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Dear Reader,

We are pleased to present you with our Spring 2007 issue. The magnitude and excellence of submissions, sent from around the world, attest to the wealth of knowledge and resource on part of undergraduate students worldwide. It is with sincere gratitude that we thank those who have provided the Journal of Undergraduate International Studies with the means to actively partake in the intellectual community and to exhibit the latest in foreign policy research.

In doing so, we extend our appreciation to the many writers who offered submissions, Professor Jon Pevehouse, Memorial Library, L&S Honors Program, University of Wisconsin Foundation and the donors, whose contributions breathe life into the intellectual tradition. We hope that JUIS may kindle the process of innovation and prove that the most important dialogue for international policy begins here, on campus.

Sincerely,

The Editors

The Journal of Undergraduate International Studies (JUIS) would like to acknowledge its Founder and first Editor-in-Chief, David Coddon. The first two issues of JUIS were published with the generous support of the University of Wisconsin Leadership Trust, and continued publication is made possible through the Coddon Family Foundation. Additional funding and support is provided by the University of Wisconsin-Madison College of Letters and Science Honors Program.

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International Law and Diplomacy and the American Death Penalty
Debates about the death penalty in America concern a broad range of practical, moral, and legal concerns, but do not pay sufficient attention to international considerations.

Both opponents and proponents of the death penalty tend to frame their arguments in terms of whether the death penalty is good or bad for a particular state or the country without adequately recognizing that the American capital punishment system is increasingly woven into international law and diplomacy. The domestic focus is partly the result of our federalism; that is, the death penalty in America is largely viewed as a policy question to be addressed at the state or federal level. American death penalty policy and practice undermine America’s diplomatic efforts abroad, especially in the promotion of human rights. Conversely, international legal decisions and diplomatic agreements alter the implementation of the death penalty in ways that American legislators, prosecutors, and courts cannot control, making fair and consistent capital punishment decision-making impossible.

Any analysis of the death penalty requires examination of the international context in which this system operates. This essay does not attempt to challenge the various domestic defenses or criticisms of the death penalty system. Rather, it explores the relationship between the American system of capital punishment and the international community along two dimensions. First, it analyzes
the detrimental effect of the death penalty on America’s diplomatic status and foreign policy objectives. Second, it examines the effects of international legal decisions and diplomatic agreements on the domestic implementation of the death penalty in America. Both parts of the essay demonstrate that the death penalty cannot be assessed independently of the international arena, and that such an assessment points to serious problems with continued use of capital punishment in America.

The American Death Penalty: Policy and Practice

Before turning to the international sphere, some background on the domestic characteristics of the American capital punishment system are worth noting, including some of the basic arguments used to criticize or defend this practice. Thirty-eight states currently have laws to execute criminals convicted of capital offenses; there are also federal provisions for capital punishment. According to the Death Penalty Information Center, sixty criminals were executed in 2005, with another 3,380 inmates currently on death row in America. In Furman v. Georgia, the Supreme Court declared capital punishment unconstitutional. In his concurring opinion, Justice Brennan explained that the death penalty was “being inflicted arbitrarily.” States subsequently attempted to reform their capital punishment procedures to avoid arbitrary execution, with the Supreme Court upholding the constitutionality of these revised systems in 1976. Since then, over 1,000 criminals have been executed in America. However, several Supreme Court decisions over the past three decades have made significant changes to the practice of capital punishment, such as limiting the types of offenses eligible for the death penalty and declaring unconstitutional the execution of mentally retarded inmates and minors.

Critics and supporters of the death penalty continue to debate the practical, moral, and legal foundations of capital punishment, generally framing their arguments in domestic terms. For example, on the issue of criminal deterrence, death penalty proponents often argue that executions deter further crime and save innocent lives. Opponents, on the other hand, note the variation in many studies of the death penalty’s deterrent value, and argue that evidence of deterrence is inconclusive. Similarly, proponents cite public opinion as proof that Americans “want” the death penalty as an option for criminal punishment. Opponents respond that support for the death penalty in public opinion polls “is not a genuine but a spurious function of people’s desire for harsh but meaningful punishment for convicted murderers.” Discussion about the death penalty, therefore, is often (though not always) framed as a domestic policy debate.

In recent years, debate about the death penalty in the constitutional law arena occasionally has drawn upon international considerations. For instance, legal scholars and Supreme Court Justices have referenced international trends to measure “evolving standards of decency” when evaluating the constitutionality of the death penalty under the “cruel and unusual” provision of the Eighth Amendment. Furthermore, some legal scholars argue that the Court’s decision in Roper v. Simmons, which declared unconstitutional the execution of minors under the same provision, indicates a general shift in constitutional jurisprudence towards “constitutional comparativism,” using international norms as an “instructive” guide for judicial reasoning.

Others note the Court’s recent citation of international normative trends to evaluate claims of individual liberty outside of the death penalty debate. For example, in Lawrence v. Texas the Supreme Court overruled Bowers v. Hardwick, and struck down

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a Texas statute banning consensual sodomy, citing the European Convention on Human Rights' decision in a case “with parallels to” Lawrence. Such references have raised the ire of other legal experts (such as Justice Scalia), who argue that constitutional analysis should be limited to American tradition and precedent. Noting that “law is not morality” but the product of “domestic regimes,” Stanford Law Professor and criminal procedure expert Robert Weisberg contends that such arguments are reasonable to reject the notion of imbuing American criminal law with an internationalist view. Thus, while international norms have permeated legal criticisms of the death penalty, corresponding legal justifications of capital punishment hinge on law's domesticity.

The following does not attempt to resolve the legitimacy of judges seeking guidance from international examples to resolve domestic legal disputes. But in exploring the relationship between the death penalty and the international community, this essay does suggest that a global perspective about the death penalty must inform the American capital punishment policy debate.

The Death Penalty and American Foreign Policy

Issues of human rights, including capital punishment, pose a unique dilemma to political leaders. Because “foreign policy must serve the purposes of governments… informed by the national interest,” human rights policies contrary to this interest may risk being subordinated or even abandoned. Consequently, America often faces choosing between foreign policies that promote human rights and those that promote its national interest. Domestic political pressures may lead political leaders to choose “realpolitik over human rights.” Additionally, “American moralizing at home” has produced the general belief that America is the model champion of human rights. America’s political leaders are aware of the public’s pride in seeing their country as the world leader in human rights advocacy. As a result, lawmakers have strong incentives to support human rights, but may not have the will or incentive to follow through if doing so compromises other American interests abroad. Regardless of the transnational nature of human rights issues, America has a natural inclination to approach these issues in terms of domestic politics and national ambitions.

Nowhere is this inclination more apparent than in America’s approach to capital punishment. Political leaders have strong electoral motivations to be “tough on crime,” advocating capital punishment for domestic political concerns. They embrace the domestic justifications invoked by death penalty proponents, such as studies that indicate public support for the death penalty or its deterrent value. This emphasis on domestic political concerns and the domestic arguments for the death penalty stand in contrast to developments in other Western democratic nations. While most states in America insist on executing capital criminals, international agreements, treaties, and institutions overwhelmingly indicate a movement towards abolition. This trend is apparent within the European Union, whose policies mandate the abolition of capital punishment among member states. Moreover, the actual practice of executing criminals, though not completely abolished, has followed an “overall international trend…toward the progressive abolition of capital punishment” since the 1950s. Nevertheless, America’s death penalty system runs counter to these trends, producing a profound “sense of America as an anomaly” among its “peer countries.” Decisions in America’s state and federal legislatures and courts to preserve the death penalty have been premised on the understanding that this choice is a domestic policy question, largely one for the states, with minimal attention to international concerns. Federalism has eclipsed internationalism.
This approach ignores the harmful effects of America’s death penalty system on U.S. foreign policy. Conducting diplomacy under the long shadow of the death penalty threatens America’s bilateral relations, and undermines its status as a leader among Western democracies. In a recent interview, international law expert Harold Koh noted that during his tenure as Assistant Secretary of State, “all the diplomats were opposed to the death penalty.”26 In Amicus Curiae brief in McCarver v. North Carolina,27 authored in part by Koh, four career ambassadors all noted that “this practice has caused our allies…to challenge our claim of moral leadership.”28 Indeed, European governments are increasingly unable to accept “that the self-proclaimed leader of the civilized world considers the death penalty a normal procedure.”29 As a result, American Secretaries of State are “routinely confronted about [their] country’s use of the death penalty [by their] counterparts around the world.”30

The consequences are more damaging than routine diplomatic confrontations. In fact, diplomatic friction over the death penalty may have contributed to the “loss of [America’s] seat on the UN Human Rights Commission.”31 Additionally, the French National Assembly has threatened “to revoke U.S. observer status at the Council of Europe.”32 While in the State Department, Koh found that “any meeting with the EU” would be “almost over” after discussing various U.S. executions, making progress on any other issue on the table more difficult.33 Nor is criticism limited to government officials. Felix Rohatyn, former U.S. Ambassador to France, reported “that his consulates in France were frequently besieged by death penalty protesters…[and] received an anti-death penalty petition signed by 500,000 local citizens.”34 To foreign leaders and citizens, the death penalty is a scar on the face of America’s global image.

Chief among the damaging consequences of this supposedly domestic practice is America’s diminished ability to achieve its policy objectives in several areas of international diplomacy. For example, America’s insistence on executing criminals hampstrings U.S. efforts to promote human rights abroad. China, for one, is increasingly “on the defensive” on human rights issues, largely in response to criticism levied by the United States.35 But China has recently highlighted “America’s death penalty when criticized for [its own] widespread human rights violations.”36 A recent report from the Chinese Department of State declared America’s death penalty practice “an act that fully exposes its hypocrisy and double standard on human rights issues.”37 As a result of America’s system of capital execution, U.S. charges of human rights violations in other countries increasingly fall on deaf ears. While such tensions threaten efforts to establish stable relations in a multitude of policy arenas (such as trade and commerce, intellectual property, and nuclear proliferation), America’s efforts to combat human rights violations abroad are the primary diplomatic collateral damage of American executions.

Similar problems arise over issues of national security. Contemporary threats to national security are inherently transnational in character.38 Consequently, if America intends to address these security concerns, it must do so with a multilateral, cooperative strategy. Ironically, America’s criminal justice practice of capital execution hinders its ability to develop such strategies. Ambassador Rohatyn argues that “when we require European support on security issues [such as] Iran’s nuclear program, the war in Iraq [or] North Korea’s bomb…our job is made more difficult by the intensity of popular opposition [to the death penalty].”39 In the context of the “Global War on Terror” (GWOT), America’s insistence on retaining the death penalty “alienates a growing number of countries that have abolished the death penalty.”40 Also, the death penalty may further undermine American counterterrorism efforts by facilitating martyrdom or encouraging terrorists to “fight to the death” in the field rather than in custody.41 In the international arena, domestic arguments of deterrence may not be relevant.

The recent trial of al-Qaeda terrorist Zacarias Moussaoui – the “20th 9/11 hijacker” – showcases the obstructive effects of capital punishment on American efforts to secure cooperation for GWOT. Moussaoui, a French citizen of Moroccan descent, was a member of al-Qaeda, the most notorious transnational terrorist organization. The threat of capital punishment for Moussaoui challenged traditional “norms of cooperation” that exist between America and its foreign allies in criminal justice.42 Most notably, because the Department of Justice insisted on seeking the death penalty, “France and Germany initially refused to turn over evidence against Moussaoui to the United States.”43 Ironically, America’s system of capital punishment obstructed efforts to build a case against Moussaoui.
Other nations have acknowledged the relationship between their own domestic death penalty programs and foreign diplomacy. For example, China’s government has acknowledged that its capital punishment program has taken a “toll on Beijing’s bargaining position on a host of other issues” in the international arena. In response, the Chinese Supreme Court has recently sought gradual reform of its execution practice, acknowledging that eventually China’s criminal justice system will conform to the “global trend that the controversial practice will be gradually reduced until it is abolished in the whole world.” Similarly, Mikhail Margelov, chairman of the Russian Federation Council’s Committee on International Affairs, has consistently argued for reform in Russia on similar grounds. Margelov contends that if Russia does not conform to the widely held attitudes of the European Union, other nations “will look at…Russia’s unfulfilled commitments through a microscope and attempt to challenge Russian powers in the Council of Europe.” Despite facing similar diplomatic pressure and incentives to move toward abolition, the U.S. has proved stubbornly resistant even to acknowledge the damaging repercussions of the death penalty on its foreign policy objectives.

International Legal Decisions and Agreements and Implementation of the Death Penalty in America

The foregoing underscores the detrimental impact of the death penalty on American foreign diplomacy. Yet, in addition to obstructing American diplomatic relations, divergent global attitudes toward capital punishment have produced international agreements and legal cases that influence the American criminal justice system. Stanford Law Professor and international law expert Allen Weiner noted in a recent interview that these agreements are consistent with current trends in international law, which increasingly affect the rights of individuals within different countries, rather than simply regulating behavior between nations. This “significant change in the role of international law,” has prompted the creation of bilateral and multilateral legal arrangements among American allies and bilaterally with the United States in the area of criminal justice. These new diplomatic arrangements have direct consequences on the implementation of the death penalty in America. Such agreements are largely the product of legal decisions outside of American borders. For example, in Soering v. United Kingdom the European Court of Human Rights unanimously decided against the extradition of defendant Jens Soering to the United States. Soering successfully challenged his extradition to the United States to face capital murder charges in Virginia, arguing that doing so would “would constitute a violation of Article 3 of the European Convention [of Human Rights].” In a similar case, the High Court of the Netherlands ruled in Short v. The Netherlands against extraditing Staff Sergeant Charles Short to the United States to face capital murder charges, refusing to “subject Short to the death penalty.” In United States v. Burns the Canadian Supreme Court “ruled that extradition to the United States without assurances that the death penalty will not be carried out for capital crimes violates the Canadian Charter of Rights and Freedoms.”
These cases were all decided outside of the U.S. capital punishment system. Moreover, they were decided according to international agreements (in the case of Soering) and national charters (in the case of Burns) to which the U.S. was never a party.

Cases such as Soering, Short, and Burns, therefore, help establish “norm[s] of customary international law” against extraditing criminals to the United States without guarantees against seeking the death penalty. As a result, extradition treaties with American guarantees against seeking the death penalty have been increasingly popular among U.S. allies in the 20th century. For example, in the context of the foregoing GWOT example, Great Britain has declared that it “would approve extradition of suspected terrorists only if the United States waived the right to impose the death penalty.”

Agreements and formal treaties guaranteeing that extradited criminals will not be executed extend well beyond Europe and the general War on Terror to everyday foreign diplomacy by the U.S. A treaty signed with Costa Rica identical to one signed with Portugal stated, “it is understood that Government of the United States of America gives assurance that the death sentence will not be passed upon criminals surrendered by Costa Rica to the United States of America.” Such international treaties and agreements infiltrate the domestic implementation of capital punishment in America.

These international treaties and agreements apply to a very small proportion of capital cases. Weiner argues that international legal agreements are generally irrelevant in most death penalty cases, noting that “if Texas wants to execute a Texan, international law is largely insignificant.” However, while the international legal agreements and cases described above may not be relevant to many individual cases, they exert considerable influence on the capital punishment system as a whole. International actors exogenous to the capital punishment system itself are playing an increasingly significant role in determining who is and who is not eligible for the death penalty, thereby placing prosecutorial and sentencing discretion into the hands of American and foreign diplomats. For example, extradition treaties negotiated with foreign governments prevent certain criminals – some of whom may have simply been fortunate enough to escape to a foreign nation – from the prosecutorial discretion and sentencing phases of the American criminal justice system.

As Soering, Short, and Burns suggest, whether a criminal is eligible for the death penalty in America may not even be decided by diplomats – it may be the prerogative of foreign Human Rights Courts. Therefore, as Mary Newcomer notes, “because actors in the criminal justice system…cannot control the behavior of actors outside the system, the system cannot insulate itself from the effects of ‘foreign officials.’” The American death penalty system not only operates within an international context, but increasingly operates according to policies and agreements formed in the international arena. As Koh contends, “to pretend that these two jurisdictions are not connected is to artificially approach the [death penalty] issue.”

**Conclusion**

A global perspective of the American death penalty reveals a domestic policy and practice increasingly linked to international diplomacy and legal agreements. America’s insistence on capital punishment frustrates U.S. diplomacy with alarming consequences for several foreign policy objectives. Additionally, international legal decisions and diplomatic agreements place capital punishment decision-making beyond the control of American policymakers in certain cases. In a system already vulnerable to attack for arbitrariness, this international dynamic, by introducing even more uncertainty into who becomes eligible for the death penalty, raises important new due process concerns about capital punishment in America. At the very least, these international pressures raise serious concerns as to how death penalty policy discussions are framed. Capital punishment cannot be debated independent of the international pressures under which it operates, nor can it continue to ignore the diplomatic casualties of American executions.

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Endnotes

1  “Facts about the Death Penalty,” from the Death Penalty Information Center.
3  Ibid at 381 (Brennan, J., concurring).
5  “Facts about the Death Penalty.”
6  See Coker v. Georgia, 433 U.S. 584 (1977), declaring the death penalty to be disproportionate punishment for crimes such as rape, and therefore unconstitutional under the Eighth Amendment in those cases.
7  The Supreme Court declared unconstitutional the execution of mentally retarded inmates in Atkins v. Virginia, 536 U.S. 304 (2002); the Court declared unconstitutional the execution of minors in Roper v. Simmons, 543 U.S. 551 (2005).
8  For example, the California District Attorneys Association points to “many studies finding data consistent with an important deterrent effect of punishment” (“Prosecutors’ Perspective…” 44).
9  For instance, Richard Berk’s recent analysis raises “serious questions about whether anything useful about the deterrent value of the death penalty can ever be learned from an observational study” (“New Claims…” 33).
11  Writing for the majority in Atkins, Justice Stevens referenced international attitudes towards capital punishment to argue that such executions violated “evolving standards of decency” 536 U.S. 304 (2002), at 312.
21 For example, Stephen Bright notes the lack of “political will to provide adequate counsel for the poor in capital and other criminal cases,” and argues that “significant improvement in the quality of representation for the poor is unlikely because of the unpopularity of those accused and the lack of leadership and commitment to fairness of…the justice system.” Stephen B. Bright, “Counsel for the Poor: The Death Penalty not for the Worst Crime but for the Worse Lawyer,” Yale Law Journal, Vol. 103 (1994), 165, 167.
22 As far back as 1971, “the United Nations General Assembly…affirmed the desirability of abolishing the death penalty in all countries” (“EU Memorandum on the Death Penalty”). In 1989 the UN Economic and Social Council (ECOSOC) advised “eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence” (Brief for American Foreign Servicemen as Amici Curiae in McCarver v. North Carolina 533 U.S. 975 (2001)). Additionally, Amnesty International characterizes capital punishment as “the ultimate denial of human rights” (“Amnesty International Death Penalty Q&A”). International legal institutions agree. The UN International Covenant on Civil and Political Rights (ICCPR), the U.N. Commission on Human Rights, and the International Criminal Court (ICC) all condemn the use of capital punishment (Naldi, 948; Amicus Brief; “International Criminal Court Excludes the Death Penalty”). The European Union in particular has established itself as a worldwide leader in promoting the abolition of the death penalty. The adoption of Protocol #6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) directly advocated the abolition of the death penalty (“EU Memorandum…”).

23 For instance, it is noted that abolition is a “strongly held policy view agreed by all EU member states” and “where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards.” (“International Criminal Court Excludes the Death Penalty”). Additionally, “European regional organizations have made abolition of the death penalty a prerequisite to joining the ‘new Europe,’ and a cornerstone of European human rights policy” (Koh and Pickering, 20).


25 Weisberg.

26 Harold Hongju Koh is the Dean and Professor of International Law at Yale Law School. He also served as the Assistant Secretary of State for Democracy, Human Rights and Labor under Madeline Albright. Telephone Interview by author, 31 May 2006.


29 Moisi, 1.


34 Koh and Pickering, 20.


36 Koh and Pickering, 21.


38 For example, the UN Secretariat High Panel notes that terrorism is a global threat that “flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in contexts of regional conflict and foreign occupation; and it profits from weak state capacity to maintain law and order (“A More Secure World…” 47).


41 Ibid, 423.

42 Weisburg.

43 McDonnell, 415.

44 Nathan, 638.


48 Ibid.


52 Newcomer, 629.


55 Naldi, 951.

56 Cited in McDonnell, 413.


58 Weiner.

59 Newcomer, 647.

60 Harold Hongju Koh. Telephone interview by author. 31 May 2006.
Critique of Proposed Solutions

The hesitancy by the United States and Western Europe to rapidly deploy military troops in Darfur and other cases of massive human rights violations is primarily a reaction to the disaster that United Nations and U.S. troops faced in the Somalian capital of Mogadishu in 1993. The international community’s disinterest in intervening in the Rwandan genocide, a situation which arose only a few months after the violence in Mogadishu, demonstrated that the United States was “not alone in narrowing the scope of its international interests and engagement.”

It has also been asserted that the U.N.’s bureaucratic culture facilitates this disinterest by contributing military personnel to peacekeeping missions by dispersing responsibility among members. While analyses of the Rwandan genocide often yield claims that 5,000 troops could have prevented or stopped the massacre, “the hard truth is that even a large force deployed immediately upon reports of attempted genocide would not have been able to save even half of the ultimate victims.” This same conclusion may be applied with greater vigor to the current conflict in Darfur, which is fundamentally more complex and involves more militant groups than was the case in Rwanda.

Current proposals for intervention in Darfur have been overwhelmingly military-oriented. However, a different direction must be taken in order to avoid the established international precedent of refusing to intervene militarily in humanitarian crises in an effort to respect laws of state sovereignty. While the international community has clearly demonstrated a disinterest in committing troops to conflicts with genocide-like qualities, there has been an increase in humanitarian assistance in recent conflicts. This trend is, in large part, a testament to the perception that humanitarian assistance is an adequate alternative to military solutions in matters of international law. Attempts to implement military solutions result in disagreement by the major powers on a single solution set as well as a hesitancy to disturb the revered principle of state sovereignty. China, for instance, has stated that the sovereignty of Sudan must be preserved in any action taken by the international community.

While in the past, “humanitarian assistance served as a kind of apology for the international community’s failure to act to prevent” genocide, the current conflict in Darfur has increasingly targeted humanitarian groups such as the Red Cross in violent attacks, seriously compromising the greatest contribution nations are willing to agree upon.

The need for non-military intervention in Darfur is further accentuated by the current geo-political position of the United States...
and the other members of the United Nations Security Council. The United States’ military is already over-deployed in conflicts in Iraq and Afghanistan and is, therefore, incapable of contributing enough troops to adequately address Darfur’s security needs through either coalition or unilateral deployments. Additionally, these two deployments have greatly exacerbated current anti-American sentiment of many in the Islamic world. The occupation of another Muslim country by U.S. troops, whether it be through U.S. or U.N. deployment, would give further validity to the claims of organizations like Al Qaeda.

Attempts have been made to address the problematic reality of a U.N. or U.S.-led military intervention in Darfur by, instead, calling for economic sanctions against Khartoum. Since 1997, the U.S. government has imposed sanctions on Khartoum, and in 2006, the United States Congress took further steps and passed the Darfur Peace and Accountability Act to formally recognize the situation as genocide. Additionally, the DPAA sought to “block the assets and deny visas and entry to any individual complicit in or responsible for acts of genocide…” as well as measures aimed to prevent Khartoum from fully realizing oil profits. Despite these efforts, Eric Reeves, a Sudan expert at Smith College, asserts that any “plan to block commercial bank transactions connected to the Khartoum regime, even those involving oil revenues, will be only a minor, short-term inconvenience” as the Sudanese economy is buoyed by oil wealth, supported by China.

While estimates of the amount of Sudanese oil exported to China vary from 60 to 80 percent, it is clear that any attempts to alter Khartoum’s current behavior using economic mechanisms must have the explicit and active cooperation of the Chinese government to be effective.

A New Solution Set: Olympic Pressure

While the United States and other governments have enacted economic sanctions against Khartoum since the 1990’s, many NGOs are now provoking further divestment by publishing reports of multinational companies with investments tied to Khartoum’s officials involved in the violence. These highly coordinated efforts are unlikely to have an influence on Khartoum’s policies, however, because they have not gained the cooperation of China—whose leaders have neglected the issue of human rights in their official diplomatic relationship with the Sudanese government. Amid calls for further intervention in Sudan from America and Europe, China’s President, Hu Jintao, has called on all nations to “respect the sovereignty of Sudan.” As a permanent member of the U.N. Security Council, China abstained from voting on UNSC Resolution 1706, which authorized troop deployment to the Darfur region, thus, diluting the strength of the resolution. Furthermore, in a recent visit to the country, President Jintao cancelled $80 million of Sudanese debt, paid for a presidential palace for President Bashir, and announced plans for a new railway line to transport oil. It is evident that more pressure must be placed on China in order to entice the Beijing government to utilize their well-formed diplomatic channels with Khartoum to bring an end to human rights abuses.

The most appropriate type of vehicle for the pressure that must be placed upon the Chinese government are international NGOs with Darfur-centered mandates. This will prevent diplomatic bleed-off into tangential issues between China and other countries. Such single mandated NGOs are already in existence and have been quite prolific in spreading awareness about the human rights abuses in Darfur. However, they overwhelmingly advocate for military intervention by either the U.N. or U.S. and place little to no importance on China’s role in the region. A primary example of
this misallocation is the Save Darfur Coalition, which has created a set of policy requests to Congress, primarily proposing to send U.N. and African Union troops and also advocating for the very same divestment schemes that Eric Reeves and other experts have labeled as ineffective. This policy set is not congruent with the geopolitical reality and does not even mention utilizing Chinese diplomacy as a strategy. In order for the Save Darfur Coalition and other Darfur-centered NGOs to optimize their effectiveness, they must begin to target Beijing as a primary actor in Darfur.

The Sudanese oil that China imports is part of a larger pattern of increasing energy imports over the past few years in support of the massive infrastructure build-up which is occurring throughout the country and which will be showcased during the 2008 Beijing Olympics. China has placed the 2008 Olympics as a top priority and source of prestige, in turn, creating the potential for NGOs to exploit it as an international forum which can be used to illuminate the extent to which China implicitly contributes to the situation in Sudan. However, more immediate action may be taken in the lead-up to the Olympic games by targeting corporations that will sponsor the games. Instead of allocating resources towards campaigns which seek to merely spread awareness of Darfur’s plight, NGOs should begin media campaigns with the intention of forcing corporations to withdraw their sponsorship connections to the Beijing Olympics. While forcefully coercing China to put more pressure on Khartoum is not possible, using the Olympic games as a point of leverage will place very real reputational and highly targeted economic pressure on the Beijing government and is, thus, the best option given the realities of international law and the current geopolitical climate.

Augmented International Court Indictments

Additionally, there is evidence that the Chinese government has signaled it would be willing to cooperate with actions initiated by the international community in Darfur that do not violate the principle of sovereignty. While abstaining from the vote on UNSC Res. 1706 in order to respect Sudan’s sovereignty, both China and Russia supported a UNSC case referral to the International Criminal Court that resulted in indictments against two Khartoum officials involved in crimes against humanity in Darfur. The indictments against Khartoum’s Interior Minister and a Janjaweed leader are significant as they have specifically targeted individuals who, while guilty of human rights violations, occupy mid-level Cabinet positions and may therefore be offered up by the Bashir government as scapegoats. This is a promising strategy that should be employed further on both sides, with more indictments handed down against Khartoum-Janjaweed officials and also against Darfur rebel leaders guilty of civilian massacres. By offering up the individuals most responsible for human rights violations on both sides, there is a greater chance that future peace deals may be brokered.

It has been argued that these ICC indictments could result in even greater resistance to allow peacekeeping forces into Sudan from President Bashir so as to evade attempts to capture him. However, it is much more likely that the issuance of more indictments will provoke President Bashir, top-level Cabinet officials, and Darfur rebel leaders to appeal for immunity in exchange for greater cooperation in preventing further human rights violations. This situation would present one of the greatest opportunities to prevent further civilian deaths and achieve stability in the region. However, it would also set a dangerous precedent for future conflicts in other areas of the world. Despite this possibility for undesirable precedents, such immunity-for-peace deals illustrate the dialogue between the principle tenets of international law and diplomacy that is necessary in real life to prevent further violence against civilians.

Use of Corporate Militaries

Concomitant to targeting the Beijing Olympics and the use of ICC indictments, the new solution set for Darfur must also include measures to protect the humanitarian aid workers already operating in Sudan. In the past few months, rebel groups and government-supported Janjaweed militias have both demonstrated a clear transition towards a strategy of targeting humanitarian workers, with the intention of forcing them to leave Sudan. More than 130,000 Darfurians went without aid for days in late 2006 when
With the realization that the initial motives for the Iraq War were less than well-founded, if the international community is able to effectively intervene in Sudan, without violating the principle of sovereignty, it has the opportunity to change this image of ineptitude.

hundreds of aid workers were forced to flee due to well-planned attacks against them. Currently, humanitarian aid workers in Sudan are protected by African Union peacekeeping forces, which is part of a recent trend whereby military forces provide security for aid missions in environments of deteriorating security. Randolph Kent, a scholar on humanitarian crises, argues that in these situations “the lack of distinction between the impartial and independent aid worker and the military creates very real security problems for the former as well as tensions within the affected communities.”

The increased frequency of attacks on humanitarian workers in Darfur provides a clear example of the phenomenon Kent describes.

The Darfur region has been the subject of systematic neglect from the Sudanese government in Khartoum and therefore even if the explicit targeting of civilians were to end, ensuring the undisturbed flow of humanitarian aid to Darfur is paramount to preventing civilian deaths. To correct the blurred line of neutrality that military security escorts have created for humanitarian aid workers, the current African Union peacekeepers should be redeployed to areas where they can best monitor peace agreements and human rights violations. The task of protecting humanitarian workers should be outsourced to private corporate military contractors without a political or national-orientation. Corporate military contractors such as Blackwater USA have been increasingly hired by the U.S. Department of Defense to fight in Iraq and have provided security for U.S. and foreign officials in conflict zones since 2004. Blackwater USA provides some of the 100,000 contractors currently employed by the Pentagon in Iraq and Cofer Black, Blackwater USA vice president, has expressed interest in expanding into peacekeeping operations. Providing security for humanitarian services in Darfur could be an effective strategy for Blackwater USA and other corporate military contractors to ease the transition into full peacekeeping missions while simultaneously ensuring that much-needed aid is delivered to hundreds of thousands of Darfurians.

Conclusion

In conclusion, the current trajectory of plans to bring stability to the Darfur region have not properly accounted for a number of key characteristics in the geopolitical environment, and a rapid transition to a new solution set is of the utmost importance. A cogent argument can be made for the prestige of international law being intricately linked with the conflict in Darfur. In the wake of the Iraq War, many critics claimed that the institutions and features of international law had become too bureaucratic and incapable of arbitrating the very type of situations for which they were created to pacify. With the realization that the initial motives for the Iraq War were less than well-founded, if the international community is able to effectively intervene in Sudan, without violating the principle of sovereignty, it has the opportunity to change this image of ineptitude.
Endnotes

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5 Agence France-Presse. 2007. Aid for Darfur at Risk, Red Cross Warns. February 23.
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Bennett.
The Fight Against Impunity in Argentina: Justice After 20 Years
For the countries of the Southern Cone, most of the 1970s and 80s were characterized by violent state-directed campaigns to reconstruct society according to capitalist and “Christian” principles. In these countries, thousands of citizens – mostly civilians – were “disappeared”: kidnapped, tortured, and, in most cases, killed.

in Argentina: After 20 Years

By Emily Spangenberg
Even today, there is no official account of many of these deaths. Human rights groups, relatives of the disappeared, and large sectors of civil society have continued to pressure government for justice for state-led crimes against humanity. For human rights advocates, justice by “official means” (trials for those responsible for the violence against civilians) is an indispensable part of the process of democratization, although their demands for justice have encountered different levels of success in each country.

In Argentina, this insistence on justice as part of democratization encountered a series of obstacles that, until recently, have limited the judicial process in the country. After the fall of the last military dictatorship, better known as the Proceso de Reorganización Nacional (or simply the Proceso), human rights defenders viewed trials for those responsible for the disappearances of civilians during the Proceso as crucial to the restoration of democratic values and institutions in the country. However, shortly after the return to democracy in 1983, President Raúl Alfonsín decreed two laws, known as Punto Final (Full Stop) and Obediencia Debida (Due Obedience), which halted the judicial process for most of those responsible for crimes against humanity during the dictatorship. A few years later, presidential successor Carlos Menem pardoned the few military members who had been sentenced during the first round of trials. Both these pardons and the sanction of Full Stop and Due Obedience provoked indignation among those who had believed in the restoration of justice in Argentina. For this reason, many Argentine human rights advocates’ agendas during recent years have been to pressure the government to annul the “impunity laws,” as Full Stop and Due Obedience came to be known, and readdress the question of judgment for those responsible for the human rights abuses of the Proceso.

After years of pressure and domestic legal advances, the Argentine Supreme Court declared Full Stop and Due Obedience unconstitutional in a historic decision handed down on June 14, 2005. Those responsible for the violence of the Proceso can now be judged under Argentine law. In part, this study examines the precedents for this decision and the value of “official” justice in the aftermath of the last military dictatorship in Argentina. Of particular interest is the value of official justice 20 years after the transition to democracy, and how notions of justice have changed over time.

By providing a chronological account of the fight against impunity in Argentina, this essay illustrates different stages in Argentina’s recent legal history with regards to human rights.

**Bipolar Power: Disappearances and Clandestine Abuse of the Military Regime**

The years between 1976 and 1983 represent a period of terror in Argentine history, in which an estimated 30,000 people were “disappeared” under a violent military regime. This violent campaign constituted a radical plan to stabilize a chaotic economic and political climate, in accordance with the neoliberal politics of the regime. The idea was to eliminate anybody the military leaders considered “subversive” – mostly leftist activists, but eventually anyone accused of sympathizing with them or of criticizing the authoritarian regime. Using an extensive and complex bureaucracy, the military and members of security forces kidnapped, tortured, and killed thousands of people, known collectively as the desaparecidos (“disappeared”). Now, more than 20 years after the

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fall of the military regime, the truth about most of these deaths and disappearances is still hidden, a fact that permeates political debates in the country to this day.

Decades of chaotic leadership undermined by various guerrilla groups provided ideal conditions for the military coup of 1976. Argentina had been strongly polarized, with political actors from the left and right debating the role of the state in the economy and its relations with labor unions. On one side were the Peronists, members of the political party formed during the first presidency of Juan Domingo Perón in 1946. Although at first, Peronism was a populist party that favored policies of redistribution to the working class, when the military seized power from Isabel Perón (Juan Domingo Perón’s third wife) in 1976, a faction of Peronism had become decidedly authoritarian and conservative in response to inflation and an unstable economy. During the last period of her governance, before she was overthrown, Isabel had been using an armed group known as the “Triple A” (Alianza Anticomunista Argentina; “Argentine Anticommunist Alliance”) to control militant leftist activists, causing a rise in violence in Argentine society. Under the leadership of General Jorge Videla, Admiral Emilio Massera, and Brigadier Orlando Ramón Agosti, a coalition of officials of the army, navy, and air force overthrew Isabel in 1976, on the pretext that she had submerged the country even further in chaos.

When the military took power in 1976, its leaders initiated a violent clandestine campaign to eliminate chaos and “reestablish order” after years of political conflict in the country, known as the Proceso de Reorganización Nacional (el Proceso; “National Reorganization Process”). The new regime planned to incorporate capitalistic principles in the Argentine economy to attract foreign investment, but many unionists and activists who believed in the social welfare principles of the original Peronism were opposed to these neoliberal plans. The military regime decided to eliminate social “obstacles” in order to implement its political and economic plans without opposition. Eventually, the category of “enemies” of the military regime grew to include any person suspected of sympathizing with ideas contrary to those of the government. With the looming threat of being “disappeared” for political reasons, a culture of fear and repression spread throughout the country. This widespread fear of public dissent caused the Argentine population to engage in what many consider “silent complicity” with the regime, and many preferred to pretend not to see the negative effects of political repression.

With the looming threat of being “disappeared” for political reasons, a culture of fear and repression spread throughout the country. To institutionalize the violence, the military government adopted the Doctrina de Seguridad Nacional (DSN; “National Security Doctrine”), an ideology already popular in Chile and Uruguay. The DSN was based on a Cold War ideology that claimed that Western civilization and capitalist principles composed the “true spirit” of a nation. Using this ideology, the Argentine military gave themselves the authority as “guardians of the nation” to kidnap and kill political opposition to “purify” the state. The military drew on Cold War rhetoric to define “subversives” as anybody who might oppose an alliance between Argentina and other Western nations based on capitalist and Christian principles.

Using the DSN as a guideline, the Proceso implemented a widespread and clandestine plan to detain and kill “subversives” while maintaining the façade of a legitimate state. As Argentine journalist María Seoane notes, the Proceso had a “bipolar” nature. On one hand, she says, the regime demonstrated a “diurnal” power that acted as if it completed normal functions of a state, hiding and suppressing criticism in order to create some semblance of legitimacy. On the other hand, it had a “nocturnal” power, which instilled terror in the population in order to act on its neoliberal plans. One of the most common methods to find “subversives” was for members of the armed and security forces to block off neighborhoods and villages at night to raid homes and businesses to find evidence of political opposition. They took suspects by force, often without finding substantial evidence that they belonged to any “subversive” groups, kidnapping and transporting them to clandestine prisons. Approximately 90% of the disappearances occurred this way between 1976 and 1978, and an estimated 94%
were civilians.\textsuperscript{10} In spite of this widespread violence, there was little intervention in the everyday affairs of the regime.

One of the reasons why there was relatively little outcry, at least at first, was because the majority of the assassinations and acts of torture took place in the aforementioned clandestine prisons. There were about 360 clandestine centers in \textsuperscript{11} of the 23 Argentine provinces. After incarcerating people in these centers, the military members in charge of the prisons immediately erased their identities, replacing their names with numbers.\textsuperscript{11} Inside these prisons, the majority of the victims were tortured with the objective of obtaining more information about their political activity and giving names of other "subversives," although often torture did not provide any concrete information. Those who could not provide any information were killed, as well as those who tried to escape. Any survivors of these prisons who spoke publicly about their experiences also ran the risk of being executed.\textsuperscript{12} Even today, no formal reports about the fate of most of the desaparecidos exist.

A second reason why these abuses took place had to do with the extremely bureaucratic nature of the military regime, which allowed for minimal accountability and prevented protest from the outside. The regime’s structure was set up in such a way that nobody could determine who had ordered the disappearances and killings. The democratic system had been dismantled since the start of the Proceso. Political power was concentrated in the executive under the leadership of General Videla, and other governmental bodies only developed and supported pseudo-laws that reinforced and legitimized military power and the DSN. Although Videla had initiated the coup and was the person most associated as the head of the military government, an integrated junta of the three branches of the military led the country. Seoane describes this political structure as “a shared mechanism of guilt and, at the same time, irresponsibility.”\textsuperscript{13}

The internal affairs of the regime also reflected an evasion of responsibility. In addition to the Proceso’s structure, which diffused state power across the three branches of the military, some 300,000 lower-ranking officials in the armed and police forces shared responsibility for carrying out the violence. As members of security and national defense forces, they believed that their jobs obligated them to comply with their leaders’ orders. If they decided to disobey them, they were often threatened with the same fate as the disappeared “subversives.”\textsuperscript{14} With this methodology of clandestine abuses through an intricate network of culpability, the Proceso was able to avoid massive opposition from the international community, unlike the violent campaign in Chile, where the violence was more public and drew more opposition from the start.\textsuperscript{15} In addition to assuring the permanence of the military power, this network of responsibility and the pyramidal structure of the regime would impede efforts for justice in the future, and the dismantling of democratic institutions and growing “culture of fear” fostered silent complicity on behalf of the Argentine population.

**Justice as Fundamental to Democracy and Human Rights Protection**

After a failed invasion of the Malvinas/Falkland Islands in 1982 and heightened visibility of its human rights abuses, the military regime collapsed and civil society pushed for the restoration of democracy in Argentina. In 1983, Raúl Alfonsín won the presidency with a campaign focused on human rights protection and the promise of justice for the abuses of the past. One of his first presidential acts was to order trials for those responsible for the human rights abuses of the Proceso, discrediting an “autoamnesty” law that the armed forces had decreed immediately after the transition to democracy. Alfonsín also ordered an official report on the disappearances of the Proceso, directed by the Comisión Nacional sobre la Desaparición de Personas (CONADEP; “National Commission on the Disappearance of Persons”).\textsuperscript{16} There was widespread enthusiasm for the reconstruction of the democratic institutions in Argentina, principally through justice and a rupture of the silence on the human rights crimes of the Proceso.

This emphasis on justice and human rights signaled what historian Luis Alberto Romero calls an “ethic dimension” in the rhetoric of political reconstruction during the transition to democracy.\textsuperscript{17} Alfonsín earned his support from the Argentine people by demanding a renewed sense of ethics in politics, though many would later claim he was overconfident in promising justice for human rights abuses of the Proceso years. At the time, however, Alfonsín’s proposal to use civil law to judge the military was revolutionary in the politics
of the region. In no other Latin American country had there been such a questioning of the official reasoning for violence perpetrated by a military regime.18

The trials of the military commanders of the Proceso represented a new wave of legitimacy for civil institutions and the official recognition of serious crimes that had been hidden in the past, and they gained widespread support from Argentine society. Oral trials started in April 1985 and continued through the rest of that year, and thousands of people were present in the federal Palace of Justice to demonstrate their support for these trials. The judges applied domestic law that pertained to torture, kidnapping, and murder in these trials, rather than using international laws such as those that cover crimes against humanity. At the end of these trials in 1985, five of the military commanders had been sentenced under Argentine law for their roles in the planning and execution of the crimes of the Proceso.19

This opportunity to judge the ex-commanders provoked a social consciousness that called for the judgment of all those responsible for the violence of 1976-1983 in a court of law. However, it soon became evident that conducting these trials would be a task too big for the nascent democracy. With so many potential cases and military indignation to the trials, the Alfonsín administration was under pressure to limit this judicial process. In spite of protests from human rights groups, in 1986 Alfonsín decreed the Full Stop law, which placed a 60-day limit to bring a case against members of the armed or security forces. In theory, this limit would help curb the inundation of trials.20 Contrary to what the government had attempted by approving Full Stop, however, the judiciary received even more cases, and the system continued to be overwhelmed.21

Hopes for the restoration of ethical values in politics and the official recognition of the torture of the military regime were further dashed a few months after the passage of Full Stop, when, in response to military protest, Alfonsín decreed the law of Due Obedience in 1987. This law nullified and prevented any further trials of military members with a ranking lower than colonel.22 Many people, including some judges, thought that this law institutionalized impunity, and it was unacceptable for those who had believed in the power of the judiciary to rewrite history by providing an account of the crimes that “disappeared” so many people. Together, Full Stop and Due Obedience were known as the “impunity laws,” and to many people they represented a setback in the process of democratic institution building. As Luis Alberto Romero notes, in the year 1987, “the illusion of the unlimited power of democracy concluded definitively.”23

The judiciary and other democratic institutions’ credibility faced new obstacles with election of President Carlos Menem in 1989. Many who lost confidence in the implementation of ethics in democracy after Alfonsín decreed Full Stop and Due Obedience considered it dead shortly after Menem won the presidency. On the question of justice in Argentina, Menem decided that, instead of opening up trials for the military members of the Proceso, the Argentine government would follow a path of “reconciliation” by pardoning those military officials who had been tried during the Alfonsín administration. To many, this “reconciliation” was a means of appeasing the military, which had been a thorn in Alfonsín’s side throughout his presidential term. By packing the Supreme Court with his supporters, Menem gave the executive branch considerable power, guaranteeing that his decisions and actions would meet little opposition. With this guarantee of the repression of political dissent from within the government itself, Menem could continue to implement his policy, and with the guarantee of military impunity, he enjoyed continued support from the armed forces.

From the late 1980s onward, human rights defenders and those who had believed in the restoration of an “ethical” democracy had few domestic resources to continue to try ex-military members in the country. For this reason, many have said that the 1990s represented
a “culture of impunity” in which many efforts for the reclamation of justice for crimes against humanity during the Proceso were impeded. The Full Stop and Due Obedience laws and President Menem’s pardons represented an official government position that supported forgetting the past instead of confronting it, in spite of Alfonsín’s initial promises at the return to democracy. Those who still believed in the construction of memory and democracy via trials for crimes against humanity continued to push for official justice, and new efforts for grassroots justice would spread in the absence of trials.

Pressure for Nullification of Full Stop and Due Obedience: Justice by “Official Means”

From the end of the 1980s on, the fight against impunity in Argentina manifested itself largely in demands for the annulment of Full Stop and Due Obedience in order to bring members of the Proceso to trial. This pressure came as much from Argentine civil society as from the international community, marking a movement that recognized that the forced disappearances, torture, and killings of the Proceso were crimes that merited judgment. From the mid-1990s onward, there have been various legal and historic landmarks resulting from this pressure that have contributed to the declaration of the unconstitutionality of the Full Stop and Due Obedience laws.

The years between 1996-2003 mark a period of legal development and civil society pressure to derogate the Full Stop and Due Obedience laws. Many say that the 20th anniversary of the military coup, observed in 1996, fomented a social consciousness that called for the construction of political memory and created stronger demand for justice for the human rights abuse of the past. From this point forward, there have been various important moments that have advanced the fight against impunity, which has been viewed as crucial to the construction of memory in the country. One of these legal landmarks was the opening of cases not explicitly “covered” by the Full Stop and Due Obedience laws in the mid-1990s, including the kidnapping and substitution of identity of the babies of the disappeared families, robbery, and crimes committed by people who were not members of the military or security forces during the Proceso. Additionally, in 1998, two representatives of the Congress argued that Full Stop and Due Obedience be declared unconstitutional, which opened trials for crimes not “covered” by the impunity laws nor Menem’s pardons. As a result of these legal landmarks, by the year 2001, there were three categories of trials related to the crimes of the Proceso: a.) for crimes not explicitly pardoned by the Full Stop and Due Obedience laws, b.) trials for torture and crimes against humanity, and c.) new efforts to judge the military members pardoned by Menem.

These efforts to reopen trials won more legal backing in 2001, when judge Gabriel Cavallo declared Full Stop and Due Obedience unconstitutional due their contradictory relationships with various international human rights laws and treaties, such as the Convention against Torture. In November of that year, Congress backed Cavallo’s declaration, an important landmark in the eventual derogation of the two “impunity laws.” Two years later, the Congress nullified these laws for reasons similar to Cavallo’s in the law 25.779, re-opening some trials for military members and more legal backing for those already underway. In spite of these efforts and of the widespread support from both Congress and civil society for the nullification of these laws, until 2005 they were considered constitutional. Until this point, all trials for crimes not “covered” by the Full Stop and Due Obedience laws still ran the risk of being closed.

It is worth noting a specific case, the Poblete case, which played a fundamental role in these steps toward the nullification of Full Stop and Due Obedience. The case started in 1998, when the Asociación Abuelas de la Plaza de Mayo filed a complaint for the kidnapping of Claudia Victoria Poblete, daughter of José Poblete and Gertrudis Hlaczik de Poblete, who were all kidnapped in 1978. Since the appropriation of children was one of the crimes not pardoned by the Full Stop and Due Obedience laws, the case originally began as a complaint against Claudia’s abductors. The Centro de Estudios Legales y Sociales (CELS, “Center for Legal and Social Studies”) intervened in the case in 2000 to add provisions to punish those responsible for the kidnapping of José and Gertrudis as well. Since the appropriation of children was one of the crimes not pardoned by the Full Stop and Due Obedience laws, the case originally began as a complaint against Claudia’s abductors. The Centro de Estudios Legales y Sociales (CELS, “Center for Legal and Social Studies”) intervened in the case in 2000 to add provisions to punish those responsible for the kidnapping of José and Gertrudis as well. This addition of a complaint for the disappearances of José and Gertrudis became part of a group of cases for crimes not pardoned by Full Stop and Due Obedience, with the goal of overturning said laws. The Poblete case marked two fundamental moments in 2001: one
In spite of its historical significance in the fight for justice in Argentina, it should be noted that the Supreme Court decision will not eliminate all challenges for the fight against impunity in the country.

was that it was the first oral judgment and sentence for kidnapping children during the Proceso. The other landmark was the fact that it was in this case that Judge Cavallo made his aforementioned historic declaration of the unconstitutionality of the “impunity laws.”

These developments in Argentine law, which permitted the opening of various trials whose goals were to nullify the “impunity laws,” are related to developments in international law. First, the principle known as “universal jurisdiction” helped human rights groups to promote their cause against impunity through collaborations with Spanish judge Baltasar Garzón. The principle of universal jurisdiction is based on the idea that any court in the world can judge citizens of other states accused of violating internationally recognized human rights law. In 1996, Garzón and the Unión Progresista de Fiscales (UPF; “Progressive Union of Lawyers”) collaborated with human rights groups to begin trial procedures – mostly in absentia – in Spain to judge those who had been “pardoned” by Full Stop and Due Obedience. Although some Argentine authorities rejected requests for extradition of military members to Spain, citing sovereignty reasons, the significance of these actions from Spain was that they generated attention towards the fight against impunity in Argentina and demonstrated that impunity would not be tolerated in the international community.

Another important development in international law that influenced the movement against impunity in Argentina was the fact that some amnesty laws had been nullified in other countries in the inter-American system. A famous example of this trend is the “Barrios Altos” case in Peru. This case went to the Inter-American Court of Human Rights of the Organization of American States, and it dealt with a pair of amnesty laws that prevented the punishment of past human rights abuses in Peru. In its decision for this case, the Inter-American Court of Human Rights decided that these amnesty laws violated important judicial and democratic principles because they supported impunity, an issue very similar to that facing Argentina. This decision, in combination with the applications of universal jurisdiction in Spain, demonstrated a strong international stance against impunity in third states, marking a new age of predominance over state sovereignty when it defends practices contrary to international law.

“Justice after 20 years is not justice anymore”: The Effects of the June 14, 2005 Supreme Court Declaration and Alternative Views on Justice

The culmination of these developments within the Argentine legal system and in international human rights law took place June 14 of 2005, when the Supreme Court declared Full Stop and Due Obedience unconstitutional in a decision related to the aforementioned Poblete case. Five of the nine judges on the Court supported the ratification of law 25.779 of Congress (that had annulled the Full Stop and Due Obedience laws), declaring that they did not follow basic principles of international human rights law. According to the Argentine Constitution of 1994, international human rights law – guaranteed by treaties that Argentina had ratified – takes precedence over domestic law where relevant. Additionally, the Court cited the case of Barrios Altos, saying that if the amnesty laws were rejected in the regional system of the OAS, they should not be intact in Argentina.

The legal impact of this decision is that it permitted the trials that began with the nullification of Full Stop and Due Obedience to continue. Before the Supreme Court declared them to be unconstitutional, it would have been possible to close all the trials that fit into this category, which represented a step backwards for
the justice and human rights movement. With the declaration of unconstitutionality of Full Stop and Due Obedience, the trials that had already been opened could legally continue, and the decisions handed down in these trials had to be legally recognized. From a legal point of view, the most important aspect of the Supreme Court decision of June 14, 2005 was the recognition of these trials, which marked a victory in the fight against impunity for human rights groups and relatives of the disappeared.33

In spite of its historical significance in the fight for justice in Argentina, it should be noted that the Supreme Court decision will not eliminate all challenges for the fight against impunity in the country. What this decision does not allow is a total reopening of all cases that had been closed as a result of Full Stop and Due Obedience in the late 1980s, and not all those who had demanded accountability before will see it granted.34 Additionally, the legal processing of those cases related to human rights abuse during the Proceso is still very slow. The cases that remained under the jurisdiction of courts outside of the city of Buenos Aires still face considerable obstacles, due to various levels of judicial autonomy in many of the courts in the interior of the country.35 There remains substantial work in the fight against impunity with regards to trial procedures related to the last military regime, but the declaration of the unconstitutionality of the “impunity laws” marks an historic landmark that recognizes legal conflicts between domestic and international human rights law.

In spite of the challenges that still face the fight against impunity, the social impact of the June 14, 2005 decision is considerable. If the laws of Full Stop and Due Obedience caused disillusion in the fight for an “ethical” democracy, as Luis Alberto Romero suggests,36 the partial recuperation of justice through the declaration of their unconstitutionality has marked a new wave of confidence in democratic institutions and recognition human rights groups’ efforts to construct political memory. By reinforcing human rights principles in domestic law, the Supreme Court decision also marked an important landmark in the process of reconstructing political memory.

One of the most significant effects of the declaration of the unconstitutionality of the laws of Full Stop and Due Obedience, from a human rights perspective, has to do with political memory. According to many human rights advocates and relatives of the disappeared, one of the most important issues of the trials for crimes against humanity committed during the Proceso was not just the fact that those responsible for the violence could be sentenced for their actions. For them, the processing of the members of the old regime is a way of giving a voice to the history of clandestine violence and oppression of the military regime. After the declaration of the unconstitutionality of Full Stop and Due Obedience, two of the main obstacles for the fight against impunity were eliminated, an important event in the construction of political memory in the country. With regards to the fight for memory, truth, and justice, Center for Legal and Social Studies anthropologist Valeria Barbuto says that “for one of these things [memory, truth, or justice], the others are irreplaceable. There can not be truth without justice, nor justice without truth, nor memory without justice…but Argentina’s human rights movement that has always considered justice a priority.”37

Human rights advocates say the trial procedures create a space to fight against the silencing of the past, which they believe impunity promotes. Enrique Fukman, member of the Asociación de ex Detenidos Desaparecidos (AEDD, “Association of ex Disappeared Detainees”) and survivor of the Escuela de Mecánica de la Armada (ESMA, “Naval Mechanics School”), sees the fight for justice in Argentina as fundamental in the construction of political memory. According to Fukman, the declaration of the unconstitutionality of Full Stop and Due Obedience helped open a public discourse on the hidden events that went on for years during the authoritarian regime. “The trials [now legally permitted after the June 14 Supreme Court decision] permit us to work on the element of the collective conscience…They break the myth that authority is untouchable, and now we can combat impunity.”38

Evel Petrini of the Association of the Madres de Plaza de Mayo explained that her organization sees the continuing trial procedures as a drafting of the “official” story of the last military regime. With the assurance that trial procedures can continue, thanks to the declaration of the unconstitutionality of Punto Final and Due Obedience, Petrini said that now there can be a minimal sense of accountability for some of the human rights abuses of the Proceso. “The good judges are those who have sentenced the guilty,” she
said. “Justice is always important…It is necessary to clarify who the guilty ones are.”

In addition to contributing to the construction of political memory and social consciousness for allowing those trials already started, the declaration of the unconstitutionality of the Full Stop and Due Obedience laws have played an important role in the continual process of democratization in Argentina. The “impunity laws” and Menem’s pardons were some of the various examples of the problematic role of justice since the return to democracy in Argentina. The nullification of the impunity laws and the constitutionally guaranteed trials represent an important landmark in the construction of confidence in democratic institutions in the country. According to Fukman, “The first effect that [the Supreme Court decision] had over the public is the fact that we can make justice work. It showed the people that if we fight, we can succeed,” a fundamental idea in democratic theory, and one that had been completely absent during the dictatorship.

In terms of institution building, the Supreme Court decision also has symbolic value when viewed in light of the economic crisis of 2001 in Argentina. According to Valeria Barbuto, the positive reception of the derogation of Full Stop and Due Obedience is partially based in a strong consciousness of the need for transparency and social responsibility of democratic institutions after said crisis:

“The crisis of 2001 was an institutional, political, economic and social one, and there had been certain institutional elements that had to be rearmed and that can serve as a base for solving profound social problems. In this sense, the theme of the end of the dictatorship is strong because it brands our democracy…You can not think of establishing accountability for things like corruption, social degradation, if as a counterpart you pardon torturers, disappearers, and killers.”

Therefore, “official” the recognition of the fight against impunity of the crimes of the Proceso represents, for many people, a fundamental moment in the insistence for accountability and transparency in society after years of corruption.

In a broader sense, the contributions of the recent Supreme Court decision have complemented the grassroots justice movement in Argentina. In addition to pressuring the government to promote “official” justice in the courtroom, in recent years many human rights groups in Argentina have pursued grassroots justice through education and mobilization of the youth. These groups believe that, in addition to punishing those who committed clandestine human rights abuse, educating youth on the era of the Proceso can help construct political memory and foment social consciousness. Petrini said that, due to the fact that so much time has passed since the transition to democracy, the trials for the crimes against humanity of the Proceso are no longer adequate in themselves in the fight against impunity. “Justice after 20 years is not justice anymore, really,” she said. “It is always good to condemn the guilty, but the important thing is to work with youth for a different country in the future – a country of love, a democratic country.”

Petrini noted that the Madres de Plaza de Mayo, an internationally-known Argentine human rights group, has set up various programs to educate youth on human rights and ethical issues in order to meet this goal, and that many of the Madres view this type of “justice” as more relevant.
than that handed down in the courtroom.

Fukman said his organization, the AEDD, does similar work with youth, educating them on the past in order to continue to construct political memory. According to him, in addition to the trials, political memory is constructed through everyday interactions and a continuous dialogue about the past, breaking the “silence of complicity” present in Argentine society during the Proceso. AEDD contributes to this cause through talks at high schools in the country.

“You have to recuperate memory by acting on the present. Not only with the theme of the trials in courtrooms, but all the public has to do it. When a high school invites us to give a talk, our principle objective is to provoke [the youth],” he said. “They ask us what we did, and we hope that some are stirred to ask their parents, ‘And what did you do during the Proceso?’ That is what recuperating memory is all about. That is how you construct the political future,” he said.

Fukman added that now that the Supreme Court has recognized the fight against impunity and has allowed trial procedures to continue, there can be even more discourse on the past. For this reason, the declaration of the unconstitutionality of Full Stop and Due Obedience has contributed to the movement for the reconstruction of social consciousness and the mobilization of youth by helping to develop confidence in democratic institutions and demonstrate that, with will and persistent pressure, it is possible to make change within the democratic system.

In summary, the Supreme Court decision of June 14, 2005 has contributed to the construction of democratic values in various ways. One is the fact that it recognized the value of international human rights law, something that many NGOs and human rights defenders consider crucial to democratic transition. Through recognition of the injustice promoted by Full Stop and Due Obedience, there is more constitutional recognition of human rights. Although justice handed down as a result of this declaration is certainly delayed, it demonstrates that collective action amongst civil society in defense of human rights can achieve substantial changes. Other consequences of the declaration of the unconstitutionality of Full Stop and Due Obedience are social in nature – this declaration demonstrates that, due to pressure from civil society, collective action in defense of human rights can achieve substantial changes. This fact, when combined with other social movements for political memory and social responsibility, helps to change the legacy of the Proceso, restoring faith in democratic institutions and granting official recognition to the human rights struggle in the country.

Conclusions

The recent Argentine Supreme Court decision that declared Full Stop and Due Obedience unconstitutional marked an historic moment in the fight against impunity and the process of democratization in Argentina. It brought more recognition to international human rights law and contributed to building confidence in democratic institutions. These issues are especially important in the context of contemporary Argentine history, starting with the last military dictatorship, when political participation was completely suppressed. During this time, 30,000 people, mostly civilians, were “disappeared” by the Proceso de Reorganización Nacional, as part of a radical plan to eradicate people who “contributed to social instability,” according to the military. The Proceso was organized in such a way that responsibility for human rights abuses was shared, which later impeded efforts to judge those who committed said abuses.

Since the transition to democracy, a major component of the rhetoric of human rights policy has been the legal processing of those responsible for the disappearances and violence of the Proceso. Though at first President Raúl Alfonsín promised a new commitment to human rights protection, starting with the submission of the military to civil law, after little time he decreed the laws of Full Stop and Due Obedience, which impeded trials of those responsible for the violence of the Proceso. After the ratification of these laws, presidential successor Carlos Menem pardoned the few that had been sentenced after the decree of Full Stop and Due Obedience, which dealt another blow to those who had advocated justice.

After almost 20 years of protest against these laws, human rights advocates and relatives of the disappeared won a significant victory June 14, 2005, when the Supreme Court declared their unconstitutionality. Now, legally, all trials for crimes against
humanity during the Proceso can remain open. One of the important aspects of this decision is that it represents a fundamental landmark in the incorporation of international law in domestic law of Argentina. From the perspective of human rights advocates, this fact in itself is fundamental for the future protection of human rights, and represents a legal commitment to said rights.

In spite of the challenges that exist for the trials already underway and the fact that justice after 20 years may not have the same value as it would have in the moment of transition to democracy, the Supreme Court decision still has considerable symbolic value. The importance of the trials permitted by the Supreme Court lies not just in legal proceedings and retributions in themselves – they complement other efforts at grassroots justice as well. As we have seen, the insistence on justice for the abuse of these rights has been characteristic of the period of democratic transition in Argentina, and the declaration of the unconstitutionality of Full Stop and Due Obedience have brought a minimal sense of confidence in democratic institutions. This fact has been especially important after the crisis of 2001 in the country, which fomented a social consciousness against corruption. Additionally, this declaration of unconstitutionality is considered to be important in the construction of political memory, since the permitted trials contribute to the drafting of a revised history of the age of clandestine atrocities. Justice and the fight against impunity have always been crucial in the process of democratization in Argentina. The June 14, 2005 decision, in combination with the efforts already begun for the political memory and truth surrounding the regime, is a concrete step in the fight against impunity and for ethical democratic institutions.
Endnotes


2. Isabel assumed the presidency upon Juan Perón’s death, since she was vice president at the time.


5. Roniger & Sznajder, 18-19.


7. Lewis, 131-7.


10. Seoane, 142.


12. Lewis, 147-59.


15. Lewis, 131-4.


17. Luis Alberto Romero, 247.


19. Moreno Ocampo, no page; Luis Alberto Romero, 250-1.

20. The “Full Stop” law (law 23.492), limited the trials “of anybody for their presumed participation of any degree” that wasn’t carried out in insubordination to only those whose complaints were filed within 60 days of the promulgation. For excerpts of the text (in Spanish), see Appendix 1.

21. Moreno Ocampo, no page; Luis Alberto Romero 250-1.

22. Moreno Ocampo, no page; The Law of “Due Obedience” (law 23.521) pardoned lower-ranking officials “for acting in virtue of due obedience [of their superiors]...” For excerpts of the text of the law (in Spanish), see Appendix 2.


24. For texts of these laws (in the original Spanish), see Appendices 1 and 2.


28 CELS, “Justicia por los crímenes del terrorismo del Estado”, no page; CELS, “Las leyes de Punto Final y Obediencia Debida son inconstitucionales”, no page.


30 CELS, “Justicia por los crímenes del terrorismo del Estado”, no page.

31 CELS, “Justicia por los crímenes del terrorismo del Estado”, no page.


35 Barbuto, interview 11/11/2005; Enrique Fukman, Asociación de ex Detenidos Desaparecidos. Interview with the author 11/13/2005. Fukman cited a case in the Cámara de San Martín, similar to the “megacase” of ESMA, in which all the military members have been pardoned and all procedures remain closed.

36 Luis Alberto Romero, 247.


43 Fukman, interview, 11/13/2005
What is Republika Srpska? Simple analysis of the term “Republika Srpska” does not provide a satisfactory answer to this question. The theoretical meaning of the word republic is a form of government in which citizens elect representatives to make governing decisions on their behalf. Republika Srpska does indeed possess such a form of government.

However, the practical definition of republic has evolved to denote a state (e.g. Republic of Croatia, Republic of Slovenia), and Republika Srpska is not itself considered to be a state. Instead, Bosnia and Herzegovina is the state (though interestingly, it is no longer known officially as a republic). Therefore, Republika Srpska is a republic in that it a.) calls itself a republic, and b.) possesses a republican form of government, but it is not a republic in the practical sense of a republic as a state. Rather, it is a constituent entity within the state of Bosnia and Herzegovina.
This answers one question but raises two more. First, what is an entity? Geographically, the term cannot be a synonym for region because that implies a consolidated landmass. Republika Srpska is not one consolidated landmass, but rather two semi-consolidated sections whose only direct link to one another is under a separate jurisdiction. Politically, the term is also problematic because the extent of the RS’s political power as an entity vis-à-vis the state of Bosnia-Herzegovina (BiH) is in frequent dispute. Economically, the term does not have any particular relevance because entity borders do not impede the free flow of labor and goods within BiH. The term entity, therefore, appears to be in use simply for lack of non-politically charged alternative terms.

Second, what characteristics of this entity make it a Serbian entity? Most practically, the RS is a Serbian entity because its population consists mostly of ethnic Serbs. This demographic shape reflects the “ethnic cleansing” conducted during the war in BiH between 1992 and 1995, which transformed a population of almost 50% non-Serbs on the territory of what is now the RS to a population that is believed to be around 5%-10% non-Serbs. Many members of the Croat and Muslim ethnicities, as well as members of Roma (gypsy) communities, were expelled from the RS, and many Serbs were expelled from the territory now part of the Federation of BiH, the country’s other entity, which is demographically dominated by Muslims and Croats. According to one political point of view, the RS was established as a haven for Serbs in some areas of BiH who were in danger due to their ethnicity and needed an official Serbian political body to protect them.

However, in today’s BiH, citizens of all ethnic groups are, at least in theory, welcomed to live in whatever part of the country they choose, regardless of entity borders. This implies that any real or perceived danger to any citizen because of his or her ethnicity has passed. Thus, there is no further need for protection of ethnic populations by an ethnically oriented entity.

Furthermore, refugees are returning to their homes, and both entities are slowly beginning to re-diversify. Yet, for the foreseeable future, Republika Srpska will continue to be called Republika Srpska, no matter how many non-Serb refugees return. Therefore, having an “ethnically clean” Serb population is obviously no longer a requirement for having a Serbian entity.

In this way, the status of the RS in the 1995 Dayton Peace Accords represented a paradox: an acknowledgement of an entity called “Serbian Republic” but a rejection of practically everything that had made it what it was up to that point. In other words, Dayton recognized a mono-ethnic Serbian entity on the condition that it take steps to make itself less of a mono-ethnic Serbian entity and that it remain part of a multi-ethnic BiH.

In light of this discussion, it can be safely declared that the current shape of Republika Srpska is ambiguous: geographically, politically, demographically, economically, and most of all philosophically.

Uncertainty may be the only certainty regarding Republika Srpska’s overall present and future shape. As Bosnia-Herzegovina begins the process of accession to the European Union, EU requirements such as that of a state-level military have already forced changes to the entity governments that would have been unimaginable 10 years ago, particularly in the RS. As the European integration process continues, so does the reform process in the RS, albeit at a slow pace. Military integration is finally in the books, and currently, police integration and constitutional reform are being undertaken.

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The focus of this essay is to examine some of the major reform processes presently unfolding in Bosnia-Herzegovina and to explore how and to what extent these processes are altering the nature and mandate of the Republika Srpska. It is clear from EU demands, thus far, that BiH is being pushed to achieve greater integration at the state level, thus leading inevitably to some dilution of entity autonomy. What does this mean for the RS? What place does the RS have in BiH today, and what place is it on track to have in the EU-integrated BiH of tomorrow? What kind of future do its own political leaders, non-governmental activists, and ordinary citizens envision?

The major issues to be discussed will be the role of the RS in the spheres of police integration, reform of the state constitution, and the economy of Bosnia-Herzegovina. Corruption will be a major focus, as it relates to all three issues and represents both a cause and a by-product of the economic and political situation in the RS. The issue of refugee return is an important one that will not be discussed in much detail here, as it is large enough to merit several of its own papers.

Primary and secondary sources for this essay are broad and include interviews with political and civic activists in Republika Srpska, policy publications such as reports from the International Crisis Group, academic articles, news articles, and government documents, like the Dayton Peace Accords and the RS constitution. Where quotes have been translated into English, the translator will be listed in citations.

Interspersed with policy examination will be quotes and examples of the human perspectives on these issues, as experienced over a three-week span in Banja Luka, the de facto capital of Republika Srpska. In many cases, the manifestations of abstract political and economic processes can easily be seen in the everyday lives of citizens in the studied area. Comments from ordinary people will be included along with the opinions of activists in order to gain a broader perspective on the reality of the situation.

It should be noted, for the sake of context, that talking to people from Banja Luka does not necessarily provide an accurate read on average thinking and political trends in the RS. Banja Luka is the entity’s only bona-fide urban center, and it should not be taken as being representative of the RS as a whole, since it is economically the strongest part of the entity (or more accurately, the least weakest part) and politically the most left-of-center. Economic problems are, of course, easily visible there, but they are even more so in the nearby smaller city of Prijedor, and more so still in more rural parts of the entity. Nationalism is a political fact of life everywhere in the RS, but chances are that it is more likely to be displayed by politicians and citizens from the Eastern RS, the political power base of the reigning Serbian Democratic Party (SDS), rather than by citizens of Banja Luka, only 18% of whom voted for SDS in the last elections. Therefore, the fact that this essay is based on research exclusively in Banja Luka is recognition of that city’s importance for the issues discussed; the opinions and life situations and of city residents are not always automatically indicative of those of “average” RS citizens.

**War and Peace**

In November 1990, Bosnia-Herzegovina’s first democratic elections produced a coalition government of three parties oriented respectively toward BiH’s three major ethnic groups: SDS representing the Serbs, the Croatian Democratic Union (HDZ) representing the Croats, and the Party of Democratic Action (SDA) representing the Muslims or “Bosniaks.”

Though all three parties initially espoused similar anti-communist and pro-Bosnia themes, cooperation rapidly deteriorated in an atmosphere of fear and uncertainty surrounding the future of both BiH and the Yugoslav federation itself, this coupled with rabid nationalism emanating from the governments of both Serbia and Croatia. SDS trumpeted the fear that Bosnian Serbs would be endangered if BiH became independent because the more numerous
Bosniaks would impose an Islamic fundamentalist regime. The party began declaring parts of BiH as “Serbian Autonomous Regions” and threatened to split off if the republic left Yugoslavia. SDA shifted away from its pro-Yugoslavia stance and began to turn towards Bosnian independence, stoking the fear that Bosniaks would be oppressed under a new, Serb-dominated Yugoslav federation. HDZ, with support from its parent organization in Croatia, abandoned its pro-Bosnia position and began pushing for autonomy of Croat territories, warning that either an Islamic BiH or a “Serboslavia” would place Bosnian Croats in mortal danger.

In October 1991, SDS deputies walked out of the Bosnian parliament as a motion was debated to declare the sovereignty of Bosnia’s laws over those of the federation. On January 9th, 1992, SDS declared the Republika Srpska of Bosnia-Herzegovina, later to be known simply as Republika Srpska.

Even before the European Community officially recognized BiH’s independence on April 6th, open war had begun. It would last for over three more years until a final peace treaty was established between the three warring groups in November 1995 in Dayton, Ohio, U.S.A. The war had resulted in over 200,000 deaths, 2.2 million people displaced from their homes, an estimated $50-$70 billion in damage, and a wrecked economy with a 90% unemployment rate.

International negotiators sought to preserve the integrity of Bosnia-Herzegovina’s borders by helping to shape a government system that would be acceptable to all sides. Annex IV of the Dayton Peace Accords created a tri-national state with power-sharing mechanisms designed to ensure that no ethnic group would be able to dominate the others by force of numbers or military strength. BiH would remain a united country with its territory intact, but it would consist of two entities: the Republika Srpska and the Muslim/Croat Federation of Bosnia-Herzegovina. The state would have express jurisdiction on certain issues, but all non-enumerated powers would fall to the entities. The specific state institutions would consist of the following:

- A three-member presidency consisting of one Serb, one Croat, and one Bosniak, who rotate as president of the presidency on an 8-month basis.
- A Council of Ministers whose members must be 1/3 from the RS and 2/3 from the Federation. Each minister must have a deputy minister of a different nationality.
- A bicameral parliament consisting of a House of Representatives, with 42 members directly elected by voters in the entities, and a House of Peoples, with 15 members (5 Serbs, 5 Croats, 5 Bosniaks) chosen by the entity parliaments.
- A constitutional court with 2 Serbs, 2 Croats, 2 Bosniaks, and 3 foreign judges who are members of the European Court on Human Rights.

A Decade After Dayton

Ten years after Dayton put an end to war in Bosnia-Herzegovina, it is clear that the government system established by the accords is dysfunctional and has been all along. Though well-intentioned, this attempt to satisfy all ethnic groups has ended up satisfying no one, as the three sides have simply fallen into political stalemate. The state constitutional structures ensure that near-unanimity is necessary for any political decision to be made, and needless to say, this is unrealistic in any democratic system, most of all in BiH.

In the limited areas that are under the exclusive control of the state government, the Office of the High Representative has evolved to become the final arbiter of political disputes. The stalemate has become so ingrained that elected representatives have almost voluntarily taken a backseat to the OHR even on issues that are not ethnically sensitive but could simply be politically unpopular. According to Florian Bieber, “the degree of successful decision-making between representatives of the different national communities has been minimal. Thus the question is raised whether power-sharing actually did take place.”

The Dayton Agreement embraced a fundamental contradiction by both enshrining the results of ethnic cleansing in Annex IV—a mono-ethnic Serb entity and a bi-ethnic Muslim/Croat entity—and trying to reverse them in Annex VII by promoting the return of refugees and Internally Displaced Persons. The result has been that, despite significant returns, Muslims and Croats from Republika Srpska and Serbs from the Federation are effectively denied state-
level representation, save by members of their respective ethnic group in the opposite entity. This is at odds with the object of refugee return, which is to re-create the entities as the multi-national territories they were before the war. In addition, the constitution provides little opportunity for representation of Roma, Jews, other smaller ethnic communities, and people of mixed heritage. In fact, save for limited opportunities in the House of Representatives, these categories of people are, by design, shut out of the state government.

Because of both the terms of Dayton and the central government's inherent inability to function, most significant decision-making has been at the entity level. Within the two entities are varying degrees of authority between the entity government and administrative units in Republika Srpska and the entity government, cantons, and municipalities in the Federation of BiH. Brčko District, which connects the two geographic sections of the RS, represents yet another area with different jurisdiction and bureaucratic structures. All in all, this makes a state-level government, two entity governments, ten cantonal governments, and one district government for a total of 14 parliaments and constitutions and 180 ministries, more per capita government officials than any other country in the world.

The price of this excessive bureaucracy in a country of less than 4 million people is immense, and not just in the number of convertible marks directly spent on it (though this amounts to 60% of the country's GDP). Bosnia-Herzegovina has seen sluggish economic growth due largely to bureaucratic red tape that discourages potential Bosnian entrepreneurs from starting new businesses, particularly if they are not members of the ethnic majority in their regions. Police investigations are hampered due to lack of coordination between jurisdictions, and officers are prohibited from crossing the Inter-Entity Boundary Line even in hot pursuit, allowing criminals to easily evade capture by jumping cantonal and entity lines. Health insurance coverage is not universally transparent throughout BiH, meaning, for example, that if someone in the Eastern RS town of Pale needs to be hospitalized for a complex operation, he or she must travel clear across the country to Banja Luka instead of to nearby Sarajevo.

These problems serve to illustrate the concrete ways in which the Dayton constitution is hindering BiH's development and must be reformed. It is telling that the title of the memoir by lead Dayton negotiator Richard Holbrooke is To End a War, not To Build a Country. Now that ten years have passed since the war ended, BiH must transcend Dayton, which was meant primarily to silence the guns, and begin to reach toward Brussels, a process that will require the government to be remade as a vehicle, not an obstacle, of political and economic progress.

The Challenges of Republika Srpska

In the blitz of literature regarding BiH's massive post-Dayton government, it can easily be overlooked that the problem of crippling bureaucracy is one that applies mainly to the Federation of BiH and to the state level government, not to Republika Srpska.

The RS, in fact, possesses a fairly efficient, centralized political system. This is in large part due to the entity’s mono-ethnic domination. Unlike the Federation, which was required to divide itself into ten cantons to incorporate parallel Bosniak and Croat structures, the RS's internal units do not have the kind of autonomy enjoyed by Federation cantons. Its municipalities and townships have political structures, but the entity-level government has clearly-defined authority.

It is ironic, therefore, that the RS has become infamous for dragging its feet on EU-mandated reforms, particularly related to state-level integration. Common state license plates had to be imposed by the OHR, and integration of the military and police took years of cajoling by the international community. The RS National Assembly signed off on the latter process in October 2005, after years of protesting that abolition of the entity police force was a stepping-stone for abolition of the entity interior ministry, which was a stepping-stone for abolition of the RS itself.

As John Crownover of the organization CARE BiH explains, political reform in the RS is not a matter of political structure but rather one of political will.

"Republika Srpska is very centralized where most decision making is in the RS parliament. On issues where there is the political will, they can move much faster than the Federation, [especially when it comes] to mandates from the international community. If the
RS needs to consider [something], it's much easier for them at the entity level to pass a decision, whereas in the Federation, you have to get various cantonal parliaments to sign off on things. But it's all focused on where there's a political consensus.

On an economic level, the main problems in Republika Srpska are the same as the main problems in all of BiH: unemployment, lack of foreign investment, flat domestic growth, a corrupt privatization process, the departure of educated workers for better job markets, and the informal “Grey Economy.” At the state level and both entity levels, the government's current ability to solve these problems without substantial international support is limited due to lack of revenue, corruption, and—in the case of the Federation and the state government—expensive government bureaucracy.

The issues of economy, police reform, and the role of the international community do not exist in a vacuum. They are tightly inter-connected, with no single point of origin but with changes in one sector invariably causing changes in the other sectors. Corruption is interwoven into every sector and cannot be studied and solved by itself without taking on every larger issue of which, as mentioned before, it is both a cause and a symptom. Politics has become ingrained in every sphere of existence in BiH. Several interviewees referred to the cultural permeation of politics and corruption as a “twisted system of values” in the aftermath of the war and in the face of continuing economic misery.

**Economy**

“The root problem [with the current constitution] is that laws have no chance of adoption without an almost complete national consensus, which is hard to come by in Bosnia.”

While Katana and Igrić may be right about the constitution, they overlook one area on which there is a total consensus among all citizens of BiH, especially those in the RS, and that is the state of the economy.

“I'm graduating in a few months,” says a university student in Banja Luka. “But what will I do with my degree? It's useless because I can't get a job.”

“There's always so much talk about the ethnic problems here,” says Banja Luka youth activist Aleksander Živanović. “The politicians talk about those issues which drive people apart, and they ignore the economy, which we're all united on. I mean, everybody wants a job. Old people want their pensions. Students want a university that isn't so expensive.”

Bosnia-Herzegovina's economic problems stem from the fact that the country has been undergoing a triple transition: from Yugoslav socialist “self-management” to a market economy, from war to peace, and from international administration to full sovereignty. Transitioning to the market has proven difficult for all post-communist countries in Central and Eastern Europe, and this was made all the more so in BiH by the problems left by the war, namely 2.2 million displaced people, devastated infrastructure, and lack of coordination of economic policy in the various levels of government.

Massive international aid helped to rebuild basic infrastructure and created several years of strong growth immediately following the Dayton Peace Accords. In the first three years after the war, $4.4 billion was invested in BiH by the World Bank, IMF, and other international donors, and the growth rate of the Bosnian economy reached 80% in 1996, 36% in 1997, and 10% in 1998-99. But as the flood of foreign money has slowed to a trickle in recent years, growth has done the same, falling to a lower (though stable) average of 5% in the years since. Both domestic development and Foreign Direct Investment continue to be minimal (Moldova is the only country in Central and Eastern Europe with lower per capita FDI than BiH), and the size of the public sector has increased despite the privatization of large government firms. The state unemployment rate continues to hover in the mid-40s, and in the RS, it is believed to be in the 60s.

While unemployment is undoubtedly one of the biggest economic problems in BiH if not the single biggest, the rate of unemployment can be deceiving because many unemployed people have been driven into what is known as the “Grey Economy.”

This phenomenon can be seen every day in the form of the merchants who line practically every street in the center of Banja Luka. They sell hats, scarves, cigarettes, bracelets, bootlegged CDs and DVDs, and an assortment of other small items. They
do not have city vending permits unless they own formal kiosks, and municipal action against unlicensed merchants is virtually nonexistent. Thus, these sellers make a modest living on city property without the burdens of buying a permit or paying taxes on the income they make from their sales. This, in turn, affects legitimate businesses because prices for the same goods are much lower on the street than in shops. When legitimate businesses lose money, the government collects less tax revenue and thus has diminished ability to invest in job creation and social programs. Add to this a dizzying array of bureaucratic hoops for starting up new businesses, plus rampant systematic corruption, and the climate for legitimate entrepreneurship becomes understandably frigid.

Statistics on the Grey Economy are hard to come by for obvious reasons, but recent figures indicate that it currently makes up 1/3 of GDP and is rapidly eating away at the real economy. This is not just an economic problem, but also a political and social problem.

Politically, the Grey Economy cripples the government by depriving it of revenue, thus rendering it incapable of stimulating the real economy and funding vital programs like retiree and disability pensions and education. Without opportunities for advancement in the real economy, more people turn to the Grey Economy, and the cycle becomes self-perpetuating.

Socially, the fact that building a better life through legal means is nearly impossible creates a culture in which illegal activities are not frowned upon but relied upon as the only means of survival. Such a culture has already taken root in BiH and is becoming more ingrained with each day that passes without reform. According to NGO activist and economic expert Aida Bogdan, many of the street merchants in Banja Luka are former microcredit recipients who were unable to start legitimate businesses due to bureaucratic delays, corruption, or occasionally ethnicity and who are now getting by any way they can.

A probable example of all three cases is Adem Bajagilović, a Muslim from Banja Luka who now lives in Sweden but who wants to return to Banja Luka to start a small business producing tractor parts. “[Both the RS and Banja Luka authorities] asked for a new document, certificate, or more tax[es] every time I showed up,” says Bajagilović. “They shamelessly demand money for what they are obliged to do under the law. I wasn’t prepared to pay off anyone. I now realize I have lost a year and more money than I would have if I’d just bribed a few people.”

When Aleksandra Petrić went to the hospital to deliver her baby, she gave an envelope of money to the nurse even though the cost of her hospital visit was covered by her health insurance. “Nobody forced me to do that,” she says, “but it’s kind of an unwritten rule that you pay the doctor or nurse [in addition to] medical insurance because then they will pay more attention to you or your baby or whatever kind of medical services you need. I don’t approve of corruption and paying extra for services, but in that situation, I cannot blame them for accepting these kinds of gifts. That nurse probably needs extra money to pay the extra for something she needs. They have low salaries. They put in so much effort to finish medical school, and they deserve better than they’re getting from the current system.”

At least Petrić still recognizes this as a form of corruption. This is not so for the majority of citizens, says Aleksander Živanović:

“The problem is that these smaller types of corruption are not even perceived like that. They are perceived as something normal or, for example in the hospital, it’s perceived as a way of [thanking] the medical workers for their assistance. When you say ‘corruption,’ everybody thinks about high-end corruption. With smaller amounts or some small present, [it’s] perceived as normal. During the war and the afterwar period, the whole system of values was completely destroyed or [turned] upside down, so now some things that were unacceptable before are now accepted as just normal.”

In some ways, it is not fair to label small transactions as “corruption.” Corruption bears the connotation that the instigator is abusing his or her privileged position for greater financial gain motivated by pure greed. In the case of high-end corruption, such as political party members profiting personally from state-owned companies, this connotation is accurate. In the case of Grey Economy corruption, however, the instigators are not in privileged positions but are using any small advantage they have in order to reach a “normal” level. Petrić was lucky enough to be able to afford the small amount of extra money to pay for the basic services to
From a theoretical standpoint, all of these transactions constitute corruption, but in many cases, the offenders are simply providing for their families the only way they can.

which she should already have been entitled. Many university professors will accept money from students in exchange for passing grades on exams because their official pay is not enough to support them.19 Police officers will accept bribes in lieu of writing tickets for minor traffic violations because that extra money may help them put food on their children's plates. From a theoretical standpoint, all of these transactions constitute corruption, but in many cases, the offenders are simply providing for their families the only way they can.

The catch-22 is that noble motives still cannot justify criminal acts that individually cause no harm, but that collectively are corroding the real economy, the welfare of the state, and its system of values.

For every person who can afford to pay extra money for services, there are several more people who cannot afford it, and thus receive inferior or no services. The common practice of someone paying an employer to give him or her a job by definition neglects the people who most need jobs, who are unable to afford this.

The cure for systematic petty corruption is not simply to crack down on the offenders. First of all, even if a crackdown were possible, the direct effect would simply be to throw a significant percentage of the population into utter starvation and indigence because it would take away the only thing keeping them afloat. Second of all, it would require those carrying out the crackdown, presumably police officers, to be compensated adequately enough that enforcing the law would be more profitable to them than joining in the illegal activities. This is not currently the case, and making it the case would require a large amount of new government money to raise police salaries. If the government had enough money to do this, it would presumably want to start spending it on the cure, investment in social programs and job creation, and not simply band-aid the symptom, the high level of Grey Economy corruption.

The most basic solution to BiH's economic problems is to get people employed in legitimate businesses. A larger number of people will be employed in legitimate businesses when there are a larger number of legitimate businesses that need employees. There will be a larger number of legitimate businesses when domestic development and foreign investment increase. Spurring more domestic development will require the lessening of bureaucratic obstacles and the greater availability of startup capital.

As for foreign investment, Aida Bogdan lists two areas that need to be improved in this realm. The first is sustainable investment and strategic thinking of donors. "[International NGOs] had so many unsustainable projects. They spent the money during the project life, they realized the project, they increased the employment rate, and after six months, the employment rate decreased, and the people were [laid off]. [NGOs] have many good resources, but they...need a strategy...and an accounts system because financial control is very bad."20 Second, BiH's economic space must be stable and integrated:

"[To encourage foreign investment, BiH needs] stability, legal reform, a security climate for investors, to have the same standard and the same law as [other] countries in ex-Yugoslavia and European Union, the same climate for investors, and don't have the practice to change the law...every year. It is very hard for investors; they want to know what the obligations are in this country, and they expect that the climate will be stable, not changing. In the past in BiH, we had different laws on the entity level, and if try to export products outside BiH Federation, you had to pay 30% taxes, and in Republika Srpska for the same things 10%, but in the future it will be the same percentage, I hope around 15%, but [most importantly] it will be the same. It is very important that companies have the same climate for developing. Investors have to know how much they will have to pay on the profit they make. And it is very important to reconstruct the government and finally to have a normal government as in other countries."

Bogdan points to three government plans to spur economic
reform: increased financial assistance to Small and Medium Enterprises (SMEs), completion of the privatization process, and establishment of a Ministry of Agriculture on the state level that would coordinate between the entity ministries and the international community.

Police

Unlike the Federation of BiH, which possesses ten autonomous cantonal police forces and one entity-level force with limited jurisdiction, Republika Srpska’s police force is strictly centralized. It is divided only into geographical Public Security Centres, all of which report directly to the entity-level Ministry of Internal Affairs (Ministarstvo Unutrašnjih Poslova or MUP).

On October 5th, 2005, the RS National Assembly voted in favor of integrating its entity police force at the state level. This cleared the way for Bosnia-Herzegovina to begin official negotiations with the EU on a Stabilization and Association Agreement, the first major step towards EU membership.

The most visible change that will occur as a result of state-level police integration will be a salary increase for officers. The average monthly salary of an RS police officer is KM 455, which is below the price of a basket of consumables needed to support a family of four. Furthermore, there has been no salary increase since 1999, and in the meantime, real wages have decreased due to inflation. Delays in full payment (or sometimes in any payment) are also common both for salaries and pensions.

The dismal pay of RS officers forces them to seek other sources of income to support themselves and their families, and corruption inevitably emerges as a profitable alternative. At the lowest level, this can mean pocketing KM 30 for a traffic violation instead of writing a ticket. At the highest level, this can be complicity or even active participation in organized crime.

The International Community

When asked for his assessment of the job the international community is doing in Bosnia-Herzegovina, Igor Stojanović of the Center for Civil Initiatives in Banja Luka, said, “It depends. Sometimes good; sometimes not so good.”

This sentiment is the prevailing theme of the international community’s 10-year involvement in BiH. In terms of ensuring peace and the basic structures of a free society, the record has been overwhelmingly positive. The war is over, and it shows no signs of returning in the near future. Elections organized and supervised by the Organization for Security and Cooperation in Europe are generally acknowledged to be fair, and basic rights such as the freedom of speech are firmly in place.

In particular, the carrot stick of EU membership has encouraged BiH to make reforms it may not have made on its own without that incentive. Constitutional reform to eliminate BiH’s bloated government bureaucracy has been blocked for much of the past decade due to national concerns, but partly thanks to EU pressure, consensus has been built that constitutional reform needs to occur. The debate has now graduated to how the constitution needs to be reformed, not if it needs to be reformed. On police reform, EU officials made it very clear that if the RS parliament did not agree to state-level police integration, BiH would not begin negotiations on a Stabilization and Association Agreement, leaving it as the only country of the former Yugoslavia without a formal relationship to the EU. It is unlikely that, after years of delay, the reform package would have finally passed if not for the carrot of future EU membership and the stick of exclusion.

Where the international community (the Office of the High Representative in particular but OSCE as well) has been least helpful has been in the field of electoral politics. While aspiring to create a functioning democratic government, the OHR has acted as a fundamentally non-democratic check on BiH’s process of democratization. The irony of an unelected foreigner telling BiH that it needs to be more democratic while at the same time arbitrarily removing democratically elected officials does not go unnoticed by Bosnians. Says Igor Stojanović:

“What we are trying to cultivate is the sense of being citizens, trying to generate the impression that every vote is important. That’s something which is really crucial for development of civil society in this country. Then when the
international community makes an intervention in the sense of replacing people who got half a million votes, that sends a really bad message. It says, ‘Your political process doesn’t matter; I’m the boss here.’ And then next time we have a decreasing number of people who go out and vote. Why? ‘Why should I go out and vote when the international community will just choose a person they like?’ Sometimes it’s kind of a mental problem for me to understand that there’s someone up there who operates as a god, making a decision about what is right and what is not. I don’t think I’m comfortable with that.”

In Republika Srpska, the international community’s policy towards the Serbian Democratic Party (SDS) has been particularly misguided. This is not to say that the allegations leveled by the international community at SDS are not true. SDS is clearly guilty of stirring up ethnic tensions and exploiting nationalism for political gain while failing to improve a single economic aspect of the lives of citizens in Republika Srpska. Numerous high-ranking SDS officials have either profited fabulously from, and/or gained control of, companies that were supposedly privatized, and the paper trail linking the party with organized crime is extensive. Furthermore, it is strongly suspected that SDS is still supporting its founder and former leader, fugitive Hague indictee Radovan Karadžić, and thwarting international efforts to arrest him. The international community may well be correct in its frequent assertion that the RS will never be able to make significant improvements so long as SDS is in power.

However, none of these issues has thus far, for whatever reason, dented SDS’s status as the most popular and electorally successful party among Bosnian Serbs, both at the state and Republika Srpska levels. Save for a brief two-year interruption from 1998-2000, SDS has held power in the RS for the entity’s entire existence, and even in 1998-2000, it remained the most popular party at the municipality level and exercised significant indirect power at the entity level.

To state the problem simply, the international community does not recognize the democratic will of the voters of Republika Srpska. In the words of an International Crisis Group report on the RS,

“Having claimed before Bosnia’s citizenry that elections equal democracy, the international community has found itself in the invidious position of dealing thereafter with democratically elected demagogues, autocrats, warlords and crooks. The OSCE has thus felt obliged to do down certain parties (the ‘hardline nationalists’) while promoting the electoral prospects of others (the ‘moderates’) by making repeated changes to the election rules, all the while seeking to convince the public that it is not trying to cook the results.”

This double standard of democracy is particularly damaging when applied to a state like Bosnia-Herzegovina, which has been ruled throughout its entire history by one occupying force after another, and whose first experiment with democracy is only 10 years old. Says Aida Bogdan:

There may be short-term benefits of removing an official who is either corrupt or has regressive policies, but sacking this official after a democratic election undermines voters’ faith in the democratic system and, in the long-term, does nothing to ensure that the “bad guys” will not return to power as soon as the OHR is retired.
“[The international community] has to teach democracy to people who really have never known what democracy is. You have [foreign] people who are talking about democracy, but they are not democratic. They are using ‘democracy style’ and [are] talking about democracy, but they have the behavior of absolutists.”

Democratic double-talk on the part of the international community has occurred frequently in the short political history of the RS. In November, 1997, when SDS suffered its first electoral loss in early parliamentary elections, international donors moved quickly to lift EU and World Bank embargos on non-humanitarian assistance to the RS and to build public support for the new “Sloga” coalition government with generous assistance packages. However, under the new government, the economy did not improve; budgetary mismanagement and corruption were widespread; and virtually no increased efforts were made at facilitation of refugee return or cooperation with the ICTY. Despite the lack of progress, the international community refrained from pushing Premier Milorad Dodik too hard because it feared that if Dodik’s popularity waned, SDS would return to power. Instead, the international community continued to support both him and RS President Biljana Plavšić until its prestige took a double hit when Plavšić was first defeated for reelection and then indicted by the ICTY. Her successor, Nikola Poplašen of the extreme nationalist Serbian Radical Party, was dismissed by High Representative Carlos Westendorp for refusing to reappoint Dodik as premier.

The international community’s unconditional embrace of Dodik as the lesser of two evils turned out to be all for naught, as SDS won the next elections anyway. Though SDS clearly ran the table in 2000, it technically fell short of being the outright majority party in the RS National Assembly. Thus, “The international community faced a harsh dilemma: should it permit the SDS to participate in government or deny the party its democratic dues?” The OHR chose the latter option and announced that while the SDS president, vice president, and delegates to the state House of Representatives would be permitted to take office, all financial support to the RS would be withdrawn if SDS was allowed to participate in the new government. Mladen Ivanić, the charismatic leader of the Progressive Democratic Party (PDP) and the international community’s favored prime minister, argued that it would be impossible to maintain what would need to be a 12-party coalition to exclude SDS from power. Realizing that governance without SDS was unsustainable, the OHR agreed to a compromise: SDS would still be banned from the coalition, but members of SDS could serve in Ivanić’s government if they suspended their party labels during their terms of office.

The extent of the OHR’s blunder in creating this compromise went beyond the absurdity of expecting that politicians would cast off their partisan interests as easily as their partisan labels. Instead of “admitting that the SDS would now share power and setting appropriately strict conditions for the continued receipt of international subventions,” the OHR’s compromise gave SDS the best of all worlds. As the largest coalition partner, it controlled the government for all intent and purposes, yet it was Ivanić who was its public face and who would suffer the electoral consequences of any negative results of their policies.

In addition, the party’s disfavored status within the international community was virtually a point of pride amongst its nationalist constituents. The fact that it regained power over the strong opposition of the hypocritical foreigners was the perfect kind of “thumb in the eye of the international community” that has always made parties like SDS so appealing. “[Crusading against SDS] just makes them stronger,” says Aleksandra Petrić. “You are making them a public victim by doing that. Like…with war criminals, they are prized by people because [there is] so much pressure on the government to catch them [that] they almost make heroes out of them. If you put so much pressure on parties, you make them win elections. It’s a way of repulsing foreign influence. It’s simply the human mentality. If something is banned, you like it.”

The results of the international community’s attempts to interfere in the democratic process in the RS could be considered poetic justice. Biljana Plavšić and Milorad Dodik were propped up and not called out for their lack of results. Plavšić ended up in The Hague and Dodik’s party was ousted from power. The OHR sacked the extreme but democratically elected president Nikola Poplašen, only to see the SDS take back the office. The OHR tried to impede SDS’s triumphant return to power even though it was duly earned by the votes of the people; OHR’s impediment failed,
and its compromise allowed SDS to escape electoral responsibility for several years.

The question comes down to sustainability. Presumably, the international community wants the OHR to become defunct at some point and the Bosnian government to take full sovereign control. However, when public officials elected in free and fair elections are arbitrarily sacked, sovereignty is set back. There may be short-term benefits of removing an official who is either corrupt or has regressive policies, but sacking this official after a democratic election undermines voters’ faith in the democratic system and, in the long-term, does nothing to ensure that the “bad guys” will not return to power as soon as the OHR is retired. Says Igor Stojanović:

“We have three foreign members of the Bosnian Constitutional Court. The former High Representative [Wolfgang] Petritsch said that that’s one of the greatest successes in Bosnia, which is ridiculous. Most of the decisions made by the court have been 5-4, 2 Bosniaks and 3 foreigners versus 2 Croats and 2 Serbs. Is that a sustainable decision? Let’s try to create solutions based on the needs and opinions of the citizens. Only these solutions will be sustainable enough. Otherwise, we will have to deal with the same questions again in a few years.”

Conclusions

“The magic key to Bosnia is the economy,” says a PDP official. “When the economy is bad, that’s when people start thinking about who is what ethnicity.”

What is curious about this likely very accurate statement is that the economy is bad, yet people in Banja Luka, at least the people in Banja Luka who sat down for interviews, are not thinking about ethnicity. There is hardly any thought of the future of Republika Srpska because everyone is thinking about their families, their employment prospects, and their own futures.

In Aleksander Živanović’s opinion,

“I think [people] connect to Republika Srpska, and it’s still something that is important in the lives of the majority of people who are living here. This is something that they would not compromise about probably. I think that [their belief] is not based in [the] good structure and good policy of the authorities of Republika Srpska [because] we cannot say that this entity is taking care of the people who are living here. It’s more like something that people wanted to have in the war, and now they identify with it. Although it cannot be supported by some real arguments, it is still something that is very important for the Serb population here.”

A student from Banja Luka says that,

“In my opinion, there is space for Bosnia to stay not divided but consisted of two entities. I think…young people do recognize Bosnia as their country, and I do, but at the same time I recognize as part of me Republika Srpska. I do not call it a country because it’s not a country, but still it’s something that is part of me. I don’t have nothing against people who come from Federation; that’s [just] how it works here. Under the constitution we have right now, it’s defined by that.”

The student hastened to add,

“Those are the things I don’t like to talk about. When it comes to these reforms, those are hear-say things, and I don’t want to bother to waste my energy on things that most of the time I cannot affect. I cannot change anything, so I’m trying to be productive in other things.”

Judging from the responses of interviewees, the answer to the question of what kind of future is envisioned for Republika Srpska appears to be “Who knows?” Like the student in the previous
paragraph, the question appears to strike people as the sort of abstract philosophical question which they have no time to ponder and which they perceive themselves as having no power to control anywa.

On the whole, BiH is making progress. The pace of progress is so slow that it can often be overlooked, and there is still a long way to go, but progress is present. Despite the delays, police integration has been approved and it is in the process of being carried out. Civil society is strong, and according to members of civic organizations, the government has been much more receptive to NGO initiatives in recent years. Even the SDS has moderated itself in recent years thanks to international pressure and, at last, electoral defeat at the hands of Dodik’s SNSD in 2006. Assuming that political instability over the Kosovo situation in neighboring Serbia does not spill over to BiH, the country should continue its slow-but-steady forward progress towards the EU. The big question mark, and the huge block on faster progress, is the economy. An increase in economic stability will be the decisive factor in getting rid of corruption and corrupt leaders. Economics, not ethnicity, will be the determinant of future prosperity in BiH.

As for Republika Srpska, ambiguity over its relationship vis-à-vis BiH shows no signs of abating. The entity’s practical function in post-war BiH is unclear, but it appears to be, as usual, little more than a political football with negligible concrete significance for ordinary citizens. Yet contrary to the expressed indifference of the interviewees, the RS’s permanent status, function, and long-term necessity will have to be resolved before permanent stability and prosperity can come to Bosnia and Herzegovina.

**Alphabet Soup**

- BiH: Bosnia and Herzegovina
- DPA: Dayton Peace Accords
- EU: European Union
- HDZ: Croatian Democratic Union
- ICTY: International Criminal Tribunal for the former Yugoslavia
- KM: Convertible marks, Bosnia’s official currency (fixed at 0.5 of the euro)
- NGO: non-governmental organization
- PDP: Progressive Democratic Party
- OHR: Office of the High Representative
- OSCE: Organization for Security and Cooperation in Europe
- RS: Republika Srpska
- SDA: Party of Democratic Action
- SDS: Serbian Democratic Party
- SNSD: Party of Independent Social Democrats
- SRS: Serbian Radical Party
Endnotes

1 Commonly abbreviated as BiH (Bosna i Hercegovina).

2 Florian Bieber, “Governing Post-War Bosnia-Herzegovina,” Minority Governance in Europe LGI Books p. 329. A note about statistics: BiH does not possess a census bureau because the question of demographics is politically sensitive. The last official population numbers are from the 1991 Yugoslav census. It is important to remember that subsequent figures are ballpark estimates.

3 Marcus Cox, State-Building and Post-War Reconstruction: Lessons from Bosnia, The Rehabilitation of War-Torn Societies. CASIN: Geneva, 2001, p. 12-15. In this way, not only are they are absolved of electoral responsibility for the unpleasant potential side effects of reform (e.g. layoffs, unemployment), but they are free to fortify their base political standing by indulging in nationalist rhetoric.


5 Ibid.

6 This is excluding township and local levels.


9 Interview with John Crownover, 08 December 2005


11 Interview with student in Banja Luka.

12 Interview with Aleksander Živanović. 09 December 2005

13 Azra Hadžiahmetović, “Dayton ‘Construction Error’ Blocks Bosnia’s Path to Prosperity” See previous citation.

14 Ibid.

15 Ibid.


17 Interview with Aleksandra Petrić, 5 December 2005.

18 Interview with Aleksander Živanović.

19 Interviews and conversation with various Banja Luka University students.

20 Interview with Aida Bogdan, 11 December 2005.


22 International Crisis Group correspondence with RS MUP, 22 January 2002, and interview with Vedrana Dimitrijević, 1 December
2005. In a 20 February 2005 interview with Nezavisne Novine, EUPM Commissioner Kevin Carty cited the figure of between KM 300 and 350 per month.


24 According to Transparency International BiH’s 2004 Corruption Perception Study, the average bribe amount demanded by BiH police officers is KM 30.5.

25 Interview with Igor Stojanović, 7 December 2005


27 Interview with Aida Bogdan, 11 December 2005.

28 The embargo was lifted despite the fact that the RS had not fulfilled the main condition for lifting the embargo, that Radovan Karadžić be arrested and extradited to The Hague.


30 Ibid.

31 Ibid.

32 Interview with PDP official, 9 December 2005

33 Interview with student in Banja Luka
Ideology, Pathology, and Politics: U.S. HIV/AIDS Initiatives in Sub-Saharan Africa in the New Millennium

Adam Lichtenheld

From Brawn Drain to Brain Drain

Liana Brower
Ideology, Pathology, and Politics:
U.S. HIV/AIDS Initiatives in Sub-Saharan Africa in the New Millennium
By Adam Lichtenheld

“Just remember, whatever you do, don’t mention condoms.”
Bearing Witness

I froze halfway inside the hot, dusty classroom in Kampala, Uganda. I turned to Crystal, the coordinator for ASK Africa, an initiative promoting HIV/AIDS awareness and education in Ugandan primary and secondary schools. I must have looked bewildered, because she again made it clear that my impending speech about the ASK program could not include any mention of vital safe-sex resources. In fact, according to the headmistress, “safe sex” seemed to be nothing more than an oxymoron.

The parameters of my lecture firmly established, I spoke to the children and went out to the courtyard to collect my thoughts. After discussing my concerns with Crystal and the other directors of the ASK program, I quickly learned that the restricting boundaries of the program were not merely the effects of Uganda’s budding Born-again Christian population, but the mandated requirements set forth by U.S. policies that provided a majority of the funding necessary to run HIV/AIDS educational programs in Uganda and throughout Africa.

The “African Killer”

The obstacles facing Africa on the road to economic development are monumental and many, but few are more devastating than the HIV/AIDS epidemic. The notorious virus has swept the entire globe—killing over 22 million people worldwide—yet it has particularly ravaged the world’s most vulnerable continent, crippling economies, decimating health sectors, and wiping out populations in one of the most alarming pandemics in history. Of the over forty million people living with HIV/AIDS, 74 percent live in sub-Saharan Africa, where three-quarters of the global AIDS death toll has occurred. Every day, throughout the continent, over 6,000 Africans die from AIDS while 9,000 new people are infected. UNICEF estimates that AIDS in sub-Saharan Africa could orphan eighteen million children by 2010, and in parts of the region, the disease has caused average life expectancy to decrease by twenty years. Even the continent’s economic star, South Africa, suffers from a daily AIDS death toll of eight hundred citizens, and there is at least one HIV-positive child in every classroom in Botswana.

The destructive virus has not gone unnoticed by the international community, especially the United States. Every year since 1986, Congress has set aside funds for global AIDS prevention. Though Adam Lichtenheld is a Junior at the University of Wisconsin-Madison. In 2006, he spent time in Uganda researching issues pertaining to refugees and internally displaced people. It was during his stay in Uganda, while helping with the HIV/AIDS initiative, that he discovered the information of which he writes about. Currently, he is studying abroad at American University in Cairo, Egypt.
the international community began donating funds for fighting HIV/AIDS in the early 1990s, the world did not get serious about combating the pandemic until the new millennium. In 2002, collective international pressures prompted U.N. Secretary-General Kofi Annan to implement the Global Fund to Fight AIDS, Tuberculosis and Malaria, an independent, multilateral fund designed to collect resources from a multitude of donors and use them to prevent and treat the world’s most devastating diseases. Global spending on AIDS in Africa has skyrocketed from $300 million a year in the late 1990s to $8.3 billion in 2005. Despite the progress made in providing collective responses to the epidemic, according to economist and poverty expert Jeffrey Sachs, HIV/AIDS is still “an unmitigated tragedy and a development disaster throughout Africa.”

The Birth of PEPFAR

“To meet a severe and urgent crisis abroad, tonight I propose the Emergency Plan for AIDS Relief, a work of mercy beyond all current international efforts to help the people of Africa. I ask the Congress to commit $15 billion over the next five years, including nearly $10 billion in new money, to turn the tide against AIDS in the most afflicted nations of Africa and the Caribbean.”

-U.S. President George W. Bush, 2003 State of the Union Address

In 2003, instead of fully investing in the Global Fund, President Bush decided to adopt his own unilateral approach to help combat HIV/AIDS overseas, the President’s Emergency Plan for AIDS Relief (PEPFAR). The program’s massive $15 billion donation for global prevention and treatment over a five-year period made it the largest source of worldwide funding for AIDS. It focuses on providing relief to fifteen countries; twelve of them in sub-Saharan Africa: Botswana, Ethiopia, Cote d’Ivoire, Mozambique, Kenya, Nigeria, Namibia, Rwanda, South Africa, Tanzania, Zambia, and Uganda. Yet its prevention procedures differ significantly from those of the Global Fund; most notably, its emphasis on abstinence-only approaches to safe-sex education. Bush’s strategy provides a $133 million annual budget for programs whose main message to young people is that they abstain from sexual activity until marriage.

Under PEPFAR, eighty percent of funds are devoted to AIDS treatment, which includes providing victims with antiretroviral drugs and increasing the quality of health care available for citizens in high-risk areas. Of the remaining twenty percent set aside for HIV prevention, funds are split up between three strategies in a hierarchical education approach simply labeled “ABC,” “A” for Abstinence, “B” for Be Faithful and “C” for Condoms.

Despite the considerable funds PEPFAR has provided to some of the world’s most AIDS-ravaged countries, the requirement that two-thirds of prevention programs be devoted to abstinence and fidelity has been met with increased controversy around the world, culminating in August, 2006 at the Sixteenth International AIDS Conference in Toronto, Canada, when delegates were told that "ABC” is not a horizontal, multi-pronged approach to combating HIV/AIDS. Rather, it is a vertical list of prioritized steps where the top is heavily preferred over the bottom. The result has meant a lot of “A” and “B,” but very little “C.”
PEPFAR’s focus on abstinence-only may be leading to a resurgence of the HIV virus in its focus countries. PEPFAR has also come under intense fire from an array of domestic and international actors, most recently from the U.S. Congressional Government Accountability Office. In April, the GAO issued a report that the program’s strategy may be undermining the entire effort to eradicate AIDS worldwide. Because of abstinence-only programs’ unproven track record, and PEPFAR’s ignorance of the cultural and societal norms that act as substantial barriers to AIDS education in Africa, the policy is receiving widespread condemnation from the European Union, the U.N., African scholars, health care providers, and educators. As Jodi Jacobson, executive director of the Washington, D.C. based Center for Health and Gender Equity says, “While the United States has become a world leader in total funding for HIV prevention, treatment and care, evidence overwhelmingly indicates that restrictions in U.S. global AIDS funding and policy guidance are undermining effective prevention efforts in many countries such as Nigeria, Tanzania, Uganda, and Zambia.”

“AB” with Little “C”

Though the “ABC” approach appears comprehensive on the surface, in reality, PEPFAR has vested its focus on the “AB” component of the strategy at the expense of nearly phasing out the “C.” While the policy weakly “recommends” that local programs be all-inclusive, its priority is to ensure that teaching abstinence is the primary focus in primary and secondary school classrooms. PEPFAR does not statutorily require that each of the “ABC”s receives an equal share of prevention funding, allowing (and often coercing) countries to pump more money into the “A” and “B” strategies. PEPFAR is the most restrictive when it comes to condoms, only allowing contraception programs in cases that it deems “appropriate,” then narrowly defining “appropriate” as only for groups that are considered “high-risk,” such as prostitutes or individuals married to an HIV-positive spouse.

Given the high HIV-prevalence rates among the general population in most African countries, the reality is that everyone is “high risk” and stopping the spread of HIV requires educating people before they are at risk for infection. Yet the GAO reported that the heavy emphasis on abstinence and fidelity often requires cutbacks in other programs, most often, ones that educate students on safe-sex practices and effective ways of using contraceptives. In Nigeria, an after-school youth program failed to get PEPFAR funds because they spent too much time on condoms and not enough time promoting abstinence. In Tanzania, ninety-five percent of its PEPFAR money is going towards promoting abstinence and fidelity only—leaving very little room for condoms. Yet this is not a unique phenomenon. In 2006, only two of PEPFAR’s 15 focus countries included condoms in prevention programs—and even in those cases, U.S. guidelines required that they include a label noting condoms’ allegedly “high rate of failure.” Under President Bush’s program, “ABC” is not a horizontal, multi-pronged approach to combating HIV/AIDS. Rather, it is a vertical list of prioritized steps where the top is heavily preferred over the bottom. The result has meant a lot of “A” and “B,” but very little “C.”

The Failures of Abstinence

If any country has been known to be cozy with abstinence-only approaches to safe-sex education, it is the United States. Abstinence programs have been a focus of U.S. policy starting in the early 1980s, and since then, an array of public and private studies have condemned them as ineffective and potentially harmful. Research has shown that, while teens who pledge to abstain until marriage may delay their first sexual encounters, it is unlikely that they will use protection when they do. Moreover, there are accounts of abstinence-only programs failing to specify that oral or anal sex is included in definitions of “sexual activity,” putting young people at risk merely because they fail to realize that sexual acts other than intercourse makes them susceptible to disease and unwanted pregnancies.

Failing to convince young people to ignore their biological desires and refrain from sex is not the only problem with U.S.-funded abstinence programs. According to the British medical journal The Lancet, abstinence has a long history of distorting or withholding vital HIV prevention information that is not directly
related to abstaining from sex. Such programs have been shown to grossly exaggerate the failure rates of condoms and even expunge outright lies about the realities of contracting STIs using safe-sex resources. In Zambia, reports revealed that HIV educators were microwaving condoms and dousing them with milk to show that they do not work. In Tanzania, rumors surfaced that condoms were not effective, prompting officials to cancel their contraceptive campaign, and officials at Family Health International in Kenya complained that PEPFAR’s “ABC” approach sent “mixed, conflicting, and inaccurate messages” to students while shaping “negative views about condoms.” This is where the effects of abstinence go from being ineffective to harmful—jeopardizing the very purpose for educating young people on sexual activity. Yet comprehensive safe-sex education programs that discuss both abstinence and contraception have proven to be consistently effective in the U.S. and elsewhere—even in sub-Saharan Africa.

The religious implications are apparent in abstinence education programs; many are built around the ideologies of those who believe it is morally appropriate to refrain from sex until marriage. Yet PEPFAR does not just pay heed to churches by preaching abstinence—it provides religious centers with distinct opportunities to use safe-sex education as a means to promote their moral views at the expense of fact. Indeed, PEPFAR prevention funds are available to faith-based educational organizations that are permitted, under the stipulations of the law, to intentionally exclude information about contraceptives if such information is inconsistent with their religious teachings. This essentially empowers these organizations—which are dominant in many African countries—to lawfully manipulate their educational practices on sex education to adhere to their ideological agendas, leaving out valuable information or blatantly refusing to disclose the truth about HIV/AIDS transmission, infection and prevention.

The evidence against abstinence programs is undeniably conclusive. It is not hard to see why these programs are destined to fail. Abstinence-only initiatives merely focus on telling children not to have sex; an objective that is ideal, no doubt, but fundamentally unreasonable. Young people have shown a keen willingness (often, an eagerness) to engage in sexual activity regardless of what they are told. Moreover, abstinence-only initiatives prohibit erecting protective barriers in the event that individuals’ pledges to abstain fail—so when young people decide to have sex, they are completely ill equipped to protect themselves. Abstinence, then, is like a high-risk stock option: it pays off big if it actually works, but if it fails (which is likely) then the consequences are severe. If abstinence-only programs have proved to be persistently ineffective—or even harmful—in the United States, then there is little chance for them in sub-Saharan Africa. The U.S. should not be so determined to export such a bad product.

The Global Gag Rule

Corresponding with PEPFAR is the controversial policy conceived in the U.S. by the Reagan Administration in the 1980s: the Mexico City Policy, known more infamously as the “global gag rule.” This policy, which President Bush reinstated upon his arrival to the oval office, bars any overseas organization from receiving U.S. funds for family planning if they use it to discuss abortion. This became one of the first global policies built on the ideologies of armchair politicians in Washington, and wreaked devastating havoc on the women gagged by the rule in the third world. Disturbingly, the Mexico City Policy has had a direct impact on HIV/AIDS education—not just foreign abortion rights—because many comprehensive HIV/AIDS programs include some discussions of abortion, abortion rights, and abortion options in their family planning sections—which disqualify them from receiving funds from the United States Agency for International Development (USAID). Due to the gag rule, for example, an organization that counseled adolescents and families in Zambia was forced to cut back their services in four provinces because they included family planning in their curriculum, and youth centers in Cameroon were forced to close because they were deprived of USAID funding for teaching young people about responsible parenting and HIV/AIDS prevention—which allegedly “promoted” abortion.

Condom Shortages

PEPFAR, complemented by the far-reaching effects of the revamped global gag rule, has helped exacerbate severe condom
shortages in several African countries. As family planning clinics all over the continent have witnessed sharp reductions in supplies from American donors, PEPFAR’s massive budget has provided little relief, because it primarily funnels funds into abstinence-only teaching programs instead of equipping countries with adequate safe-sex resources. After adopting the U.S. policy, health care clinics in Kenya reported a sharp drop in donated condom supplies, forcing some establishments to close their doors; the leading health care providers in Ethiopia and Zambia were cut off from USAID condom supplies because of their association with the International Planned Parenthood Federation, which refused to meet the requirements of the global gag-rule. Perhaps no country has been hit harder by condom shortages than Uganda, which is in the midst of a crisis that, according to Stephan Lewis, U.N. Special Envoy for HIV/AIDS in Africa, is “being driven and exacerbated by the extreme policies that the administration in the United States is now pursuing in the emphasis on abstinence.”

Cultural Barriers

The inadequacies of abstinence notwithstanding, PEPFAR’s use of marriage as the antidote for the spread of AIDS epitomizes the ignorance by which policymakers have made decisions completely out of touch with the local realities of the countries targeted as the “beneficiaries” of their policies. Studies have shown that, because of the rights married women lack in the third world, monogamous wives are actually some of the most vulnerable individuals for HIV infection worldwide. Yet PEPFAR is based on the belief that a faithful marriage will ensure zero transmission of disease between partners, even though, in many African countries, individuals are infected at a young age and still enter monogamous relationships only to pass the disease to their husbands or wives. It does not matter if an individual is abstinent until marriage and remains faithful during marriage if his/her spouse does not practice the same principles. Therefore, teaching safe-sex methods is vital to helping people protect themselves even after they have entered monogamous relationships.

Moreover, the American PEPFAR policy fails to realize that polygamy and multiple sex partners in matrimonial relationships are commonly accepted in many sub-Saharan African societies, such as Zimbabwe. Even if individuals enter marriage abstinent, they are not protected from the promiscuity of their partner because societal norms permit multiple spouses and sex companions. In addition, a lack of women’s rights, and the vulnerability of women in impoverished, conflicted African countries, makes abstinence a difficult reality to ensure; women lack the empowerment within marriage that Western females often enjoy. Finally, the order to abstain until marriage discriminates against homosexuals, who cannot legally marry in most African countries.

As Stephen Lewis says, “AIDS and violence are interlinked”; the devastating disease cannot survive without the elements that allow it to flourish. Sub-Saharan Africa is home to the world’s most pervasive poverty and is still ridden with violent conflict—situations where individuals, particularly women, do not have the luxury of making decisions on family and sex, based on their own personal conscience. For many individuals, women in particular, economic and social pressures to have sex, including sex for survival during wars and famine, take preference over abstaining. In Africa, sex is oftentimes a means for survival—desperate war victims, abductees and refugees are often forced to engage in sexual activity to stay alive. Abstinence will do little to protect rape victims, sex workers, sex slaves and children who rely on “sugar daddies” for food and shelter. These cultural and societal barriers completely undermine PEPFAR’s strategic focus, and provide explanations for why the policy has been ineffective and, in some cases harmful.
The Uganda Case

When PEPFAR was unveiled, Uganda, a longtime and staunch American ally in Africa, was revealed to be its largest beneficiary with almost $150 million in new funding over the five-year period.\(^{52}\) In an ironic twist of fate, while PEPFAR has jeopardized AIDS programs in a multitude of African countries, the policy’s effects on its largest recipient have proven to be especially devastating. During the 1990s, Uganda was seen as a poster child for eradicating AIDS in Africa, consistently hailed for its effective efforts in combating the global epidemic. Though prevention programs included a healthy dose of abstinence and an emphasis on remaining faithful in marriage, at the cornerstone of its educational initiatives was a quality contraceptive program, which included a virtually unlimited supply of condoms, many of which were handed out for free at local bars to promote safe sex.\(^{53}\) The results were striking: HIV rates in Uganda plummeted from fifteen percent in the early 1990s to a mere five percent in 2001.\(^{54}\)

Yet, the data presented at the International AIDS Conference in Toronto confirmed that the tremendous gains Uganda made in the fight against HIV has withered away since President Bush implemented PEPFAR three years ago. The country’s AIDS commissioner announced that the incidence of the HIV virus has nearly doubled since it began to fully comply with the American policy; new infections went from 70,000 in 2003 to 130,000 in 2005.\(^{55}\) Last March, Human Rights Watch published an extensive 80-page report, “The Less They Know, the Better: Abstinence-Only HIV/AIDS Programs in Uganda”, detailing how the U.S.-funded policy is jeopardizing Uganda’s successful fight against the HIV/AIDS pandemic.\(^{56}\) It documents the recent removal of crucial information on AIDS from school curriculums in the country, including safe-sex methods that help prevent HIV transmission and the risk of contracting the disease within marriage.\(^{57}\)

Additional evidence links PEPFAR’s contribution to the resurgence of the HIV virus in Uganda. U.N. and medical officials have attributed the increase in Uganda’s HIV prevalence to a lack of condoms and condom education, citing that the “morality-based approach” mandated by PEPFAR’s abstinence-only focus has “unleashed a wave of stigma against condom use.”\(^{58}\) Indeed, PEPFAR has helped construct a mentality among Ugandan officials that providing education about condoms along with abstinence can be “confusing” to youth—as Ugandan President Yoweri Museveni said in a draft release of an “AB” (Abstinence and Being Faithful only) policy by the Uganda AIDS Commission in 2004.\(^{59}\) Teachers were told by U.S. contractors not to discuss condoms in schools as a part of the new abstinence-only policy, and Museveni went as far to say that condoms were “inappropriate for Ugandans.”\(^{60}\) Uganda’s HIV/AIDS curriculums claimed that condoms have small pores that could still allow viruses through; thus, they were not very effective and, allegedly, were similar to “using a parachute which opens only 75% of the time.”\(^{61}\) These were just among a multitude of inconsistencies and inaccuracies found in teaching programs funded by PEPFAR.

Policy Prescriptions

Though there are a multitude of AIDS prevention methods available for educating young people, condom use is a scientifically proven strategy that has been shown to effectively diminish the risk of HIV transmission. There is no reason, then, for keeping it out of educational curriculums whose sole intentions are to equip students with valuable tools that will protect them from the world’s deadliest virus. The vital role that condoms can play is apparent in a country that, while adopting one of the world’s most progressive HIV/AIDS policies, has been one of the most successful in curbing the spread of the pandemic. Brazil has adamantly rejected PEPFAR funding and its abstinence-only conditions, choosing instead to adopt its own prevention policies that center on a widespread distribution of condoms to young people complemented by a marketing campaign claiming that “wrapping up” is “cool.”\(^{62}\) Now the infection rate in Brazil has dropped to a mere .6 percent—a tiny proportion compared to 7.5 percent in sub-Saharan Africa.\(^{63}\) If quality condom education programs as a part of general preventive strategies have proved to be effective in curbing HIV—as they have in Brazil and pre-PEPFAR Uganda—then we cannot hide from the fact that equipping African societies with condoms and teaching them how to use them is vital to eradicating AIDS worldwide.

This is not to say that the “AB” component of prevention strategies does not play a part in safe-sex education. Students
should be exposed to the benefits of refraining from sexual activity, and promoting fidelity not only stands to decrease an individual’s risk of contracting diseases, it holds the potential to ingrain values of monogamy and devotion into younger generations, potentially leading to stronger marriages and stronger families in the future. Dave Serwadda, director of the Institute of Public Health at Makerere University in Kampala, Uganda, admitted that abstinence was a “small part of what led to Uganda’s success” in diminishing HIV/AIDS infection rates during its glory days of the 1990s. Indeed, the sex education programs that have been shown to be the most effective in the U.S. are those that balance healthy doses of abstinence with lessons on contraceptives. PEPFAR should aim to adopt comprehensive approaches that combine multiple prevention strategies into a multi-pronged package of protection that African youths can use to shield themselves from HIV/AIDS.

A progressive piece of legislation that could address PEPFAR’s weaknesses is the Protection Against Transmission of HIV for Women and Youth Act of 2006 (PATHWAY Act), recently introduced by U.S. Rep. Barbara Lee (D-California), which would abolish the PEPFAR stipulation requiring that at least one-third of HIV/AIDS prevention funds go towards abstinence-only programs. By throwing away the stringent abstinence requirement, this bill would open the door for more PEPFAR-funded programs emphasizing prevention strategies that focus on safe-sex practices and resources. PATHWAY would also require all HIV prevention programs funded by PEPFAR to address violence against women and other factors exacerbating the spread of HIV among females. Considering the lack of women’s rights in Africa, and that the proportion of women as part of the total HIV-infected population in the region has increased from thirty-five percent in 1990 to forty-eight percent in 2004, the U.S. needs to adopt measures that will empower African women and concentrate on the cultural and social factors that exacerbate the spread of HIV/AIDS. PATHWAY offers a promising start.

In addition, the other U.S. policy responsible for diminishing condom supplies in African countries—the Mexico City Policy—must be rescinded. Abolishing the global gag rule would allow the U.S. to increase condom donations to Africa and provide opportunities to implement provisions into PEPFAR that would better highlight condom education. In addition to addressing HIV/AIDS, these initiatives could help remedy other problems plaguing African countries. A focus on contraceptives would bolster knowledge not only of disease prevention, but pregnancy prevention. Jeffrey Sachs highlights widespread overpopulation as a factor deepening the self-perpetuating “poverty trap” that prevents African countries from achieving sustainable economic development. Safe-sex education would promote the idea of family planning, while teaching couples how to prevent unwanted pregnancies when they engage in marital relations. This would result in fewer children per African family, allowing parents to provide their sons and daughters with more opportunities and give them a better life.

Regardless of what policymakers deem the most “appropriate” strategy for eradicating AIDS, young people throughout the globe have a right to learn about truthful information that could save their lives. We have not reached a point in the HIV/AIDS legacy
that allows us to discriminate the type of prevention and treatment methods we use—we need all available options in our educational arsenal that could help protect people from the virus. In addition, the U.S. cannot hope to be the supreme oracle for advising the world on protecting itself from AIDS. The effectiveness of different prevention methods often hinges on the locales in which they are implemented. If factors that contribute to the disease's spread are embedded in social and cultural norms, American officials must allow policymakers in PEPFAR's focus countries to adopt certain strategies based upon the realities of their local environments. In other words, instead of endorsing cookie-cutter solutions to ending the AIDS crisis in Africa, the U.S. must empower African leaders to make their own crucial decisions about HIV/AIDS education strategies based on their knowledge of their own countries.

**Microcosm of an Overlying Problem**

The consequences of PEPFAR represent the perils that plague African nations that must abide by the conditions set forth in specific assistance programs handed down from developed countries. Though foreign aid has undoubtedly helped Africa, especially in fighting the HIV virus, President Bush's policy reminds us how current foreign aid paradigms may be used as manipulative tools to spread Western influence. When eighty percent of many African countries' budgets are covered by foreign aid, these countries are inevitably beholden to their wealthy donors. When it comes to global HIV/AIDS programs, the new millennium witnessed an increase African independence on foreign donors coinciding with a resurgence of Western radicalism, forcing many sub-Saharan countries to conform to the ideologies of America's political elite, which limited countries' flexibility in adopting their own anti-AIDS programs. In the words of Stephen Lewis, PEPFAR's strict conditional standards equate to "neo-colonialism"—a way of indirectly regulating the way third world countries approach HIV/AIDS education. Yet all nations should be granted the autonomy to make decisions on their own behalf. As Lewis states in his closing remarks at the International AIDS conference in Toronto, "No government in the Western world has the right to dictate policy to African governments in how they structure their response [to AIDS]. That's called conditionality. It is illegitimate to dictate terms to governments that have their own policies and priorities and own ways to deal with the response." Perhaps the neo-colonial aspects of PEPFAR's strategy present a small-scale example of an overlaying problem, one that prevents foreign aid programs from achieving more effective results—that these programs are not actually inspired by a compassionate ambition to improve the lives of citizens in impoverished countries, but are fueled by the greed of Western policymakers instead. Perhaps donors are more interested in extending their influence throughout the globe, and providing countries with aid gives them firm control over other regions, allowing them to regulate how recipient nations develop, implement policy, and interact with the international community. There is no question that PEPFAR is a policy built primarily on ideology, through a misguided approach wherein rich countries are making decisions for poor countries that they know very little about. The question then remains: Is this a unique case, or has this mentality become the status quo in shaping foreign aid programs?

**On the Brink of Disaster**

Jacob Zuma, the former deputy president of South Africa—one of the U.S.'s focus countries—epitomized PEPFAR's failures when he stood trial in February for allegedly raping a young HIV-positive woman. Despite being one of the most educated, powerful and prominent men in sub-Saharan Africa's wealthiest nation, Zuma displayed an alarming ignorance of the details of HIV transmission when he told the court that he was safe from AIDS because, following unprotected sex with the woman, he took a shower. Zuma reminds the world that, though there are other concerns for addressing the HIV/AIDS pandemic—such as providing quality health care and treatment options—the most critical method for eradicating the disease is through honest, effective, and comprehensive education programs. Unfortunately, the U.S. policy's abstinence-only focus completely undermines the positive contributions PEPFAR has made—including the expanded distribution of antiretroviral drugs to HIV/AIDS victims throughout Africa. Until the program adopts necessary reforms to improve the potency of its prevention efforts and focuses on strategies driven by science, instead of ideology,
PEPFAR’s inadequacies will continue to overshadow any positive good it is doing in its host countries.

The statistics from Uganda and the revelations about abstinence programs in the U.S. reiterate what most people already know; abstinence-only education not only persistently fails to curb the AIDS pandemic, but increases the risk of its spread by discouraging the use of contraceptives. The fact that it would be a cornerstone of a global program as ambitious as PEPFAR is almost unfathomable.

It is bad enough that $1.3 billion has been spent domestically in the U.S. on these unproven and controversial abstinence-only programs. But it is criminal, even unpardonable, that the U.S. has forced its own policies on countries unable to deny them, undermining the potency of programs needing every disposable resource in their educational arsenal to adequately equip vulnerable populations against HIV/AIDS—which, as politicians bicker over values and morals, silently rages on.

Endnotes


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From Brawn Drain
This past spring semester I studied abroad in Ghana. My program was centered on the history and cultures of the African Diaspora and our lectures, tours and discussions focused on the changes that had and were taking place in West Africa due to colonialism, its stages, and their influences. There is a large pattern of educated, intelligent and motivated young Ghanaians moving abroad (most commonly) to the United States in order to seek higher education and jobs. Although the issue of migration to the United States has always been prevalent in West Africa and developing countries in general, it is alarming to notice the increase in migration by Ghana’s brightest and best students and citizens as a common practice. This trend has no doubt had an effect on Ghana’s economy as well as those economies to which Ghanaians are migrating. There are various factors inside and outside of Ghana that are reinforcing the phenomenon of brain drain, many of which can be linked to this history of colonization and colonial influence in Ghana’s internal structure, as well as its current standing within the international system. This essay explores the other implications of this trend as well as the various factors influencing this brain drain.
Brain drain is the “emigration of a significant proportion of a country’s highly skilled, highly educated professional population, usually to other countries offering better economic and social opportunity.”¹ This phenomenon can be seen to have two forces in its conception; the push and the pull to migration. The factors are cyclical and they can both be directly linked to the colonial legacy within Ghana as well as the developed countries’ positions within the international system. One of the most common things I heard in Ghana from high school aged kids was of their desires to move, work, live, and travel to the United States. Although this trend is widely discussed by academics, economists, and political scientists it is usually within one field of study; i.e. how brain drain is affecting health services in Ghana and abroad. The inability of these discussions to envelope a multilayered view of brain drain and its psychological and social affects as well as the implied economic consequences limits these studies to a very one-dimensional and western-based analysis. There are layers to this trend which in large part involve the colonial legacy that haunts Ghana and continues to influence its position in the international system and the minds and desires of its nationals.

The idea of brawn drain to brain drain was first introduced to me through a lecture given in Cape Coast on appropriate technology in Ghana. Doctor Kofi Sam from the University of Cape Coast discussed the idea of universal science versus environmental technology² and how colonial structures have imposed non-local methods and perspectives in Ghanaian society. The British systems are often still completely in use if not at the root of Ghanaian industry, education and government, which have a large influence in shaping action and goals in the country. This influence reinforces a western-focused impulse and validates the desires of Ghanaian to leave their country in favor of a lifestyle described and sometimes mimicked through their socialization in Ghana. It is the lack of development of natural resources both physical and human to appropriate use in Ghana as well as the eventual loss of the brightest and best that ultimately undermines Ghana’s development separate from its colonizers and other Western nations. One of the most frustrating aspects of this trend is the dependency on imports within the context of human exports. Doctor Sam mentioned the term ‘AIDS’, which stands for Acquired Import Dependency Syndrome.³ This describes Ghana’s dependency on imports for items that can be made locally but are cheaper due to international market pressures (usually coming from Western markets) to import. This is ironic in contrast with the dependency that has formed both economically and psychologically on exporting the biggest assets to Ghana’s development and long term stability; its best and brightest citizens.

There are multiple pull factors to their migration, most obvious are the economic advantages sought by Ghanaians. Although West African nations are becoming more commonly associated with large remittances, Ghana is by far the leader. According to numbers from the recent Beijing conference Ghana’s remittances this year will probably reach 7 to 8 billion dollars⁴, far surpassing their gross domestic product. There are psychological as well as economic messages in this fact. Young Ghanaians understand the connection between work abroad and financial investment and return. The benefit of Ghanaian families in Ghana is directly in relation with the larger profiting of those Ghanaians abroad. But the economic results of the massive brain drain of Ghana have been misconstrued to be a large point of profit for the Ghanaian economy through these exceedingly high rates of remittances. Although remittances have been associated with drops in poverty⁵

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the long-term economic consequences of this large cyclical exodus are alarmingly negative and detrimental to Ghana's economy and chances for future financial stability and growth. In At Home in the World Manuh says; “Empirical evidence suggests that in sub-Saharan Africa the brain drain has significant negative effects on the growth rate of the source country’s and potentially retard its long term development.”6 The simple fact is that “it takes human resource to build a nation and not remittances.”7 The post-colonial psychological impacts and influences are a huge part of the problem of Ghanaian development that is often disregarded in favor for attention to short term economic changes.

Another pull factor of brain drain as discussed in the book Emerging Market is the idea of status. There is a certain status attached to leaving Ghana and coming back or being able to provide through these forwarded financial payments known as remittances.8 Those that travel abroad are usually regarded highly within their social circles at home. Ironically, Ghanaians’ status abroad is often unmatched with their skill and intelligence in comparison with their achievements and in relation to their socialization and development in Ghana. Ghanaians abroad are paid unimaginably well in comparison with the salaries available at home, but in comparison with the American work force, they are just a piece of the puzzle, not the high achievers they could be regarded as in Ghana. It is this aspect of brain drain that is most socially and psychologically crippling in the long term; whilst Ghanaians abroad are the most educated and promising, they are acting only in the enormity of Western growth.

Furthermore, it is the irony and paradox of forced migration in relation to current voluntary migration that is alarming. The slave trade that is poignantly associated with the Gold coast and her neighbors was an involuntary migration of the strong and most powerful peoples. This involuntary Diaspora completely stripped the West African nations of their most physically elite, as well as generally important players to Ghanaian society and individual families, disabling their growth and psychologically and literally crippling families and national development. Currently, we have a voluntary migration that acts as a new chapter of the Diaspora, once again stripping away key players in Ghanaian families and national development, and once again, these most promising and contextually important citizens are helping to reinforce the hierarchy of the international system.

Due to the colonial structure and its post-colonial longevity and influence in shaping the current economic system in Ghana, there is an emphasis on “development” and catching up with the so called developed (or first) world. Because of the failures of socialism the Ghanaian economy and political sphere have taken the shape of a learning democracy, based on capitalism. Economic instability and a lack of nationally based corporations and business enterprises forces many Ghanaians to either become a part of the large informal market or involve themselves in capitalist ventures involving European, American or international organizations and non-local corporate interests. Ghana’s lack of financial independence pushes its economy and workforce in many directions, often making the path from schooling to employment an unstable one, with common detours out of country for individual financial success. In the 1990’s the International Monetary Fund’s Structural Adjustment Programs focused the Ghanaian economy away from the stabilizing of academic institutions and other aspects of the civil society and infrastructure. This de-prioritization has left Ghanaian academic institutions, health services and other infrastructures under-funded and under-developed, often frustrating Ghanaians that wish to see positive change but are not willing to forgo the salaries they know are available in Western job markets.

The push factors also involve aspects of colonialism and its legacy.
although it cannot be purely blamed on this legacy, just as it cannot be purely attached to Ghanaian development and history separate from this legacy. The ways in which infrastructures have formed and continue to develop are no doubt reflective of the systems imposed by previous colonizers. The push factors within Ghana have a similar makeup in their balance of colonial based infrastructure and separate Ghanaian development but they are more effective to the long term development of Ghanaian mindsets; these structures are rooted in Ghana's history, a mix of Ghanaian tradition, British systems, and post independence development. The fact that systems within Ghana have been developed in part by Western governments and are then encouraging migration to Western countries is a root of brain drain. One of the basic ways that this influence is promoted is through the education structures in Ghana. The educational system used within Ghana is very closely related to the English system and similarly it is geared towards a Western mindset and preparation for a Western graduate lifestyle;

“It has been argued that we are trained for migration right from the start as the knowledge obtained even at the primary level has very little to do with local systems of livelihoods and survival. By the time students arrive at secondary school there is even less focus on local issues, and universities may be said to ‘liberate’ students from their roots, through the impartation of ‘universal’ and global knowledge, that is more relevant to the metropoles than to local economies and needs.”9

This type of institutional bias and structure is the ultimate message to Ghanaian youth. It is hard to visualize change within their own country if they are being taught and guided through a system that is not in the national interest, but geared towards the profit and imitation of other nations instead.

Another large push factor is the lack of financial incentives to stay. While this is an obvious reason for migration -as discussed previously in reference to the undermining of Ghanaian institutions- its consequences are not as obvious. The exodus of the academic elite leaves vacancies in academic institutions, health services and many other hierarchical sectors. This human resource drain also promotes future patterns of exit to young Ghanaians, who see migration as the norm and a basic step for attaining success. Finally, this exodus is often discussed separate from the environment it leaves behind what is lacking in Ghanaian social and economic sectors inevitably brings down the country’s gains and ability to develop. When discussing academic institutions Manuh says that a negative effect of this drain in academia is a “lack of innovation and creativeness, leading to external dependence.”10 Due to the lack of young elite minds in Ghana a level of mediocrity is established; there are few motivations to promote Ghana to the top of any field as it is seen as always behind. Because the top of the class is physically absent within academics, etc. there is this accepted sense of mediocrity that undermines hopes and ideas for internal innovation and growth.

Ghanaians see these obstacles as either insurmountable or frustrating- they don’t see a clear path to change and improvement, and would rather circumvent the system and accomplish abroad what can take twice the time at home.
the time at home. This inability to visualize change and success within Ghana, apart from globalization or outside planning, keeps Ghanaians reliant on America and eager to migrate.

There is a generally accepted idea of Ghana’s economic instability and some may point to brain drain as a perpetrator of this instability. Yet, as Manuh discusses, “The brain drain is not a primary cause of Africa’s development deficits but rather a consequence.”12 This attests to the fact that the colonial structure and international pressures along with Ghana’s inability to maintain economic stability have formed the environment necessary to promote this brain drain. It is essential to build patriotism, teach history, and reinforce national pride in all sectors of professional life in Ghana. But this must be done in part with other structural adjustments designed to stabilize and appropriately identify and use Ghanaian resources and systems of living.

The problem of brain drain from Ghana to Western countries, and especially to the United States, has a detrimental effect on the Ghanaian economy and national psyche. Brain drain’s influences in Ghana, as well as influences predicated on previous colonial structures and attitudes, are lending to mass departure a general message of real financial or social success. This trend is stripping Ghana of its brightest and best, in turn helping to further develop, stabilize and reinforce the Western nations Ghanaians are trying to emulate and follow domestically. This cyclical phenomenon must change in order to substantiate any long-term development in Ghana.

Endnotes


The Journal of Undergraduate International Studies, published at the University of Wisconsin-Madison, presents a compilation of essays and international insights from undergraduate and postgraduate students around the world. Publications document a wide variety of socio-political issues ranging from international conflict and diplomacy to environmental issues to global economics. Most importantly, the Journal of Undergraduate International Studies is intended to serve as a platform for global discussion and the open exchange of ideas, in effect, expanding our understanding of global interactions.