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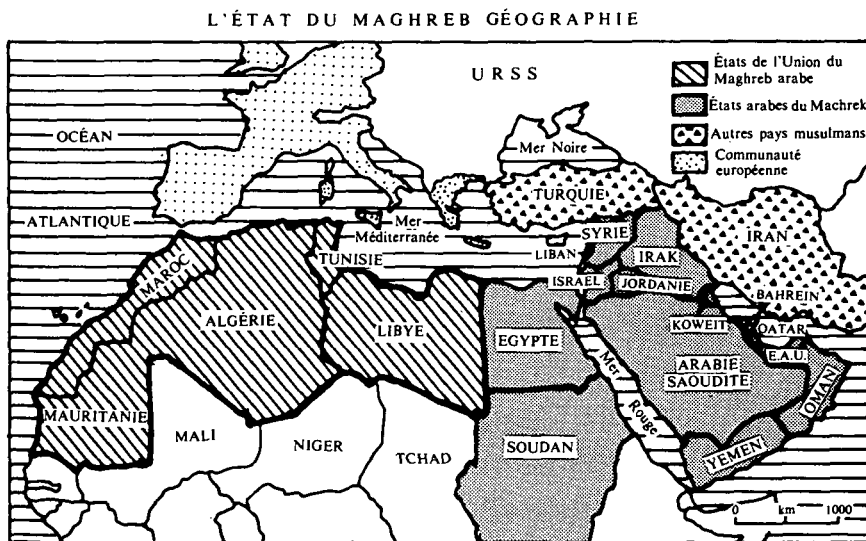
Robert W. McKeon, Jr.*

I. Introduction

On February 17, 1989, Algeria, Libya, Mauritania, Morocco, and Tunisia signed the Treaty to Constitute the Union of the Arab Maghreb (Treaty) in Marrakesh, Morocco.¹ The Arab Maghreb Union (Union) now comprises sixty-two million people within a re-

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1. The Treaty Creating the Union of the Arab Maghreb was supplied by the United States Department of State and translated from the original in Arabic [hereinafter AMU Treaty]. French translations of the Treaty may be found at 124 *MAGHREB MACHREK: LE MONDE ARABE* 127-30 (J. Jangor director, April-June 1989) [hereinafter Jangor]. 94 *Revue générale de droit international public* 552-56 (1990) [hereinafter RGDIP]. In interpreting the articles of the Treaty, the author found it necessary to refer to both the English and French versions. See also *infra* note 115 footnote and accompanying text. For a map of the area, see *L'ÉTAT DU MAGHREB* 21 (C. Lacoste & Y. Lacoste eds. 1991):



gion rich in oil, natural gas, fish, and minerals.² The purpose for its creation was to promote political and economic integration,³ as well as to afford the Member States more leverage with the European Economic Community (EEC) in the advent of 1992. Therefore, determined to accelerate their economic integration, the Member States announced plans for a customs union by 1995.⁴

Successful regional integration, as anticipated by the Arab Maghreb Union, requires that the member states' interests converge on cultural, political, and economic levels.⁵ With the goal of determining whether the Arab Maghreb Union is viable, Part II of this Article will begin by examining the individual interests of each Member State, the construction of the Treaty, and regional cooperation presently achieved. Part III will analyze the Arab Maghreb Union's duties under the General Agreement on Tariffs and Trade (GATT), as well as the implications of European Economic Community (EEC) agreements and United States legislation.

II. The Arab Maghreb Union

A. Common Cultural Background

The Maghreb comprises five countries: Algeria, Libya, Morocco, Mauritania, and Tunisia.⁶ The Maghreb region has been inhabited by human beings since prior to the fifteenth millennium B.C.⁷ The two known prehistoric cultures which inhabited North Africa⁸ are the Oranian and the Capsian.⁹ Meanwhile, Mauritania was occupied by the nomadic Branès who were of the same race as the Oranians and the Capsians.¹⁰ Furthermore, the territory of Maurita-

2. *North African States For Joint Parliament*, The Reuter Library Report (June 10, 1989) (LEXIS, Nexis library, Omni file).

3. Murphy, *Briefing Paper; North Africa Moves toward Joint Market*, L.A. Times, July 17, 1990, H4, col. 1. In addition, King Hassan II of Morocco stated that: "Our aim is to turn the Arab Maghreb into one country, with one passport, one identity and a single currency." *Id.*

4. *World in Brief; North Africa; 5 Maghreb Nations vow to speed Ties*, L.A. Times, July 24, 1990, A, col. 1.

5. The political level includes aspects of ideology and strategy. The economic level also includes financial concerns. Belaid, *Les perspectives de construction d'un grand Maghreb uni*, 27 *Revue algérienne des sciences juridiques, économiques et politiques* 493, 495-96 (1989).

6. See LE GRAND MAGHREB (A. Claisse & G. Conac eds. 1988). The name Maghreb, given to this conglomeration of countries, is Arabic for the land of the sunset. J. ABUN-NASR, *A HISTORY OF THE MAGHRIB I* (1971).

7. J. ABUN-NASR, *supra* note 6, at 7.

8. North Africa refers to Libya, Algeria, Tunisia, and Morocco.

9. J. ABUN-NASR, *supra* note 6, at 7. These were Stone Age cultures.

The Oranian culture flourished in the coastal hinterland of the Mediterranean Sea and spread as far east as Egypt. The Capsian culture mostly centralized itself in the Algerian parts of the Atlas mountains and their Tunisian slopes. The Capsian culture later spread north to the coast where it influenced the Oranian culture. *Id.*

10. C. BELVAUDE, *LA MAURITANIA* 14 (1989).

nia was shared between the Branès and the black Africans.¹¹

With the advent of trade in the Mediterranean area, the Phoenicians were the first to come into contact with the Oranians and the Capsians around 1000 B.C.¹² The Phoenicians colonized much of the northern coast of present day Tunisia and founded Carthage in 814 B.C.¹³ Although Phoenicia soon thereafter was overrun by the Assyrians, Carthage continued to grow. By the sixth century B.C., its territory included several coastal cities from Morocco to Libya.¹⁴

Carthaginian domination of the Maghreb ended in 146 B.C. when Rome destroyed Carthage and assumed its empire.¹⁵ During the Roman occupation, the territory of the Maghreb was divided for administrative purposes into provinces.¹⁶ From these provinces evolved the present boundaries of the Maghrebine countries.¹⁷

The European domination of North Africa through the Roman Empire, and later by the Byzantine Empire, ended at approximately 670 A.D. in light of the victorious Arabs.¹⁸ The Arabs acquired complete control of the region and successfully established the Islamic religion.¹⁹ In addition, the Arabic language completely replaced Latin, although many of the people continued to speak local Berber dialects.²⁰ This Arab conquest was to alienate the Maghrebine coun-

11. *Id.*

12. L. HAHN, *NORTH AFRICA: NATIONALISM TO NATIONHOOD* 2 (1960).

13. *Id.* The Phoenicians needed purple molluscs, which were found in the area, for their dye industry. The Phoenicians also founded Utica and Tunis.

14. J. ABUN-NASR, *supra* note 6, at 15. It was from this occupation that the word "Libyan" was derived — a Greek name referring to non-Phoenicians living within the Carthaginian state. In addition, the Greeks called the indigenous population of the region which did not live within the Carthaginian State "Numidians," a word which means the nomads. *Id.* at 7.

15. J. NICKERSON, *A SHORT HISTORY OF NORTH AFRICA* 5 (1961). Roman-Byzantine control lasted until the middle of the seventh century. *Id.* During this occupation, the indigenous people were called "Berbers," a derivation of the Latin *barbari* (barbarians). J. ABUN-NASR, *supra* note 6, at 7. This name has continued and today the people of the Maghreb, there included Mauritania (excepting the black population), are known as the Berbers. *Id.*; C. BELVAUDE, *supra* note 10, at 14.

16. C. BELVAUDE, *supra* note 10, at 31-33.

17. J. ABUN-NASR, *supra* note 6, at 31-33. Mauritania Tingitana was the name given to the territory from which Morocco is presently comprised. *Id.* at 33. Algeria was comprised of Caesarian Mauritania, Sitifian Mauritania, and Numidia. *Id.* at 32. Proconsular Africa and Byzacenia were the predecessors of Tunisia. Tripolitania stretched across the present day Libyan coastline.

18. J. NICKERSON, *supra* note 15, at 58-59. Arab generally refers to the people originating from the Arabian Peninsula. I *THE NEW ENCYCLOPEDIA BRITANNICA* 1043 (1977). This definition is, however, too traditional. An Arab is anyone from an Arab country who speaks Arabic, whether Christian or Moslem, Moroccan or Saudi Arabian. al-Husri, *Qu'est-ce que l'arabisme?*, *L'ÉTAT DU MAGHREB* 375 (C. Lacoste & Y. Lacoste eds. 1991).

19. J. NICKERSON, *supra* note 15, at 61. This included even Mauritania which was never under Roman or Byzantine domination. C. BELVAUDE, *supra* note 10, at 13-14.

20. J. NICKERSON, *supra* note 15, at 65. See *supra* note 15 text, defining Berber. Berber dialects continue to be spoken in remote areas of the Maghreb, but have been losing ground to Arabic as the countries become more urbanized and the level of education increases. Lacoste, *Géographie Le Grand Maghreb, un vaste ensemble géopolitique*, *L'ÉTAT DU MAGHREB* 19, 20 (1991).

tries from Western influence for more than one thousand years.²¹

In 1337 the Muslim Turks attacked Constantinople, thereby crossing into Europe.²² Determined to repel Islam, the Pope called for a crusade.²³ The Christian nations responded by attacking several Maghrebine ports on the Mediterranean Sea.²⁴ With the threat of constant Christian incursions into North Africa, the Maghreb sought the protection of the powerful Ottoman Empire during the sixteenth century.²⁵ Under Ottoman control, three kingdoms were established in the countries of Libya, Tunisia, and Algeria. Meanwhile, Morocco became an independent kingdom,²⁶ and Mauritania remained isolated as an independent, Moorish kingdom.²⁷

By the nineteenth century, the prospects of rich commerce drew France to the Maghreb.²⁸ In 1830 France began incursions into Algeria²⁹ and, by 1848, declared Algeria to be a French territory.³⁰ Next, Tunisia fell to the French conquerors upon their invasion in 1881.³¹ Two years later, in 1883, Tunisia was made a French protectorate, and its colonization followed.³² Then French incursions into Mauritania began in 1855, but the interior of the country was not penetrated until 1902.³³ By 1912, Mauritania became part of French West Africa and became a colony in 1920.³⁴ Finally, Morocco thereafter fell to the French in 1912, and it was immediately transformed

21. *Id.* at 62.

22. A. LAROUÏ, *THE HISTORY OF THE MAGHRIB*, 232 (1977) [Trans. R. Manheim].

23. *Id.*

24. *Id.* at 233. The result of these attacks was the establishment of Christian hegemony over the Mediterranean, thereby resulting in Christian monopolization of trade and commerce. *Id.* at 234.

During the Middle Ages, the countries of North Africa became known as the Barbary States. Barbary is a word derived from Latin meaning barbarian. J. NICKERSON, *supra* note 15, at 4. This, of course, excludes Mauritania since it does not border on the Mediterranean Sea. The Barbary States were comprised of warring kingdoms. *Id.* at 69.

The Barbary States were never again to enjoy the prosperity and security which they had enjoyed under Rome. *Id.* The Barbary States, unable to further defend their own commerce on the Mediterranean and thereby growing poor, resorted to piracy. A. LAROUÏ, *supra* note 22, at 234.

25. J. NICKERSON, *supra* note 15, at 73.

26. *Id.* Nevertheless, the established kingdoms in Libya, Tunisia, and Algeria were given much autonomy. It was under this Ottoman protection that the three eastern Maghrebine Kingdoms continued their profitable practice of piracy. *Id.* at 76. The history of Morocco has continuously been marked by a desire to be independent. Rousset, *Le système politique du Maroc*, in *LE GRAND MAGHREB* 52, 53 (A. Claisse & G. Conac, eds. 1988).

27. C. BELVAUDE, *supra* note 10, at 17. "Moors" refers to the mixture of the Arabs and the Berbers. *Id.*

28. In addition, Europe had become tired of the Barbary piracy. J. NICKERSON, *supra* note 15, at 97.

29. J. ABUN-NASR, *supra* note 6, at 238.

30. *Id.* at 250.

31. *Id.* at 278-79.

32. *Id.* at 279, 281-82.

33. C. BELVAUDE, *supra* note 10, at 21.

34. *Id.* at 22.

into a French protectorate.³⁵

After the French incursions into North Africa began, Libya experienced a separate evolution apart from the rest of the Maghrebine countries. Fearful of Christian intervention in North Africa, the Ottoman Empire used Libya as a buffer to protect the Empire's standing in the Middle East.³⁶ Thus, in 1835 the Ottomans set out ruthlessly to assert absolute control and direct authority over Libya.³⁷ This intense authority kept Libya isolated from Europe until 1911 when Italy, who desired to create its own empire, invaded Libya.³⁸ In 1912 the Italians and the Ottomans formally signed a treaty of peace, whereby Italy gained sovereignty over Libya.³⁹

The Maghrebine Countries continued to be subjected to foreign domination until the end of World War II. Libya was the first of the countries to gain its independence on December 24, 1951, pursuant to a United Nations resolution.⁴⁰ Morocco followed when on March 2, 1956, France recognized Moroccan independence after years of terrorist attacks on the French.⁴¹ Similarly, France submitted to terrorist pressures in Tunisia and declared Tunisian independence on March 20, 1956.⁴² Mauritania peacefully gained its independence on November 28, 1960.⁴³ France's final Maghrebine possession, Algeria, gained its independence on July 5, 1962, after a long and costly conflict.⁴⁴

The Maghrebine States had never known complete independence until the retreat of the European powers following World War II. Since the earliest days of Phoenician intervention in 1000 B.C. to

35. J. ABUN-NASR, *supra* note 6, at 303.

36. *Id.* at 303. The Ottomans did not want the French to expand any farther east. *Id.* at 304.

37. Martel, *Souveraineté et autorité ottomane: La province de Tripoli au couchant*, in ETATS, TERRITOIRES ET TERROIRS AU MAGHREB 75-76 (P. Baudel ed. 1985).

38. *Id.* at 85.

39. *Accordo preliminare di pace tra l'Italia e la Turchia seguito da un firmano imperiale, da un decreto reale e da un jadrè imperiale* [Preliminary Treaty of Peace between Italy and Turkey Resulting from an Imperial Firman, a Royal Decree and an Imperial Iadre], Oct. 15, 1912, Italy-Turkey, 22 *Trattati e Convenzioni* 226 (Jan. 1, 1912-Dec. 31, 1913), 217 C.T.S. 137.

40. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: LIBYA I (1989) [hereinafter BACKGROUND NOTES: LIBYA]. Due to the defeat of Italy in World War II, Libya was the first African state to gain independence from a European ruler. In addition, it was the only state to have ever been created by the United Nations General Assembly. J. DAVIS, LIBYAN POLITICS: TRIBE AND REVOLUTION I (1987).

41. J. ABUN-NASR, *supra* note 6, at 377.

42. *Id.* at 353.

43. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: MAURITANIA I (1987) [hereinafter BACKGROUND NOTES: MAURITANIA]. Mauritania always resisted French domination, but Mauritania's transition from a colony to an independent State from 1958 to 1960 was accomplished with French approval and assistance. *Id.* at 4; C. BELVAUDE, *supra* note 10, at 22.

44. J. ABUN-NASR, *supra* note 6, at 340; BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: ALGERIA I (1988) [hereinafter BACKGROUND NOTES: ALGERIA].

the Roman and then Arab and Ottoman rule, the North African countries have shared a common foreign domination.⁴⁵ This domination only diverged in the nineteenth and twentieth centuries when France gained control of the western Maghrebine Countries and when Italy conquered Libya. Mauritania, lying farther south, has shared Arab and French domination.

The Maghreb's common religion and history, coupled with a common people, established significant and fraternal links which foster a common cultural identity. None of these states would ever allow itself to be cut-off from its historical and cultural identity, and this identity serves to unify the Maghreb.⁴⁶ This common identity provides the impetus toward any tangible, political and economic unity, and it is the only driving force to bring the Maghrebine Countries toward resolving their differing political and economic policies.⁴⁷

B. Political and Governmental Structures of the Maghreb

From the independence of the Maghrebine Countries, during the latter half of this century, each state has developed different political and ideological platforms. These differing platforms often have seriously affected their intra-regional relations and have blocked any cooperation between the states, especially in the area of economic cooperation.⁴⁸ In addition, Mauritania, Morocco, and Tunisia are politically aligned with the West. Algeria and Libya remain staunchly anti-colonialist and anti-imperialist, while preferring closer relations with the Union of Soviet Socialist Republics (U.S.S.R.), rather than with the West.⁴⁹ As best stated by King Hassan II of Morocco: "Disparity . . . is extremely detrimental to regional blocs."⁵⁰

45. The one exception to this is the autonomy which Morocco enjoyed from the sixteenth century until the French conquest in 1912.

46. El Malki, *Le Maghreb économique: est-il encore possible?*, 200 LAMALIF 52, 56 (1988).

47. Belaid, *supra* note 5, at 497.

48. *Id.* at 496.

49. Brunot, *Le Maghreb et la communauté européenne*, L'AFRIQUE ET L'ASIE MODERNES 52, 60 (Fall 1989). Morocco even offered to allow a United States (U.S.) military air base on its territory. Ghiles, *Algeria Forges a Fragile Maghreb Union*, Financial Times, Feb. 16, 1988, at 3. Algeria generally prefers isolation but must maintain relations with the Union of Soviet Socialist Republics (U.S.S.R.), who has supplied Algeria with armaments since Algeria's independence. The U.S.S.R. is also Libya's main arms supplier. *Id.*; Bamford, Proprietary to the United Press International (Oct. 6, 1988) (LEXIS, Nexis library, Omni file) (a.m. cycle); Dick, *Algeria Ponders Libyan Union after Qaddafi-Hassan Break*, Reuters North European Service (Sept. 14, 1986) (LEXIS, Nexis library, Omni file).

50. King Hasan of Morocco addresses news conference at the end of the Maghreb summit in Marrakesh, British Broadcasting Corporation (Feb. 21, 1989).

1. *Algeria*.—Following independence on July 5, 1962,⁵¹ Algeria has been dominated by one exclusive political party, the National Liberation Front (FLN).⁵² The FLN solely controlled a highly centralized, socialist government⁵³ until the Constitution was revised on February 28, 1989,⁵⁴ due to mounting internal pressure for political reform.⁵⁵ This revised Constitution no longer refers to the political monopoly of the FLN and permits multipartism, though ambiguously and with potentially significant restraints.⁵⁶ The Constitution

51. BACKGROUND NOTES: ALGERIA, *supra* note 44, at 1.

52. Leca, *Le système politique algérien (1965-1981)*, in LE GRAND MAGHREB 6-7 (A. Claisse & G. Conac eds. 1988). The FLN adopted the National Charter in 1976 which embodies the Party's principles. These principles are largely laid out in the subsequently adopted Constitution of November 19, 1976. Membership to the Party is done through a rigorous selection process which the Party implements. Therefore, Party membership is exclusive. The National Charter with specific membership requirements has been reproduced in M. CAMAU, POUVOIR ET INSTITUTIONS AU MAGHREB 249-50 (1978). In sum, a candidate must demonstrate his adherence to socialism. *Id.* at 145. Interestingly, the Constitution of November 19, 1976, was to be interpreted in accordance with the National Charter. In addition, the National Charter was the fundamental source of the policy of the nation and the laws of the state. ALGERIAN CONST. of November 19, 1976, art. 6, reprinted in Cubertafond, *La constitution algérienne du 28 février 1989*, REVUE JURIDIQUE ET POLITIQUE. INDÉPENDANCE ET COOPÉRATION 39, 43, n.12 (1990).

53. Moatassime, *Dimension culturelle et géopolitique de l'intégration maghrébine*, in LE GRAND MAGHREB 237, 238 (A. Claisse & G. Conac eds. 1988). Article 10 of the Constitution of November 19, 1976 declared socialism as the only means of achieving national independence. Article 10 is reprinted in Cubertafond, *supra* note 52, at 43, n.12.

The former political platform of the FLN is summarized:

1. (a) The FLN nominates the presidential candidates and the people thereafter elect the President by direct universal suffrage.

(b) The FLN nominates the candidates for the Popular National Assembly which the people thereafter elect by direct universal suffrage.

2. The State's power is unified and there must be political unity between all branches and institutions of the State — that is the Assembly, government, President and Judges.

3. Organizations formed by the people must follow the political platform of the FLN.

Leca, *supra* note 52, at 6-7.

54. The revision of the Constitution was approved overwhelmingly by national referendum on February 23, 1989. Cubertafond, *supra* note 52, at 39, note 1.

This Constitution is the third since Algeria gained its independence. The first Constitution was adopted on September 10, 1963, and was repealed in 1965 after a *coup d'état* resulting in strongman Colonel Boumediene taking power. The second Constitution was adopted on November 19, 1976, and it provided the framework for the present Constitution. Bendouron, *La nouvelle constitution algérienne du 28 février 1989*, REVUE DE DROIT PUBLIC ET DE LA SCIENCE POLITIQUE EN FRANCE ET À L'ÉTRANGER 1305, 1305-06, n.2 (1989).

55. Garçon, *La vie politique algérienne: bouleversements après 25 ans d'immobilisme*, L'ÉTAT DU MAGHREB 383, 386 (1991).

56. Cubertafond, *supra* note 52, at 43.

The Constitution recognizes the "right to establish associations of a political character." ALGERIAN CONST. art. 40, 1 CONSTITUTIONS OF THE WORLD 43 (A. Blaustein & G. Flanz eds. 1990). Therefore, the Constitution does not expressly guarantee the right to form political parties. Cubertafond, *supra* note 52, at 43, note 45. This interpretation becomes more apparent based on former Algerian president Chadli Bendjedid's speech at the FLN Congress: "A party which is not founded on solid bases cannot qualify as a political party, but is more an association or group while it is not present in all the areas of the whole of the wilayas (districts) of the country." Moreover, Bendjedid stated that the phrase "associations of a political character" was used in order to permit political groups to join the FLN in the future without in the meantime outlawing the formation of political parties outside the FLN. Bendourou,

makes no reference to socialism, which prevailed as the only form of government in the prior two constitutions.⁵⁷ Nevertheless, the Constitution creates a democratic republic in which the executive exercises considerable influence over the legislature and judiciary,⁵⁸ and possesses discretion to take any measures during a "compelling necessity."⁵⁹ The Constitution, adopted only eleven days after the signing of the Arab Maghreb Union Treaty, declares Algeria to be an "integral part of the Great Maghreb country."⁶⁰

However, these so-called reforms in the Constitution have come too late. On June 12, 1990, the majority of Algerians voted in municipal elections for the fundamentalist Islamic Salvation Front (FIS), a radical political party which represents the people's frustration with the FLN.⁶¹ Furthermore, on December 26, 1991, the FIS unexpectedly won 188 of 231 seats available during the first round of parliamentary elections. The second and final round of parliamentary elections, with an additional 200 seats at stake, were scheduled for January 16, 1992.⁶² This round would have undoubtedly given the FIS the political clout needed to change the Constitution.⁶³

supra note 54, at 1315, n.22.

Further ambiguous restraints on political associations are that they "may not be invoked against fundamental liberties, national unity, territorial integrity, the independence of the country and the sovereignty of the people." ALGERIAN CONST. art. 40. These political associations may fall under the purview of Article 8 (institutions established by the people must, *inter alia*, safeguard the national independence, identity, and unity) since the phrase "institutions established by the people" is so general in meaning. In addition, the institutions may not, *inter alia*, engage in "practices contrary to Islamic morals and the values of November." ALGERIAN CONST. art. 9. See generally Cubertafond, *supra* note 52, at 45-49 discussing these potential pitfalls and those posed by three laws concerning political parties passed pursuant to Article 40.

57. See Cubertafond, *supra* note 52, at 43, n.12 for the articles of the previous constitutions requiring socialism.

58. See generally Cubertafond, *supra* note 52, at 50-58 for a critique of the executive's powers within the Constitution.

59. *Id.* at 54; CONST. art. 86. The President may also take exceptional measures with the consent of the High Council of Security and the Council of Ministers when the country's institutions are threatened by imminent danger. *Id.* art. 87. In addition, the President unilaterally declares war, in which case the Constitution is suspended. *Id.* arts. 89-90.

60. ALGERIAN CONST. Preamble.

61. Ibrahim, *Algeria's Leader Quits, Citing Fear of Political Chaos*, N.Y. Times, Jan. 12, 1992, at 1, col. 6; 10, col. 3; Ramonet, *Algérie: dernière chance avant le chaos*, LE MONDE DIPLOMATIQUE, Dec. 1991, at 12, col. 1. The FIS is supported financially by Saudi Arabia. Ramonet, *supra* note 61, at 12, col. 3.

The people rally around the FIS simply out of disdain for the FLN. The FIS does not uphold democratic ideals and believes that an election should only continue until it has achieved full power in Algeria. The FIS will thereafter impose single party rule. At present, the FIS has not made public any social or economic programs. The FIS will only hold a party congress to discuss such matters after an Islamic State has been proclaimed. Addi, *Algérie: le dérapage*, LE MONDE DIPLOMATIQUE, Feb. 1992, at 1, col. 4; 20, col. 1. The FIS' slogan is: "No Constitution and no laws. The only rule is the *Koran* and the law of God." Ibrahim, *Algerian Election Tests Government: Parliamentary Voting Is Seen as a Challenge to Appeal of Islamic Militants*, N.Y. Times, Dec. 26, 1991, at 3, col. 1.

62. Ibrahim, *supra*, note 61, at 10, col. 4.

63. The FIS would also have to gain control of the presidency in the elections scheduled for December 1993.

Faced with such a drastic outcome, the army cancelled the elections, annulled the results of the first round, and had President Chadli Benjedid resign.⁶⁴ A High State Committee has assumed Benjedid's duties for the remainder of his term (until December 1993),⁶⁵ and the FIS has been outlawed.⁶⁶

2. *Tunisia*.—The political ideology of Tunisia is cornered between two competing philosophies: absolutism and liberal reformism.⁶⁷ Embodying this political ideology, the Destourian Socialist Party⁶⁸ led the quest for independence from France.⁶⁹

After independence in 1956, Tunisia adopted a Constitution on June 1, 1959.⁷⁰ Similar to Algeria, the Tunisian Constitution declares Tunisia as part of the Great Arab Maghreb.⁷¹ The Constitution forms a government based on the French model, but embodies both the remnants of the powers of the pre-colonial monarch and the

The Constitution may be amended in two ways. First, the president submits the amendment for legislative approval (presumably by a simple majority) and the amendment is thereafter voted by referendum. ALGERIAN CONST. art. 163. Second, the president may promulgate the amendment if he obtains a three-fourths supermajority vote on the amendment by the legislature and a concurring opinion by the Constitutional Council (though it is not apparent if this opinion is controlling). *Id.* art. 164.

64. Addi, *supra* note 61, at 20, col. 1; Ibrahim, *Algeria Arrests a Senior Islamic Leader*, N.Y. Times, Jan. 23, 1992, at A3, col. 4.

65. Addi, *supra* note 61, at 20, col. 1; *Fundamentalist Leaders Reported Arrested in Algeria*, N.Y. Times, Jan. 20, 1992, at A3, col. 3.

66. *Algérie: un mort à constantine lors de heurts entre islamistes et policiers*, LE MONE, March 8-9, 1992, at 5, col. 1.

67. Chaker, *L'évolution constitutionnelle et politique de la tunisie*, in LE GRAND MAGHREB 86, 88 (A. Claisse & G. Conac eds. 1988). The history of government in Tunisia reflects stability and moderation. The progression of government in Tunisia has not always been constant; it has been marked with periods of change and periods of digressions. This history may be traced to the time prior to the French extension of a protectorate over Tunisia in 1883.

Before 1883, Tunisia, though under the influence of the Ottoman Empire, nevertheless, possessed much autonomy. Under local rule by the Bey, a Constitution was adopted in 1861, which served to limit the Bey's power and provided for a separation of powers. *Id.* at 87. The period from this time until French intervention was marked by a movement to align the state with liberal constitutionalism. M. CAMAU, *supra* note 52, at 27.

Although in reality, the Bey still possessed absolute power, continual pressure by reformers created a political ideology in Tunisian based on the necessity to reform the state. In 1864 there was a revolt in Tunisia. In order to suppress it, the Bey suspended the application of the constitution. *Id.* at 29. During the period of the French protectorate, Tunisia promulgated another constitution and became attached to western liberal reform of the state. *Id.* at 31.

68. This political party evolved from the Young Tunisian Movement, the founders of Tunisian nationalism in the early 1900s. M. CAMAU, *supra* note 52, at 30. The nationalist Young Tunisian Movement was thereafter continued in 1920 by the Destour. *Id.* at 32-33. The Destour was followed by the Néo-Destour in 1934. *Id.* at 37. This party then became the Destourian Socialist Party in 1964. *Id.* at 41. The leader of this party, then and up until very recently, was Habib Bourguiba. *Id.* The present President of Tunisia is Zine el Abidine Ben Ali.

69. *Id.* at 41.

70. *Id.*

71. TUNISIAN CONST. art. 2, reprinted in Historical Constitutions Vol., CONSTITUTIONS OF THE WORLD (A. Blaustein & G. Flanz eds. 1971).

inspirations of political reform.⁷² The result is a presidential republic⁷³ that minimally allows for multipartism.⁷⁴

3. *Morocco*.—In the face of French intervention, the National Movement was formed to reinstate Morocco's independence.⁷⁵ The National Movement knew that in order to gain the support of the Moroccan people, it had to emphasize the monarch as a symbol and factor of the traditional unifying force in Morocco.⁷⁶ In addition, the National Movement had to incorporate a policy stressing a new social equilibrium, due to the strong influence of Muslim reformists and the traditional bourgeoisie.⁷⁷ Thus, Morocco was to emerge independent as a result of an ideology based on the necessity of a mon-

72. Chaker, *supra* note 67, at 88. Evidencing reform, the Constitution espouses significant principles of human rights. TUNISIAN CONST. arts. 5-17. The Constitution proclaims Tunisia to be an independent, sovereign republic of the Islamic faith and Arabic language. *Id.* art. 1.

Election of public officials is by "universal, free, direct and secret suffrage." *Id.* arts. 19, 39. Articles 19 and 39 concern the National Assembly and president respectively. However, electoral law determines the procedures and conditions for elections. The principle of separation of powers has been incorporated into the Constitution. Article 28 declares that the National Assembly exercises the legislative power. Executive power is carried out by the President. *Id.* art. 37. Judicial authority is independent and the magistrates are not subject to any authority other than the law. *Id.* art., 65.

The President, who is elected for renewable five year terms, is both the head of state, government and the army. *Id.* arts. 38-39, 44, 50-51 (the President appoints the Prime Minister and presides over the Council of Ministers. In addition, the President may terminate governmental functions at will.)

During times of crises, the President may unilaterally take necessary measures. *Id.* art. 46. Crisis is referred to as imminent peril. This term is not defined, nor has anyone or anything been named to determine when an imminent peril is taking place. Thus, it may be assumed that the President exercises his discretion in this area. In addition, former President Bourguiba was granted an exception from the presidential electoral requirement and proclaimed president for life. *Id.* art. 39.

The unicameral National Assembly, invested with legislative powers, does have the authority to censure the government and may dissolve the government upon a two-third vote. *Id.* art. 62. However, in this event, the President may dissolve the National Assembly thereafter, and call for new elections. Should the newly elected National Assembly again dissolve the government for the same reasons as those of its predecessor, the President must then resign. *Id.* art. 63.

73. Chaker, *supra* note 67, at 89.

74. Concerning political parties, the main player is the Destourian Socialist Party. Although pluralism has been recently allowed, these opposition parties have little influence due to the state's periodic repressions of the parties and limitations on free speech, and the parties' lack of funds to hold mandatory national congresses. *Id.* at 108-10. In addition, the opposition political parties must apply to the Minister of the Interior in order to be officially recognized. *Id.* at 108. Moreover, the dominant groups in Tunisian society do not favor pluralism. *Id.* at 111. Thus, it may be concluded that pluralism does not exist and will not develop in Tunisia for some time. *Id.* at 115. Despite this fact, the stability of the Tunisian state appears strong. *See id.* inferring that the Army favors a one party system comprised of the Destourian Socialist Party. The Army has always been instrumental in preserving the state. *Id.*

75. M. CAMAU, *supra* note 52, at 71. During the nineteenth century, the Sultan of Morocco was viewed in his country as both the descendent of the Prophet Mohammed, thereby invested with spiritual authority, and also as the leader of the Muslim community, possessing vested political authority. *Id.* at 70.

76. *Id.* at 72.

77. *Id.*

archy and on the need for social reform.⁷⁸

This political liberalism mixed with a monarchy⁷⁹ is best evidenced by the Constitution of March 10, 1972, which guarantees political pluralism in the monocameral Chamber of Representatives,⁸⁰ and which grants the people basic rights and freedoms.⁸¹ Though the Constitution provides for a quasi-democratic regime, the King still controls in virtually all facets.⁸²

Concerning Morocco within the Maghreb, the Constitution proclaims Morocco to be a Muslim State that is part of the Great Maghreb.⁸³ Furthermore, as an African State, Morocco avows to aid African unity.⁸⁴

4. *Mauritania*.—Mauritania emerged as an independent state on November 28, 1960, without any apparent resistance from France.⁸⁵ The Mauritanian Constitution of May 20, 1961, purported

78. *Id.*

79. The King is the leader of the Muslim faith and guarantor of the state. MOROCCAN CONST. art. 19, reprinted in 11 CONSTITUTIONS OF THE WORLD (A. Blaustein & G. Flanz eds. 1971). The King is sacred and inviolable. *Id.* art. 23. The King also assures the territorial integrity of the state, there included the Western Sahara. *Id.* art. 19. See *infra* note 114 discussing the Moroccan view on sovereignty over the Western Sahara.

The King appoints all members of the government, there included the Prime Minister. MOROCCAN CONST. art. 59. The King may also dissolve the Legislative Chamber of Representatives (Chamber). *Id.* art. 70. In addition to general executive powers, the King also may suspend the Constitution's application in time of a national emergency. *Id.* art. 35. However, this may last for only thirty days unless the Chamber permits its continuance. *Id.* art. 48.

The King appoints the members of the judiciary. *Id.* arts. 33, 78. Exceptions to this general grant of authority involve the High Court and the Supreme Court where judges are elected or appointed for terms. *Id.* arts. 86, 95. The judiciary is independent of the legislative and executive branches. *Id.* art. 76. Judges may not be removed. *Id.* art. 79. The Supreme Court, in addition to other duties, resolves conflicts between the government and the Chamber when the Chamber has allegedly overstepped its constitutional grants of authority. *Id.* art. 52.

80. Pursuant to the Constitution, there must be political pluralism. MOROCCAN CONST. art. 3. There is a significant diversity of political parties in Morocco. For a description of their political orientations, see Rousset, *Le système politique du maroc*, LE GRAND MAGHREB 52, 60-62 (A. Claisse & G. Conac eds. 1988).

In addition, two-thirds of the monocameral Chamber is elected by direct, universal suffrage. MOROCCAN CONST. art. 43. The other one-third of the Chamber is elected by an electoral college. *Id.* art. 43. Nevertheless, a member of the Chamber may be arrested if his views challenge the monarchy or the Muslim faith, or are disrespectful to the King. *Id.* art. 37. Moreover, the Chamber is granted limited legislative powers. *Id.* arts. 45, 49-50. However, the Chamber may dissolve the government upon a majority vote. *Id.* art. 75. All members of the Chamber are elected on the basis of proportional representation of the different groups.

81. MOROCCAN CONST. arts. 5, 8-15. However, many rights may be restricted by law. See *id.* art. 9. In addition, citizens must contribute to the defense of the country and to revenue raising. *Id.* arts. 16-18.

82. Rousset, *supra* note 80, at 70. Unrest in Morocco has precipitated from a lack of total democratization and decentralization. In 1981 and 1984, there were outbursts and unrest due to Morocco's economic difficulties. *Id.* at 70. Opposition political parties are progressively gaining more representation in the Chamber. *Id.* Without further reform, the people will lose confidence in the ability of the state to adequately resolve the nation's difficulties. The major unifying force, however, remains the will to maintain the territorial integrity of the nation, there included the Western Sahara. *Id.* The Western Sahara is discussed at *infra* note 114.

83. MOROCCAN CONST. Preamble. Arabic is proclaimed the official language.

84. *Id.*

85. Marchesin, *L'évolution politique et constitutionnelle de la mauritania*, in LE GRAND

to impose a system of separation of powers. In reality, it formed a government in which the President reigned in an oligarchy.⁸⁶ The National Assembly's legislative powers were *de facto* abolished.⁸⁷ The President controlled the state without any possible opposition from either the National Assembly or the judiciary.⁸⁸

This political system continued until July 10, 1978, when the military successfully staged a *coup d'état*,⁸⁹ precipitated by Mauritania's lack of effectiveness in the Western Sahara.⁹⁰ The Constitution of May 20, 1961, was replaced by successive charters following five further military *coup d'états* in six years.⁹¹

The present military regime in Mauritania is the Military Committee of National Salvation (CMSN), which took power on December 12, 1984, under the leadership of Colonel Maaouyaould Taya.⁹² Under this regime, the Constitutional Charter of February 9, 1985, was promulgated.⁹³

The Charter's preamble stresses the attachment of the state to Islam—it is the religion of the state and of the people; also, the only source of law is the *sharia*.⁹⁴ Furthermore, the Charter expresses an

MAGHREB 73, 75 (A. Claisse & G. Conac eds. 1988).

86. *Id.* at 78, 81. The President was nevertheless elected for five year terms. *Id.* at 77.

87. *Id.* at 77.

88. *Id.*

89. *Id.* at 78. The takeover was precipitated by Mauritania's costly military intervention in the Western Sahara and lack of success against the Polisario Front. C. BELVAUDE, *supra* note 10, at 36-37.

90. Upon Spain's withdrawal from the Western Sahara in 1975, Mauritania laid claims to parts of the Western Sahara. However, Mauritanian forces were defeated in 1978 by an indigenous guerilla group, seeking independence for the Western Sahara, called the Polisario Front. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: MOROCCO 6 (1989) [hereinafter BACKGROUND NOTES: MOROCCO].

In Mauritania, the Military Committee of National Reconstruction ended hostilities in the Western Sahara and avowed to save the country from ruin and dissolution, stressing the necessity of safeguarding the national unity and of defending the State's existence. C. BELVAUDE, *supra* note 10, at 37-38.

91. Marchesin, *supra* note 85, at 79, 81.

92. *Id.* at 81.

93. Mauritanian Charter, *reprinted in* 10 CONSTITUTIONS OF THE WORLD (A. Blaustein & G. Franz eds. 1971). The Charter expressly rejects the Constitution of May 20, 1961. *Id.* art. 1.

Mauritanian politics have continuously been dominated by the descendants of the Moors who were of nobility. Marchesin, *supra* note 85, at 81. The society is divided by a caste system in which the lower levels are exploited by the nobility. The nobility possesses the power and does little work, while the poor have nothing and work diligently. *Id.* at 83. These social problems have created unrest. *Id.* Mauritania is comprised of a significant black population and racial problems continue to exist. Black leaders are not adequately included in the membership of the Military Committee of National Salvation (CMSN). *Id.*

94. Mauritanian Charter preamble. The *sharia* is Islamic law. BACKGROUND NOTES: LIBYA, *supra* note 40, at 4. The *sharia* represents all the rules found in the *Koran* and in the tradition of the Prophet Mohammed. These rules guide individuals in all aspects of their daily lives. Actions are judged under the *sharia* as right or wrong based on principles of truth and justice. These principles are found in the *Koran* and the Prophet's tradition relating to religious rites, individual and community morals, and legal rights and obligations (on which the *Koran* supplies many rules relating to the position of individuals and material wealth in society and criminal penalties). Botiveau, *La charia islamique*, L'ÉTAT DU MAGHREB 3511 (1991).

adherence to human rights.⁹⁵ Nevertheless, although political parties are banned, the country continues to be ruled by the military government of Colonel Maaouya ould Taya,⁹⁶ and all power remains exclusively within the CMSN.⁹⁷

5. *Libya*.—Libya emerged upon its independence in 1951 as an independent, federal state under the rule of King Idriss.⁹⁸ Under this regime, Libya fell again in the Western sphere due to the discovery of oil and the permittance of American and British military bases.⁹⁹ In order to resist Western imposed economic dependence,¹⁰⁰ Colonel Qaddafi overthrew the monarchy in 1969 and created a new revolutionary government.¹⁰¹

Following an evolution of political philosophy, the Declaration on the Establishment of the Authority of the People (Declaration) was adopted as a National Charter on March 2, 1977.¹⁰² The Declaration's preamble, denouncing traditional norms of government,¹⁰³ espoused the establishment of a direct democratic system¹⁰⁴ tied to socialism and Islam.¹⁰⁵ In addition, the *Koran* was declared as the

95. Mauritanian Charter preamble. Interesting to note that slavery was abolished for the third time in 1980. C. BELVAUDE, *supra* note 10, at 45.

96. BACKGROUND NOTES: MAURITANIA, *supra* note 43, at 4.

97. Pursuant to the Charter, the CMSN exercises executive power and controls the government and the military. Mauritanian Charters arts. 2, 3. In addition, the CMSN appoints the President, and retains the power to impeach the President. *Id.*, arts. 4, 10. The President is the head of state. *Id.*, art. 9. The CMSN selects its own membership. *Id.*, art. 5. Thus, the charter invests the CMSN with sole power and any semblance of democracy has been extinguished.

Nevertheless, the Charter does provide some hope for democracy, stating that: "The present Charter will remain in force until the construction of democratic institutions." *Id.*, art. 147. Recent steps taken toward this realization are evidenced by mayoral elections in 1986 and regional elections in 1988. C. BELVAUDE, *supra* note 10, at 40. Though minimal, these elections do give hope to the possibility of more significant decentralization. *Id.*

98. Bleuchot & Monastiri, *Le système politique de la Libye*, in LE GRAND MAGHREB 41-42 (A. Claisse & G. Conac eds. 1988) [hereinafter Bleuchot]. Due to separatist pressure, federalism was abandoned and the territory was divided into several smaller governmental entities. *Id.* at 42-43.

99. *Id.* at 43. During World War II, Libya was occupied by Allied forces. *Id.* at 41.

100. Libyans began to embrace Colonel Nasser's demands that Arabs find their independence and dignity by resisting colonialism, capitalism, and western zionism, and by adopting socialism. *Id.* at 43-44. Petroleum exploitation created an economic dependence on the West due to the oil companies' introduction into Libya of capitalist consumption. This was viewed as a continuation of Italian colonialism. *Id.* at 43.

101. *Id.* at 44. The revolutionaries had the installation of democracy and socialism for a goal. However, they had not formulated a plan for recreating the society. Thus, the Libyan revolution was not to really happen until several years after the *coup d'état*. J. DAVIS, *supra* note 40, at 31-32, 34.

102. Bleuchot, *supra* note 98, at 47.

103. These denounced norms include government by the "individual, family, tribe, sect, class, representative, party, or group of parties." LIBYAN DECLAR. Preamble, *reprinted in 9 CONSTITUTIONS OF THE WORLD* (A. Blaustein & G. Franz eds. 1971).

104. Qaddafi believes that representation necessarily involves domination of the people by a few. Qaddafi places much emphasis on personal sovereignty. J. DAVIS, *supra* note 40, at 19-20.

105. LIBYAN DECLAR. Preamble.

Constitution of Libya,¹⁰⁶ and the *sharia* became the controlling source of law.¹⁰⁷ The Declaration formed people's committees and congresses,¹⁰⁸ but it did not provide for a head of state, a government or ministers since the people are the purported rulers.¹⁰⁹

In practice, however, Colonel Qaddafi has possessed absolute political power in Libya as leader of the Revolutionary Committee.¹¹⁰ Colonel Qaddafi has been consistently willing to dissolve the Libyan State in order to unite with fellow Arab States.¹¹¹ He is an adamant supporter of a more significant integration of the Arab Maghreb Union on political, economic, and social levels.¹¹²

6. *Maghreb Union*.—Thus, the Maghrebine Countries have evolved into individual nation-states who possess governments which are, for the most part, highly centralized and exclusive. Nevertheless, each government is very different, ranging from: a monarchy in Morocco allowing political pluralism; to a presidential, republican government in Tunisia permitting minimal pluralism; to a highly centralized, single party government in Algeria on the verge of political chaos; to a military government in Mauritania; and to a socialist dictatorship in Libya. In addition, Mauritania, Morocco, and Tunisia maintain close relations with the West, while Algeria and Libya prefer the former U.S.S.R.

This diversity of governments with differing political ideologies will certainly hinder the possibilities of a political union, and it also will affect any form of economic cooperation.¹¹³ Recent present-day examples of the clash between these differing political ideologies are the emotional Western Sahara dispute between Morocco and the Polisario Front (supported by Algeria and Libya);¹¹⁴ the Iraqi inva-

106. *Id.* art. 2. However, the *Koran* provides little insight as to how a state should function and barely addresses political issues. Bleuchot, *supra* note 98, at 49.

107. Prior to 1969, Libya possessed two court systems: civil and Islamic. Now all civil laws must conform to the *sharia*. BACKGROUND NOTES: LIBYA, *supra* note 40, at 4. See *supra* note 94 defining *sharia*.

108. LIBYAN DECLAR. art. 3.

109. Bleuchot, *supra* note 98, at 50.

110. *Id.*; BACKGROUND NOTES: LIBYA, *supra* note 40, at 4. It must be stressed that the Declaration does not invest this power in Colonel Qaddafi nor in the Revolutionary Committee. Qaddafi legitimizes his power from his capacity as guide of the revolution. Bleuchot, *supra* note 98, at 48. The Declaration forms a system which almost resembles libertarian anarchy. *Id.* at 50. This analogy parallels Qaddafi's belief that states must be abolished since they oppress the people. J. DAVIS, *supra* note 40, at 19-20.

111. R. LEMARCHAND, *THE GREEN AND THE BLACK* 106 (1988). Colonel Qaddafi believes that colonial boundaries must be abolished since they hinder the success of Pan-Arabism. *Id.*

112. *Nexis: The Perth Corp.*, Defense & Foreign Affairs Weekly, Feb. 20, 1989, at 4. (Vol. XV, no. 7, number 320, 3rd series).

113. Belaid, *supra* note 5, at 496.

114. However, Algeria reported that it has stopped supporting the Polisario Front, and Libya is believed to have followed suit. *Algerian Paper Blames Morocco for Sahara Fighting*, The Reuters Library Report (Nov. 18, 1989) (LEXIS, Nexis library, Omni file); Hughes, *North*

sion of Kuwait (causing much discord within the Arab Maghreb Union due to the irreconcilable positions of its members);¹¹⁵ and the bitter border struggle between Mauritania and Senegal (allegedly supported by Morocco).¹¹⁶

Despite each Maghrebine State's purported willingness to merge its State with others in order to create a unified Maghreb, the Maghrebine States opt for guarding their national sovereignties.¹¹⁷ Hence, a Maghrebine unity can only be formed based upon the cooperation of existing states, and this unity can only be realized progressively.¹¹⁸ Faced with such a disparity in political ideologies, the

African Foreign Ministers Discuss Maghreb Integration, The Reuters Library Report (Oct. 30, 1989) (LEXIS, Nexis library, Omni file); *British Boat Destroyed by Guerrillas*, Reuters North European Service (Jan. 14, 1987) (LEXIS, Nexis library, Omni file).

The Western Sahara, comprised of 267,028 square miles of wasteland and desert, was a Spanish territory from 1884 until 1976. However, in 1975 Morocco occupied the northern two-thirds of the territory, Mauritania the southern one-third. In 1979 upon Mauritania's withdrawal from the Western Sahara, Morocco laid claim to all the territory. Morocco's claim to sovereignty, based on its historical ties with the territory, were refuted by the International Court of Justice in an opinion in 1975 I.C.J. Reports.

The Polisario Front emerged as an indigenous guerrilla group to first evict the Spaniards, and then to continue against the Moroccans. Damis, *The Western Sahara Dispute as a Source of Regional Conflict in North Africa*, in CONTEMPORARY NORTH AFRICA: ISSUES OF DEVELOPMENT AND INTEGRATION 138-39 (H. Barakat ed. 1985); BACKGROUND NOTES: MOROCCO, *supra* note 90, at 6. Seeking peace within Africa, the Organization of African Unity (OAU) opted for a referendum in the territory on self-determination. 17 Resolutions on decolonization; UN General Assembly, 20 UN CHRONICLE 19 (Jan. 1983). When the OAU seated a delegate from the Sahara Democratic Arab Republic (SDAR), the purported government of the Polisario, Morocco immediately withdrew from the OAU and the referendum never took place. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 6.

Finally, on June 27, 1990, the UN Security Council adopted a plan for the supervision of a ceasefire and the effectuation of the referendum. The referendum is to be administered by a UN Mission within thirty-five weeks. *Security Council approves UN plan for Western Sahara*, 27:3 UN CHRONICLE 12 (Sept. 1990).

Morocco's arch-enemy during its struggle with the Polisario has always been Algeria, which supports self-determination in the Western Sahara. In addition, Algeria provides weapons and shelter for the Polisario across the border in Algeria. Nevertheless, the leaders of Morocco and Algeria met in 1988 and resolved to set aside, for the time being, their differences over the Western Sahara in order to cooperate with each other so that a Maghrebine Union may be achieved. Daoud, *La création de l'Union du Maghreb arabe*, MAGHREB MACHREK: MONDE ARABE 120, 122-23 (April-June 1989). Thus, nothing has been resolved and the question of the Western Sahara will continue to plague Moroccan relations with Algeria and Libya in the years to come.

115. Though all the Maghrebine Countries supported an Iraqi withdrawal from Kuwait and an Arab role in solving the crisis, Shehadi, *Maghreb States Seek Common Ground on Gulf Crisis*, The Reuters Library Report (Sept. 2, 1990) (LEXIS, Nexis library, Omni file), each country went its own way with respect to how to bring about the withdrawal. At an emergency Arab summit held on August 10, 1990, Morocco was in favor of sending troops to Saudi Arabia, Libya was adamantly against it, Algeria abstained from voting, Mauritania merely expressed reservation, and Tunisia did not even bother to attend. Zhurun, *News Analysis: Gulf Crisis Ruins Prospects of Arab Economic Integration*, The Xinhua General Overseas News Service (Sept. 2, 1990) (LEXIS, Nexis library, Omni file). In the end, Morocco sent 5,000 troops to the Middle East. *Algerian Prime Minister in Morocco for Cooperation Talks*, The Reuters Library Report (Jan. 7, 1991) (LEXIS, Nexis library, Omni file).

116. Murphy, *supra* note 3, at 4.

117. Claisse, *Les systèmes de légitimité à l'épreuve, le cas des pays du Maghreb*, in LE GRAND MAGHREB 119, 145 (A Claisse & G. Conac eds. 1988). Mauritania's willingness to dissolve itself is inferred from its participation in the Arab Maghreb Union.

118. *Id.* Since the Magrebine States will not undergo an immediate political, economic,

Arab Maghreb Union's only hope to achieve any sort of unity must first begin with economic cooperation.¹¹⁹

C. *Economic Analysis*

Economic cooperation between the Maghrebine Countries has been minimal,¹²⁰ and trade between the Maghrebine Countries has averaged only \$200 million per year.¹²¹ This amount of intra-regional trade merely accounts for 3% of the total trade of the Maghreb, which conducts more than 60% of its total trade with the EEC.¹²² Nevertheless, increased trade within the Arab Maghreb Union is anticipated due to the comparative advantages¹²³ of the Maghrebine Countries.¹²⁴ Understood within the Maghreb is that to meet the challenges posed by today's world, national economies are ineffective and the Maghrebine Countries must act together, as one unified block.¹²⁵ Only as a united entity will the Maghrebine States best be able to guard the preferential trade concessions granted to them by the EEC and the United States. By being unified, the Maghrebine Countries will also be able to pressure for even further advantageous concessions.¹²⁶

Algeria is the largest of the Maghrebine Countries, possessing 2.4 million square kilometers of territory,¹²⁷ 23.9 million people¹²⁸

and social merger, any sort of unity must be accomplished by the existing states progressively negotiating and comprising amongst themselves. As demonstrated by the EEC, a closer unity based on the already existing Member States will be accomplished by successive and more serious agreements leading to further integration and ultimately, perhaps, to a complete union. The EEC is achieving political unity slowly since the EEC Member States are only willing to give up small portions of their political sovereignty at a time.

119. *Id.* at 146; J. VINER, *THE CUSTOMS UNION ISSUE* 92-93 (1961).

120. Belaid, *supra* note 5, at 496.

121. U.S. DEP'T OF COMMERCE, *FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: MOROCCO* 9 (1990) [hereinafter FET: MOROCCO].

122. Murphy, *supra* note 3, at 4.

123. Comparative advantage is a term to describe the notion that since each country of the world possesses various resources (different factor endowments), each country should specialize in the production of an item which it can produce more efficiently and cheaply than another country could. With each country specialized as such, there exists a basis for trade. C. KINDLEBERGER, *INTERNATIONAL ECONOMICS* 17-21, 27, 33 (5th ed. 1972), *reprinted in* J. JACKSON & W. DAVEY, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS; CASES, MATERIALS AND TEXT ON THE NATIONAL AND INTERNATIONAL REGULATION OF TRANSNATIONAL ECONOMIC RELATIONS* 11-15 (2nd ed. 1986) [hereinafter W. DAVEY].

124. FET: MOROCCO, *supra* note 121, at 9. Cooperation in economic development within the Maghreb would yield enormous rewards. Ruedy, *Historical Influences on Intra-Regional Relations in the Maghrib*, in *CONTEMPORARY NORTH AFRICA: ISSUES OF DEVELOPMENT AND INTEGRATION* 87, 96 (H. Barakat ed. 1985).

125. Belaid, *supra* note 5, at 497-98. Challenges facing the Maghreb are continued population growth, demographics, food, technology, international competition, and relations with economic blocs.

126. *See infra* notes 256-89 and accompanying text discussing the granted trade preferences and how easily they may be revoked.

127. BACKGROUND NOTES: ALGERIA, *supra* note 44, at 1.

128. U.S. DEP'T OF COMMERCE, *FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: ALGERIA* 2 (1989) [hereinafter FET: ALGERIA 2]. These are 1988 estimated figures.

and a gross domestic product (GDP) estimated at only \$11 billion. This low GDP translates into a per capita income of \$770 with a labor force of 5 million people and an unemployment rate of 21.8%.¹²⁹ Hydrocarbon production comprises 75% of the GDP, and a staggering 96% of export revenues.¹³⁰ Though Algerian crude oil is expected to run dry by the beginning of the next century,¹³¹ Algeria still possesses the fourth largest known natural gas reserves in the world.¹³²

In 1987 Algerian trade with the EEC amounted to nearly \$6 billion in exports, consisting mostly of hydrocarbons.¹³³ Algeria imported nearly \$5.5 billion from the EEC, which included machinery, electrical equipment, and foodstuffs.¹³⁴ In 1988 Algerian exports to the United States were \$2.6 billion, which was virtually all hydrocarbons, while Algerian imports from the United States amounted to less than \$9.5 million with the principal import being foodstuffs.¹³⁵

Libya is the next largest Maghrebine Country territorially with nearly 2 million square kilometers but only 4 million people.¹³⁶ Nevertheless, the GDP was over \$20 billion, with \$5,500 as the highest annual per capita income in the Maghreb.¹³⁷ Libyan exports to the EEC amounted to \$6.3 billion, almost exclusively hydrocarbons, while Libyan imports from the EEC reached \$3.3 billion and covered machinery, electrical equipment, iron, steel, hydrocarbons, and foodstuffs.¹³⁸ Libya did not trade with the United States in 1990.¹³⁹

Libya's economy is wholly dependent upon revenues from exported crude oil. These revenues decreased from \$23 billion in 1980

129. *Id.* at 2. These are 1988 estimated figures. The GDP and per capita income figures, if computed according to the official exchange rate, would be inflated to \$51 billion and \$2,150 respectively. However, the official exchange rate is overstated, and the \$11 billion and \$770 figures more accurately reflect the true purchasing power. *Id.* at 4-5.

130. *Id.* at 5; BANQUE NATIONALE DE PARIS, *The Maghreb: Algeria*, The Reuters Library Report (Dec. 4, 1989) (LEXIS, Nexis library, Omni file). Hydrocarbon production includes natural gas (e.g., ethane, propoane, and butane), fuel oils, and crude petroleum.

131. Harris, *Europe and North Africa: Conflict and Opportunity*, ARAB AFFAIRS 78, 86 (1988-89).

132. The largest known natural gas reserves are in the U.S.S.R., Iran, and the U.S. BACKGROUND NOTES: ALGERIA, *supra* note 44, at 6. Algeria is one of the three largest natural gas suppliers to the E.C. *No Quotas for Outsiders, Cunha tells U.S. Gas Group*, 1992 — 3:2 THE EXTERNAL IMPACT OF EUROPEAN UNIFICATION, Feb. 9, 1990, at 3.

133. EUROPEAN COMMUNITIES EUROSTAT: EXTERNAL TRADE 83 (1990) [hereinafter EUROSTAT]. These 1988 figures were converted to U.S. dollars using the following exchange rate: 1 ECU = \$1.2 USD.

134. EUROSTAT, *supra* note 133, at 91.

135. U.S. DEP'T OF COMMERCE, U.S. FOREIGN TRADE HIGHLIGHTS 13, 17, 234, 235 (1990) [hereinafter U.S. DEPT. OF COMMERCE]. 1990 statistics.

136. BACKGROUND NOTES: LIBYA, *supra* note 40, at 1. 1988 figures.

137. *Id.* 1986 figures.

138. EUROSTAT, *supra* note 133, at 85, 95.

139. U.S. DEP'T OF COMMERCE, *supra* note 135, at 13, 17. This situation is due to a total ban on trade with Libya imposed by President Reagan in 1986. BACKGROUND NOTES: LIBYA, *supra* note 40, at 5.

to \$6 billion in 1988.¹⁴⁰ Economic woes in Libya can only be expected to increase since its oil reserves are anticipated to dry up early in the twenty-first century;¹⁴¹ furthermore, Libya must import 65% of its food.¹⁴²

Mauritania is the poorest of the Maghrebine Countries. It possesses 1 million square kilometers of territory; nearly 2 million people; and a GDP of only \$600 million.¹⁴³ This weak GDP translates into a \$450 per capita income.¹⁴⁴ Over \$219 million of Mauritania's exports were to the EEC and involved either ores or fish, while Mauritania imported from the EEC more than \$250 million, consisting mostly of machinery, vehicles, and foodstuffs.¹⁴⁵ Mauritanian exports to the United States amounted to \$24 million — nearly all of these exports were comprised of iron ore; imports from the United States amounted to \$14 million — most of which consist of foodstuffs and industrial, manufactured goods.¹⁴⁶

Next to Algeria, Morocco is the second largest economic power in the Maghreb. Morocco has a GDP of over \$937;¹⁴⁷ a work force of 6 million;¹⁴⁸ and an unemployment rate of 16.5%.¹⁴⁹ The national territory of Morocco, excluding the Western Sahara, is less than one-half million square kilometers.¹⁵⁰ Morocco exported \$2.7 billion in textiles, minerals, and foodstuffs to the EEC, and imported \$3.1 billion heavily in machinery and vehicles.¹⁵¹ To the United States, Morocco exported only \$109 million to the United States which consisted of manufactured goods including textiles, electronic parts, phosphates, and fish.¹⁵² Imports from the United States amounted to less than \$500 million, consisting mainly of foodstuffs, aircraft

140. BACKGROUND NOTES: LIBYA, *supra* note 40, at 4-5. This decline of crude oil revenues is due to OPEC production restraints and falling oil prices. The result on per capita income was a drastic decline from \$11,000 in 1980 to \$5,500 in 1986. *Id.* at 5.

141. Harris, *supra* note 131, at 86.

142. BACKGROUND NOTES: LIBYA, *supra* note 40, at 5.

143. BACKGROUND NOTES: MAURITANIA, *supra* note 43, at 1. 1986 figures.

144. *Id.*

145. EUROSTATE, *supra* note 133, at 87, 99. Mauritania's most important natural resource is high-grade iron ore, and the exports of this ore accounted, until recently, for almost 80% of the export earnings. BACKGROUND NOTES: MAURITANIA, *supra* note 43, at 5; U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: MAURITANIA 6-7 (1989) [hereinafter FET: MAURITANIA]. The fishing industry accounted for \$272 million of the export earnings in 1988. *Id.* at 5.

146. This is information supplied separately by the U.S. Department of Commerce on October 26, 1990, regarding products traded. 1990 statistics. The U.S. share of Mauritanian exports and imports in 1988 was 3.3% and 18.8 respectively. FET: MAURITANIA, *supra* note 145, at 2.

147. FET: MOROCCO, *supra* note 121, at 2. 1988 figures.

148. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 1. 1985 figure.

149. U.S. DEP'T OF COMMERCE, *supra* note 135. 1989 figure.

150. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 1. These figures do not include the Western Sahara.

151. EUROSTAT, *supra* note 133, at 81. 91.

152. U.S. DEP'T OF COMMERCE, *supra* note 135, at 17, 249. 1990 statistics.

equipment, and coal.¹⁵³

Morocco is rich in human and natural resources. Although Morocco has few energy sources, it has a strong agricultural industry, consisting mainly of cereals and fruit,¹⁵⁴ as well as a textile industry that has experienced spectacular growth.¹⁵⁵ Furthermore, Morocco is the largest exporter of phosphates in the world,¹⁵⁶ and it has the potential to be a major supplier of fish.¹⁵⁷ In addition, tourism is a major Moroccan industry, with over 2 million visitors in 1988.¹⁵⁸

In Tunisia, 8 million people¹⁵⁹ reside within 164,149 square kilometers of territory.¹⁶⁰ The per capita income of these people is \$1,324, and the Tunisian GDP is approximately \$10.6 billion. The yearly inflation rate is only 9%,¹⁶¹ but the unemployment rate is 17%.¹⁶² Tunisian exports to the EEC were over \$1.8 billion in textiles, hydrocarbons, pharmaceutical products, electrical machinery, equipment, and fish, while imports from the EEC amounted to \$2.4 billion in machinery, electric equipment, cotton, hydrocarbons, and plastics.¹⁶³ Exports to the United States were only \$32 million and consisted mainly of optical goods and textile products.¹⁶⁴ Tunisia imported from the United States foodstuffs and manufactured parts for vehicles and planes valued at \$118 million.¹⁶⁵ Nevertheless, tourism is Tunisia's largest export at \$1.2 billion, while textile exportation is second at over \$700 million.¹⁶⁶ Since Tunisia is soon expected to import petroleum,¹⁶⁷ it will have to expand its labor-intensive export industries, such as textiles.¹⁶⁸

153. *Id.* at 13, 248. 1990 statistics.

154. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 506.

155. FET: MOROCCO, *supra* note 121, at 4. The average growth of textile exports has been over 49% for the past seven years.

156. *Id.* However, Morocco is the third largest phosphate producer, after the U.S. and the U.S.S.R. Morocco possesses over three-quarters of the world's known reserves of phosphates. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 6.

157. Organized fishing, especially off the coast of the Western Sahara, could become as lucrative as Morocco's phosphate industry. BACKGROUND NOTES: MOROCCO, *supra* note 90, at 7.

158. FET: MOROCCO, *supra* note 121, at 12.

159. U.S. DEP'T OF COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES: TUNISIA 2 (1989) [hereinafter FET: TUNISIA]. 1989 estimate.

160. BUREAU OF PUBLIC AFFAIRS. U.S. DEP'T OF STATE, BACKGROUND NOTES: TUNISIA 1 (1987) [hereinafter BACKGROUND NOTES: TUNISIA].

161. FET: TUNISIA, *supra* note 159, at 2.

162. *Id.* at 2. 1987 figure.

163. EUROSTAT, *supra* note 133, at 82, 83, 93.

164. U.S. DEP'T OF COMMERCE, *supra* note 135, at 17, 253.

165. *Id.* at 13, 252. 1990 statistics.

166. FET: TUNISIA, *supra* note 159, at 4. 1988 figures. Surprisingly, Libyans are the most significant contributors to the tourism industry, with one million Libyans spending \$600 million in 1988.

167. Harris, *supra* note 131, at 82.

168. BACKGROUND NOTES: TUNISIA, *supra* note 160, at 5. Tunisia has been heavily investing in the production of facilities for building industry, and its mechanical, electrical and chemical industries have been growing remarkably. FET: TUNISIA, *supra* note 159, at 4-5.

Thus, the Moroccan and Tunisian economies have become very oriented toward industrialization due to their lack of hydrocarbon resources. Soon to be faced with a similar exhaustion of crude oil reserves, Algeria must industrialize to provide employment for its large work-force. Libya, faced with quickly diminishing natural resources, also must industrialize to employ its smaller population. Though Mauritania is extremely poor, it too must follow suit to meet more adequately the needs of its population. Until this industrialization occurs, present Algerian and Libyan markets will easily be able to absorb the products from Morocco and Tunisia.¹⁶⁹

The economies of the Maghrebine countries diverge due to their diverse political policies. Morocco's economy is based on liberalism,¹⁷⁰ while the economies of Algeria¹⁷¹ and Libya are entirely state controlled. Tunisia, always teetering in the middle, possesses an economy with elements of both liberalization and state control. Mauritania bases its economy on socialism.¹⁷² These vastly different economies pose a serious obstacle toward economic integration, since a customs union requires harmonization of the Member States' general patterns of economic controls.¹⁷³

Unity should first develop by integration on the economic level, which in the present case will require significant cooperation among the Member States. However, the large disparity of economic policies clearly blocks unity. Nevertheless, opportunities for increased intra-Maghrebine trade and industrialization are apparent. These benefits will hopefully provide the impetus to create an effective customs union.

D. *The Treaty Creating The Arab Maghreb Union*

The notion of a united Maghreb and solidarity between the

169. El Malki, *supra* note 46, at 54.

170. Morocco's desire for independence has always accompanied an equal desire to be open to the outside world, precipitating economic liberalism. Rousset, *supra* note 26, at 52, 53.

171. Algeria has been considering liberalizing its conditions for foreign investment in order to attract badly needed foreign capital. Nevertheless, Algeria is fearful that such investments will result in Algeria losing absolute control over its national economic policy. An example of Algeria's determination not to lose this control is its refusal in 1990 to ask for International Monetary Fund aid in paying its external debts. This attitude may change, since in July 1991, the Prime Minister proposed selling \$6 billion to \$7 billion worth of shares in the oil and gas reserves, long considered untouchable national patrimony to foreigners. Benachenhou, *La réforme du secteur public à l'ordre du jour*, L'ÉTAT DU MAGREB 429, 431 (1991); Yachir, *L'économie algérienne: Les transformations et leurs limites*, 448, 451 (1991); Ibrahim, *In Algeria, Hope for Democracy but Not Economy*, N.Y. Times, July 26, 1991, at A1, col. 1; A6, col. 1.

172. Brunot, *supra* note 49, at 52, 60. For an in-depth study of the impact of political philosophies on economic policy in Algeria, Morocco, and Tunisia, see Entelis, *The Political Economy of North African Relations: Cooperation or Conflict?* in CONTEMPORARY NORTH AFRICA: ISSUES OF DEVELOPMENT AND INTEGRATION 112-37 (H. Barakat ed. 1985).

173. J. VINER, *supra* note 119, at 136.

Arab people was first announced by Mohammed V in 1947.¹⁷⁴ In 1956, Habib Bourguiba adopted this idea.¹⁷⁵ Nevertheless, these ideas were merely statements that would not mature until a later time.

In 1964 the Consultative Permanent Committee of the Maghreb (CPCM) was the first Maghrebine institution.¹⁷⁶ The CPCM was located in Tunis and was comprised of the Ministers of Economy from Algeria, Libya, Morocco, and Tunisia.¹⁷⁷ Its goal was to develop a system of regional commercial preferences and to coordinate the industrialization and exportation policies of the member states.¹⁷⁸ However, the CPCM was not very successful in its objectives,¹⁷⁹ and therefore, dissolved in 1975 due to the conflicting politics of the Member States.¹⁸⁰

The Maghrebine States did not begin to come together again until 1983.¹⁸¹ Nonetheless, it was not until after the two major economic powers of the region, Algeria and Morocco, decided to cooperate in 1987, did an agreement on possible unity seem plausible.¹⁸² Professor Sadok Belaid,¹⁸³ in anticipating a potential political-economic union agreement and in considering the political and economic particularities of the Maghrebine Countries, offered several guidelines for the formation of an Arab Maghreb Union.

Belaid asserted that in order to effectuate an Arab Maghreb Union, the Union must be both profitable and dynamic. In other words, the political-economic union must realize long-term goals in dissolving the present obstacles formed by the nation-state¹⁸⁴ and

174. Brunot, *supra* note 49, at 52. Mohammed V was the King of Morocco during this period.

175. *Id.* Habib Bourguiba was President-for-life of Tunisia.

176. *Id.*

177. *Id.* at 53. Mauritania became a member in 1975.

178. *Id.* The CPCM wanted to develop horizontal exchanges by harmonizing customs and providing a list of products to be freely traded within the Member States, to harmonize politics in the areas of industry, raw materials, energy, transportation and telecommunications, and to unify the members' positions regarding the European Economic Community (EEC). El Malki, *supra* note 46, at 52.

179. Inter-maghrebine commercial exchanges remained low, political coordination with respect to industry was little, and harmonized, national plans for development were continuously delayed. Nevertheless, there were some positive results in the areas of telecommunications and rail and air transportation. El Malki, *supra* note 46, at 52.

180. Relations between Libya and Tunisia hit an all time low in 1974 following the failure of their attempted union. Moreover, Morocco and Algeria were bitterly at odds in 1975 over the Western Sahara. *Id.* at 53.

181. In 1983 Algeria, Mauritania, and Tunisia signed a treaty of friendship. Daoud, *supra* note 114, at 120, 122.

182. *Id.* at 131-32. The leaders of Algeria and Morocco met and resolved to set aside, for the time being, their differences over the Western Sahara in order to cooperate with each other so that a Maghrebine union may be achieved. The two countries resumed diplomatic relations in 1988.

183. Professor of Law and former Dean, The University of Tunis II, School of Law.

184. This includes dissolving trade barriers such as customs duties and harmonizing administrative requirements such as technical specifications. Concerning the political aspects of

must provide more benefits to its members than they already enjoy today.¹⁸⁵ This Union must also be efficient, in areas in which newly formed institutions possess actual yet balanced power, to make the Union work.¹⁸⁶ Thus, the Member States must transfer some of their sovereign powers to the Union. According to Belaid, this sort of Union will be achieved pursuant to a treaty with general terms—a treaty which creates institutions that conduct and further define the affairs and programs of the Union within the limits of their express powers.

The Maghrebine States each came to negotiate and formulate the Arab Magreb Union Treaty¹⁸⁷ with different ideas on what government structures should be formed.¹⁸⁸ Nevertheless, the plans by Algeria and Morocco for the Union were the ones adopted.¹⁸⁹ These plans created rather flexible governing bodies without defined stages for implementation of requisite programs¹⁹⁰ or institutions with apparent, real authority as Belaid foresaw as necessary.

An important section of the Treaty is the mutual defense provision, stating that an aggression against one Member State is considered to be an aggression against all members.¹⁹¹ Moreover, the

the Union, sovereignty will have to be transferred to a central power so that the Union may act uniformly in certain areas such as foreign relations and domestic affairs. With the Maghrebine States acting as one unified voice through the Union, they will have more weight in negotiating with third entities such as the EEC or the United States. *See generally infra* notes 250-83 regarding the Maghreb's significant economic interest concerning these two trading partners. Also, the Union will be able to take measures within its authority to promote internal development such as building railroads and pipelines or encouraging industry. *See infra* notes 210-18 and accompanying text.

185. Belaid, *supra* note 5, at 498. The benefits would most notably be comprised of increased trade and development.

186. Actual power means that authority to act has been transferred to the Union. Balanced power refers to making sure that the actual authority given to the executive and legislative branches is not abused or that these branches do not overreach their conceded authority. *Id.* Therefore, a judiciary must intervene where necessary. An abuse of power transferred to the Union or an overreaching thereof may result in Member States leaving the Union. Therefore, the members will have to compromise some of their sovereignty. *Id.* at 499.

187. The Treaty is non self-executing and enters into force upon its ratification by each Member State. AMU Treaty, *supra* note 1, art. 19. As of yet, it has not been determined if all Member States have ratified the Treaty. The Treaty may be amended only upon ratification by all Member States. *Id.*, art. 18.

188. Daoud, *supra* note 114, at 123. Libya wanted an immediate political union which would include the Sudan, Chad, and the Niger. *Id.* In addition, Libya insisted on the creation of a "Maghrebine Confederation, complete with a Maghrebine flag and national identity card — to guaranty a total freedom of regional travel by persons and property." Brunot, *supra* note 49, at 58. Tunisia pushed for a close federation with, a permanent Secretariat and set program. Daoud, *supra* note 114, at 123; *Maghrib meeting gets closer*, DEFENSE & FOREIGN AFFAIRS WEEKLY, Feb. 20, 1989 (vol. XV, No. 7, Number 320, 3rd Series) at 4. The General Secretariat is discussed at *infra* notes 193-95 and accompanying text. The position of Mauritania was not articulated.

189. Daoud, *supra* note 114, at 123. The acquiescence of Libya, Tunisia, and Mauritania to the plan by Algeria and Morocco indicates the two latter countries' dominance in the region.

190. *Id.* at 120, 123.

191. AMU Treaty, *supra* note 1, art. 14.

Member States vow to "prohibit any activity or training in their territory that would violate the security, territorial integrity, or political regime of a [fellow] member."¹⁹² The Member States also pledge to refrain from "joining any political or military pact or bloc directed against the political independence or territorial integrity of the other member states."¹⁹³

In recognizing that Member States have existing agreements with themselves or with other non-Member States or groups, the Treaty permits each to maintain these agreements and to formulate future agreements as long as they do not "contradict the rules of the Treaty."¹⁹⁴ The provision of the Treaty is especially pertinent with respect to economic agreements since Mauritania, Morocco, and Tunisia are GATT members,¹⁹⁵ and Mauritania is a member of the Economic Community of West African States.¹⁹⁶ Regarding political arrangements, the Member States clearly will not be allowed to maintain any sort of accord that would violate the provision of mutual defense and the provision prohibiting an infringement on (or the permittance of violation to) a fellow member's sovereignty.¹⁹⁷

The Treaty begins with a preamble that legitimizes the Union through the strong ties of a common history, religion, and language shared by the Arab Maghreb people. The preamble calls for the gradual integration of the Maghrebine States, which will grant the Union more influence in the international community. In addition, the preamble expresses the desire to integrate other African and Arab States within the Union.¹⁹⁸ A fundamental goal of the Union¹⁹⁹ is the implementation of a common policy between the member countries in the areas of foreign policy,²⁰⁰ defense,²⁰¹ econ-

192. *Id.* art. 15. This provision has apparently had rather interesting ramifications since Algeria and Libya both aided the Polisario Front in its quest for secession of the Western Sahara from Morocco. Moreover, Algeria permits the Polisario Front to use its territory as a refuge and a launching point for guerilla campaigns against Moroccan forces in the Western Sahara. But upon the signature of the AMU Treaty, Algeria and Libya purportedly stopped these activities." Hughes, *supra* note 114; *British Boat Destroyed by Guerrillas*, *supra* note 114.

193. AMU Treaty, *supra* note 1, art. 15.

194. *Id.*, art. 16.

195. *See infra* notes 255-58 and accompanying text.

196. Treaty of the Economic Community of West African States, May 28, 1975, 14 I.L.M. 1200 (1975). This Treaty created a customs union which is still presently in operation. *Id.* arts. 12-14.

197. *See supra* notes 190-93 and accompanying text.

198. AMU Treaty, *supra* note 1, Preamble. This desire for further integration within the Union is incorporated in Article 17 of the Treaty. However, admission of other states requires unanimous approval by the Member States. *Id.*, art. 17.

199. *Id.*, art. 2. Another fundamental goal of the Union particularly worth mentioning is the desire to work towards achieving the free movement of persons and transfer of goods, services, and capital.

200. *Id.*, art. 3. If ever achieved, this could serve to bring Libya within a more moderate stand on international issues.

201. *Id.* The objective is to preserve the independence of each member country.

omy,²⁰² and culture.²⁰³

The Treaty creates within the Arab Maghreb Union a governmental structure, and the Presidential Council is at its pinnacle. The Presidential Council consists of the member countries' chiefs of state and is the sole decision making body. Decisions are made by the unanimous consent of the five chiefs of state.²⁰⁴ The Presidential Council is headed by a president; the presidency rotates among the members of the Presidential Council every six months.²⁰⁵ The Presidential Council holds its ordinary sessions every six months and may reconvene at any time should it deem necessary.²⁰⁶ Nevertheless, the Treaty does not specify where the Presidential Council will sit. The Council inferred that the seat will follow the member holding the six-month presidency.²⁰⁷

The General Secretariat reports directly to the President of the Presidential Council. The General Secretariat, composed of a delegate from each Member State,²⁰⁸ exercises its functions from the country holding the presidency of the Presidential Council. Therefore, the General Secretariat has control throughout the entire Union and is merely located for six months in one Member State. The President's control over the General Secretariat appears to be the single attribute of the presidency,²⁰⁹ notwithstanding the temporary prestige associated with the presidency. The state of the presidency covers the expenses of the General Secretariat. However, the

202. *Id.* This requires taking all necessary measures to develop industry, agriculture, commerce, and society in the Member States, especially by common projects and programs.

203. Culture includes the development of education through cooperation, the preservation of spiritual and moral values through *tolerant* Islamic teaching (evidencing a bias for moderate views) and the preservation of an Arab national and patriotic identity.

204. *Id.*, arts. 4, 6. The succession of the presidency is in this order: Morocco, Tunisia, Algeria, Libya, and Mauritania. *Uneasy calm restored in Dakar, Mouakchott*, The Xinhua General Overseas News Service (Apr. 26, 1989) (LEXIS, Nexis library, Omni file); *South Africa: Mandela and de Klerk to Visit U.S. in June*, Inter Press Service (May 15, 1990) (LEXIS, Nexis library, Omni file); *British Boat Destroyed by Guerrillas*, *supra* note 114; *Algerian Prime Minister in Morocco for Cooperation Talks*, The Reuters North European Service (Jan. 7, 1991) (LEXIS, Nexis library, Omni file).

205. AMU Treaty, *supra* note 1, art. 4. Obviously, the office of President of the Presidential Council is merely a figure head appointment without power since all decision taken by the Presidential Council requires unanimity. The Treaty does not specify the order of rotation, which is therefore left to the Presidential Council to decide upon.

206. *Id.*, art. 5. In addition to these meetings by the member chiefs of state, the prime ministers of the Member States or their representatives may convene whenever deemed necessary. *Id.* art. 7. The purpose of potential meetings by the prime ministers is not specified in the Treaty, nor is it stated whether the prime ministers themselves, or the Presidential Council, is the determinator of when such a meeting is necessary.

207. This inference is drawn from Article 11 which states that the General Secretariat, discussed at *infra* notes 208-10 and accompanying text, will be located in the country holding the presidency.

208. Since the method of appointment is not specified, it can only be assumed that appointment falls within the discretion of each Member State.

209. *Id.* The President's control is inferred from Article 11, stating: "The General Secretariat shall exercise its function in the country presiding over the session of the Presidential Council under the office of the President of that country." *Id.*

powers and duties of the General Secretariat are not specified, or even vaguely alluded to, in the Treaty.²¹⁰

The body created to advise the Presidential Council is the Consultative Council.²¹¹ The Consultative Council's purpose is to render opinions on issues submitted by the Presidential Council. In addition, the Consultative Council may render recommendations to the Presidential Council that aid in the consolidation²¹² of the Union's tasks and in the realization of the Union's goals. The Consultative Council, composed of twenty representatives from each Member State,²¹³ holds annual sessions²¹⁴ and reconvenes at other times upon the request of the Presidential Council. Again, no mention is made in the Treaty as to where the Consultative Council will sit or by what means it will be funded.²¹⁵

The Treaty further creates a Council of Foreign Ministers, which examines the work submitted to it by the Follow-up Commission and the Specialized Ministerial Commissions.²¹⁶ The Council of Foreign Ministers prepares an agenda for and attends the meetings of the Presidential Council.²¹⁷ Thus, the Council of Foreign Ministers appears to exert much influence in the decisions taken by the

210. *Id.*, art. 11.

211. The Consultative Council prepares its internal regulations subject to ratification by the Presidential Council. *Id.*, art. 12.

212. The French versions of the Treaty interpret the translation of "consolidation" from the Arabic as to mean the reinforcement of the work or action taken by the Union. Jangor, *supra* note 1, at 129; 94 RGDIP at 555.

213. Though the AMU Treaty called for ten representatives from each Member State, the Presidential Council increased, pursuant to Article 18, the number to twenty representatives from each state. *Arab Maghreb Union Ends Summit Meeting*, The Xinhua General Overseas News Service (Jan. 23, 1990) (LEXIS, Nexis library, Omni file). Article 18 is discussed at *supra* note 187.

The representatives are chosen by the legislative bodies of each state according to the state's individual, local regulations. Though not specifically stated, it is inferred that each state will choose its respective twenty representatives to the Consultative Council, and not all five member states agreeing on twenty representatives from each state totaling one hundred representatives. AMU Treaty, *supra* note 1, art. 12.

214. The Consultative Council held its first session on June 10, 1989 in Algiers, where it urged cooperation in the fields of education, culture, information, and economic joint ventures. *North African States form new Parliament*, The Christian Science Monitor, June 13, 1986, at 6.

215. AMU Treaty, *supra* note 1, art. 12.

216. *Id.*, art. 8. Concerning the Follow-up Commission, there is no provision within the Treaty which specifically calls for its formation. However, Article 9 alludes to this formation, stating:

Each member state will appoint a member of its Ministerial Council or General Popular Committee that would specialize in the affairs of the Union. They will form a committee charged to *follow-up* [underline by author] on the Union's affairs, and will submit the results of its work to the Council of Foreign Ministers.

Id.

There is a provision creating the Specialized Ministerial Commissions, and these Commissions are set up by the Presidential Council. The Commissions' duties, purposes, size, et cetera are not specified within the Treaty; Article 10 merely states that the Presidential Council will define their duties.

217. *Id.*, art. 8.

Presidential Council. The Council of Foreign Ministers examines, and probably proposes and edits, the work of the above-mentioned Commissions, presenting such work to the Presidential Council.²¹⁸ However, the treaty does not specify the number and percentage of membership, the method of appointment, the funding and the seat of the Council of Foreign Ministers.

One important organ created by the Treaty is the Judicial Authority. The purpose of the Judicial Authority is to examine conflicts that may arise relating to the interpretation and implementation of the Treaty. Possible conflicts include future agreements made within the framework of the Treaty. The Judicial Authority acquires jurisdiction to settle issues when it is petitioned by the Presidential Council or by a Member State involved in the dispute or pursuant to the Judicial Authority's Principal Regulations. The decisions rendered by the Judicial Authority are binding and final.²¹⁹

In addition to the judicial powers granted to the Judicial Authority, it also provides consultative opinions on legal matters presented to it by the Presidential Council. The Presidential Council determines the seat of the Judicial Authority and fixes its budget. The Judicial Authority must prepare its internal regulations. These regulations will become part of the Treaty, and are subject to the Presidential Council's approval.²²⁰

Each Member State appoints two justices to the Judicial Authority for staggered six-year terms.²²¹ The Judicial Authority elects a chairman from its ten members every year, although the chairman does not apparently possess any power beyond that of his fellow justices.²²²

Nevertheless, the Treaty has not addressed all the concerns that

218. *Id.*

219. *Id.* art. 13.

220. *Id.*

221. *Id.* The notion that the treaty calls for staggered terms is derived from Article 13 of the Treaty, stating:

The Union will have a Judicial Authority composed of two judges appointed by each member state for a period of six years to be renewed by half every three years.

Id.

This renewal provision in the English version of the Treaty is very ambiguous. The French version of this part of Article 13, from Jangor, *supra* note 1, at 129, elucidates more with:

L'Union disposera d'un organe juridique composé de deux juges pour chaque état, désignés par l'Etat concerné pour une durée de six ans et renouvelable par moitié tous les trois ans.

Id.

That is to say, of the two judicial appointments which a Member State must take, one of the justice's terms will expire three years after the other justice's term expires. Thus, justice A and justice B will be initially appointed by Member State Z for six years. In reality though, either A's or B's term must last, in effect, for nine years. Thereafter, the staggered six-year terms of half of the Judicial Authority will be achieved.

222. However, this could change given the fact that the internal regulations of the Judicial Authority have neither been prepared nor approved at this time.

are necessary for its proper functioning. For instance, the Treaty does not specify whether a majority or unanimity is required for the Judicial Authority to arrive at a "decision." In addition, since the Presidential Council fixes the budget of the Judicial Authority and since the Presidential Council requires unanimity to make a decision, a Member State could block the entire budget of the Judicial Authority or reduce the budget to a nullity. The Judicial Authority, therefore, would cease without independent contributions by the other member states.

In summary, the Treaty is too simply structured, leaving out many important details to be negotiated at a later date. The entire bureaucracy of the Union, except the Judiciary Authority, appears to follow the president of the Presidential Council on its rotation from member state to member state. The Treaty fails to define the technical duties and responsibilities of many of the organs created, the percentage representation, the duration of appointment terms, and the method of appointment. Furthermore, funding for the structure of the Union is not addressed within the Treaty. Most importantly, no fixed dates for implementation of any possible programs are provided. Given the fact that the Presidential Council requires unanimity to render a decision, each member state has conserved an absolute sovereignty,²²³ which has the effect of severely limiting possible action by any of the organs created. This situation could destine the Arab Maghreb Union to suffer a similar fate as that of its predecessor, the CPCM.²²⁴

E. Cooperation Thus Far Within the AMU

Since Algeria has been damaged from price fluctuations in crude oil, it has decided to expand its natural gas production.²²⁵ With the new warming of relations between Algeria and Morocco in 1988, the two began negotiating a deal to jointly build a multi-million-dollar, 2,000 kilometer, gas pipeline that would traverse Algeria and go under the Strait of Gibraltar via Morocco.²²⁶ This pipeline will enable Algeria to capture important markets in Spain and to

223. For this reason it appears that there is no provision for withdrawal from the Union, since all a member state must do is simply abstain from voting in, or vote against all proposals before, the Presidential Council to render inoperative the Union.

224. The possible exceptions to this statement are the provisions for mutual defense and the prohibition against any infringements on, or the permittance of violations against, a fellow member state's sovereignty, as stated in Articles 14 and 15. Therefore, what is left, in essence, is a treaty of friendship and good neighborly relations. This statement is especially true in that as of present, no concrete steps have been taken to implement any programs necessary toward realizing a political, economic unity.

225. Noori, *Maghreb Pipeline could ease Europe's reliance on Soviet gas*, The Reuters Library Report, (Oct. 7, 1988) (LEXIS, Nexis library, Omni file).

226. Clayton, *Maghreb Pipeline could ease Europe's reliance on Soviet gas*, The Reuters Library Report (Oct. 7, 1988) (LEXIS, Nexis library, Omni file).

link up with the European network. It is anticipated that Algeria will become the EEC's main supplier of natural gas.²²⁷ Morocco, for its part, will receive cheap Algerian natural gas and will earn transit fees. The pipeline will be completed in 1995, and a joint Moroccan-Algerian company, headquartered in Morocco with a capital of \$500,000 will be created.²²⁸

Similar pipeline proposals, involving Algeria, Libya, and Tunisia, are in the planning stage to better access Greece and Italy.²²⁹ Presently, Tunisia and Algeria are operating a transmediterranean pipeline from Algeria, across Tunisia, to Sicily.²³⁰ Furthermore, the Maghrebine Countries have agreed to integrate the operations of their national carriers for air transportation. This integration involves recognizing each other's tickets, sharing revenues on some lines, servicing each other's planes and joint training.²³¹

On May 6, 1990, The Maghreb Council of Transport Ministers adopted resolutions for the creation of a common carrier, Air Maghreb. A commission was formed to effectuate the project on financial and technical levels.²³² In addition, resolutions were passed to make more time efficient the Casablanca-Tunis passenger transport services. The Council also agreed that Libya and Mauritania should be connected on the Maghreb railway network.²³³

The Arab Maghreb Union has instituted no substantial or concrete achievements to date. The inherent weaknesses of the Treaty creating the Union of the Arab Maghreb, which attempts to group States of such diverging policies, has resulted in its members arranging bilateral agreements between themselves, as demonstrated by the Moroccan-Algerian pipeline negotiation.

III. GATT, EEC, and U.S. Implications

A. *GATT Obligations of the Arab Maghreb Union*

The General Agreement on Tariffs and Trade (GATT), formed on October 30, 1947,²³⁴ embodies the economic principle of compar-

227. See generally *Pipelines*, The Financial Times Limited, June 8, 1990.

228. See generally *Pipelines*, The Financial Times Limited, April 27, 1990.

229. *Morocco, Algeria Agree on Gas Pipeline Project*, The Reuters Library Report (Sept. 16, 1988) (LEXIS, Nexis library, Omni file).

230. Noori, *supra* note 210.

231. *North African Airlines take first step toward joint company*, The Reuters Library Report (May 4, 1990) (LEXIS, Nexis library, Omni file).

232. *Maghrib Arab Press, Maghreb air carrier to be established*, The British Broadcasting Corporation (May 15, 1990).

233. *Id.*

234. General Agreement on Tariffs and Trade (GATT), opened for signature Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT]. The official text of the agreement, last amended in 1965, is found in THE TEXT OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE, U.N. Sales No. GATT/1986-4 (1986), and in 4 CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SE-

ative advantage in world trade.²³⁵ The goal of GATT is the enhancement of world trade by negotiating lower tariff barriers.²³⁶ These negotiations contribute to the development of the world's economy by increasing trade, thus, creating a system of harmonious trade and integrating the economies of the participating states through greater trade liberalization.²³⁷ To achieve these objectives, GATT embodies the principle of Most-Favored-Nation (MFN). Under this principle, products from any contracting party²³⁸ are to be accorded "no less favorable" treatment than like products from any other contracting party.²³⁹

One step toward greater trade liberalization, which is an allowable divergence from MFN, is the formation of a customs union.²⁴⁰ GATT allows customs unions to be created between contracting parties provided that the purpose of such customs union "should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."²⁴¹ In other words, the customs union must create trade as opposed to divert trade.²⁴²

The procedures for the formation of a customs union is within GATT require that the customs unions regulation of commerce does not become overly restrictive to the other contracting parties²⁴³ and that the contracting parties forming the customs union design a plan

LECTED DOCUMENTS (1969) [hereinafter GATT, BISD].

235. J. JACKSON, *WORLD TRADE AND THE LAW OF THE GATT* 330 (1969).

236. R. IMHOOF, *LE GATT ET LES ZONES DE LIBRE-ECHANGE* 8 (1979).

237. *Id.* at 8-9.

238. Contracting parties, whether in the singular or plural, refers to the individual signatories to the GATT. T. FLORY, *LE GATT: DROIT INTERNATIONAL ET COMMERCE MONDIAL* 254 (1968).

239. This principle is also referred to as nondiscrimination. Demonstrating the significance of Most Favored Nations (MFN) in the GATT, it has been incorporated in GATT, *supra* note 237, art. I. "No less favorable" treatment demonstrates the GATT's conviction that discrimination is trade-diverting and therefore must be discouraged. *Id.*

240. W. Davey, *supra* note 123, at 271, 455; J. JACKSON, *supra* note 235, at 271. A customs union is defined as:

[T]he substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce . . . are eliminated with respect to substantially all the trade between the constituent territories of the union . . . and,

(ii) . . . substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union[.]

GATT, *supra* note 237, art. XXIV(8)(a).

241. This paragraph merely states a principle and has no independent binding force upon the contracting parties. However, it does serve as a basis to interpret the other provisions of art. XXIV and provides the GATT with a base to weigh the possible effects of a treaty creating a customs union. R. IMHOFF, *supra* note 221, at 62-65. *See also* J. JACKSON, *supra* note 235, at 599-607.

242. T. FLORY, *supra* note 238, at 93.

243. GATT, *supra* note 234, art. XXIV(5)(a).

and schedule within a reasonable amount of time.²⁴⁴ Once a contracting party enters into an agreement for a customs union or an interim agreement, the contracting party who desire the customs union must notify GATT.²⁴⁵ GATT may deny its formation if it appears that such a customs union will not be formed within the period contemplated or that period is unreasonable.²⁴⁶

Nevertheless, in practice, some contracting parties have notified GATT of a customs union formation after the agreement had already entered into force.²⁴⁷ In addition, GATT's control of the acceptance or rejection of a customs union is limited to the plan, tariff schedule, and time of implementation of the customs union.²⁴⁸ However, the trade-creating principle enounced in Article XXIV, paragraph 4, could serve as an interpretive device for weighing the benefits and detriments of a customs union.²⁴⁹

Relating the application of Article XXIV to developing countries, it is applied in a relaxed manner to aid these countries in achieving economic unification.²⁵⁰ In the beginning, GATT justified

244. *Id.*, art. XXIV(5)(c). It is within GATT's discretion to determine what is a reasonable amount of time. T. FLORY, *supra* note 238, at 93.

245. GATT, *supra* note 234, art. XXIV(7)(a). Article XXIV(7)(a) states that any "contracting party deciding to enter into a customs union . . . shall promptly notify the CONTRACTING PARTIES . . ." (emphasis added). This general language was preferred by the drafters over language which would have specifically required notification before entering into an agreement, which would have given the GATT the opportunity to approve or disapprove the customs union before a contracting party entered into it. Under the present language of the subparagraph, the duty to notify apparently does not arise until at least after an agreement has been signed. R. IMHOOF, *supra* note 236, note 4 at 97, 97-98.

246. GATT, *supra* note 234, art. XXIV(7)(b).

247. One example of such a situation is the Caribbean Free-Trade Association, where the member states did not notify the GATT of the formation of a free-trade area until three years after the free-trade area went into force. R. IMHOOF, *supra* note 236, note 5 at 97.

248. Nevertheless, the GATT still allowed the formation of a free-trade area between Australia and New Zealand even though these countries had not yet sufficiently completed a plan or program. The rationale was that the treaty implementing the free-trade area was only provisional. However, the GATT requested that the completed plan and program be submitted as soon as possible. T. FLORY, *supra* note 238, at 148.

249. R. IMHOOF, *supra* note 236, at 100. A possible argument against the allowance of a customs union in the present case is that the political and economic reasons for the formation of the Arab Maghreb Union are not in accordance with the stated art. XXIV(4) policy. The Arab Maghreb Union members feel that together they will be more likely to influence the European Community. Murphy, *supra* note 3, at 4. This hardly appears to be in conformity with the GATT desire to enhance trade. In addition, the Arab Maghreb Union members only conduct about 3% of their total trade intra-regionally; they conduct 60% of their trade with the EEC. *Id.* Moreover, much of the members' trade involves the same products. *Id.* Thus, enhanced trade by specialization may not occur, though the creation of a political block to influence the EEC is likely. Nevertheless, GATT provides no specific, independent provision to combat or prevent the formation of a customs union for such purposes. However, paragraph four may be invoked as an interpretive device which could serve to reject this sort of customs union by GATT. See *supra* notes 241-42 and accompanying text.

250. R. IMHOOF, *supra* note 236, at 116. See also T. FLORY, *supra* note 238, at 129. One such example was the Latin American Free-trade Association, which instituted a free-trade area in 1960 between Brazil, Chile, Peru, Uruguay, Argentina, Mexico, and Paraguay. The Association lacked a precise program for trade liberalization, and the immediate suppression of all trade restrictions between the Member States could not be foreseen. The GATT Working Group also surmised that the free-trade area would be trade diverting, as opposed to

this lax application process based solely upon political and economic grounds, in an attempt to give affect to the non-ratified Havana Charter²⁵¹ and to take into account the poor economic situations of developing countries.²⁵² Since 1965, the amendment of GATT by Part IV provided a legal basis for this lax application.²⁵³ Significantly, Part IV allows GATT to permit contracting parties "to use special measures to promote their trade and development."²⁵⁴ Thus, when an agreement for a customs' union based on Part IV, has been reached between developing countries, GATT will approve *a priori* the customs union, whether or not it is consistent with Article XXIV, MFN, or any other GATT objectives.²⁵⁵

Although the Maghrebine Countries will be afforded much latitude in the formation of a customs union, the problem remains that not all of these countries are members of GATT. Mauritania was the first Maghrebine Country to accede to GATT on September 30, 1963.²⁵⁶ Morocco followed much later and acceded on May 18,

trade creating, thereby in breach of Article XXIV(4). Nevertheless, due to the fact the Association grouped developing countries, the GATT did not exercise rigorous control over it. In fact, the requirements for a free-trade area were liberally and tolerantly interpreted, thus affording the Association much more latitude than that which would have been allowed to developed States. T. FLORY, *supra* note 238, at 135-37.

Another example of lax application of the GATT to developing countries forming a customs union is the case of the Equatorial Customs Union. Here, the GATT allowed the member states of the customs union to triple the common exterior tariff, recognizing that in order for this customs union to be effective in promoting development and production diversification, it was necessary to provide adequate tariff protection during at least the initial stages. *Id.* at 129-30.

251. Negotiations from 1947-1948 in Havana led to the International Trade Organization (ITO) Charter, commonly referred to as the Havana Charter. The Havana Charter contained provisions allowing for preferential arrangements between developing countries, subject to a two-thirds vote of approval by all signatories. Although these provisions were intended to be integrated into the GATT, they were delayed, assuming the ITO and its Charter would replace the GATT. The ITO never reached fruition, and these provisions fell into obscurity. J. JACKSON, *supra* note 235, at 577-78.

252. R. IMHOOF, *supra* note 236, at 116-17. GATT will permit regional integration in order to expedite the effects of integration on the developing countries, to increase these countries' trade between themselves, and also to better help them participate in world trade. Helping the developing countries to better participate in world trade will create new trade flows from which the developed countries will also benefit. *Id.* at 119.

253. Part IV merely expresses moral commitments, with no legal binding effect, by the developed countries to the developing countries. Nevertheless, the developed countries have felt obligated to stand by these commitments. R. HUDEC, *DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM* 56-59 (1987).

Part IV was adopted pursuant to the Declaration on the *de facto* Implementation of the Provisions of the Protocol Amending the General Agreement on Tariffs and Trade to Introduce a Part IV on Trade and Development, Feb. 8, 1965, *reprinted in* GATT, 13 BISD 10-11 (1966).

254. GATT, *supra* note 234, art. XXXVI(1)(f). In addition, developed contracting parties may enter into preferential trade arrangements with developing contracting parties, which remove or reduce the developed contracting parties' tariffs against the developing contracting parties, so long as there is no reciprocity. That is to say, the developing contracting parties do not have to remove or lower their tariffs against the developed contracting parties. *Id.*, art. XXXVI(8) at 1980.

255. R. IMHOOF, *supra* note 236, at 124.

256. GATT, 12 BISD 33-34 (1965). Mauritania's accession was pursuant to art.

1987.²⁵⁷ Tunisia continuously has renewed its provisional accession to GATT since November 12, 1959.²⁵⁸ On the other hand, Algeria applies GATT on a *de facto* basis and benefits from MFN and GATT members' tariff schedules, so long as Algeria grants MFN treatment to GATT members.²⁵⁹ Libya is the only Maghrebine country which does not have any affiliation with GATT.

The Latin American Free-Trade Association (LAFTA) is an example of a situation in which some but not all of the members of a would-be customs union are GATT members. Formed in 1960, LAFTA was comprised of seven countries; two of these seven countries were not GATT members and one had only provisionally acceded to GATT.²⁶⁰ The non-GATT members of LAFTA also were required to conform to Article XXIV requirements.²⁶¹

Thus, Article XXIV procedures and requirements must be followed by Mauritania, Morocco, and Tunisia since they have ac-

XXVI(5)(c) where a newly independent state would inherit the tariff schedule applied to it by the former colonial ruler, which is a contracting party. *Id.* at 33; J. JACKSON, *supra* note 235, at 98. If no such tariff schedule for the former colony existed, the newly independent state would be able to join GATT without any tariff concessions at all. *Id.* at 98.

The new country must have been sponsored for membership by the former colonial power, per Article XXVI(5)(c), and the new country must thereafter apply GATT on a *de facto* basis. Reciprocally GATT will apply to the new country on a *de facto* basis, so that the new country may have time to formulate its international commercial policies and decide whether it wishes to join GATT. *Id.* at 97. Mauritania's rights and obligations as a contracting party to GATT were to date from the day of its independence, November 28, 1960. GATT, *supra* note 253, at 33-34.

257. GATT, 34 BISD 3 (1988). Morocco's accession was pursuant to Article XXVI(4). *Id.* at 4-5. This provision allows for automatic admission to the GATT upon acceptance by the applicant country. However, pursuant to article XXVI(2), the applicant country must have been negotiating on March 5, 1955 for accession. It is doubtful that this was the case for Morocco, since the Working Party recommended admission per Article XXXIII, requiring a two-thirds majority vote by the Contracting Parties. GATT, 33 BISD, 87 96 (1987).

258. Tunisia continuously renews its GATT affiliation for one to two year periods. *See* Provisional Accession of Tunisia, para. 6, *reprinted in* GATT, 8 BISD 15-16 (1960). This provisional accession was last reportedly renewed until December 31, 1989. GATT, 15 BISD (1989). It is assumed that this has once again been renewed and effective at present.

Tunisia enjoys, under provisional accession, the GATT tariffs and applies its negotiated tariffs. Provisional Accession of Tunisia, GATT, 8 BISD 15-16, para. 1 (1960). Nevertheless, Tunisia's status does not grant it any direct rights with respect to the tariff concessions in GATT. *Id.* Complete accession to the GATT by Tunisia is anticipated per Article XXXIII. *Id.*

259. GATT, 9 BISD 16 (1961). Though the *de facto* application was last renewed until 1967, GATT, 14 BISD 12 (1967), it still continues to be applied. GATT, 35 BISD IX (1989).

260. LAFTA in 1960 was comprised of Brazil, Chile, Peru, Uruguay, Argentina, Mexico, and Paraguay. Mexico and Paraguay were not GATT members and Argentina had only provisionally acceded to the GATT. T. FLORY, *supra* note 238, at 135.

261. *Id.* at 135-36. However, *see* note 254 discussing the lax application of these regulations to all LAFTA members. *See also* the case when the United Kingdom and the Republic of Ireland formed a free-trade area in 1965. Though the United Kingdom was a GATT member, Ireland was not a GATT member at the time. In order for the GATT to approve the free-trade area, Ireland vowed that it would respect GATT regulations. *Id.* at 149.

The end result of a non-GATT member of a customs union applying Article XXIV regulations is that its external tariffs must be lowered to that of the GATT member's tariffs of the customs union. This is not the case in a free-trade area since each member maintains its own external tariffs and may apply internal tariffs against products imported to the GATT member which reach the non-GATT member.

ceded, whether fully or provisionally, to GATT.²⁶² Algeria and Libya are the only two countries which do not have Article XXIV obligations, but they will nevertheless be indirectly obliged to adhere to GATT regulations to ensure that Mauritania, Morocco, and Tunisia do not breach their GATT duties. If a political union occurs, the GATT members of the Arab Maghreb Union will lose their GATT affiliation. The Union, therefore, will have to apply for accession to GATT to receive MFN tariff benefits.²⁶³

No plan, schedule, or time frame for the implementation of a customs union within the Arab Maghreb Union has been supplied to GATT.²⁶⁴ No immediate duty on behalf of these countries appears necessary due to the latitude GATT affords to developing countries. In addition, the customs union has not been implemented and will not likely to be implemented within the very near future.

B. EEC Agreements Concluded with the Maghreb

In 1978 the EEC entered into trade agreements with Algeria, Morocco, and Tunisia²⁶⁵ pursuant to Part VI of the Treaty of Rome.²⁶⁶ According to the Maghreb Cooperation Agreements, most industrial products which originate²⁶⁷ in Algeria, Morocco, and Tu-

262. Article XXIV(1) requires that GATT members, who have acceded per Article XXVI, or to whom the GATT is applied per Article XXXIII, or in accordance with the Protocol of Provisional Application, adhere to the procedures and requirements of Article XXIV. See notes 255-57 explaining how these countries acceded to the GATT.

263. This statement presupposes that a single customs territory will have already been formed within the Arab Maghreb Union, or that none of the formerly independent states enjoys fully autonomy in its external commercial relations, since these are the requirements of a contracting party. See GATT, *supra* note 237, arts. XXXII, XXXIII, XXVI.

Since the GATT requires admission and defines the procedures for admission, international law allows for strict adherence to these procedures when state succession is involved. These procedures must be strictly adhered to. J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 355-56, 655-56 (8th ed. 1977). The rights and obligations which the members of the Arab Maghreb Union may have had with the GATT will not be enforceable, since third parties, here the GATT members, cannot be bound by such a succession, unless they make an express declaration to be bound or impliedly do so by their conduct. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 653 (3rd ed. 1979).

264. Letter of Liliane Rastello, Principal Directrice of Information to the GATT, of October 24, 1990.

265. Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, 21 O.J. EUR. COMM. (No. L 263) 2 (1978).

Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, 21 O.J. EUR. COMM. (No. L. 264) 2 (1978).

Cooperation Agreement between the European Economic Community and the Republic of Tunisia, 21 O.J. EUR. COMM. (No. L 265) 2 (1978).

Since all three agreements are substantially similar in import, they will be collectively referred to as the "Maghreb Cooperation Agreements" hereinafter.

266. Treaty Establishing the European Economic Community (EEC), Part VI, 2 B.D.I.E.L. 45 [hereinafter Treaty of Rome], stating, in pertinent part, that "[t]he Community may conclude with a third state, a union of states or an international organization establishing an association involving reciprocal rights and obligations, common action and special procedures." *Id.* art. 238.

267. Protocol 2 of the Maghreb Cooperation Agreements broadly defines "originating products" of a signatory (Algeria, Morocco, Tunisia, EEC) as products wholly obtained within

nesia, can be imported into the EEC free of quantitative restrictions and customs duties.²⁶⁸ However, the product must be transported directly from any of these Maghrebine countries to the EEC. If direct transport is not effectuated, then an explanation must be provided and the product must have been kept under surveillance by the customs authorities in the intermediate country.²⁶⁹

For example, although many petroleum products and natural cork were allowed into the EEC without customs duties, these products were subject to annual quantity ceilings, and customs duties were applied when the quantity imported exceeded the ceiling.²⁷⁰

the signatory. Maghreb Cooperation Agreements, Protocol 2, art. 1(1), *supra* note 249; (No. L 263), at 40; 21 O.J. EUR. COMM. (No. L 264) art. 1(1), art. 38; and O.J. EUR. COMM. (No. L 265) art. 1(1), at 38.

Wholly obtained products of a signatory generally refers to minerals or food produced in the signatory. *Id.*, Protocol 2, art. 2., (No. L 263), at 40-41; 21 O.J. EUR. COMM. (No. L 264), at 38-39; 21 O.J. EUR. COMM. (No. L 265), at 38-39.

Where one of these Maghrebine Countries obtains products from one or both of the other two stated Maghrebine Countries, or from the EEC, and these products undergo working or processing in the acquiring Maghrebine Country, those products will be considered by the EEC as originating from that Maghrebine Country. *Id.* Protocol 2 art. 1(2), (No. L 263), at 40; 21 O.J. EUR. COMM. 38. When products wholly obtained in one of the Maghrebine Countries undergoes working or processing in the EEC, those products are to be considered by the Maghrebine Countries as wholly obtained with the EEC. *Id.* Protocol 2, art. 1(3), (No. L 263), at 40; 21 O.J. EUR. COMM. (No. L 264), at 38; 21 O.J. EUR. COMM. (No. L 265), at 38.

In addition, "originating products" also includes products obtained in a signatory, where products not wholly obtained in the signatory were used to manufacture the product, so long as the products undergo sufficient working or processing. *Id.* Protocol 2, art. 1(1), (No. L 263), at 40; 21 O.J. EUR. COMM. (No. L 264), at 38; 21 O.J. EUR. COMM. (No. L 265), at 38. Where the working or processing takes place in either of the other two Maghrebine Countries, or in the EEC, and the product undergoes subsequent working or processing in the acquiring Maghrebine Country, that product will be deemed by the EEC as originating from the Maghrebine Country which last performed the working or processing. (The one exception to this last statement is Tunisia, where when the working or processing takes place in Algeria, Morocco or the EEC, and the product undergoes subsequent working or processing in Morocco, the working or processing will nevertheless be deemed as having been carried out in Tunisia.) *Id.* Protocol 2, art. 1(2), (No. L 263), at 40; 21 O.J. EUR. COMM. (No. L 264), at 38; 21 O.J. EUR. COMM. (No. L 265), at 38. When a product has undergone working or processing in a Maghrebine Country, and that product thereafter undergoes subsequent working or processing in the EEC, that Maghrebine Country must consider the product to have undergone working or processing in the EEC. *Id.* Protocol 2, art. 1(3), (No. L 263), at 40; 21 O.J. EUR. COMM. (No. L 264), at 38; 21 O.J. EUR. COMM. (No. L 265), at 38.

Thus, further trade concessions to the Maghreb become apparent since products from the Maghreb, which undergo working or processing in the EEC, and are shipped from the EEC to the Maghreb, will be subject to Maghrebine tariffs. Whereas, conversely, a product from the EEC, which undergoes working or processing in the Maghreb, may be exported to the EEC and accorded the favorable tariff treatment as provided in the Agreements.

Generally, sufficient working and processing is defined to exclude minimal transformations such as preservation of the goods during transport and storage, cleaning, sorting or classifying the goods, packaging or breaking up and mixing the goods, affixing marks or labels on the goods, assembly of the goods, and the slaughter of animals. *Id.* Protocol 2, art. 3(3), (No. L 263), at 41; 21 O.J. EUR. COMM. (No. L 264), at 39; 21 O.J. EUR. COMM. (No. L 265), at 39.

268. Maghreb Cooperation Agreements, art. 9(1), (No. L 263), at 5; 21 O.J. EUR. COMM. (No. L 264), at 5; 21 O.J. EUR. COMM. (No. L 265), at 5. Industrial products which do not receive free access to the EEC market are listed in annex II of the Maghreb Cooperation Agreements. *Id.*

269. *Id.* Protocol 2, arts. 1(1), 5, (No. L 263), at 40, 42; 21 O.J. EUR. COMM. (No. L 264), at 38, 40; 21 O.J. EUR. COMM. (No. L 265), at 38, 40.

270. *Id.* art. 12, (No. L 263), at 6-7; 21 O.J. EUR. COMM. (No. L 264), at 6-7; 21 O.J.

However, these ceiling amounts were voided by 1980.²⁷¹ In addition, the duties on most agricultural products originating²⁷² and transported²⁷³ from Algeria, Morocco, and Tunisia were substantially, and sometimes wholly, reduced. One important agricultural product to receive this favorable treatment is fish. Its tariff was reduced by 100%.²⁷⁴ Nevertheless, textile products from Morocco and Tunisia are subjected to negotiated import quotas.²⁷⁵

The Maghreb Cooperation Agreements (Agreements) accord many concessions by the EEC to these three Maghrebine Countries. These countries must grant MFN treatment in return to EEC products.²⁷⁶ In any event, the EEC is assured MFN status due to the Maghrebine Countries' affiliations with GATT.²⁷⁷ Thus, since these Agreements are in essence non-reciprocal concessions on the part of the EEC to the Maghrebine Countries, and since the EEC may unilaterally terminate the Agreements with six months' notice,²⁷⁸ the reasons for the Maghrebine Countries' paranoia of possibly losing their preferential market has become readily apparent.²⁷⁹

As a signatory to the Lomé IV Convention,²⁸⁰ Mauritania is entitled to directly export to the EEC, free of customs duties, all products that originate from within Mauritania or any of the other sixty-nine designated African, Caribbean, and Pacific (ACP) States.²⁸¹

EUR. COMM. (No. L 265), at 6-7. Nevertheless, the EEC reserved the right to modify concessions regarding the petroleum products upon adoption of a common definition of origin for petroleum products, of decisions under a common commercial policy, or of a common energy policy. *Id.* art. 13(1), (No. L 263), at 7; 21 O.J. EUR. COMM. (No. L 264), at 7; 21 O.J. EUR. COMM. (No. L 265), at 7.

271. *Id.* art. 12(5), (No. L 263), at 7; 21 O.J. EUR. COMM. (No. L 264), at 7; 21 O.J. EUR. COMM. (No. L 265), at 7; Bruno, *EEC Trade Agreements with Middle Eastern Countries*, 4 Middle East Executive Reports 9 (Jan. 1981).

272. See *supra* note 252 defining "originating products."

273. See *supra* note 254 and accompanying text defining "directly transported."

274. *Id.* art. 15, (No. L 263), at 8-14; 21 O.J. EUR. COMM. (No. L 264), at 8-15; 21 O.J. EUR. COMM. (No. L 265), at 8-15. The concessions covered more than 80% of the Maghrebine agricultural exports to the EEC, also including citrus fruits, tomatoes, and potatoes. J. McMAHON, *EUROPEAN TRADE POLICY IN AGRICULTURAL PRODUCTS* 142 (1988).

275. *Promethee, Annuaire 1991 des Accords Textiles de la CEE D5-D9* (1991) [hereinafter *Promethee*].

276. Maghreb Cooperation Agreements, *supra* note 250, L263 art. 25(1), at 19; L264 art. 27(1), at 18; L265 art. 26(1), at 18. These Agreement Articles also state that this MFN obligation may be breached "in the case of measures adopted with a view to the economic integration of the Maghreb." *Id.*, art. 25(3). Furthermore, any one of these Maghrebine countries may derogate from the MFN obligation should it enter into a customs union of free trade area. *Id.*, art. 25(2). No mention is made of a complimentary derogation from the definition of an originating product. See Protocol 2, *supra* note 267.

277. See *supra* notes 255-58 discussing the GATT affiliations of these Maghrebine countries.

278. Maghreb Cooperation Agreements, *supra* note 250, (No. L 263), art. 55, at 24; 21 O.J. EUR. COMM. (No. L 264), art. 57, at 22; 21 O.J. EUR. COMM. (No. L 265), art. 56, at 22.

279. See *supra* note 235 depicting this fear of the Maghreb of a possible set-back in their most important market, the EEC.

280. The EEC was authorized to negotiate the nonreciprocal Lome Convention IV pursuant to the Treaty of Rome. Treaty of Rome, *supra* note 266, art. 238.

281. Fourth ACP-EEC Convention, Dec. 15, 1989, 29 I.L.M. 783, 84, art. 168, Protocol

Originating products, as listed in Protocol 1 of the Convention, include fish and minerals — Mauritania's sole exports.²⁸² In addition, these products cannot be subjected by the EEC to quotas or other quantitative import restrictions.²⁸³ The Convention, which went into effect on March 1, 1990, will remain in effect for ten years.²⁸⁴ Nevertheless, any signatory, the EEC, or any ACP, may withdraw from the Convention with six months' notice. In addition, the EEC may unilaterally cease application of the Convention to any ACP with the same notice.²⁸⁵ Thus, ACP's fear a potential EEC legal derogation.

Thus, all of the Maghrebine Countries, except Libya, have concluded trade agreements with the EEC which give them valuable preferences. With the advent of 1992, these agreements will constitute the only preferential arrangements that the Maghrebine Countries enjoy in the EEC, since agreements between individual EEC States and the Maghreb will be eliminated.²⁸⁶ The possibility of losing preferential treatment in the Maghreb's largest market certainly provides an impetus for unity, to influence more effectively EEC legislation; however, it is evident that this EEC legislation has created "trading blocks" within the Arab Maghreb Union, which can only deter, rather than aid, the Arab Maghreb Union members in achieving a successful union.

C. *United States Legislation Relating to the Maghreb*

The Trade Act of 1974 instituted within the United States the non-reciprocal Generalized System of Preferences (System). This System provides that the United States President, at the person's discretion, "may provide duty-free treatment for any eligible article from any beneficiary developing country"²⁸⁷ Duty-free treat-

1, art. 10, 888 (1990) [hereinafter Lomé IV Convention]. These provisions are rather similar to those of the Maghreb Cooperation Agreements.

282. Specifically stated, wholly obtained products from the ACP or EEC include:

(a) mineral products extracted from their soil or from their seabed;

* * *

(f) products of sea fishing and other products taken from the sea by their vessels[.]

Id. Protocol 1, art. 2, at 887. Protocol 1 is incorporated into the Convention per Article 368, at 885.

See notes 135-36 and accompanying text describing Mauritanian exports.

283. Lomé IV Convention, *supra* note 281, art. 169, at 845.

284. *Id.*, art. 366, at 885.

285. *Id.*, art. 367, at 885.

286. Lancaster, *Completing the European Market*, in *THE IMPACT OF EUROPE IN 1992 ON WEST AFRICA* 25, 29 (O. Obasanjo & H. d'Orville eds. 1990).

287. A beneficiary developing country is broadly defined as a country that has been designated by the President, either by Executive Order or by Presidential Proclamation, to be a beneficiary developing country. 19 U.S.C. 2461 (1988).

The prerequisite that a beneficiary developing country be a country merely requires that it be a foreign country, an overseas dependent territory of a foreign country or a possession of a foreign country. 19 U.S.C. 2462(a)(1) (1988). This definition of a country also includes the

ment will be accorded to designated, eligible articles²⁸⁸ from beneficiary developing countries, even though subsidies were provided in

Trust Territory of the Pacific Islands. 19 U.S.C. 2462(a)(3) (1988). The Congress refused to define or provide a list of what is a developing country since such designation would be subject to change and could imply a right to benefit from generalized preferences. However, a list was provided of eligible countries to be considered for beneficiary developing country status in 1974; a list which included all five of the Maghrebine countries. 4 U.S. CODE & CONG. & ADMIN. NEWS 7186, 7349 (West 1974). However, in determining whether to designate any country as a beneficiary developing country, the President must consider if the country itself wants such status conferred upon it, the level of economic developing of the country, if other developed countries are extending generalized preferential tariff treatment to the country, to what extent the country has made assurances to the United States that it will provide equitable and reasonable access to its markets and basic commodity resources and refrain from engaging in unreasonable export practices, if the country protects intellectual property rights, the extent to which the country has reduced barriers to trade in services, and if the country attempts to grant to its workers internationally recognized workers rights. 19 U.S.C. 2462(c) (1988).

The President designates eligible articles by Executive Order or by Presidential proclamation. 19 U.S.C. 2463(a) (1988). However, import-sensitive articles are exempted from eligible article designation, as listed in 19 U.S.C. 2463(c) (1988).

The President is required to consider the effect of such duty-free treatment on the furtherance of the economic development of developing countries through expansion of their exports, the extent to which other developed countries have granted such treatment to the products of the developing countries, the impact of duty-free treatment on U.S. producers of like or directly competitive products, and how competitive the beneficiary developing country will be with respect to the eligible articles accorded such favorable treatment. 19 U.S.C. 2461 (1988).

An eligible article must be imported directly from the beneficiary developing country to the United States and the costs for producing the article in the beneficiary developing country (costs of materials plus direct costs of processing operations) are not less than 35% of the appraised value of the article within the United States. 19 U.S.C. 2463(b) (1988).

"Imported directly" is defined as: the direct shipment of the eligible article from the beneficiary developing country to the United States without having passed through another country; if the eligible article has passed through another country, that article has not entered into the intermediate country's commerce, so long as the bill of lading and invoice show the United States as the final destination; or if the eligible article is shipped through another country without the invoice or bill of lading indicating the United States as the final destination, the article must have remained under the customs control of the intermediate country, it must be sold other than at retail, and it must not have been altered except by loading and unloading, or for preservation. However, if the eligible article passes through a free-trade zone, which is determined by the U.S. Government, to which the beneficiary developing country is a member, the article may not be altered except by sorting, grading, packing or unpacking, affixing labels or marks, or by performing operations to preserve the article in its original condition. In addition, within a free-trade zone, the eligible article may be purchased and resold for export so long as this is not done in a retail market. 19 C.F.R. 10.175 (1990).

For an eligible article to meet the 19 U.S.C. 2463(b) (1988) requirement of having been produced within a beneficiary developing country, the constituent materials comprising the article must be either: "(1) wholly the growth, product, or manufacture of the beneficiary developing country; or (2) substantially transformed within the beneficiary developing country into a new and different article of commerce. 19 C.F.R. 10.177(a)(1) & (2) (1990).

The cost or value of the materials produced in any beneficiary developing country is computed by adding the manufacturer's actual cost for the materials, transportation, waste disposal and taxes. 19 C.F.R. 10.177(c)(1) (1990). (However, *see infra* note 289 discussing the application of this section when subsidies are involved.) "Direct costs of processing operations" is defined to include those costs either "directly incurred in, or which can be reasonable allocated to, the growth, production, manufacture or assembly of the specific merchandise under consideration. 19 C.F.R. 10.178(a) (1990). These costs include, but are not limited to, labor, machinery, research and development, and quality control. *Id.* However, costs which are not directly attributable to processing operations may not be included, such as profit and general expenses of doing business (administrative salaries, casualty and liability insurance, advertising, and commissions). 19 C.F.R. 10.178(b) (1990).

288. Articles means products. 19 C.F.R. § 10.12 (1988).

the production of the eligible articles.²⁸⁹ Nevertheless, a varying, annual limit will be imposed on the amount of eligible articles that a beneficiary developing country may export duty-free to the United States. If a beneficiary developing country exceeds this limit, it will lose the duty-free treatment with respect to the eligible article.²⁹⁰ To avoid such a harsh result, the President may designate the beneficiary developing country as a least-developed beneficiary country, thereby exempting it from the limit.²⁹¹

For an association of countries that is a free-trade area or customs union, the President may similarly designate that all the association members will be treated as one beneficiary developing country.²⁹² However, the President is specifically prohibited from

289. However, countervailing duties will be assessed if the U.S. International Trade Commission determines that a U.S. industry is being injured or threatened with injury, or potential industry is being materially retarded. 19 U.S.C. 1671(a)-(b) (1988); 19 U.S.C. 2503(b)-(c) (1988).

Where materials are provided to the manufacturer at less than fair market value, the cost or value of the materials is determined by adding all the costs associated with producing the materials, an amount for profit, and the costs for transportation of the materials to the manufacturer's plant. 19 C.F.R. 10.177(c)(2) (1990). "Direct costs of processing operations" is broadly defined to comprise those costs "either directly incurred in, or which can be reasonably allocated to, [. . .] the specific merchandise under consideration." See 19 C.F.R. 10.178(b) (1990), *supra* note 287 for a more complete definition. These sections, read with 19 U.S.C. 2463(b)(2) (1988), which is concerned with the direct costs of processing operations performed in the beneficiary developing country, allows for all respective costs in the value of an article, whether or not incurred by the manufacturer, so long as these costs were incurred in a beneficiary developing country.

Thus, the United States both expressly and constructively allows for beneficiary developing country imports of eligible articles which are subsidized. This conclusion is derived from the fact that subsidized eligible articles are expressly permitted per 19 U.S.C. 1671(a) (1988), and in order to be imported duty-free, the U.S. Government will compute all material and operational costs, though they were not wholly or actually incurred by the manufacturer, but so long as the costs were incurred in a beneficiary developing country.

290. 19 U.S.C. 2464(c)(1) (1988). The annual limit is reached when one of these equations is satisfied:

1. The amount of an eligible article exported directly or indirectly to the United States,

$$\frac{\text{Amount of appraised value}}{\$25,000,000} > \frac{\text{U.S. GNP 1990}}{\text{U.S. GNP 1974}}$$

2. The amount of an eligible article exported directly or indirectly to the United States,

$$\text{amount at appraised value} > \frac{\text{total imports of article all BDCs}}{.2}$$

Id.

In addition, if the President determines that the beneficiary developing country is becoming competitive with respect to the eligible article, he may substitute, 1984 for 1974 and 25% for 50% in the above paragraph, thereby increasing the limits on a beneficiary developing country. 19 U.S.C. 2464(c)(2) (1988). Conversely, the President may also waive the limit's application to a beneficiary developing country, but this waiver is subject to stringent requirements as set forth in 19 U.S.C. 2464(c)(3)-(4) (1988).

291. 19 U.S.C. 2464(c)(6)(A) (1988).

292. 19 U.S.C. 2462(a)(3) (1988). However, the annual limit imposed on eligible articles and conferral of least-developed beneficiary country status apply strictly to individual countries, and not to an association of countries. 19 U.S.C. 2464(c)(7) (1988).

An association of countries, eligible for such collective designation as a beneficiary devel-

granting beneficiary developing status to any country that is a member of the Organization of Petroleum Exporting Countries (OPEC).²⁹³ Thus, the President may treat, for beneficiary developing country purposes, eligible member countries of an association as one country, while excluding the ineligible members of the association.²⁹⁴ In addition, an exclusion of ineligible members is possible even if these members are affiliated with GATT and have formed an Article XXIV customs union or free-trade area.²⁹⁵

At the time of the passage of the United States Trade Act of 1974, all the individual Maghrebine Countries were considered for possible beneficiary developing country status.²⁹⁶ However, only Morocco and Tunisia were awarded beneficiary developing country status;²⁹⁷ Mauritania was granted even more favorable concessions as a least-developed beneficiary country.²⁹⁸ Algeria and Libya were never granted beneficiary developing status since they were members of OPEC.²⁹⁹

oping country, also includes one which is contributing to comprehensive regional economic integration among its members. 19 U.S.C. 2462(a)(3) (1988).

On March 18, 1982, President Reagan proclaimed all members of the Caribbean Common Market to be treated as one country with respect to eligible articles for the purposes of the Generalized System of Preferences since each member had already been designated as a beneficiary developing country and the Caribbean Common market satisfied the considerations of 19 U.S.C. 2462(c) (1988). President's Letter to the Speaker of the House and the President of the Senate Concerning Countries of the Caribbean Common Market, 18 Weekly Comp. Pres. Doc. 343 (Mar. 18, 1982).

293. 19 U.S.C. 2462(b)(2) (1988).

294. 19 C.F.R. 10.171 (1990). One example of when such a situation took place is when President Reagan deleted Brunei Darassalam and Singapore from the members of the Association of South East Asian Nations (ASEAN), an association which received beneficiary developing country status as one country. Proclamation No. 5,805, *reprinted in* 24 Weekly Comp. Pres. Doc. 548 (Apr. 29, 1988).

295. There is no express provision in the GATT which states otherwise.

At the time of the deletion referred to in *supra* note 294, Singapore was a GATT member. The succession of Singapore to the GATT took place on August 20, 1973, and its rights and obligations retroactively dated from August 9, 1965. GATT, 20 BISD 19 (1974).

The ASEAN formed a regional, preferential trading arrangement in 1977 pursuant to GATT Part IV article XXXVI(1)(f), and since Singapore was a GATT member, the ASEAN had to be approved by the Contracting Parties due to the inherent violation of MFN in a preferential trading arrangement. This approval was achieved in 1979. GATT, 26 BISD 224 (1980). This preferential trading agreement is relatively similar in import to that of a customs union or free-trade area, given that approval by the Contracting Parties is required.

Since the ASEAN is a GATT approved preferential trading arrangement, and the GATT has not admonished the United States for its selective tariff concessions to ASEAN members, the implication is that there is no implied obligation to accord all members of a preferential trading arrangement, customs union or free-trade area similar tariff concessions. Of course, this argument is only applicable with respect to better-than-MFN tariff concessions which a developed contracting party may give to a developing contracting party in accordance with the spirit of Part IV to the GATT.

296. 4 U.S. CODE & CONG. & ADMIN. NEWS, 7186, 7350 (1974).

297. Presidential proclamation 5,365 of August 30, 1985, 50 F. 36220 (Sept. 5, 1985). Also, the Western Sahara was accorded beneficiary developing status though it is recognized as a non-independent territory. *Id.*

298. Proclamation No. 6,123, 55 Fed. Reg. 18,075 (1990), *reprinted in* 26 weekly Comp. Pres. Doc. 658 (Apr. 26, 1990).

299. See 4 U.S. CODE & CONG. & ADMIN. NEWS 7186, 7351 (West 1974) where Alge-

The United States will designate the Arab Maghreb Union as one country for beneficiary developing country purposes should the Union satisfy the requirement of a customs union. Nevertheless, Algeria and Libya will always be exempt from receiving duty-free treatment for any eligible articles even though they are members of the Union who receives beneficiary developing status from the United States. In the unlikely event that a political union is formed, resulting in the Maghreb becoming one country with OPEC membership, the United States will withdraw its beneficiary developing country and least-developed beneficiary country tariff concessions. If the Arab Maghreb Union, as a political union acceded to GATT, a precarious situation could unveil itself. The United States, as a GATT contracting party,³⁰⁰ may find itself according MFN status to Libya³⁰¹ as a member of the Union.³⁰²

IV. Conclusion

The Arab Maghreb Union constitutes five countries with very diverse political and economic policies. A political union will not be realized without having first undergone substantial economic cooperation. Even this economic cooperation, no matter how minimal and despite the potentially great rewards, will be difficult to achieve due to the vast divergences in economic policy — divergences that the AMU Treaty does little to alleviate. Although GATT will not hinder the formation of a customs union in the Arab Maghreb Union, other obstacles exist. Each of the members, excluding Libya, receives important tariff preferences from developed states. These preferences come with many requirements relating to the origin of a product and to its direct importation from the country receiving the preference to the grantor of the preference. This vertical alignment makes the formation of a successful regional trading block tenuous at best, where instead products ought to be traded horizontally. Cooperation in order to give effect to the Arab Maghreb Union, therefore, is not only essential within the framework of the Union, but is required of the developed nations as well.

rian and Libyan membership in OPEC is stated.

300. GATT, *supra* note 234, at 1.

301. See *infra* note 139 and accompanying text where President Reagan imposed a total trade ban on Libya.

302. Otherwise, the United States would have to refuse application of GATT to all members of the Union pursuant to GATT Article XXXV. GATT, *supra* note 234, art. XXXV. Nevertheless, the United States would continue granting BDC status to certain members of the Union and not to others.