries to less developed nations.

The reason why such market redistribution policies are unlikely to be embraced by MDCs, and why such policies would fail even if they were, is simple: if poor countries become efficient in the production of goods, then they will become more competitive and industries in richer countries will sell less. As result, the demand for employees will decrease and unemployment will grow in the MDCs, transferring adverse factors of free trade from underdeveloped countries to MDCs in the long term. This highlights the incompatibility of economic interests between poor and rich countries and in both the short term and the long term.

While it is widely known that policies of autarchy and isolation are not economically profitable for any country, is politically difficult for poorer countries to open their doors to competition from developed countries for fear that their industries will not be able to compete and unemployment will rise. Lesser developed countries doubt (rightly) that MDCs will be eager to help them by decreasing their own efficiency.

The paramount question and focus of this topic is whether underdeveloped countries should participate in an agreement with more developed countries. The question is answered by APEC member states largely on an individual basis, depending upon relative strength and weakness. For countries that have a wide range of resources (such as Chile or Mexico) free trade would facilitate concentration of production on certain products, and enable high levels of competitiveness. On the other hand, nations with fewer resources will me more reluctant to accept free trade unless they restructure their economies and enlarge their services and tertiary sectors. The latter is exactly what has made some of the new dynamic Asian economies so important in the last few decades (the case of Singapore, for instance). In any case, such a restructuring is along term process that demands a great deal of patience and political will.

Another consideration is the openness of member states to an agreement that is characterized by mutual cooperation and leaves aside future domestic concerns. This must be taken into account, particularly in the context of the few current examples of mutual agreements, which include as the European community and Mercosur. Critics argue that these entities have devolved into chaos creating situations that are profitable to none of their members, and especially damaging to smaller and poorer countries. In the case of Mercosur, smaller countries such as Uruguay and Paraguay lead the pact on a direct pathway to disaster. This case should be considered when predicting some of the consequences of free trade among APEC member states.

There is a clear incompatibility between the short term and the long term implication of enacting free-trade agreements. On one side, developed countries should do whatever they can to help boost underdeveloped countries' economies. However, this could potentially create internal political problems within MDCs, since strong unions would protest such changes that would direct capital and labor flows out of MDCs to small and underdeveloped countries. This would be unprofitable for lesser developed countries, forcing them to compete with larger nations without any helping hand.

In addition to economic concerns, many nations have encountered resistance to the ideas of free trade agreements stemming from popular fears regarding the environment and labor relations. One very important piece of the environmental debate centers on the relationship (or lack thereof) between international trade regulations and international environmental concerns, with many countries feeling that environmental standards should not restrict their own trading practices. Since addressing environmental considerations usually also comes with a cost of both capital and efficiency, the bear of such costs—whether it be importer or exporter—must be decided.[3]

In addition to costs, there is a perception that developed countries feel they can use trade agreements to force

underdeveloped nations into recognizing and abiding by more strict environmental regulations, simply because the developed countries have the economic might. However, developing nations must recognize that if they do not actively participate in cleaning up the environment, it will become impossible to do so. Developed nations attempt to drive this point home through the use of trade incentives to smaller nations. Developing countries, on the other hand, rent this practice and feel that developed nations are to blame for many of environmental concerns.

Besides environmental concerns, the fear of exploitation of labor has come to the forefront of recent debates over free trade (perhaps most pointedly when discussing NAFTA). There are a multitude of issues relating to labor from sweatshops to child labor to primitive working conditions, all of which must be seriously considered as they relate to free trade. For example, agreements entered into by developed countries might effectively push corporations into moving factories abroad where labor is cheaper, and laborers are exploited.

Relevant International Action

In 1996, the SCCP developed a comprehensive framework for technical assistance and human resource development, providing a foundation for implementation of the Collective Assistance Plan (CAP). Canada and Japan will continue to be responsible for implementing the APEC technical assistance framework. Implementation of SCCP's CAP depends on funding from the APEC Trade and Investment Liberalization and Facilitation (TILF) Fund, provided by Japan. TILF totals 10 billion yen (approx. US$100 million) over 15 years for APEC activities.

In 1997 the SCCP formalized its vision in the document *A Blueprint for APEC Customs Modernization: Working with Business for a Faster, Better Border*.[4] This document is updated each year to demonstrate SCCP accomplishments with a view to seeking and solidifying strategic partnerships with business.

The SCCP has accepted that certainty and speed in clearing goods through borders will lower costs to business. A progressive customs administration will have a beneficial impact on an economy's growth, development and prosperity. Decisions to invest in new enterprises are influenced by factors such as domestic labor and capital costs; and an important consideration is the ease in which goods are cleared through customs.

Significant international action has also been taken regarding the environment and trade, with many treaties and actions resulting. For example, United Nations Conference on Environment and Development (UNCED), which took place in 1992, addressed some concerns regarding the link between the environment and sustainable development. The resulting *Rio Declaration* discusses the exact link between trade policies and the environment. Principles 12 and 16 of the declaration argue that environmental policies should not in fact obstruct trade agreements or policies.[5]

Possible Solutions

Many nations have come to realize that a key factor of economic growth and enhanced trade and investment is the removal of barriers and the creation of a virtually seamless flow of people, goods and services. In order to reap the benefits that APEC can potentially provide, customs administrations must with businesses in all member states to develop faster and better borders that balance goals of enforcement and public protection with facilitation and competitiveness.

After a successful year in 2001, the SCSC is looking forward to the continued implementation, monitoring, and improvement of an increasingly large number of CAPs. Current plans include the encouraging standardization of best practices among nations.

Conclusion

While the gap between the developed and developing countries keeps widening, further trade liberalization has the potential to promote fairer treatment and economic growth for all nations. Despite this, internal pressures coupled with environmental and labor concerns serve as significant impediments preventing developing countries from entering into free trade agreements. These pressures and concerns must be seriously addressed by both developing and more developed member states before making any decision on the free trade issue.

Endnotes

1Taken from Parkin, Michael page 217

2 Ethier p 51

3 A report composed by the United Nations Committee on Trade and Development (UNCTAD) in 1994 which specifically addresses the issue of internalizing environmental costs This report can be found at: http://www.ciesin.org/docs/008-581/008-581.html

4 Available online at: http://www.sccp.org/sccplibrary/papers/blue-22.htm.

5 Available online at: http://www.unep.org/unep/rio.htm.