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"The Court of Justice of the European Union
and International Relations Theory"

Establishment of the European Union and the Court of Justice

World War II brought devastation to the European continent that had not previously been imaginable. The desire to avoid future catastrophic war, and the desire to avoid communist pressure from Eastern Europe, created an incredible atmosphere for international cooperation within Western Europe. What has come to be known as the European Union (EU) was first proposed by the French Foreign Minister Robert Schuman on May 9th 1950, which is now celebrated as Europe Day (Europa). The EU was first established by the Treaty of Paris, also known as the Treaty of the European Coal and Steel Community, which was signed on April 18 1951 in Paris, and entered into force on 23 July 1952 (TOPWeb). Originally the European Coal and Steel Community (ECSC) was composed of six member states. Belgium, France, West Germany, Italy, Luxembourg and the Netherlands were the original six members of the ECSC. The member states fully recognized that the ECSC was to not only be a community of cooperation, but also a community of integration (Nugent 23). Integration was seen as providing greater benefits and securities to the member states than a simple cooperation agreement could bring.

In 1957 the Treaties of Rome were signed creating the European Economic Community (EEC), the European Atomic Energy Community, and further solidifying the existence of the European Community as something more than an intergovernmental organization (Nugent 23). Under the Treaty of the EEC five core institutions were created: the Commission, the European Parliament, the Council, the Court of Justice, and the Court of Auditors (Closa). The Treaty on the European Union, or the Maastricht Treaty, was signed in Maastricht in 1992 and, among other things, changed the official

name from the European Economic Community to the European Union (Europa). The Treaty of Paris, the two Treaties of Rome, and the Maastricht Treaty make up the foundation of the European Union today. Many more treaties, some amending the core four, have been established, and many more countries have eventually joined the EU. In 1973 the community was enlarged with the addition of the United Kingdom, Denmark, and Ireland (Closa). In 1981 Greece joined the EU, in 1986 Spain and Portugal joined, and in 1995 Finland, Austria, and Sweden joined (Dinan 5). In 2004 the greatest enlargement of the EU took place when Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia joined (Europa).

The Court of Justice of the European Communities, established by the Treaty of the EEC, was created to interpret and apply EU law evenly across all member states (curia). EU law is primarily established by treaties agreed upon by all member states, but it has also been established by the EU institutions and the Court of Justice itself via case law (Nugent 245). The Court of Justice operates from Luxembourg, and for many years was one of the least known institutions of the EU. However, the Court has, over the past five decades, created an incredible amount of case law, and, as has been recognized in recent years, laid the foundation for the continual increase in the power of the EU.

Structure of the Court of Justice

The Court of Justice of the European Communities is made up of 25 judges, one from each member state, and 8 advocates-general (europa). The judges and advocates-general are to have the qualifications to be judges of the highest degree in their own country, and whose impartiality and independence is totally beyond question (Hix 105).

Judges are appointed, with consent from the governments of the member states, for three year terms, with a partial replacement of the Court occurring every three years (Hix 105). One judge is selected to be President of the Court for a renewable term of three years (curia). The President directs the actions of the Court and presides at major hearings, when the Court sits in full. However, the Court of Justice usually acts and sits in chambers of three or five judges (curia). The only time the Court sits in full, requiring a minimum of 15 members, is when a full Court is requested by a member country, it is required by provisions of a treaty, or a case is deemed to be especially complex and important (europa). Presidents of the individual chambers are also selected. Three judge chambers elect a President to a one year term, and five judge chambers elect a President to a three year term. The advocates-general are selected by the member states as well. Traditionally, the five largest states each select an advocate-general and the remaining advocates-general are selected by the other states on a rotating basis.

The judges have the duty of insuring that EU law is applied and interpreted equally for all member states. The advocates-general have the duty of gathering information on cases, analyzing the information in light of treaties and past EU law, and presenting reasoned and impartial opinions to the Court, or a chamber of the Court. EU law is established in two ways. The “primary” way is acts between governments of EU member states. The “primary” way includes all of the treaties and conventions that form the basis of the EU (Hix 103). The “secondary” way EU law is established is via EU legislation. EU legislation is divided into four major categories: regulations, directives, decisions, and recommendations/opinions (Nugent 247). Regulations have general application and are binding for both the EU and the member states of the EU (Europa).

Directives are addressed to member states and must be transposed into law by the member states (Europa). Decisions are addressed to member states of private citizens (Europa). Recommendations and opinions are not binding but can be addressed to any member state or to any individual within a member state (Europa). Any member state, institution of the EU, or individual citizen of a member state can bring a case before the Court of Justice based on a complaint in regards to either a treaty or a from of EU legislation.

The increasing case load for the EU Court of Justice led to the creation of the Court of First Instance in 1989 (curia). The Court of First Instance essentially acts in the same way and on the same types of cases as the Court of Justice. The Court of First Instance is made up of 25 judges with one judge coming from each member state (curia). There are no advocates-general for the Court of First Instance, but a President is elected to a three year renewable term (curia). Like the Court of Justice, the Court of First Instance rarely sits as a full court, but usually sits in chambers of three to five judges (curia). At times actions may be taken by a single judge sitting as a chamber (curia). The jurisdiction of the Court of First Instance was initially limited, but by 1995 the jurisdiction had been expanded to include all cases that the Court of Justice has jurisdiction over (Nugent 276). All rulings of the Court of First Instance can be appealed to the Court of Justice only on questions of law (curia).

The Court of Justice has one regular publication. Each year the Court publishes its Annual Report. The Annual Report typically includes a forward by the President of the Court of Justice, the proceedings of the Court for the year, statistical data on judicial activity of the Court of Justice, proceedings of the Court of First Instance, and statistical

data on the judicial activity of the Court of First Instance (curia). The Annual Report is made publicly accessible and a copy of the 2003 Annual Report can be found in Appendix A.

Court of Justice action and operation

Cases are brought before the Court of Justice in three ways. The first is a request for a preliminary ruling. Preliminary rulings are requested by national courts of member states when an individual argues before a national court that a national law conflicts with EU law (Dinan 305). The national court essentially asks the Court of Justice what a correct decision would be. The second way is known as a direct action and is when a case is brought directly to the Court. These actions may be brought by institutions, member states, or individuals. Direct actions are primarily brought in five ways. The first is when cases are brought by the Commission of the European Union against a member state not fulfilling a legal obligation (Dinan 306). The second way, known as a “proceeding for annulment”, is when cases are brought against an EU institution questioning the legality of a regulation (Dinan 306). The third way is when a case is brought against an EU institution for failure to act when it should have (Dinan 307). The fourth way is cases brought to prove liability of the EU for personal or institutional damages, and the fifth way is when EU civil servants bring cases in regards to unfair dismissal (Dinan 307).

The Court of Justice acts in a set and defined procedure whenever a case is brought before it. This procedure is explicitly laid out by Simon Hix in The Political System of the European Union as follows:

- “An advocate-general and a judge-*rapporteur* are appointed to gather the information relating to the case and to hold the necessary preparatory oral and written enquiries.
- A public hearing is then held at which the lawyers of the parties’ involved present their views orally, and at which the judges and advocates-general question the lawyers.
- The advocate-general appointed to the case submits a report to the judge-*rapporteur*, outlining how the case fits with existing EU law and suggesting a judgement.
- On the basis of the advocate-general’s report, the judge-*rapporteur* presents a draft decision to the Court.
- Each judge expresses an opinion on the decision, and the final decision is then taken by a simple majority vote.” (Hix 105)

Hix also points out that judges vote based on age, with the most junior judges voting first, and no dissenting opinions are registered (Hix 105). Due to the number of cases brought before the Court of Justice, which can be several hundreds per year (see appendix A), it often takes just under two years for a full ruling to be given on a case (Hix 306).

Court of Justice jurisdiction and supremacy

The responsibility of the Court of Justice, as has already been noted, is to insure equal application and interpretation of EU law in all member states. However, the jurisdiction of the EU penetrates much deeper into national law than this primary responsibility suggests. In The European Union James A. Caporaso argues that the Court of Justice has penetrated and influenced not only the national legal policy of its member states, but the social policy as well. The Court has made incredibly influential rulings in the social realms of social security, pregnancy of workers, and equal pay and equal treatment for workers (Caporaso 30). Caporaso argues that these rulings were an

immense stretch in jurisdiction of the Court of Justice, but that the Court escaped negative political reaction because it primarily acted through national courts rather than entirely on its own (Caporaso 38).

Without supremacy over national courts, the Court of Justice would be incredibly limited, and perhaps pointless. Interestingly, the point of supremacy was not addressed in the establishment of the Court of Justice. However, as Desmond Dinan point out in Ever Closer Union, the Court of Justice was quick to establish its superiority and did so in the case of *Costa v. ENEL (1964)* when “the Court pointed out that member states had definitively transferred sovereign rights to the Community and that Community law could not be overridden by domestic legal provisions without the legal basis of the Community itself being called into question.”(Dinan 304). The Court would later, in the case of *Simmenthal v. Commission (1978)*, expand on its supremacy by ruling that every national court must apply EU law in its entirety and can not have any national law that conflicts with EU law (Dinan 305).

This supremacy has contributed to most national courts of EU member states referencing decisions by the Court of Justice in their own decisions. While the number of references differs between member states, it has been on a continual increase in every state since 1975 (Hix 114). Although several member states claim that the power of Court of Justice over their national courts is conditional on correlation to the goals of their own national policies, the supremacy of the Court of Justice has not seriously been challenged or defied and is generally accepted as an “integral part of national legal systems”(Hix 118).

With the increasing jurisdiction of the Court of Justice, its established supremacy over the national court systems of its member states, and its lower Court of First Instance, it appears that the EU has its own supranational and incredibly powerful legal system. This legal system has at its head the Court of Justice, and in many ways treats national courts simply as courts of a lower level. This concept is encouraged by the increased citing of Court of Justice decisions in the decision making of national courts. This has led to the claim that what is truly being established by the increasing role of the Court of Justice is a complex system of federalism. This system is in some ways similar ways to the court system of the United States in which the Supreme Court is the highest power, hears appeals from state and lower federal courts, but does not rule on every state issue.

Court of Justice Power

International law is notoriously weak and vague. The weakness of international law stems primarily from lack of enforceability between nation states. Besides going to war, it is typically difficult for one nation to force another nation into action or restriction of action. However, the Commission of the European Union has considerable power in enforcing the decisions of the Court of Justice. While the European Union, including the Court of Justice, has no police force of its own to enforce decisions on individuals of member states, it does have the power to require member states to force individual citizens into compliance with EU law (Nugent 264). Thus, the Court of Justice does not need an EU police force since it, in a sense, has the police force of member nations to

help enforce its decisions upon individuals. Yet, enforcement of decisions upon nation states is where the true problem with international law lies.

Originally, the Court of Justice had little actual enforcement power upon nation states. Blatant non-compliance with the Court was not excessive; perhaps because non-compliance with EU law is usually a point of embarrassment among nation states (Hix 127). Still, several countries, primarily Italy, Greece, Spain, and Portugal, regularly violated EU laws on environmental policy, the single market, and agriculture (Dinan 310). To address this problem the Maastricht Treaty in 1992 gave the EU and the Court of Justice a considerable “hammer” in enforcing decisions. Under the Maastricht Treaty, the Commission of the EU can initiate action in the Court of Justice against any member state in noncompliance with an order of the Court of Justice (Nugent 265). The member state is given the opportunity to explain why it has not come into compliance with EU law and must set a definitive time table establishing when and how it will come into compliance (Nugent 265). If the member state does not comply then the Commission can bring the action back to the Court of Justice with a suggested penalty, and the Court of Justice may impose a penalty with unlimited jurisdiction (Nugent 265). The power to forcefully impose penalties upon member states not complying with EU law is a further step in separating the EU from other intergovernmental organizations.

The Court itself has aided the enforcement of EU law considerably. The Court’s 1991 decision in *Francovich and Bonifaci v. Italy* set down the precedent that under certain circumstances individuals could sue a government for not implementing or complying with EU regulations or directives (Dinan 310). Thus, the Court has set in motion a system in which citizens of member states will be those who will insure that

member states will come into compliance with EU law, and member states will insure that individual citizens are in compliance with EU law. Court of Justice decisions that have such vast consequences clearly display the amount of power that Court possesses, but they also serve to invoke criticism.

It is often argued that the Court of Justice has considerable power to create judicial law via judicial activism. The Court of Justice often has the task of interpreting the sometimes vague language of international treaties. In doing this the Court plays a significant role in forming EU law (Hix 118). The supremacy of EU law is one example of an EU principle that was created through the interpretation of international treaties by the Court of Justice. That the interpretation increased the power of the Court is not rare. In fact, many critics of the Court argue that the Court itself acts as a political actor. In his 1981 article “Lawyers, Judges, and the Making of a Transnational Constitution” Eric Stein, a pioneer of the criticism of the Court as a political author, states that:

“Tucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe.”

Stein goes on to criticize the activist nature of the Court that has allowed it to powerfully assert itself as a supreme court in Europe, higher than any of the national courts and able to remedy their problems (Stein 1). Criticisms of the Court of Justice exceeding its rather fragile beginnings in the Treaties of Rome are not rare; but it is important to note that the Court does not always act with disregard for public opinion.

Many theorists, including Simon Hix, argue that the Court has curbed its actions considerably in the face of public outcries of brazen judicial activism. In light of greater media attention in recent years, the Court has considerably cut back on references to its

supremacy over national courts both in its decisions and opinions (Hix 122). One clear example of this is the resistance of the Court to force its decisions and EU law in a horizontal (from citizen to citizen) rather than a strictly vertical manner (from member nation to citizen) (Hix120). It seems that the Court has chosen not to employ its decisions in a horizontal manner, even though it has been encouraged to do so by several national judges, academics, and advocates-general of the Court of Justice, because of the public disapproval that such an action may create.

Yet, even in light of growing public discontent over the amount of power the EU Court of Justice wields, national governments have been unwilling to actively restrict the Court. In 1997 British government, in light of several extensions of power by the Court of Justice, proposed several actions that would severely curtail the power of the Court. However, most countries believed that the Court served to great a purpose to be reduced and when the Amsterdam Treaty of 1997 was passed it contained no challenges to the power of the Court of Justice or its enforcement of EU law (Dinan 312).

Perhaps overt resistance to the EU Court of Justice is so minimal because the Court of Justice is never dominated by any one member state. Since each member country has exactly one representative among the judges of the Court of Justice, overt domination of the Court is impossible. Additionally, while the advocates-general *are* dominated by the five regular appointments from the largest member countries, they are to, and nearly always do, act with absolute impartiality. The fact that the actual voting, in regards to how each individual judge voted, of the Court of Justice is kept secret may also be a reason the Court generally acts with impartiality. Without a voting record, no individual judge can be subjected to individual criticism from his/her member state.

An additional factor contributes to the lack of resistance to Court of Justice rulings is that the rulings do not have any consistent bias towards one member state over another. There is little, if any, evidence of the Court of Justice continually ruling in favor of any one member state over another. Perhaps the only bias that has been shown by the Court is a regular tendency to rule in favor of the power and supremacy of the European Union and the Court of Justice itself. However, it is important to note that the Court of Justice has no apparent difficulty ruling against other institutions of the European Union (for example the European Parliament). It is simply that the Court will rarely restrict the overall power of the European Union as a whole. These actions do not, judging from the lack of resistance, upset member states as biased rulings towards one member state may. Perhaps this is because the member states feel that rulings in favor of the European Union will, for the most part, benefit all member states equally.

The Court of Justice from a Realist Perspective

The Court of Justice of the European Union appears to be an immediate and serious problem for the realist philosophy of international relations. The cooperation between member states and the general compliance with Court of Justice rulings seem to be in contrast to what the realist perspective claims is the natural attitude of nations towards international organizations. Realists generally hold that international organizations are, by their very nature, weak, and are usually manipulated by powerful member states for their own good (Pease 47). This assumption seems to be contradictory to the compliance that is found among member states in regards to Court of Justice

rulings. Great Britain, certainly one of the most economically and militarily powerful members of the European Union, should, under the realist concept of international organizations, dominate the policy of the European Union and the decisions of the Court of Justice. Yet, Great Britain has frequently been ruled against by the Court of Justice, and it is difficult to discover any bias towards Great Britain within the Annual Reports of the Court of Justice. Furthermore, Great Britain has generally accepted these rulings and complied with them. It then appears that the Court of Justice lacks the manipulation that is a core assumption of realist ideology in regards to international organizations. However, perhaps an explanation for compliance with Court of Justice rulings could be still be given from a realist perspective.

From the realist perspective, the fact that states have continually complied with Court of Justice rulings, and that many national courts have based rulings on law set down by the EU Court of Justice, must be categorized and explained as actions that were in the self interest of the nation state. While this may at first seem to be a difficult task, perhaps it could be claimed that member states can use Court of Justice rulings as tools to act in ways that may be harmful in the short run, but beneficial in the long term. Thus, the Court of Justice *is* manipulated so that governments of member states can implement long term beneficial policies that may be harmful to the government's image if implemented without the Court of Justice ruling. There may be some substance to this proposal as an analogous situation faces representatives within the United States.

Often times U.S. Congressional representatives must act contrary to the overall good of the nation so that individual sectors are satisfied in the short term. Thus, for example, a representative from a major coal mining region of the country (where coal is

the main source of jobs and income) must act for the short term welfare of the coal industry, even if it is in direct conflict with the good of the nation as a whole, or in conflict with what the representative realizes would be good for the coal region in the long term. If the representative does not act for the short term welfare of the coal industry then they will be incredibly vulnerable in upcoming elections. The Court of Justice may allow member governments to escape the punishment that U.S. representatives would incur if they pursued long term interests.

Perhaps, it could be argued that the member states of the European Union manipulate the rulings of the Court of Justice so that action benefiting the member state over the long term, but causing negative effects in the short term, can be conducted without the penalties that may normally be imposed on such action. In such a case the government of the EU member state could simply blame the negative short term effects on the rulings of the Court of Justice and escape penalization. Thus, the realist may be able to claim that it can be shown that the Court of Justice of the European Union is in fact simply another international organization that is manipulated by nation states acting solely in the self interest of the state. Thus, the realist may conclude, that the Court of Justice does not truly pose a challenge to the basic assumptions of national self interest that are at the core of the realist philosophy on international relations.

A Blow to the Realist Perspective

The realist perspective on the Court of Justice seems vulnerable to a number of criticisms. In fact, despite a serious attempt to justify the action of member states within

the realist framework, it seems that the Court of Justice is still an enormously significant problem for realism as an ideology. The first blow is that in ceding legal supremacy to the Court of Justice member states have actually surrendered a portion of their sovereignty to the European Union (Nugent 276). In The Political System of the European Union, Simon Hix notes that this surrender of sovereignty is anything but covert, and it was even publicly and forcefully brought up by the Court of Justice itself. Hix points to a 1964 preliminary ruling by the Court of Justice, in which an Italian law clearly contradicted an EU law, the Court of Justice argued that:

“By creating a Community of unlimited duration, having its own institutions, its own personality, (and) its own legal capacity... the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves. The integration into the laws of each member state of provision which derive from the Community...make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity.”(Hix 109)

Therefore, the members of the European Union, especially those who joined after the ruling was made, explicitly acknowledge a partial surrender of sovereignty to the European Union. This is not the extent of the damage dealt to the realist viewpoint by the Court of Justice of the European Union. The ability of the Court of Justice to overcome the security dilemma is perhaps an even greater blow.

The security dilemma is at the heart of realist theory. The security dilemma faced in international relations is very similar to a classic game theory case known as the Prisoner's Dilemma (Pease 51). The Prisoner's Dilemma is essentially a zero-sum situation in which one person, in this case usually a captured criminal, must choose one of two options. Since the captured criminal has an accomplice, who was also captured,

the two options have four results. The options are to confess to the crime or not confess. Each combination results in different prison terms. If both prisoners confess then both get reduced sentences of 8 years. If one confesses and the other does not, then the confessor gets off and the non confessing accomplice gets 20 years. If neither confesses then both get minor terms or 4 years (for clarification purposes a diagram of this situation is in Appendix B). The surprising conclusion that game theory has discovered is that the best option is to confess. This is essentially because, at all costs, one wants to avoid the 20 year prison situation in which one does not confess and the accomplice does. This is the worst possible outcome and must be avoided. The direct correlation that the Prisoners Dilemma has with the international situation is what is at the heart of the realist philosophy.

In international relations the prisoners from the Prisoner's Dilemma are replaced with nations. The choice of whether or not to confess is replaced by the adoption of an economic policy (or any other choice that a nation state faces). Assume that the economic policy is such that if both countries adopt the policy both will profit, if neither accept then nothing will happen, but if one accepts and the other does not then the accepting country will *lose* profit while the non-accepting country will profit immensely (this situation is also demonstrated in Appendix B). The prisoner's choice to confess is analogous to the nation state's decision to adopt the policy. The result of the situation is also the same. The most rational action for the state is to never adopt the policy. While this loses the opportunity for the ideal *overall* situation in which both accept the policy, it avoids the catastrophic *individual* situation in which one nation state chooses to accept, but the other does not. The situation is normally applied to military arms buildups, thus

the name “the security dilemma”, but, for realists, this unconquerable situation exists in nearly all aspects of international relations and is at the very core of the realist ideological framework. However, the Court of Justice seems to have the ability to overcome the security dilemma in an important way.

As discussed, the Court of Justice has the power to penalize countries and to force them into compliance with European Union regulations. Also, the embarrassment that often arises among states in non-compliance with Court of Justice decisions is an additional deterrent to non compliance with EU policy. The result of this power is that the Court of Justice has the ability to, in many areas, overcome the international security dilemma. If the security dilemma occurs between two member states of the European Union, then it is in the best interest of each to act for the optimal overall outcome. If an economic policy is agreed upon and one nation defects (leaving it with the enormous benefit and another country with the loss) then the complying country can take the defecting country before the Court of Justice. The Court of Justice has the power to force the defecting country into compliance and therefore to force the overall optimal situation to occur within the European Union. Essentially, the Court of Justice puts to rest the fear of being on the receiving end of the worst possible situation in the security dilemma, and instead creates a situation in which the optimal situation can be achieved. This certainly appears to be an incredible blow to the realist perspective.

Of course, realists could point to the fact that the European Union has no military force of its own, and does not rule in regards to the military forces of member states. Therefore, the realist may conclude, the Court of Justice can not overcome the security dilemma in regards to the military of nations, and that *this* is the most important part of

the unconquerable security dilemma. This very well may be true, but since the Court of Justice has overcome the security dilemma so many times in the economic realm, it has created the highest level of economic interdependence among the nations of the European continent that has ever existed. The increased level of economic interdependence may lead to an indirect control over the military as well; as it is generally held that nations incredible economically dependant on each other will not be hostile to one another. It is also important to note that the European Union has the ability to create binding treaties between its member states and outside nations, and that the Court of Justice has the power to enforce these treaties.

Despite the lack of a European Union military force, or the direct intervention of the EU in military matters, it seems clear that the Court of Justice can, in some spheres of activity, overcome the international security dilemma. This is, without a doubt, a powerful blow to the realist philosophy. The power of the Court to enforce penalties on member states clearly sets the European Union apart from the characteristically weak international organizations of the realist philosophy. The Court of Justice is not dominated or manipulated by any powerful hegemonic power, it is an organization that acts wholly on its own, and acts only for the good of the European Union as a whole. The very acceptance of a powerful international court, one that has jurisdiction and authority over national courts, by the members of the European Union represents a blow to the very base of realism, and may lend support to the competing theory of idealism.

An Idealist Perspective on the Court of Justice

At the core of idealism is the belief that cooperation between nations is possible, and probable, if obstructions to cooperation are removed. Thus, for the idealist, the European Union Court of Justice represents a vindication of this core belief in the possibility of cooperation between nations. The ability of the Court of Justice to overcome the security dilemma grants validity to the idealist belief that the optimal situation between nations is achievable, and that nations are not condemned to playing out the Prisoner's Dilemma.

The establishment of the supremacy of the Court of Justice over national courts is another vindication of the cooperation that idealism holds possible for nations. While it was the Court of Justice itself that actually established the supremacy, idealists can point to the fact that the member nations did not openly disagree with the establishment of supremacy, and that most of the current member states joined after supremacy was established. The increasing tendency for national courts to refer to the Court of Justice, or to ask for advice from the Court of Justice, is another indication that member states are willing to accept the Court of Justice as being supreme. Indeed, the surrendering of sovereignty that accompanied this grant of supremacy is another factor that adds credibility to the idealist perspective. Nothing seems to represent the willingness of nations to work together for the good of the whole more than the willing surrender of a portion of national sovereignty to an international organization that will regulate the whole of the members. The support that the Court of Justice rulings receive from national governments or courts, even when the rulings are contrary to the wishes of the nations population, add even further legitimacy to the claim that the Court of Justice has created a true situation of idealistic cooperation between nations. Furthermore, the ability

of the European Union to forge treaties that are binding on all member nations lends additional legitimacy to the claim that the European Union is wholly different than international organizations that preceded it. The ability of the Court of Justice to decide on the validity of those treaties and to enforce them upon nations lends further credence to it being deemed the supreme court on the European continent. However, the idealist perspective is not invulnerable to attack.

The idealist perspective must account for the violations, even though they are relatively small in number, that occur among some member states. The violation of environmental laws by several member nations must be addressed. It may be argued that the member states that most often violate environmental laws are the poorest member nations of the European Union, and that their economies can not afford to come into environmental compliance in the same way the richer nations may. If this is the case then the recent addition of many Eastern European nations, many of whom will become the poorest members of the European Union, will further increase the amount of nations that are in violation of environmental laws. Perhaps the idealist could counter that as the economies of these poor nations grow, as a result of joining the European Union, the countries will become better able to install the best available pollution control technology in the same way that many of the richer nations have already done.

Yet, environmental law is the worst area of violation, not the only area. Many lawsuits are brought before the Court of Justice every year because member states have allowed the violation of EU law. This continued violation seems to be contrary to the idealist assumption that nations will willingly work together. However, the idealist possibly could point to the very fact that the nations *are* brought before the Court of

Justice, and when found guilty of violating EU law the nations are forced into compliance. While this compliance may no longer be entirely *voluntary*, the member nation almost always enters into compliance, and enforces the compliance within its boundaries via national courts and police forces.

While the idealist perspective on the Court of Justice may have some flaws or questions that need answered, it seems that as a whole the Court of Justice lends support to the idealist perspective on international relations. The cooperation that takes place among the member nations of the European Union is the type of cooperation that lies at the heart of idealist philosophy. Despite occasional violations, nations willingly accept the rulings of the Court of Justice, and in doing so surrender sovereignty to the European Union. The surrender of sovereignty to an international organization is undoubtedly a major step forward for the idealist view of international relations.

A Marxist Look at the Court of Justice

While realism and idealism are the two major approaches to international relations, they are not the only two. Marxism would take a wholly different view of the Court of Justice than either of the two preceding views. Marxism generally holds that the international situation is dominated by a split in power. Powerful nations dominate and manipulate less powerful nations for the sole purpose of capital growth. Marxist would

view the Court of Justice as another tool created by the dominating class of capitalism and used to subjugate less powerful countries for the benefit of the class of powerful nations. Marxist may point to the fact that the European Union has many benefits for those who control corporations, especially powerful corporations based in richer member states. With the lowering of all trade barriers, which is essentially the heart of the European Union, these powerful corporations may force some of the smaller, more local corporations and businesses out of existence. The benefits that these same corporations and wealthy members of society will gain from the implementation of the single European currency will only add fuel to the Marxist fire. Marxist may claim that the introduction of the Euro will serve to further solidify capitalism and the abuses upon the impoverished classes that come with it. Thus, the Marxist may claim that at the heart of the European Union is the abuse of poorer members of society by the richer members.

The decision by the Court of Justice to allow any member of society to bring suit against their government for violation of EU law may also be challenged by Marxist theorist. Marxist could point to the incredible amount of money it requires to bring a case before the Court of Justice, and the inability of any but the very rich to actually get a case to trial. Thus, the decision may seem to be a façade thrown up by the rich dominating class of the European Union. The hypothetical ability to bring a case before the European Union may serve to pacify the masses of poor people in the poorer nations who could never truly afford to bring such a case. Thus, for the Marxist, the European Union and the Court of Justice represent the continuation of the chain of domination that has been occurring for centuries.

The Marxist critique of the European Union and the Court of Justice is insightful and reveals many of the problems that face the EU. However, there is evidence that some of these critiques may not go as deep as Marxist would like. The public fund for financing cases brought before the Court of Justice has been a concern of many, especially the newer, member states. This fund has been increased recently, and many proposals have been put forth for ways to further increase this fund. Additionally, while the idea that some businesses may be run out by larger international corporations may be true, the benefit to the entire economy, both rich and poor, of the poorer nations will benefit by opening its borders to free trade.

However, none of these claims or proposals will likely affect the Marxist theorist. The benefits associated with free trade rely on the acceptance of principles very similar to Adam Smith's concept of the world market, and thus rely on principles of capitalism. Thus the Marxist seems unlikely to accept at face value the claim that opening of the borders of a country to free trade will in any way benefit the poorer member states of the European Union or the populations of those states. In fact, Marxist would likely claim that this very notion is another façade put forth by the wealthy classes and rich member states so as to pacify the masses while they further subjugate the poorer nations. The propositions to increase the public fund for bringing cases before the EU would also not be insulated from Marxist attacks. Many Marxists may claim that these propositions are also just facades put up by the wealthy people who stand to benefit by the implementation of EU policy.

A Feminist Take on the Court of Justice

Feminism, like Marxism, differs from the mainstream perspectives of realism and idealism. Critiques of the Court of Justice can arise from the feminist point of view which are wholly different than any of the critiques previously seen. While the Marxist critiques focus primarily on the power relations between the wealthy and the poor, feminist critiques are based on an analysis of the Court of Justice via the lens of gender.

Some feminist may, in part, have a level of satisfaction with the Court of Justice. A number of female judges are members of the court, and a high proportion of female advocates-general have served with the Court of Justice (curia). Additionally, the Court of Justice has made numerous rulings in regards to equal pay and equal opportunity for women. The Court of Justice has continually expanded Article 119 of the Rome Treaty to cover across the board equality for women, from equal retirement pay to pregnancy leave, among member states of the European Union (Caporaso 52). These rulings have been some of the most highly publicized ruling of the Court of Justice, since they truly stretch the power of the court into social areas. However, the Court of Justice has appeared to ignore these charges and to defend its ability to regulate equal treatment of women. While some feminist may commend the Court of Justice on these efforts, it seems unlikely the feminist movement would be wholly satisfied with the situation of the European Union.

The European Union, and the Court of Justice, are still subject to the feminist critique that international relations is essentially male dominated. Even if women are granted governing roles in the EU, they must still work within the male mentality that dominates and governs the operation of government, international organizations, and

international relations. Also, the resistance of many member nations' populations to being controlled by an international organization may be seen as a male thought process that the EU has failed to overcome. Furthermore, the belief by the European Union and the Court of Justice that men and women will respond similarly to rules and laws that effect economic and social factors may be seen as a further example of the domination of the EU by the male mentality.

Additionally, the very fact that the Court of Justice has had to act to increase the rights of women in member states shows how very far those states are from achieving true equality. The press that these decisions receive may also serve to show how far away many of the member states in the European Union are from accepting truly equal rights for women. Perhaps even these very attempts by the European Union may be characterized by some feminist as a display of the total misunderstanding of the gender problem. The fact that the Court of Justice apparently believes it can affect the true underlying causes of gender inequalities with such minor decisions may make it a target of critical feminist approach.

Conclusion

The Court of Justice of the European Union seems to be wholly different than many other international organizations. The Court of Justice has the power to influence national courts and national culture, and to penalize national governments if they are not inline with the regulations of the European Union. The power and the jurisdiction of the

Court of Justice has greatly expanded since it was founded in 1957. Perhaps, the composers of the Treaty of Paris, establishing the European Coal and Steel Community, would be amazed by the powerful force that the European Union has developed into over the past five decades. The partial surrender of national sovereignty to the European Union was also perhaps unseen by the drafters of the Treaty of Paris. However, the general acceptance of the continual increases in power by the Court of Justice are a sign of the acknowledgement by member states that future prosperity for the European continent lies within the European Union.

The ability of the Court of Justice to overcome, in at least some ways, the international security dilemma makes it difficult to fit within the realist theoretical framework. The ceding of sovereignty poses an equally large problem, as does the willingness of the national court systems to accept the Court of Justice as a superior court. A much easier fit is made within the idealist framework. The ability of an international organization to organize and regulate member nations is a signal that the idealist concept of the international system may have firm ground to stand upon. While the critiques of Marxism and Feminism reveal significant shortcomings within the Court of Justice, they do not seem undermine the nature of international cooperation that sustains the Court of Justice. The addition of ten new member nations will expand the problems that the Court of Justice must deal with, but perhaps it will also expand the power of the European Union so that the Court of Justice can deal with those problems. Overall, the Court of Justice of the European Union seems to have the opportunity to guide the European continent into an era of great prosperity. Perhaps even more importantly, the Court of Justice, and the goals of the European Union as a whole, may

increase economic interdependence so that the European Continent will be able to enter an era of stability and peace that has never before been achieved.

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The Prisoner's Dilemma

Prisoner A

Prisoner B

		Confess	Don't Confess
Prisoner B	Confess	A = 8 years B = 8 years	A = 20 years B = 0 years
	Don't Confess	A = 0 years B = 20 years	A = 4 years B = 4 years

The International Security Dilemma

Country A

Country B

		Comply	Don't Comply
Country B	Comply	A = 8 million profit B = 8 million profit	A = 20 million profit B = 0 profit
	Don't Comply	A = 0 profit B = 20 million profit	A = 4 million profit B = 4 million profit