

# HOW DOES THE EUROPEAN UNION SOLVE CRISES—WITH SOLUTIONS OR BY AVOIDANCE? A STUDY OF THE “MAD COW DISEASE” CRISIS

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The European Union, an intergovernmental entity composed of fifteen European countries, postpones and avoids the resolution of crises rather than implements effective solutions. Highlighting this inability to resolve problems is the manner in which the institutions of the European Union (EU) dealt with the “mad cow disease” crisis. These institutions failed not only to prevent the crisis, but also failed to provide a solution. Specifically, violating treaty directives, the European Commission allowed political influence to direct its actions regarding the implementation of EU directives, and the European Parliament failed to exercise its supervisory power to sanction the Commission for its nonfeasance with treaty mandates.<sup>1</sup>

One reason the countries of Europe enacted treaties to create the EU (treaties) was to provide an intergovernmental entity to solve problems that they could not effectively handle on the national level.<sup>2</sup> In creating this entity, the countries of Europe (Member States) were concerned not only with partial relinquishment of power, but also with the possible misuse of power by the EU.<sup>3</sup> Therefore, to assuage these fears, the treaties include a carefully devised structure of five primary institutions, each with separate and limited powers.<sup>4</sup> The five institutions include Parliament, Council, Commission, Court of Justice and Court of Auditors.<sup>5</sup> The design of this structure *de jure* ensures a balance of power and effective interstate problem solving.<sup>6</sup>

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<sup>1</sup> See *European Parliament Temporary Committee of Inquiry into BSE*, Part III of Part A of the Draft Report, Dec. 19, 1996, <<http://www.europarl.eu.int/dg1/a4/en/a4-97/a4-0020.htm>> (last visited Sept. 24, 1998). From the author's personal interview with Elena Rivera of the European Union Delegation, the best place to access this unpublished work is through the European Union Home page which is monitored and updated daily by representatives of the European Union. [Hereinafter TCI Report].

<sup>2</sup> See HANS A. SCHMITT, *THE PATH TO EUROPEAN UNION* 88 (1962).

<sup>3</sup> P.D. DAGTOGLOU, *BASIC PROBLEMS OF THE EUROPEAN COMMUNITY IX-X* (1975).

<sup>4</sup> RICHARD CORBETT, *THE TREATY OF MAASTRICHT* (1993).

<sup>5</sup> *TREATY ON EUROPEAN UNION*, Feb. 7, 1992, art. 4, 31 I.L.M. 247, 258 [hereinafter *MAASTRICHT TREATY*].

<sup>6</sup> See *id.*; see also SCHMITT, *supra* note 2, at 87.

The structural balance of power is especially notable in the responsibilities assigned to the Commission and Parliament. Theoretically, the Commission is a politically independent body whose primary function is to act as guardian of the treaties by ensuring that the fifteen Member States comply with EU mandates.<sup>7</sup> On the other hand, Parliament, as the only populous body, is entrusted with the responsibility of supervising the activities of the Commission.<sup>8</sup> If the Commission is deemed to have failed to fulfill its responsibilities under the treaties, Parliament is authorized to sanction the Commission.<sup>9</sup> This supervisory role was granted to Parliament to limit the Commission's possible misuse of authority.<sup>10</sup>

The separate but limited powers granted to the Commission and Parliament create a natural tension. The recent global panic regarding the spread of bovine spongiform encephalopathy (BSE or mad cow disease) has highlighted this tension.<sup>11</sup> BSE was first discovered in British cows in 1986 and has since been detected in hundreds and thousands of their cows.<sup>12</sup> Although a link to the human counterpart of BSE, Creutzfeldt-Jakob disease (CJD), cannot be definitively proved, the possibility of such a connection can not be ignored: it is thought to be the cause of at least ten deadly cases of an abnormal form of CJD.<sup>13</sup> The evidence of a connection is so strong that many countries, including the United States and some members of the European Community, have instituted bans on British beef and beef by-products.<sup>14</sup>

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<sup>7</sup> TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, Mar. 25, 1957, 295 U.N.T.S. 103 [hereinafter EEC TREATY] art. 155. MAASTRICHT TREATY art. 157(2), *supra* note 5.

<sup>8</sup> See EEC TREATY, *supra* note 7, art. 143 and 147.

<sup>9</sup> EEC TREATY, *supra* note 7, art. 144.

<sup>10</sup> See SCHMITT, *supra* note 2, at 128.

<sup>11</sup> See TCI Report, *supra* note 1.

<sup>12</sup> Neal Nathanson et al., BOVINE SPONGIFORM ENCEPHALOPATHY (BSE): CAUSES AND CONSEQUENCES OF A COMMON SOURCE EPIDEMIC, 145 AM. J. OF EPIDEMIOLOGY 959, 959-69 n.11 (1997).

<sup>13</sup> Claire O'Brien, *Protein Test Favors BSE-CJD Link*, 274 SCIENCE MAG., Nov. 1, 1996, at 721. Unlike the normal form of CJD which normally afflicts the elderly, the abnormal strain of the disease afflicts people under the age of forty five and results in an unusual pattern of brain damage that is different from the pattern found in victims of normal CJD. *Id.*

<sup>14</sup> Sarah Boseley, *How the Truth was Butchered*, 43 WORLD PRESS REV., June 1996, at 18.

These bans on British beef and beef by-products are signs of the impending European, and eventually global, crises. The EU was, in part, created to prevent such situations. If the problem was acknowledged in the 1980's, the question remains why the EU failed to provide an effective solution to the dilemma and thereby permitted the BSE affair to develop into a global crises? As a result, the EU has desperately been trying to answer this question and solve the crisis. In an effort to provide a solution, Parliament established a Temporary Committee of Inquiry to investigate the situation.<sup>15</sup> Although this investigation resulted in the TCI placing considerable blame on one of its Member States, the United Kingdom (UK), the TCI also severely criticized the role of the Commission in the affair.<sup>16</sup>

Parliament adopted the findings and recommendations of the TCI and, in light of the results of this investigation and seriousness of the BSE crisis, voted on a motion to censure the Commission for its mismanagement of the crises.<sup>17</sup> In February of 1997, Parliament voted on, but ultimately rejected, the motion.<sup>18</sup> Instead, a conditional censure was placed on the Commission whereby if the Commission failed to promptly abide by the recommendations set forth in the TCI report, a motion of censure would be brought later in 1997.<sup>19</sup>

A closer examination of the results of the TCI report combined with Parliament's failure to exercise its power of censure against the Commission for its nonfeasance with treaty directives reveals the EU's inability to effectively solve problems. The report reveals the most significant impediment to the EU's ability to solve problems: the fact that the Commission is *dejure* limited in its use of power by the threat of a censure but is *defacto* able to exercise considerable power and follow the will of the current, most politically influential Member State. The ability of certain Member States to exert significant political influence on an institution entrusted with executive duties combined with the lack of effective supervision or limits on that institution's power results in the EU merely postponing and avoiding crises rather than providing effective solutions.

Recently, the European Community has been in an uproar regarding the

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<sup>15</sup> TCI report, *supra* note 1.

<sup>16</sup> *Id.*

<sup>17</sup> EU: *EP/Mad Cow - the Implementation of Commission Resolution*, AGENCE EUR., Feb. 20, 1997 [hereinafter *EP/Mad Cow*].

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* Also referred to as a "suspended" censure.

Commission's handling of the BSE crisis. The deadly BSE was first diagnosed in British cattle in the mid-1980's.<sup>20</sup> For almost a decade after this discovery, the British government adamantly denied that the presence of the disease required mass herd slaughters and that the disease could be transmitted to humans.<sup>21</sup> Nevertheless, in the late 1980's, the danger to herds of cattle around the world combined with the growing possibility of a link between BSE and the deadly CJD disease induced many countries, including the United States, to effect a ban on the importation of British beef and beef by-products.<sup>22</sup>

In the late 1980's and early 1990's, the EU was not willing to follow suit by effecting such a ban.<sup>23</sup> On the other hand, in an extraordinary meeting of the Council in June of 1990, the Council officially recognized the potential economic and health hazards posed by the spread of BSE.<sup>24</sup> As a result, the Council issued directives requiring Britain to comply with a number of safety measures in order to prevent the spread of, and ultimately eradicate, the disease.<sup>25</sup> Additionally, the Council mandated that the Commission implement research programs and ensure the UK's compliance with EU directives.<sup>26</sup>

On March 20, 1996, the British government officially recognized the probable link between BSE and the deadly CJD disease.<sup>27</sup> In light of the previous official denial of any possible link, this acknowledgment sent a wave of shock across Europe and the world. Within a week, many countries, including most European countries, banned British beef and beef by-products.<sup>28</sup> This ban marked the end, although temporarily, of a beef and beef by-products trade relationship which had represented millions of dollars for the UK.<sup>29</sup>

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<sup>20</sup> Nathanson, *supra* note 12.

<sup>21</sup> D. Arcy Jenish, *A Disturbing Link to the 'Mad Cow' Disease*, 109 MACLEAN'S, Apr. 1, 1996, at 36.

<sup>22</sup> *Id.*

<sup>23</sup> TCI Report, *supra* note 1.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Peter Blackburn, *EU Parliament Warns Brussels Over BSE*, REUTER EUR. BUS. REP., Feb. 18, 1997.

<sup>28</sup> *Id.* at 1. See also Jenish, *supra* note 21, at 36. Such countries as South Africa, Zaire, New Zealand and Singapore immediately stopped imports of British beef. *Id.*

<sup>29</sup> TCI Report, *supra* note 1.

The EU also reacted swiftly to the British government's acknowledgement of the probable link between BSE and the deadly CJO disease. On March 27, 1996, the Commission adopted a resolution imposing a worldwide ban on the export of British beef and beef by-products.<sup>30</sup> This decision further imposed a duty upon the Commission to conduct inspections in Great Britain to ensure that measures were implemented to solve the problem.<sup>31</sup> Soon after, the Commission adopted another resolution whereby it imposed a "compulsory slaughter of animals identified as imported from the United Kingdom, all animals in herds where cases of BSE have occurred and all animals in other herds identified as belonging to the same birth cohort as affected animals."<sup>32</sup>

Even with these new measures, some began to question why the BSE situation reached the point of a crisis in the first place. Many Member States expressed concern that the crisis might have been the result not only of British misconduct but also of misconduct on the part of the Commission.<sup>33</sup> In response to the concerns, Parliament, in July of 1996, established a Temporary Committee of Inquiry (TCI) to conduct an investigation into the possible mishandling of the BSE affair and to suggest recommendations to resolve the problem.<sup>34</sup> The result of the investigation is a report in which the TCI makes recommendations to improve the BSE situation, accuses the Commission of mishandling the BSE situation, and denounces the conduct of the UK.<sup>35</sup> Specifically, the TCI charges the Commission with submitting to the political influence exerted by the UK and of failing to implement the directives set forth during the Council Meeting in June of 1990.<sup>36</sup>

As a result of this report and considerable pressure from many political groups, Parliament, in February of 1997, voted on a motion to censure the Commission.<sup>37</sup> The motion fell short of the required votes and was rejected.<sup>38</sup> However, in an attempt to implement a solution to the crisis, Parliament formally adopted the findings and suggestions of the TCI's report.

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<sup>30</sup> Commission Decision 96/362, 1996 O.J. (L 078).

<sup>31</sup> *Id.*

<sup>32</sup> Commission Decision 96/381, 1996 O.J. (L 149) 25.

<sup>33</sup> Blackburn, *supra* note 27, at 1.

<sup>34</sup> MAASTRICHT TREATY art. 138c, *supra* note 5. Blackburn, *supra* note 27. See TCI Report, *supra* note 1.

<sup>35</sup> TCI Report, *supra* note 1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *EP/Mad Cow*, *supra* note 17.

Additionally, a resolution was adopted which places a suspended censure on the Commission for mishandling the mad cow disease situation.<sup>39</sup> This decision serves as a threat to the Commission that failure to comply with the recommendations set forth in the TCI report, will result in another motion to censure.<sup>40</sup>

The EU was, in part, established to help solve multi-state problems that could not be effectively handled on the national level.<sup>41</sup> In creating this entity, Member States were concerned with relinquishing too much power and were also fearful of any one institution within the EU gaining too much control over international affairs.<sup>42</sup> Therefore, to assuage the fears of Member States and effectively fulfill the resolutions under the treaties, the EU is divided into five institutions including Parliament, Commission, Council, Court of Justice and Court of Auditors.<sup>43</sup> Additionally, each institution has different responsibilities and authority under the treaties. The result is a system structurally designed so that no one institution has the ability to misuse its power. For example, the Commission was entrusted with considerable executory and supervisory authority, but Parliament has the responsibility of censuring the Commission if the Commission abused its power.<sup>44</sup>

Motions to censure the Commission have been raised as early as 1972.<sup>45</sup> However, between 1972 and 1992, only seven motions to censure the Commission have been formally presented in Parliament.<sup>46</sup> Partly due to the seriousness of the act and in part due to its grave consequences, not a single motion to censure has ever been adopted by Parliament.<sup>47</sup> Additionally, most motions were withdrawn before a vote could be conducted.<sup>48</sup> The seriousness of this act is revealed by the fact that if a censure is endorsed by Parliament, the Commission must resign as a body.<sup>49</sup> Furthermore, neither national governments nor the Council have the power to censure the

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> CORBETT, *supra* note 4, at 9-10.

<sup>42</sup> *Id.* SCHMITT, *supra* note 2.

<sup>43</sup> *See id.*

<sup>44</sup> CORBETT, *supra* note 4.

<sup>45</sup> FRANCIS JACOBS ET AL., *THE EUROPEAN PARLIAMENT* (2d ed. 1992).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> EEC TREATY art. 144, *supra* note 7.

Commission; the power rests squarely on the shoulders of the populous Parliament.<sup>50</sup>

The responsibility of censuring the Commission for nonfeasance with treaty directives is clearly stated in the treaties, but the power dates back almost to the origins of Parliament.<sup>51</sup> A "real" parliament first arose with the Schuman Plan and the ensuing European Coal and Steel Community.<sup>52</sup> At the heart of the Schuman Plan was the ideal of "[i]ntegration entrusted to a control organ independent of national supervision."<sup>53</sup> The Plan established a Common Assembly, now called Parliament, which had limited responsibilities, but was granted a degree of control over the High Authority.<sup>54</sup> In contrast, the High Authority, now called the Commission, was empowered with extensive responsibilities.<sup>55</sup> The Assembly's alleged control over the High Authority rested with the Assembly's power to force the resignation of the High Authority by a successful motion of censure.<sup>56</sup>

Today, as in the past, Parliament has relatively limited responsibilities and authority, while the Commission enjoys extensive supervisory and executive responsibilities.<sup>57</sup> However, one of Parliament's most important duties is to supervise the activities of the Commission.<sup>58</sup> This duty theoretically serves the purpose of preventing the Commission from abusing its powers.<sup>59</sup>

In contrast to Parliament's responsibilities, one of the Commission's

<sup>50</sup> JACOBS, *supra* note 45. CORBETT, *supra* note 4.

<sup>51</sup> SCHMITT, *supra* note 2.

<sup>52</sup> *Id.* DAGTOGLOU, *supra* note 3. RATIFICATION OF THE MAASTRICHT TREATY (Finn Laursen & Sophie Vanhoonacker eds., 1994). In 1949 at the Congress at The Hague, the first parliament of Europe was formed and was named the Advisory Assembly. SCHMITT, *supra* note 2. This Assembly was different from any succeeding parliament in that it had very few responsibilities and no power over its sister institution, the Council of Ministers. *Id.* The Assembly became "merely a 'simulacrum of a European parliament and not the real thing.'" *Id.* at 66.

<sup>53</sup> SCHMITT, *supra* note 2, at 67. Jean Monnet was the person responsible for developing the Schuman Plan; Schuman merely accepted responsibility for the plan for political reasons. *Id.* The ideal at the heart of the Schuman Plan was therefore the same ideal envisioned by Jean Monnet. *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> MAASTRICHT TREATY, *supra* note 5, arts. 157 and 158.

<sup>58</sup> MAASTRICHT TREATY, *supra* note 5, art. 144.

<sup>59</sup> See SCHMITT, *supra* note 2. See JACOBS, *supra* note 45. THE EUROPEAN COMMISSION 153 (Geoffrey Edwards & David Spence eds., 1994).

primary duties is to serve as guardian of the treaties: the Commission is entrusted with "ensure[ing] that the provisions of . . . [the treaties] and the measures taken by the institutions pursuant thereto are applied."<sup>60</sup> Furthermore, the treaties direct the Commission to "exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter."<sup>61</sup> The differences in responsibilities and powers between Parliament and the Commission provide an important balance of power to ensure that one institution would not become too powerful.<sup>62</sup>

Additionally, Member States have incorporated into the treaties other provisions which help to ensure a balance of power within the EU. For example, the method of selecting the members of each institution is considerably different. Parliament is the only European institution that is elected by direct universal suffrage.<sup>63</sup> In contrast, the Commission is not an elected body. The Commissioners are nominated by the governments of Member States and are approved as a body by Parliament.<sup>64</sup> Furthermore, the treaties require the complete political independence of the Commission, whereas the members of Parliament enjoy the ability to form political affinities.<sup>65</sup> Finally, with regard to the power of censure, the treaties allow Parliament to censure the Commission, but do not permit the Commission to censure the Parliament.<sup>66</sup> In part, these differences in power were calculated to assuage the fears of some Member States that one State or institution would garner too much power.<sup>67</sup>

The authority entrusted to Parliament and the Commission was granted only after considerable debate among European countries. In creating the EU, Member States agreed to relinquish a degree of autonomy in order to create an entity which could solve interstate crises.<sup>68</sup> With this relinquishment of some autonomy, there were concerns regarding the manner in which

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<sup>60</sup> EEC TREATY, *supra* note 7, art. 155.

<sup>61</sup> *Id.*

<sup>62</sup> See SCHMITT, *supra* note 2. See JACOBS, *supra* note 45. See THE EUROPEAN COMMISSION, *supra* note 59.

<sup>63</sup> EEC TREATY, *supra* note 7, art. 138.

<sup>64</sup> MAASTRICHT TREATY, *supra* note 5, art. 158.

<sup>65</sup> MAASTRICHT TREATY, *supra* note 5, art. 138(a) and 157.

<sup>66</sup> See EEC TREATY, *supra* note 7.

<sup>67</sup> See SCHMITT, *supra* note 2. See DAGTOGLOU, *supra* note 3.

<sup>68</sup> See SCHMITT, *supra* note 2. The EU was also created to eventually achieve a common market. *Id.*

the power entrusted to the EU might be divided among its institutions.<sup>69</sup> In particular, some Member States were disturbed by the extensive general powers granted to the Commission.<sup>70</sup> Similarly, other Member States were concerned about the limitations exacted upon the Parliament.<sup>71</sup> Such reservations have persisted over the years.<sup>72</sup> Even today there continues to be much debate over what powers the Commission should enjoy and what powers should be relinquished to Parliament.<sup>73</sup>

The BSE crisis compels the re-examination of the nature of the institutions of the EU and the effectiveness of the EU in solving crises. The treaties theoretically establish a balanced system designed to solve intergovernmental problems.<sup>74</sup> In reality, the EU does not solve intergovernmental crises, but instead postpones and avoids such dilemmas. This ineffectiveness is revealed by the Commission's failure to implement the Council's mandates regarding the BSE crisis combined with the failure of Parliament to censure the Commission for its nonfeasance.<sup>75</sup>

The Commission's mishandling of the BSE crisis is evidenced by the TCI report which summarizes the results of an extensive investigation into the situation.<sup>76</sup> The results support earlier accusations that the Commission acted pursuant to the politically motivated direction of the UK and placed the British beef market ahead of human health and safety.<sup>77</sup> Such actions by the Commission are a violation of Article 157 of the treaty which requires the Commission to "neither seek nor take instructions" from any body including Member States.<sup>78</sup> Furthermore, such actions are also a violation of Article 100(a) of the treaty which requires the Commission to "take as a base a high level of protection" in the areas of health and safety as well as environmental and consumer protection.<sup>79</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> SCHMITT, *supra* note 2, at 77-88. France and Germany were especially concerned with the balance of powers in the new community. *Id.* On the other hand, such concern might well have been a result of their mistrust for each other during the 1940's and 1950's. *Id.*

<sup>72</sup> See JACOBS, *supra* note 45.

<sup>73</sup> *Id.*

<sup>74</sup> See THE RATIFICATION OF THE MAASTRICHT TREATY, *supra* note 52. See CORBETT, *supra* note 4.

<sup>75</sup> TCI Report, *supra* note 1. *EP/Mad Cow*, *supra* note 17.

<sup>76</sup> TCI Report, *supra* note 1.

<sup>77</sup> *Id.*

<sup>78</sup> EEC TREATY art. 157(2), *supra* note 7.

<sup>79</sup> EEC TREATY art. 100a(3), *supra* note 7.

The TCI asserts that the Commission submitted to the political influence of the UK.<sup>80</sup> This influence is revealed by the excessive reliance on the instructions given by successive Commissioners of Agriculture.<sup>81</sup> In particular, the TCI determined that "the Commission's management of the BSE affair has at all points been based on the direct instructions" of these Commissioners.<sup>82</sup> Had the instructions been politically unbiased, there may not have been an issue regarding the Commission's excessive reliance on particular Commissioners. But, the fact remains that the directions were biased. Through official testimony and documents, the TCI discovered that successive Agricultural Commissioners favored the British beef export industry over the potential human danger posed by the transmission of BSE.<sup>83</sup>

For example, such bias is revealed through the actions taken by Agricultural Commissioner, Mr. MacSharry, before the Council Meeting of June 1990 (Council Meeting). It was during this meeting that the initial regulations were placed on British beef processing and exportation in an effort to curb the spread of BSE.<sup>84</sup> In the days preceding the Council Meeting, Mr. MacSharry made "public threats to take out infringement proceedings against Member States introducing unilateral measures against British beef exports, or even to take such Member States to the Court of Justice."<sup>85</sup> An additional example reflecting Mr. MacSharry's bias was his response to an actual proposal set forth during the Council Meeting. During the meeting, the Assistant Director-General for Agriculture, along with two other officials, submitted a proposal to Mr. MacSharry which recommended British beef be exported only in de-boned form due to the difficulties in monitoring beef exports.<sup>86</sup> Mr. MacSharry's response was so harsh that those submitting the proposal were excluded from the meeting room and were no longer given the opportunity to discuss the proposal.<sup>87</sup> Both of these actions suggest that Mr. MacSharry favored the British beef export industry over health and safety.

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<sup>80</sup> TCI Report, *supra* note 1.

<sup>81</sup> *Id.* at 18.

<sup>82</sup> *Id.*

<sup>83</sup> *See id.*

<sup>84</sup> *See id.*

<sup>85</sup> *Id.* at 10.

<sup>86</sup> TCI REPORT, *supra* note 1, at 10.

<sup>87</sup> *Id.*

In further support of the Commission's submission to the political influence exerted by the UK is the Commission's excessive reliance on the Scientific Veterinary Committee, SVC.<sup>88</sup> This reliance, in and of itself, may not have been an issue of misfeasance, except for the fact that the SVC is primarily composed of British officials.<sup>89</sup> Beyond those measures recommended by the SVC, the Commission did not exert any further effort to devise public health measures.<sup>90</sup> "[T]he Commission, using its own scientific and risk assessment capacities, should have embarked on a detailed and critical examination . . ." of the BSE situation.<sup>91</sup>

Additionally, the success of British officials in influencing the SVC is revealed by the circumstances surrounding the lifting of the EU's embargo on semen, tallow and gelatin.<sup>92</sup> In April of 1996 the SVC considered the possibility of ending the ban, but the proposal was not approved due to the opposition of the Scientific Committee on Cosmetology, the Scientific Committee for Food, and the European Medicine Evaluation Agency.<sup>93</sup> Nevertheless, the Commission "insisted on trying to obtain a report in favor of lifting the embargo . . . ."<sup>94</sup> The desired report was soon acquired, and even though most scientific studies opposed the action, the ban was lifted.<sup>95</sup> The problem with this report was that it was not only based on experiments involving scrapie instead of BSE, but was also "provisional, incomplete and therefore [of a] dubiously reliable nature."<sup>96</sup>

In addition to finding that the Commission submitted to the political influence of the UK, the TCI stated that the Commission failed to implement the directives issued during the extraordinary Council Meeting in June of 1990.<sup>97</sup> Specifically, these directives require the development of large-scale research programs, implementation of decisions regarding BSE, and on-site inspections.<sup>98</sup> Between 1990 and 1994, no large-scale research programs were instituted; instead the Commission fashioned a deliberate political

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<sup>88</sup> *Id.*

<sup>89</sup> *See id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 17.

<sup>92</sup> *See id.*

<sup>93</sup> *Id.* at 17.

<sup>94</sup> *Id.*

<sup>95</sup> *See id.*

<sup>96</sup> *Id.* at 18.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

policy of "subordinat[ing] Community to British research."<sup>99</sup> This policy is confirmed by official testimony and a Commission document stating that " 'Community action would therefore be designed to complement the UK research. . . . ' "<sup>100</sup>

Furthermore, in contrast to the Council's mandate to implement decisions to improve the BSE situation, there was a "silence which . . . cannot be considered accidental."<sup>101</sup> The Commission waited six years after the Council directive to ban UK exports of meat and bone-meal.<sup>102</sup> Under the circumstances, "this is particularly grave: more timely action could arguably have stopped the spread of the epidemic in Europe . . . "<sup>103</sup>

Additionally, between June 1990 and May 1994, the Commission failed to conduct regular inspections in the UK.<sup>104</sup> With regard to these inspections, the Commission admitted that it was subject to considerable political pressure exerted by the UK.<sup>105</sup> Specifically, the UK pressured the Commission to omit BSE checks from general slaughterhouse inspections.<sup>106</sup> Furthermore, there was at least one situation where negative results from an inspection were not directed to the proper authorities.<sup>107</sup>

The Commission's submission to British political influence as well as the failure of the Commission to implement EU directives are extensively documented in the TCI report.<sup>108</sup> Furthermore, the report also indicates that had the Commission fulfilled its obligations under the treaties, the BSE crises might have been prevented.<sup>109</sup> The result of the BSE affair is a worldwide panic concerning British beef which has resulted in the loss of billions of dollars.<sup>110</sup> Furthermore, the possibility exists that tens and

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<sup>99</sup> *Id.* at 16.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 15.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 16.

<sup>104</sup> *Id.* at 13. Additionally, only thirty seven general inspections were conducted between 1990 and 1994. *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 14.

<sup>108</sup> *See id.*

<sup>109</sup> *Id.*

<sup>110</sup> Blackburn, *supra* note 27. Jenish, *supra* note 21. *EU Stops Fiddling While Cows Burn*, 274 SCIENCE 1297. This money has either been spent or set aside to slaughter herds of cattle and to implement extensive research programs to study BSE and related diseases. *Id.*

thousands more people are infected with CJD as a result of the BSE epidemic.<sup>111</sup>

Parliament was privy to all of this information regarding the Commission's role in the BSE affair before it voted on a motion to censure the Commission in February of 1997.<sup>112</sup> Nevertheless, despite the global nature of the economic and human crisis, the motion was rejected.<sup>113</sup> This result compels an examination of Parliament's willingness to exercise its supervisory authority. If Parliament is unwilling to censure the Commission under such egregious circumstances, then we must ask how devastating must a crisis be before such measures are taken?

Although the treaties of the EU allocate to Parliament the power to censure, the circumstances under which such an action may or should be taken are not provided.<sup>114</sup> Furthermore, since not a single motion to censure has ever been adopted by Parliament, there are no standards by which to compare such a motion.<sup>115</sup> As a result, the decision of whether or not to approve a motion to censure has been determined primarily by the emotional speeches given during the Parliamentary debates.<sup>116</sup> These debates have focused on issues that have relatively limited global repercussions compared to the worldwide panic over the mad cow disease crisis. Furthermore, these debates do not reflect the results of a well documented, intensive investigation.<sup>117</sup>

For example, during the debates on the motion to censure conducted in 1977, all the speakers in favor of the censure conceded that the motion was basically political.<sup>118</sup> The issues discussed concerned various aspects of the economics of alleged excessive accumulation of butter and milk powder.<sup>119</sup> Nevertheless, the proponents admit that their concern was not strictly based on the problems associated with the milk and butter stockpiles but with the resulting potential imbalance of power within the EU.<sup>120</sup> Specifically, their

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<sup>111</sup> Boseley, *supra* note 14.

<sup>112</sup> See Blackburn, *supra* note 27.

<sup>113</sup> *Id.*

<sup>114</sup> See EEC TREATY, *supra* note 7. See MAASTRICHT TREATY, *supra* note 4.

<sup>115</sup> JACOBS ET AL., *supra* note 45, at 225.

<sup>116</sup> See EUR. PARL. DEB. (215) 40 (March 23, 1977). See EUR. PARL. DEB. (407) 105 (July 8-9, 1991).

<sup>117</sup> See *id.*

<sup>118</sup> EUR. PARL. DEB. (215) 40 (March 23, 1977).

<sup>119</sup> *Id.* at 41.

<sup>120</sup> *Id.* at 40.

fear was that if Parliament "failed to discharge [its] responsibilities whenever there was an infringement of the rules, [it] should no longer be a credible institution in the eyes of the people [it] serves."<sup>121</sup> Such political concerns are troublesome, but are not well founded in the situation of milk and butter stockpiles. Unlike the situation surrounding the BSE crisis, the situation involving milk and butter stockpiles does not rise to a global level. Additionally, the debates surrounding the dairy stockpiles fail to reflect either the seriousness of the situation or the egregiousness of the Commission's acts.

Another example of misplaced issues is the Parliamentary debates regarding the motion to censure the Commission in 1992. These debates concern the role of the Commission in the Yugoslavian conflict; another situation with relatively limited global repercussions.<sup>122</sup> Some members of Parliament charge the Commission with "fail[ing] to fulfill [its] role which was to anticipate . . . [that] Yugoslav unity would be cast into doubt."<sup>123</sup> This accusation was not supported by testimony and documentation, nor do the treaties state that the Commission has a duty to anticipate the break-up of countries.<sup>124</sup> In contrast, during the BSE affair the proponents of the censure had ample testimony and documentation to support their position.<sup>125</sup> Additionally, during the BSE affair the Commission violated article 155 of the treaties by submitting to the political influence of the UK.<sup>126</sup> Furthermore, with regard to the BSE situation, the Commission admitted it was at least partially at fault.<sup>127</sup> These differences not only highlight the disparity in evidentiary support between the motions, but also highlight the disparity in the scope of the problems.

In contrast to the subjects of the previous motions to censure, the most recent motion involves a global crises. The extensive scope of this crisis is evidenced by the number of countries around the world which have banned the importation of British beef and beef by-products as well as the EU's worldwide ban on the exportation of such commodities.<sup>128</sup> Therefore, the

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<sup>121</sup> *Id.* at 40.

<sup>122</sup> EUR. PARL. DEB. (407) 105 (July 8-9, 1991).

<sup>123</sup> *Id.* at 106.

<sup>124</sup> See EEC TREATY, *supra* note 7. See CORBETT, *supra* note 4.

<sup>125</sup> TCI Report, *supra* note 1.

<sup>126</sup> For the duty to remain politically independent see EEC TREATY, *supra* note 7. See TCI Report, *supra* note 1 for the submission to UK political influence.

<sup>127</sup> TCI Report, *supra* note 1.

<sup>128</sup> Jenish, *supra* note 21. Blackburn, *supra* note 27.

most recent motion to censure the Commission for its handling of the BSE situation is vastly different from, and more serious than, any previous motion. Nevertheless, Parliament refused to exercise its supervisory power under the treaties and instead placed a suspended censure upon the Commission.<sup>129</sup> Essentially, Parliament avoided and postponed the issue of censure by rejecting the motion and promising to re-examine the issue in the future. This decision shows Parliament's unwillingness to punish the Commission for abusing its powers and its inability to prevent future abuse by the Commission.

The result of the EU's handling of recent global crises reveals that in its present form, the EU is not the effective body that was originally envisioned by Member States. The EU's handling of the BES crisis illustrates the EU's inability to provide solutions to multi-State problems. During the BSE affair, the Commission, often considered the executive institution, was essentially controlled by the political will of the U.K. As a result, the Commission acted in a manner endangering the health and safety of the citizens of Europe and the world.<sup>130</sup> Additionally, Parliament proved to be helpless in punishing the Commission for its misconduct. The decision of Parliament to place a "suspended" censure on the Commission merely left the BSE crisis unresolved.

Overall, an analysis of the time line of events with regard to the BSE crisis reveals that the EU engages in a cycle of avoiding and postponing the resolution of problems. In 1990, the Council acknowledged the potential global, economic and human danger posed by the disease and issued directives to the UK and the Commission in an effort to prevent the problem from turning into a crisis.<sup>131</sup> Neither the UK nor the Commission, which submitted to the influence of the UK, implemented those directives.<sup>132</sup> In 1996, the mad cow disease problem erupted into a global crisis.<sup>133</sup> In 1997, Parliament failed to censure the Commission for mismanaging the affair and violating treaty directives. Instead, Parliament issued a suspended censure, an act which at best may be equated with a slap on the hand. Additionally, Parliament issued more directives to be followed by the UK and the Commission.<sup>134</sup>

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<sup>129</sup> Blackburn, *supra* note 27.

<sup>130</sup> TCI Report, *supra* note 1.

<sup>131</sup> *See id.*

<sup>132</sup> *Id.*

<sup>133</sup> Blackburn, *supra* note 27.

<sup>134</sup> TCI Report, *supra* note 1.

Parliament's action compels observers to ask why should the UK or the Commission follow additional directives when they were not sanctioned either for their deliberate failure to adhere to previous directives nor their deliberate violation of EU treaties? The threat of a censure in the future is not enough of a threat to compel the Commission to follow EU directives.<sup>135</sup> Since the power to censure the Commission has been in existence since the very beginning of the EU, threatening the Commission with a motion of censure in the future is not only redundant but, as history has revealed, also ineffective. This threat is always imminent, but it is not a threat likely to come to fruition.<sup>136</sup>

As revealed by the BSE crises, the Commission acts in a manner reflecting no fear of being sanctioned. Even more potentially dangerous than a Commission without fear of reprimand is a Commission free to choose political sides to the detriment of the rest of the Member States. With Parliament's unwillingness to censure the Commission even in the most egregious of circumstances, the EU is unable to provide effective solutions to interstate solutions. The world's faith in the EU's future as a globally powerful entity will rapidly decline if it can not quickly and effectively provide solutions to situations such as the BSE crisis.

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<sup>135</sup> See SCHMITT, *supra* note 2.

<sup>136</sup> See *id.*