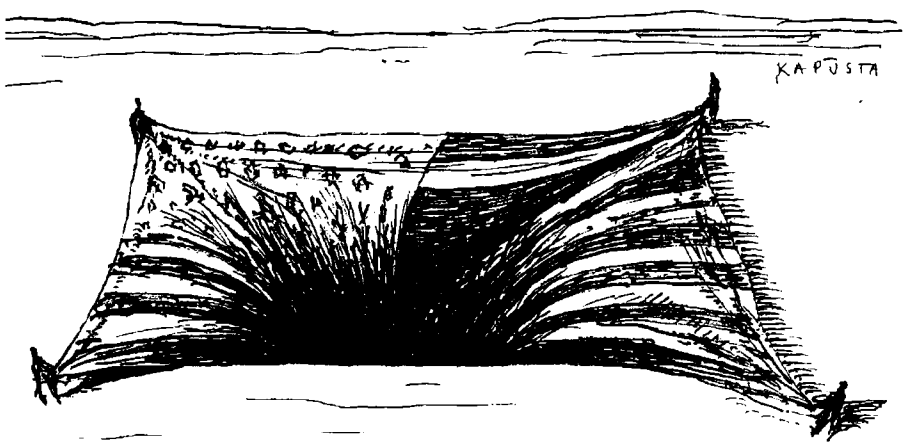
It's Sovereignty, Stupid!

by William R. Hawkins



On March 18, President Bill Clinton tested the waters on the foreign trade issue. These waters had been heated up by Republican contender Patrick Buchanan's attacks on "unfair trade deals," which had hurt Americans for the benefit of transnational corporations. Speaking in New Orleans, Clinton defended his "free trade" policies, quoting John F. Kennedy and citing the jobs created at the city's sprawling Nashville Avenue Wharf. What he did not mention was that in 1995, the United States suffered the largest merchandise trade deficit in its history, amounting to $175 billion—a sum larger than the federal budget deficit. He also did not note that many of the workers at the busy Gulf Coast port spent their time unloading products manufactured in foreign lands. These goods were then sent inland to throw other Americans out of their jobs, reducing the industrial capacity and national wealth of the United States.

Yet, as damaging as 20 years of trade deficits have been, they are only the result of a far more dangerous notion, one that strikes not just at the prosperity of America but at its very survival as an independent society. It is the loss of national sovereignty that prevents actions being taken to end the trade deficit and rebuild a high-wage economy: the surrender of the right of the American people, acting through their elected government, to control their destiny, which is being passed to supranational entities of the New World Order, such as the World Trade Organization (WTO).

When the WTO issued its first ruling in January, no one was surprised that it was directed against the United States. The WTO was established to curb the power and independence of major nations like the United States and to give smaller nations a vehicle for penetrating and exploiting the large and affluent American economy. A three-member WTO panel, composed of judges from Hong Kong, Finland, and New Zealand, declared EPA regulations governing the Clean Air Act's reformulated gasoline standards to be unfair to oil refiners in Venezuela. In response to the verdict, the Venezuelan Oil Minister Erwin Arrieta exclaimed, "I hope we can now take back the natural market of the U.S." Brazil, Norway, and the European Community were arrayed with Venezuela as "interested parties" in the dispute.

The Clinton administration did not immediately state it would appeal, but did eventually mount an effort. On April 29, a three-judge panel comprised of judges from the Philippines, Japan, and New Zealand rejected that appeal, which can only be made once, and on procedural grounds. A WTO decision can never be assailed on the grounds that the judges did not think through the issue properly; only that they did not follow the WTO's own rules. Thus, it is highly unlikely that a decision will *ever* be overturned.

This is also the problem with the creation of an American review commission, which Senator Robert Dole, then the Minority Leader, proposed as his price for endorsing WTO in 1994. Dole's suggested commission of retired federal judges would also be limited to reviewing cases the United States lost only in terms of whether the WTO followed its own rules, not on whether the country got a fair hearing or a tolerable outcome. Dole, of course, has made no effort to establish such a commission, even though as Majority Leader he could have brought this bill to the floor at any time and passed it. This is just as well. Such a commission could easily have become a vehicle for granting an explicit American stamp of approval for WTO procedures and thus for defusing popular or congressional reactions to decisions hostile to American interests.

Like the original case, the appeal was a first, a precedent-

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setting action which was used to legitimize the authority of the WTO. The WTO appeals panel agreed with the United States that the EPA regulation was made in pursuit of the legitimate goal of conservation, as defined under WTO rules. Yet, it still rejected the regulation itself, arguing that the EPA could have come up with a better way of implementing the same goal. Nothing could better demonstrate the micromanagement of American law that the WTO intends to pursue.

If allowed to become a precedent, this ruling could threaten a wide variety of other United States policies, including some with industrial base and national security implications. Every year, for example, the EC publishes a long list of American laws and regulations it feels are harmful to European exporters. Hence, its interest in this WTO ruling.

During the raucous debate over congressional implementation of the Uruguay Round of GATT, opponents concentrated on the creation of the WTO. It was argued that the WTO constituted a transfer of sovereign authority from Washington to Geneva because of its claimed right to declare any national law or regulation to be "GATT illegal" as an impediment to international trade. The WTO panel went far beyond the specifics of the gasoline case to assert its role as the authority that must grant its permission before any national initiative can be implemented. In the concluding section of the panel's decisions is the following claim: "Under the General Agreement, WTO Members were free to set their own environmental objectives, but they are bound to implement these objectives only by means consistent with its provisions." This is presumably applicable, as a general principle of WTO supremacy, to other areas of policy.

Populists and nationalists across the political spectrum, from Patrick Buchanan to Ralph Nader, assailed the creation of the WTO and the "globalist" philosophy behind it. On the right, the argument was that a WTO based on one nation, one vote, with no vetoes or Security Council, would put the United States at the mercy of foreign, in particular Third World, coalitions. On the left, there was fear that American health, labor, and environmental standards would be struck down as harmful to trade in foreign products that could not measure up. Both right- and left-wing critics opposed the notion that the United States could not use trade policies to give American-based industries and their workers an edge over foreign rivals. To the right, the loss of key industries signified a shift in the world balance of power. To the left, the loss of jobs and the downward pressure from wage competition with exploited Third World labor would undermine American living standards.

Proponents of the WTO, who ranged from idealistic Wilsonian liberals to jaded transnational businessmen, played a double game in the debate over how much legitimate authority the United States would retain. A prime example is law professor John H. Jackson of the University of Michigan. Jackson wrote a 1990 study for the Royal Institute of International Affairs on the alleged "defects" in GATT's pre-Uruguay structure, which became the basis for the WTO. In testimony presented to the U.S. Senate Committee on Foreign Relations (June 14, 1994) Jackson sought to allay fears by saying, "It is my opinion and judgement that the proposed new World Trade Organization, as part of the results of the Uruguay Round trade negotiations, poses virtually no danger or risk to the United States Government's ability to protect its sovereign capacity as an independent nation to take appropriate and necessary governmental actions on behalf of its citizens."

Yet, as Jackson wrote in the *Journal of World Trade Law* (Spring 1978), "Despite some occasional misguided or misinformed statements to the contrary, the GATT is a binding treaty obligation accepted by the nations which are Contracting Parties." Jackson also wrote, in a 1990 study for the influential Washington-based Institute for International Economics, that "despite cynical statements by members of Congress that GATT rules are 'irrelevant,' there are a number of proven instances in which congressional committees and their staff members have taken considerable trouble to tailor legislative proposals to minimize the risk of complaint to the GATT."

> This is how sovereignty will be lost; not swept away by conquering armies (at least, not initially), but given away by the petty minds of bureaucrats and barristers.

Jackson is known for analyzing what he calls the competing regimes of "Power-oriented" and "Rules-oriented" diplomacy. Here is how he had described the conflict in 1978:

> Power oriented techniques suggest a diplomat asserting, subtly or otherwise, the power of the nation he represents. In general, such a diplomat prefers negotiation as a method of settling matters, because he can bring to bear the power of his nation to win advantage in particular negotiations, whether the power be manifested as promised aid, movement of an aircraft carrier, trade concessions, exchange rate changes or the like. Needless to say, often large countries tend to favor this technique more than small countries; the latter being more inclined to institutionalized or "rule oriented" structures of international activity.

A 1992 study prepared for the World Bank, based explicitly on Jackson's work, argued that in a system based on negotiations between sovereign nations, "Powerful countries would grab the 'gains from trade' away from the less powerful. . . . GATT rules do not provide limits to national practice, but international sanction for it. Such rules are not part of the solution, they are part of the problem." However, Jackson had noted earlier that the main obstacle to reform was "the desire of governments to maintain enough freedom or 'sovereignty' to deal with the burdens of the responsibilities their citizens impose on them." These concerns "lead governments to be very cautious in further tying their hands through international bodies."

As should be the case. The United States should favor, and

use, a system that allows full play to its considerable power as the world's largest economy to shape international trade to its benefit. But the Clinton administration surrendered this principle by warmly embracing the creation of the WTO, reviving a concept that had been moribund under the Reagan and Bush administrations. It was an abrogation by the Clinton administration of its duty to continue the active conduct of foreign policy on behalf of the nation in an area of increasing importance: international economics. That this embrace of irresponsibility is based on the philosophy of supranational authority promoted by academics like Jackson and institutions like the World Bank and GATT is demonstrated by U.S. Trade Representative Mickey Kantor, who constantly promotes to members of Congress and the media the ideal of "a strong rules-based trade system."

The consequences of such a system became evident last summer during the United States-Japanese confrontation over the auto and auto parts trade. Despite the great leverage possessed by American negotiators, Kantor backed down as the deadline approached to impose the long-promised sanctions on the import of Japanese luxury cars. Ryutaro Hashimoto, then head of Tokyo's infamous Ministry of International Trade and Industry, used the counterthreat of an appeal to the WTO to disarm Kantor. Hashimoto then used his diplomatic victory to bolster his bid to become Prime Minister.

The American retreat in the auto and auto parts dispute raised the question of whether Section 301 of the 1974 Trade Act, which has provided the muscle behind United States commercial diplomacy, is still a credible tool of policy. If the WTO is taken seriously, then Washington cannot use Section 301 or any other unilateral effort to pry open overseas markets or defend against foreign predators without first obtaining Geneva's permission. This, at best, places a new and complicated obstacle in the path of the United States and, at worst, cripples American efforts altogether.

China has made joining the WTO a top priority. This is not because China endorses the notion of "free trade." Beijing carefully manages its economic relations with the outside world. Most Favored Nation status already gives China easy access to the American market and generated for Beijing a trade surplus with the United States of $33.8 billion in manufactured goods in 1995. What China wants is WTO protection against any effort by the United States to use trade as leverage on Chinese foreign policy, arms sales, or human rights practices.

Prior to the WTO, there was no GATT mechanism to enforce dispute panel decisions. The contending parties were expected to negotiate solutions to their trade conflicts. Now, solutions are imposed by panels in a quasijudicial procedure and backed by the threat of trade sanctions. WTO "rules" (or rulings) have been substituted for the national "power" of diplomacy.

Americans were not prepared to accept such a usurpation of power by foreign officials. To defuse the vocal opposition to the WTO, which had mobilized substantial public support, the following reservations were added to the congressional implementing legislation reasserting American sovereignty—that is, the freedom of the United States to make its own laws for its own benefit through its own democratic process.

> Sec. 102 (a) Relationship of Agreements to United States Law—(1) United States Law to Prevail in Conflict—No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.
> (2) Construction—Nothing in this Act shall be construed—(A) to amend or modify any law of the United States. . . . (B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974.

This reservation is itself confrontational. Article XVI of the new GATT states, "No reservations may be made in respect to provisions of this Agreement." GATT Director-General Peter Sutherland argued during the debate that the assertion of reservations "amounts to a country choosing to be above the law whenever it is inconvenient to observe the law." He claimed that this option would not be open under the WTO. It will be up to American leaders, through precedent-setting actions, to prove otherwise.

Again, a Dole-style review commission will not suffice. Indeed, if composed of judges operating on pseudolegal principles, it would only make matters worse. It would further the notion that international economics should be the trivial stuff of a "rules-based" system, where lawyers can be trusted to do the work of statesmen. Only by relegating the global division of industry, wealth, and technology—and the balance of power that flows from it—to the level of tort litigation can national governments be persuaded that such fundamental issues are no longer their concern. This is how sovereignty will be lost; not swept away by conquering armies (at least, not initially), but given away by the petty minds of bureaucrats and barristers.

The USTR's office sought to stake out a stronger position in its *1995 Trade Policy Agenda and 1994 Annual Report* by stating, "A significant amount of domestic concern was raised throughout 1994 in regard to whether or not the WTO will force its members—particularly the United States—to compromise its sovereignty in order to meet certain multilateral trade obligations. Nothing in the WTO relinquishes U.S. sovereignty. . . . Only Congress and State legislatures can change U.S. laws." But in the wake of the WTO gasoline ruling, USTR officials started to talk about how easy it would be to comply.

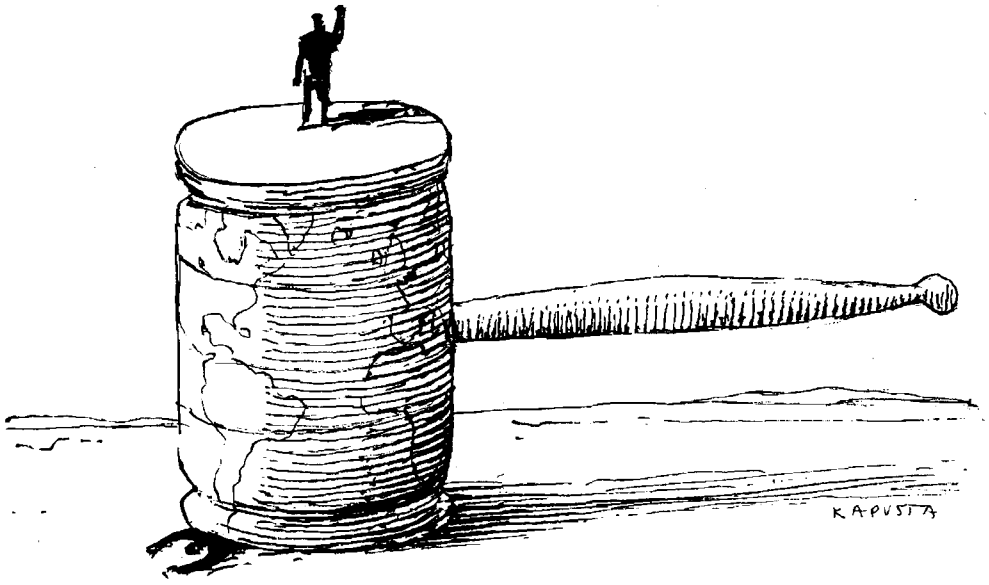
According to syndicated columnist Finlay Lewis's interview with Deputy U.S. Trade Representative Jeffrey Lang, "Lang said the United States would not have to change its laws to comply with the ruling, only the regulation. . . . Lang argued that compliance could be achieved without compromising the objectives of the clean air program and probably without doing much damage to the interests of U.S. refiners." In other words, now that the WTO has said "jump," the USTR and the Clinton administration can only ask "how high?"

If the United States gives in and changes either its laws or its regulations just because the WTO says so, it is acting as if the WTO *does* possess sovereign authority. The issue can no longer be avoided or papered over. If the WTO gives the orders and American officials act as if they must be obeyed, that establishes a "chain of command" with the WTO's Geneva tribunals at the top. All the brave talk about maintaining American sovereignty goes right out the window. Isn't this what the critics warned against, and for very good reasons?

The Hague Tribunal

Bad Justice, Worse Politics

by Srdja Trifkovic



Aleksandr Solzhenitsyn once referred to the Cheka as "the only punitive organ in human history that combined in one set of hands investigation, arrest, interrogation, prosecution, trial, and execution of the verdict." He was probably mistaken about "human history," but his anger was just. What he chronicled was indefinite imprisonment without trial; investigations and indictments politically motivated, initiated, and controlled; arbitrary evidence gathering; trial by media and assumption of guilt.

Precisely these techniques, honed by the totalitarian scum of our century, have become the hallmark of the International Criminal Tribunal for the Former Yugoslavia (ICTFY), based in The Hague. After the decline of higher cynicism in the name of human progress, we now witness the ascent of higher cynicism in the name of human rights. It is the New World Order's posthumous tribute to Felix Dzerzhinsky.

ICTFY was established by the Security Council of the United Nations in 1993 on the basis of Chapter VII of the U.N. Charter (Resolution 827), with the "jurisdiction" for crimes committed after January 1, 1991. Why *only* "the former Yugoslavia," and why *only* the past five years? The strict answer is that the United States did not want to put its generals on trial for killing Vietnamese civilians, and did not want the embarrassment of charging the Croat mass murderers who have been untouched since 1945.

But the U.S. Ambassador at the United Nations, Madeleine Albright, supplies a more attractive, less honest answer. Speaking at the U.S. Holocaust Memorial Museum on April 12, 1994, she declared that "there is no more appropriate a place to discuss the War Crimes Tribunal for former Yugoslavia." In other words, the enormity of recent crimes in the Balkans supposedly sets them apart from all other wretched spots on our planet, and makes them comparable only to the Ultimate Horror of Auschwitz, Babi Yar, and Belsen.

According to Rudolph J. Rummel in the *Journal of Peace Research* (1994), in the five decades since the Nuremberg and Tokyo trials, there have been well over one hundred million fatalities due to war, genocide, democide, politicide, and mass murder. Pol Pot's Khmer Rouge killed two million of their compatriots—one third of Cambodia's population—in only four years (1975-78). This was but an offshoot of Mao's less known, more grandiose attempt at social engineering after 1949, which physically destroyed some 35 million men, women, and children. The Indonesian Army and its affiliates killed half a million people in 1965-66. The precise number of victims of India's partition is unknown, but exceeds one million. This figure was easily exceeded by Pakistan's brief and savage democide in today's Bangladesh in 1971. Dictatorships in Afghanistan, Angola, Albania, Rumania, Ethiopia, Iraq, North Korea, and Uganda have contributed their own hecatombs to the total. Even that old darling of Western liberals, Marshal Tito, after being brought to Belgrade by the Red Army in October 1944, dispatched hundreds of thousands of Yugoslav citizens; the victims were not only the Volksdeutsche of Vojvodina who did not survive deportations in 1945-47, but any real, potential, or imagined enemies of the regime.

While democracies murder relatively few of their own citizens (which is scant comfort to a child burned at Waco, or to Randy Weaver), they are less restrained in killing foreign civilians in declared or undeclared wars. Dresden and Hiroshima set the scene for indiscriminate bombings of Vietnamese and

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