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Letter from the Editors

On September 1, 1939, Germany invaded Poland, signaling the beginning of the Second World War. That very evening, Boyd A. Martin, a 1936 graduate of the University of Idaho, discussed the impending war with his wife Grace. The two agreed to commit their life savings, roughly \$800, to researching the causes of war and the conditions necessary to achieve lasting peace. Dr. Martin later returned to the University of Idaho as a professor of political science, eventually becoming the Dean of the College of Letters, Arts, and Social Sciences. In 1979, his initial investment of \$800 had grown to over \$600,000, and he founded the Martin Institute, which eventually grew to encompass the interdisciplinary program in International Studies and begat the Martin School.

The Martin Institute has been growing ever since and now boasts over 220 students. With its continued growth, the Martin has been able to offer increased services and opportunities for its students. Every year, the Institute takes 30-40 students to New York City to participate in the National Model United Nations Conference. Four to five students are selected to be Martin Scholars, paid research interns who then become competitive for post-graduation employment or admission to graduate programs. Ten to fifteen visiting dignitaries speak to students at events such as Martin Forums and the Borah Symposium. Several of these speakers meet with small groups of students in Spotlight Seminars, and a few even stay to teach short courses in their fields. Finally, all International Studies students participate in a capstone class during their senior year in which they write white papers, documents designed to clearly present policy goals and recommendations.

It is from these papers we draw this issue of the Journal of the Martin School | International Studies. Articles were selected based on their significance, policy recommendation, originality, and accessibility. This year's articles cover topics from UN Peacekeeping Reform to Flags of Convenience to Arctic Sovereignty and regions from Africa to Europe to the high seas. Also included is an interview conducted with Captain Ulrich Reineke, a German Naval officer working in NATO's Knowledge Support Section. We hope you find the following articles both informative and engaging, as we certainly have.

Respectfully,



Emily Brookhart
Senior
International Studies and English



Samuel Schmoker
Senior
International Studies

*It now becomes necessary for us to put our major global problems
into a socially relevant global framework.
Our world has become too complex, too interdependent,
to answer these questions by simplistic answers.*

These problems call for creative thinking...

– Boyd A. Martin, founder of the Martin Institute and namesake
of the Martin School, at the Institute's inauguration, 1980

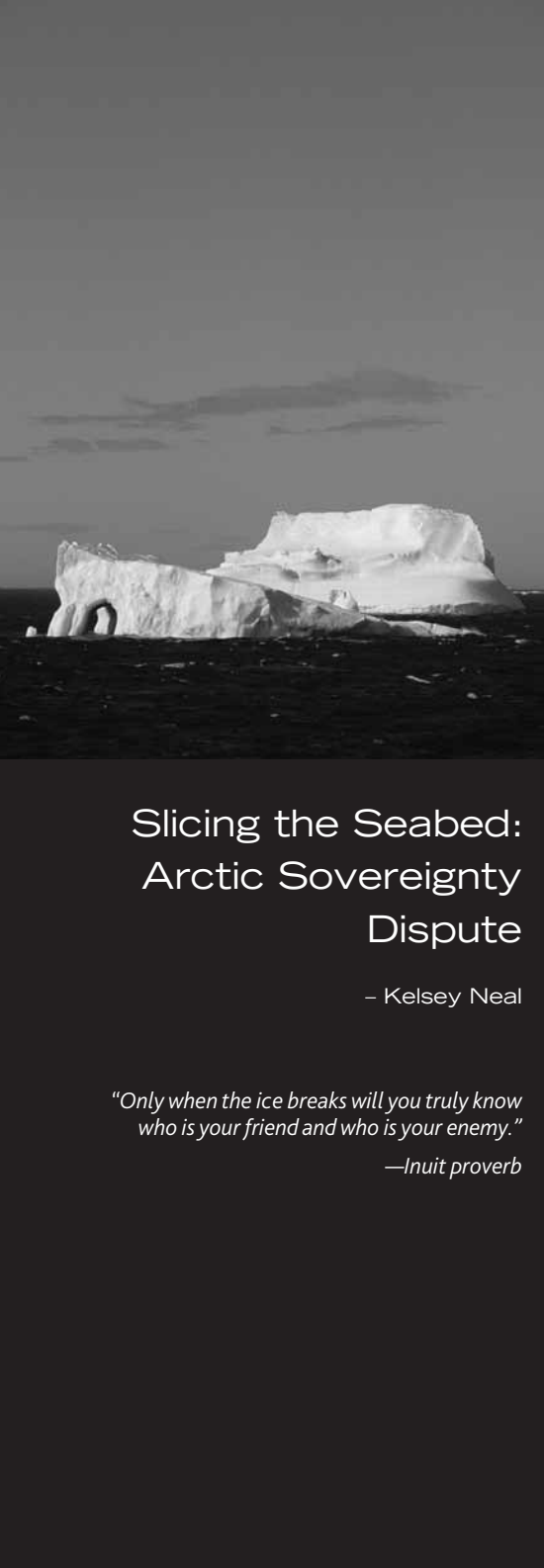


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Slicing the Seabed: Arctic Sovereignty Dispute

– Kelsey Neal

*“Only when the ice breaks will you truly know
who is your friend and who is your enemy.”*

—Inuit proverb

ABSTRACT

This paper deals with the transboundary issues that arise as demand for Arctic resources increase. Global demand for oil and gas has intensified, and the melting ice of the Arctic is exposing desired energy resources. Also, international skirmishes continue to loom over shipping routes and seabed rights. An extensive legal framework concerning Arctic sovereignty rights already exists, but this framework does not adequately address contested continental shelf boundaries, or environmental protection strategies. Also, indigenous peoples' rights and scientific research must be considered in an effective Arctic strategy. Therefore, the recommended solution to Arctic-related disputes incorporates aspects of diplomatic, scientific, sustainable, and indigenous-oriented approaches.

BACKGROUND

The past decade has been marked by increasingly assertive Arctic policies by the five Arctic states: Russia, the United States, Canada, Norway, and Denmark-Greenland. In August 2007, Russia planted a flag on the seabed beneath the North Pole, seemingly claiming the territory in a fashion reminiscent of the fifteenth century. However, such a symbolic claim has no legal basis. The US State Department spokesman, Tom Casey, retorted that he was, “not sure whether they’ve put a metal flag, a rubber flag or a bed sheet on the ocean floor,” but that, “either way, it doesn’t have any legal standing or effect on this claim.”¹ Canada has made very clear their government’s strong presence in the Arctic, announcing plans in 2007 for a fleet of patrol vessels and an Arctic base. The EU even staked a claim, asserting that the strategic dynamics of the region had distinct stability and security implications for all of Europe.² The Russian flag below the North Pole may be purely emblematic, yet it has stirred the Arctic states to vocalize their intent to fully utilize the Arctic’s strategic potential. As Canada’s Prime Minister Stephen Harper stated,

1 Gloria Galloway and Alan Freeman, “Ottawa Assails Russia’s Arctic Ambition,” *Globe and Mail* (Toronto), August 3, 2007

2 Commission of the European Communities (2008). *The European Union and the Arctic Region*.

"We either use it or lose it. And make no mistake, this government intends to use it."

Warming temperatures have caused sea ice to melt far more rapidly than previously predicted. This opens the Arctic to several economic opportunities in the form of resource exploitation, such as mining, fishing, and oil, as well as new shipping routes. A July 2008 report of the US Geological Survey estimated that 90 billion barrels of undiscovered oil exists north of the Arctic Circle.³ The abundance of Arctic resources and the geo-strategic significance of the region explains the recent flurry of diplomatic action. However, this is not to say the political debate and activity is chaotic. A well-established legal framework for settling claims already exists in the UN Convention on the Law of the Sea 1982 (UNCLOS), which has been ratified by all the Arctic states except the US, though they recognize its legitimacy.⁴

Taking effect in 1994, UNCLOS limits a coastal state's territorial sea to twelve nautical miles from the coastline. Still, coastal states are entitled to an Exclusive Economic Zone (EEZ) extending 200 nautical miles from the coastline. States are guaranteed transit rights through international straits and a freedom to the "high seas." Larger claims of the Arctic Sea are assessed on terms established by Article 76, emphasizing that geological data and not flags must drive claims. Nations have ten years following their ratification of the convention to submit data to the Commission on the Limits of the Continental Shelf (CLCS) proving areas of the continental shelf to be a "natural prolongation" of their own land.⁵

UTILIZING EXISTING LEGAL FRAMEWORKS

In May 2008 representatives of Canada, Russia, Denmark, Norway, and the US gathered and issued the Ilulissat Declaration, noting that, "The Law of the Sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea."⁶

The five Arctic states "remain committed to this legal framework and to the orderly settlement of any possible overlapping claims."⁷ The Law of the Sea has served as the one constant in sorting out Arctic sovereignty, but it lacks regulation of issues specific to the Arctic, including boundary disputes. The Commission only handles the technical aspects of submissions. States with overlapping claims may present a joint submission in which they have already reached a boundary resolution, but the CLCS will not resolve political conflicts.

A large section of ocean near Prudhoe Bay is both claimed by Canada and the US. The area is likely to contain oil and to be quite valuable to its owner, but as time passes both countries become less willing to compromise sovereignty claims. Depending on if lines are extended from their land borders, or if they stop at coastal waters and are divided by a principle of equidistance from adjoining landmasses, greatly affects the share of Arctic waters that states will receive. The preferred method for each nation depends on which will allocate them more area.

Other disputes that UNCLOS cannot resolve concern international waterways. In 1969, the US oil tanker *SS Manhattan* sailed from Prudhoe Bay through the Northwest Passage. Canada protested by passing the Arctic Waters Pollution Prevention Act in 1970, which proclaimed the enforcement of environmental shipping laws in waters 100 nautical miles from the islands of the Canadian Arctic Archipelago. Later, in 1985, Canada claimed total sovereignty over the area, designating the passage as an "internal waterway." The US disagrees with

3 Queenie Wong, "Study estimates vast supplies of Arctic oil and gas," *Anchorage Daily News*, 24 July 2008, A6.

4 The White House (2009). Arctic Region Policy. National Security Presidential Directive/NSPD-66, Homeland Security Presidential Directive/HSPD-25. January 9, 2009.

5 United Nations Law of the Sea Convention (UNCLOS), done in Montego Bay, Jamaica, 10 December 1982, in force 16 November 1994.

6 The Ilulissat Declaration, Arctic Ocean Conference, Ilulissat, Greenland, 27-29 May 2008.

7 Ibid.

this position, and in a 2009 presidential directive stated that, "The Northwest Passage is a strait used for international navigation."⁸

UNCLOS is also relatively silent concerning environmental regulation in the Arctic. Article 234 on "Ice Covered Areas" and Article 211(6) on "Pollution from Vessels" provide some recognition for national pollution prevention initiatives (such as Canada's AWPPA). However, aside from these exceptions, UNCLOS has no specific components relating to the management of the Arctic environment. In 1991, the five Arctic states passed the Arctic Environmental Protection Strategy (AEPS), which identifies environmental concerns and plans for their management. Through the Declaration on the Establishment of the Arctic Council in 1996, the Arctic Council absorbed the AEPS, thereby supplementing the existing program by emphasizing the need to engage indigenous peoples in the process of ensuring sustainable development.⁹ The Arctic Council, however, is not sufficient in ensuring the protection of the Arctic environment. It serves as a forum for discussion, but lacks real power, and its recommendations are not legally binding.

FRAMING AN ARCTIC TREATY AROUND THE ANTARCTIC SYSTEM

Some argue that an agreement similar to the Antarctic Treaty could resolve sovereignty disputes and ensure environmental protection in the Arctic. The 1959 Antarctic Treaty has peacefully managed Antarctica since its ratification.¹⁰ Its success is largely due to the "freezing" of territory claims. Nothing in the Treaty "shall be interpreted as a renunciation...of previously asserted rights or claims to territorial sovereignty in Antarctica." Also, no new claims over the territory can be asserted.¹¹ Thus, sovereignty disputes were set aside in order to embrace freedom of scientific research. Over

time, the Antarctic Treaty System has evolved to emphasize the protection and management of the environment.¹²

Based on the ideals of the Antarctic, Arctic states would have to be willing to give up their sovereignty, refrain from resource exploitation, and to internationalize the area in the name of scientific development. Such an agreement may sound noble, but it is highly unlikely. The US has already determined that, "An Arctic Treaty of broad scope— along the lines of the Antarctic Treaty— is not appropriate or necessary."¹³ The differences between the political and geographic situations between the poles are enormous. Antarctica is a large body of land surrounded by sea; the opposite goes for the Arctic. Antarctica also lacks a permanent indigenous population, while Arctic indigenous peoples and their rights must be considered.

Though the ratification of an Arctic Treaty in spirit of the Antarctic Treaty is unlikely, fundamental ideas of the Antarctic Treaty System will be useful in inspiring Arctic solutions. Any new Arctic governance regime should recognize the importance of scientific research, the need to conserve natural resources and to safeguard the Arctic environment.

DRAWING INSPIRATION FROM SVALBARD

The northernmost part of Norway consists of an archipelago known as Svalbard. Sovereignty in Svalbard is uniquely divided between several nations. The Spitsbergen Treaty of 1920 gave Norway authority to set rules regarding the environment, but granted other parties hunting and fishing access, as well as the right to engage in maritime, industrial, mining and commercial operations.¹⁴ Norwegian regulations coupled with equal access rights create a catch-22: If Norway

8 *National Security Presidential Directive 66*, January 2009.

9 Declaration on the Establishment of the Arctic Council, done in Ottawa, 19 September 1996.

10 Antarctic Treaty, done in Washington, 1 December 1959, in force 23 June 1961.

11 Antarctic Treaty, Article IV.

12 See 1991 Protocol on Environmental Protection to the Antarctic Treaty, done in Madrid, 4 October 1991, in force 15 January 1998

13 *National Security Presidential Directive 66*, January 2009.

14 Treaty Concerning the Archipelago of Spitsbergen, 1920, in force 1925.

disapproves of an oil company in Svalbard they can ban all oil companies from working there.

Sovereignty in Svalbard may be in a delicate balance, but it has allowed the area to maintain a uniquely international character, while putting aside sovereignty disputes to achieve governance. Norway regulates economic activity, but taxes collected in Svalbard must be spent there, and military presence is banned. The result is a community of scientists of every nationality working together and an abundance of nature reserves. Svalbard's ability to create a co-existence between sovereignty claims and economic and scientific freedom could inspire an Arctic Treaty. A new Arctic regime could respect sovereignty claims, but ban military action in the Arctic. Any taxes collected from either economic activity in the area or for rights of access could be funneled into nature conservation programs and research. However, economic sovereignty in the Arctic must be more clearly defined to avoid sovereignty disputes that sometimes appear in Svalbard.

AN INDIGENOUS-ORIENTED APPROACH

Dahl argues that the portrayal of the Arctic as an untouched frontier and ignoring it as a homeland "violates fundamental territorial and cultural rights and aspirations of indigenous peoples".¹⁵ Many native communities subsist on Arctic natural resources. Consequently, they have demanded the right to be involved in the policy-making processes that affect change in the Arctic, and they have claimed self-government based on historical rights to the land and its resources. Nuttall defines self-determination as "the right to live a particular way of life, to practice a specific culture or religion, to use their own languages, and the ability to determine the future course of

economic development."¹⁶ Thus, the indigenous of the Arctic are not demanding the creation of a new indigenous state—they merely desire political representation that allows for their involvement in a rapidly changing environment.

Most Arctic states have recognized the claims of indigenous peoples for self-government. The Alaska Native Claims Settlement Act of 1971 compensated natives with land ownership rights and regionally owned corporations and profits from said corporations, but cultural and political rights were not addressed. The Greenland Home Rule (1979) transformed Greenland into a separate nation to be composed of indigenous people, allowing them to remain under the Danish government with significant political representation. The Nunavut Agreement (1992) established a separate territory for the Inuit in Canada. They were granted hunting and fishing rights, and it was established that the Inuit will co-manage resources and environmental protection strategies.¹⁷

A resource management approach that is cooperative between indigenous peoples, scientists and policymakers will make for better-informed environmental and developmental policies. Indigenous peoples must be given formal representation in Arctic policymaking in order to recognize their rights as international conservationists.

RECOMMENDED SOLUTION: A MULTIFACETED APPROACH

Part IX (Articles 122 and 123) of UNCLOS requires states surrounding enclosed or semi-enclosed seas to cooperate in the management and exploitation of the living resources of the sea, to coordinate their work on the protection and preservation of the marine environment, to undertake joint research programs, and to invite other states to cooperate with them in furthering the provisions of the article. These provisions require cooperation

15 Dahl, J. 1993 'Indigenous peoples of the Arctic' in *Arctic Challenges* Report from the Nordic Council's Parliamentary Conference in Reykjavik, 16-17 August 1993.

16 Nuttall, Mark. "Indigenous Peoples, Self-determination and the Arctic Environment." *The Arctic: Environment, People, Policy*. Amsteldijk: Harwood Academic, 2000. 377-410. Print.

17 Nuttall, 2000, p. 379.

between Arctic states, but economic and political pressures will continue to threaten coordinated Arctic policies until a binding regional agreement is adopted. In order to adequately address Arctic-specific issues, existing soft law mechanisms must be converted into legally binding protocols.

A new treaty would respect pre-existing sovereign rights and the already operative frameworks found in UNCLOS, but would establish mechanisms to settle overlapping claims. In situations where conflicting claims impeded resource development, countries could reach a *modus vivendi*. The treaty would address navigational rights within Arctic waters. Just as security concerns trumped US insistence on the international nature of the Northwest Passage, the Arctic states would accede to a regional agreement in order to preserve their national interests.


States must strengthen the Arctic Council, as it serves as the principal forum for Arctic policies. The Council needs reliable funding, either through tax revenues or a payment structure. A permanent secretariat and a firm legal structure would ensure the Council could carry out its policies efficiently and systematically. The Council should consistently meet with the Arctic countries' heads of state. As the chief existing source of information about the Arctic environment, the Arctic Council should be given the means to adopt legally binding resolutions concerning shipping, fishing, and pollution. Existing ships and icebreakers belonging to the Arctic States can serve as the Council's mechanism for compliance.

Allowing the Arctic Council formal powers would sequentially allot indigenous groups decision-making powers. The Aleut International Association (AIA), Arctic Athabaskan Council, Gwich'in Council International, Inuit Circumpolar Council, Raipon, and the Saami Council would all serve

as permanent participants at the Arctic Council. Such cooperation between indigenous groups, governments and scientists would create the most effective and comprehensive conservation policies.

An environmental management plan would be included, largely based on existing conservation plans. The Arctic Council endorsed the Arctic Marine Strategic Plan in 2004—with its goals of pollution prevention, conservation of marine biodiversity, promotion of health for all Arctic inhabitants, and sustainable resource use—would serve as a thorough guideline for any new comprehensive Arctic regime. Council Ministers have already recognized that "...existing and emerging activities in the Arctic warrant a more coordinated and integrated strategic approach to address the challenges of the Arctic coastal and marine environment..."¹⁸

Finally, an Arctic regional agreement must guarantee the freedom of scientific research. This component is essential for monitoring any environmental degradation, and will help to preserve a spirit of international cooperation in the region.

The rapidly changing Arctic climate is creating a need for deepened regional cooperation. Previous attitudes resistant to binding agreements must be abandoned in the face of vast environmental change and resource exploitation opportunities. Combining issues of Arctic governance, indigenous representation, environmental protection and scientific research into one overarching regional agreement will best manage the fragile Arctic environment and ensure strategic regional cooperation. 

18 Arctic Council in Inari, Finland, in 2002

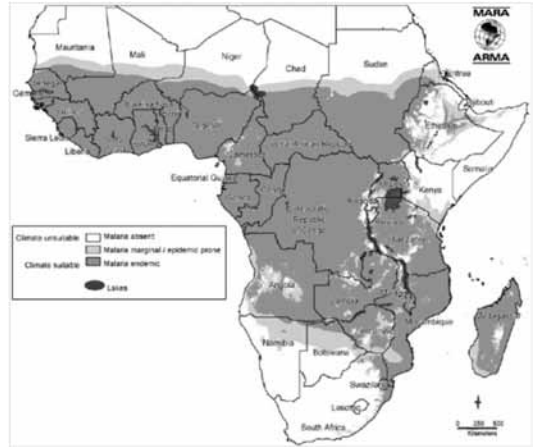
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Malaria Eradication Strategies in Sub-Saharan Africa

– Cari Dighton



MALARIA ERADICATION STRATEGIES IN SUB-SAHARAN AFRICA

“Malaria is a stubborn disease, slow to kill, quick to incapacitate and hard to cure. All through human history, in times of peace as in times of war, it has taken its steady toll of human life. Against this persistent affliction, many of the best minds in public health and in medicine have, during the past few decades, been forging increasingly effective weapons. Not a year passes without some improvement in techniques or tactics against what has been termed the greatest single threat to human health.” – R.B. Fosdick, President of the Rockefeller Foundation, 1946¹

ABSTRACT

The parasitic disease malaria, transferred from person to person by the infected bites of female mosquitos, has laid its claim to the human race for centuries. The disease is a result of poverty and a cause of poverty, and today, this vicious cycle continues to ravage sub-Saharan Africa

¹ Kager, P.A. “Malaria Control: Constraints and Opportunities.” *Tropical and International Health*. (2002). Vol. 7: 1042

at an alarming rate. Successful campaigns have eradicated the disease on many continents, but the countries left with this deadly parasite lie in the tropics, and not only do they struggle with a lack of resources, infrastructure, funds and education, they must also battle mother nature's favorable temperatures. In order to successfully rid the continent of malaria, a three-tiered approach is needed. This approach involves taking measures to control the vectors for this disease at their sources; implementing accurate diagnostic methods; implementing national and international policy development, management and education; soliciting and effectively using funding for control and intervention; and conducting vaccine research and developing a safe, affordable vaccine.

History of Malaria Prevention and Eradication

Today, malaria remains just as resilient and deadly as it has for centuries. The parasitic disease has been around as long and as far back as human life has been documented. Few, if any, civilizations, throughout all of history, have managed to escape it. Archeologists have found that Egyptian mummies show the signs of malaria, Hippocrates is said to have documented the distinct stages of the illness, Alexander the Great is thought to have died of it, leading to the fall of the Greek Empire, and malaria may have stopped the armies of both Attila the Hun and Genghis Khan.²

The modern term for malaria comes from Ancient Rome, where *mal'aria* meant "bad air," as it was thought at the time that the disease was transported through fumes in the air.³ Malaria is a blood parasite transmitted from person to person through the bites of infected female, *Anopheles* mosquitos. In the absence of prompt and effective treatment, malaria often causes death or long-term impairment. According to the World Health Organization (WHO), "Infected African countries account for 85% of malaria cases and 90% of malaria deaths worldwide, and 85% of malaria deaths occur in children under the age

of five."⁴ There are four strains of human malaria: *Plasmodium vivax*, *Plasmodium ovale*, *Plasmodium falciparum*, and *Plasmodium malariae*. The most prevalent strain, *falciparum*, also happens to be the most deadly. Due to its ability to infect vital organs, including the brain, *falciparum* is capable of killing at a quick and effective pace.⁵ Symptoms for the disease usually appear 9 to 14 days after a mosquito successfully bites its victim, and among other things, they can include fever, jaundice, headache, muscle ache, vomiting, joint pain, and other flu-like symptoms, depending on the strain.⁶

Malaria is not only a health problem, but also an economic problem, and as such, the disease slows growth in African economies by almost 2 percent per year. According to the Bill and Melinda Gates Foundation, "In some countries with a heavy malaria burden, the disease may account for as much as 40 percent of public health expenditures, 30 to 50 percent of inpatient admissions, and up to 50 percent of outpatient visits by young children."⁷ The disease costs Africa more than \$12 billion a year to treat, but according to the 2000 Abuja Declaration, it could be controlled and prevented for a fraction of that amount. As stated in the declaration, "A poor family living in a malaria affected area may spend up to 25 percent or more of its annual income on prevention and treatment."⁸

WHO launched the Global Malaria Eradication Programme in 1955 with the goal of eliminating malaria within 10 years. As Michael Finkel of National Geographic states, "More than a billion dollars was spent, thousands of tons of dichloro-diphenyl-trichloroethane (DDT) were applied

2 Finkel, Micheal. "Malaria: Stopping a Global Killer." National Geographic Magazine. (2007). 6 <http://ngm.nationalgeographic.com/2007/07/malaria/finkel-text>

3 Ibid.

4 "Ten Facts on Malaria in Africa." World Health Organization Regional Office for Africa. (2009). http://www.afro.who.int/index.php?option=com_content&view=article&id=2287:10-facts-on-malaria-in-africa&catid=1910&Itemid=2691

5 "About Malaria." Malaria No More. (2011). <http://www.malarianomore.org/malaria>

6 Ibid.

7 "Malaria Strategy Overview." Bill and Melinda Gates Foundation. (2009). <http://www.gatesfoundation.org/global-health/Documents/malaria-strategy.pdf>

8 The Abuja Declaration: An Extract from the African Summit of Roll Back Malaria, Abuja, 25 April 2000." Roll Back Malaria Partnership Secretariat, World Health Organization. (2003). http://www.rollbackmalaria.org/docs/abuja_declaration.pdf

each year to control mosquitoes, and chloroquine was extensively distributed. It was probably the most elaborate international health initiative ever undertaken.⁹ While this initiative was successful in eradicating the disease from the United States, Europe and much of the West, malaria persisted, and continues to persist, in the tropical regions of the world. Financing dropped sharply in the mid-60s and the global program was abandoned soon after. Finkel goes on to state, "In many nations, this coincided with a decrease in foreign aid, with political instability and burgeoning poverty, and with overburdened public health services."¹⁰

The malaria "situation" has worsened markedly in the past decade with the spread of malaria parasites that are resistant to first-line drugs such as chloroquine. "The breakdown of basic public health systems in the face of unrelenting poverty, the HIV/AIDS pandemic, and civil conflict"¹¹ have also contributed to malaria's rising prevalence in sub-Saharan Africa. While immunity in humans is developed over years of exposure, there are still approximately 500 million cases of malaria in the world, resulting in more than 1 million deaths per year.¹²

PARALLEL CASE STUDY

Guinea-worm disease, also known as dracunculiasis, is "transmitted exclusively by drinking stagnant water contaminated with tiny water fleas that carry infective guinea-worm larvae."¹³ In 1986, the disease aggrieved an estimated 3.5 million people a year in 20 countries in Africa and Asia. Today, Guinea worm cases have been reduced by more than 99 percent.¹⁴

The worm harbors itself in the only known host, the

9 Finkel, 2007, page 7.

10 Ibid.

11 Sachs, Jeffrey D. "Achieving the Millennium Development Goals: The Case of Malaria." *The New England Journal of Medicine*. (2005). Vol. 352

12 "Ten Facts on Malaria in Africa."

13 "Dracunculiasis Eradication." World Health Organization. (2011). <http://www.who.int/dracunculiasis/en/>

14 "Guinea Worm Disease: The Road to Eradication, Countdown to Zero." The Carter Center. (2011). http://www.cartercenter.org/health/guinea_worm/mini_site/facts.html

human body. Inside the body, the worms can grow up to one meter in length and eventually force their way out of the body through the lower leg and foot of their host in an excruciating drawn-out process. To soothe the burning pain wrought by this process, victims of Guinea Worm often submerge the infected area in water. Once in the water, the worm releases thousands of larvae, contaminating the water and bringing the infective cycle full circle.¹⁵

The success of the guinea-worm eradication campaign is due to several elements, including the "installation of safe water supplies, filtration of drinking water, intensive surveillance and control through early detection and containment with the help of trained volunteers, and treatment of ponds with pesticides and disease prevention education."¹⁶ Though Guinea worm disease and malaria are different on many levels and the guinea worm epidemic played out on a much smaller stage, in many ways, the guinea worm eradication strategy can stand as the basis for an expanded, effective malaria eradication strategy.

VECTOR CONTROL METHODS

In the past, vector control methods have been successful as an element in the broader fight against malaria. A scaled-up control effort is needed to successfully eradicate the disease. According to an annual American Association for the Advancement of Science report, vector control is defined as the application of targeted site-specific activities that are cost-effective with the idea behind vector control being to reduce levels of mortality and morbidity by reducing transmission of the disease whether through humans or mosquitoes.¹⁷ First, according to Jeffery Sachs of the *New England Journal of Medicine*, it is essential that such an effort include the free distribution of bed nets and effective medicines to impoverished rural Africans who cannot afford to buy the nets even at highly subsidized prices. Insecticide-impregnated bed nets

15 "Dracunculiasis Eradication."

16 Ibid.

17 Toure, Yeya. "Malaria Vector Control in Africa: Strategies and Challenges." Report from AAAS Annual Meeting. (2001). <http://www.aaas.org/international/africa/malaria/toure.html>

have proven "highly effective in reducing morbidity and mortality, especially when an entire village uses the nets and thereby reaps the benefit of mass community effects."¹⁸

Indoor residual house spraying using DDT and other chemicals is another control method that has proven effective in many areas of the world, if carried out consistently and thoroughly in predominantly high-risk, urban areas. According to a progress report compiled by the Bill and Melinda Gates Foundation, "Approximately 120 million people were covered by indoor residual spraying (IRS) of houses in 2006. Sao Tome and Principe, South Africa, and Swaziland lead the African region with coverage of nearly 100 percent of their at-risk populations."¹⁹

IMPLEMENTATION OF ACCURATE DIAGNOSTIC METHODS

The implementation of accurate diagnostic methods is an essential element in the quest to eradicate malaria. Malaria symptoms overlap with those of many other illnesses in Africa, and misdiagnosing other illnesses as surefire cases of malaria has created a wide-ranging problem with resistance to malaria treatment drugs. According to Brian Greenwood of the *Journal of Clinical Investigation*, "Clinical diagnosis of malaria is difficult, and misdiagnosis is frequent when laboratory confirmation is not available or is disregarded by doctors anxious to identify a treatable cause of illness. While microscopy remains an important tool in diagnosis, clinics that lack microscopy can now properly diagnose the disease using a rapid diagnostic test."²⁰

Once diagnosed, to adequately treat malaria, drugs must be "fast-acting, highly potent against asexual blood stage infections, minimally toxic,

and affordable to residents of endemic regions."²¹ Current artemisinin-based combination therapies (ACTs), which have replaced chloroquine in the last several decades, are highly effective but also expensive due to the high, unstable cost of artemisinin. Malaria patients often opt for a cheaper version of ACTs, or poor-quality counterfeit drugs, which increasingly foster resistance.²²

To improve the quality of diagnosis and treatment, the continuance of training and supervision must be made a requirement. As is outlined in the Abuja Declaration, providing countries with functioning laboratory facilities, appropriate equipment and essential drugs supplies at referral centers is also fundamental.²³

NATIONAL AND INTERNATIONAL POLICY DEVELOPMENT, MANAGEMENT AND EDUCATION

National policy development and national malaria planning strategies must not only be set in place, but also implemented. "Integration of malaria control with other primary health care and development interventions"²⁴ is fundamental. Heads of state in all affected African countries must be the principle actors in policy development, as they are the most familiar with the problems and needs of their own citizens. "Universal access to ACTs to prevent drug resistance; removal of taxes and tariffs on essential anti-malaria products; increased local production of high-quality, safe and effective anti-malaria interventions; and the scaling up indoor residual spraying and long-lasting insecticide-treated nets"²⁵ are all vital components of a fresh, effective strategy.

"Malaria tends to flourish in situations where there are weak health systems and an inadequate basic

18 Sachs, 2005.

19 "Progress Against Malaria: Winning the Fight Against a Deadly Disease." Bill and Melinda Gates Foundation. (2009). <http://www.gatesfoundation.org/livingproofproject/Documents/progress-against-malaria.pdf>

20 Greenwood, Brian M. "Malaria: Progress, Perils and Prospects for Eradication." *Journal of Clinical Investigation*. (2008). Vol. 118, Issue 4: 1259

21 Greenwood, 2008, 1270.

22 "Malaria Strategy Overview."

23 "The Abuja Declaration."

24 "WHO Policies and Strategies." World Health Organization Regional Office for Africa. http://www.afro.who.int/index.php?option=com_content&view=article&id=717&Itemid=1408

25 Brophy, Ben. "We Must Do Better Against Malaria." Malaria Policy Center. (2010). <http://www.malariapolicycenter.org/blog/?p=2705>

infrastructure,²⁶ particularly in the water supply and sanitation sectors, which characterize the living conditions of most poor populations in Africa. As such, according to the African Development Bank, "malaria, human development and poverty are thus closely related."²⁷

As is stated in the Abuja Declaration, improved managerial capacities of ministries of health, ministries of water supply and sanitation and other government sectors will help ensure the existence of health policies and the priority for integrated programs for malaria management, prevention and education. Strengthened partnerships with NGOs and other organizations in the private sector will also aid in the quest for provision of universal coverage and access.²⁸

FUNDING FOR CONTROL AND INTERVENTION

Throughout the first decade of the new millennium, as the number of malaria cases in the world have steadily increased, so has funding for the fight to contest the disease. "Disbursements reached their highest ever levels in 2009 at US \$1.5 billion, but commitments for malaria control stagnated in 2010, at US \$1.8 billion."²⁹ While on paper this looks to be a substantial amount, according to the WHO World Malaria Report at the close of 2010, the estimated amount of funding needed to obtain the required resources falls somewhere in the realm of US \$6 billion.

Lesser-populated countries tend to receive much more funding per capita than do larger countries. The maintenance of global visibility of the disease in all regions may help this matter, because while larger, more densely populated at-risk countries may receive an equal or greater amount of funding compared to smaller, at-risk countries, they still

must distribute those funds between vast amounts of people.³⁰

Supporting and showcasing models of malaria-control success to other malaria-endemic countries as well as to donors is an almost foolproof way to increase investment in the journey to malaria eradication.³¹ Funding is not only needed for direct support of malaria intervention, but also to improve the conditions on which malaria thrives in underprivileged countries. As Sachs suggests, the key to breaking the poverty trap is enabling the poorest countries to put basic infrastructure and human capital in place. This means increasing donor funding to help fight disease, establishing a network of primary health care posts, improving and extending schooling, and building the networks of roads, power, and telecommunications "on which a modern economy depends."³²

VACCINE RESEARCH AND DEVELOPMENT

If developed, a vaccine for malaria could save the lives and reduce the suffering of millions of people across sub-Saharan Africa, especially those of the most hard-hit demographic: pregnant women and children. Ideally, as Finkel suggests, a malaria vaccine would provide lifelong protection, because a "lull in malaria transmission could cause many people to lose any immunity they have built up against the disease—even adults, immunologically speaking, could revert to infant status—rendering it more devastating if it returned."³³ It is for this reason that a partial victory over malaria could be worse than total failure.

Malaria is no common pest, and it is has proven particularly difficult for scientists to gain a grasp of what is needed to develop a far-reaching and affordable vaccine. For one thing, malaria is an intricate organism to understand. "Its complex parasitic life cycle, which starts in the salivary glands of mosquitoes, moves to the human bloodstream, shifts to the human liver for a sort of adolescence,

26 "Bank Group Malaria Control Strategy." African Development Bank, Operations Policies and Review Department. (2002).

27 Ibid.

28 "The Abuja Declaration."

29 "World Malaria Report 2010." World Health Organization. (2010). http://www.who.int/malaria/world_malaria_report_2010/malaria2010_summary_keypoints_en.pdf

30 "Malaria Strategy Overview."

31 Ibid.

32 Sachs, 2005.

33 Finkel, 2007, page 12.

comes back to the human bloodstream, and finally moves back into the body of a new mosquito, was not well understood until recently,³⁴ according to Mary Carmichael of Scientific American. There are multiple malaria vaccine-related projects currently under way, but most of them are in the early stages. The development of a successful vaccine could have an enormous impact, if distribution of the serum is widespread. One vaccine in the works, called RTS,S, is under the supervision and funding of GlaxoSmithKline. Also backed by the Bill and Melinda Gates Foundation, the development of this vaccine aims to provide life-long vaccine to children under the age of 5, by 2015. But, many possible hurdles exist. "All told, developing RTS,S and getting it to market will end up costing hundreds of millions of dollars, so it could be too pricey for practical use in the developing world."³⁵

According to Carmichael, WHO and the United Nations Children's Fund (UNICEF) already immunize African infants against other diseases, such as polio and diphtheria, so ideally, adding one more vaccine to the mix would be simple. When children are vaccinated at a young age, approximately 3 months old, malaria could be integrated into the delivery system, and "piggyback on the fact that they're already giving other vaccines."³⁶ Attaching malaria vaccine delivery to this system would mean that the cost of dispensing the injections would be fairly low, because it would be possible to skip the process of establishing new distribution networks.³⁷

POLICY RECOMMENDATION: A THREE-TIERED APPROACH

Established in 1998 by WHO, UNICEF, the United Nations Development Programme and the World Bank, the Roll Back Malaria Partnership (RBM) was a respectable and endeavoring framework provided to the entire globe. Originally set with the goal to expire in 2010, this multilateral partnership failed to substantially eradicate the disease in any endemic country. This failure was not for lack of trying, but

the world did not work together as a whole. To enable a fresh look at this age-old struggle, efforts must be made from the ground up, from the top down, and on the local, national and international levels, simultaneously.

Thus, a three-tiered approach is the best way to ensure that eradication efforts are successful. Ideally, all five aforementioned methods should add up to equal the solution, but when the necessary number of funds fall short year after year, the best way to go about the problem is by looking at three tiers, and deciding which level is feasible for which group, organization, agency, etc. to start from. This approach provides a target or entry point for anyone, letting them choose on which scale they are capable of targeting their efforts, depending on the level of funds and the amount of manpower they have available to contribute. There is only one ultimate goal, and if eradication was possible in many regions of the world already, it is possible anywhere that support and cooperation come together.

LEVEL 1: CITY/TOWN/VILLAGE

Vector Control Methods

Implementation of Accurate Diagnostic Methods

Universal and repeated use of microscopy and rapid diagnostic tests, as well as medicines such as ACTs, will allow for effective case management. With the correct and strategic use of these tools, malaria morbidity and mortality can, and will, be substantially reduced. The assurance that poor populations can afford safe, non-counterfeit drugs will also reduce the risk of parasite resistance to medicines. Bed net distribution and indoor residual spraying in endemic areas are both control methods that can easily be played out at the community level.

34 Carmichael, Mary. "Halting the World's Most Lethal Parasite." Scientific American. (2010). Vol. 303, Issue 5

35 Ibid.

36 Ibid.

37 Ibid.

LEVEL 2: SOVEREIGN STATE

National Policy Development, Management and Education

Vector Control Methods

Implementation of Accurate Diagnostic Methods

In line with the Abuja Declaration, strengthening health information systems to ensure reliable reporting by the media, by health care volunteers and by health care professionals is essential to ensure that malaria cases and causes are integrated into a disease surveillance system in which statistics and research results can be shared by all countries of a malaria-ridden region.


Forming educational partnerships with schools and in the economic sector among businesses in the workplace is also essential. If knowledge is not widespread, it is brought to its knees and rendered almost useless.

LEVEL 3: INTERNATIONAL COMMUNITY

Funding for Control and Intervention

Vaccine Research and Development

International Policy Development, Management and Education

The establishment of an effective system to alert “malaria control authorities” and policy makers in other relevant sectors will positively impact the malaria situation through awareness, funding and support. As was laid out in the Abuja Declaration, the continued provision of educational opportunities for health services personnel in communities around the continent, in order to enable them to keep up-to-date and work proactively with national and international policies and guidelines on malaria control, is both basic, and essential. 

ADDITIONAL WORKS CONSULTED

- "Africa Malaria Elimination Campaign - Fight Malaria: Africa Goes From Control to Elimination by 2010." African Union, 3rd Session of the UA Conference of Ministers of Health. (2007)
- Enayati, A, and J. Hemingway. "Malaria Management: Past, Present, and Future." Annual Review of Entomology. (2010). Vol. 55: 569-91
- Ferguson, Heather M., et al. "Ecology: A Prerequisite for Malaria Eliminations and Eradication." PLoS Medicine. (2010). Vol. 7, Issue 8: 1-7
- Garg, Kailash C., et al. "Bibliometrics of Global Malaria Vaccine Research." Health Information and Libraries Journal: National Institute of Science, Technology and Development Studies. (2009). Vol. 26: 22-31.
- LaMar, James E. "Navy Medical Department: Pocket Guide to Malaria Prevention and Control." Navy Environmental Health Center Bureau of Medicine and Surgery, Technical Manual. (2000).
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Counterfeiting and Piracy in Latin America

Comprehensive
Policy Perspectives

– Austin Becker

ABSTRACT

Counterfeiting and piracy of intellectual property is a characteristic component of Latin American markets, business culture, and consumer culture yet counterfeiting and piracy severely impede overall economic performance and societal welfare in the region. This paper investigates the roots of counterfeiting and piracy – which generally include inadequate law enforcement, state institutions and intellectual property rights legislation – and the greatest barriers to addressing the root causes of counterfeiting and piracy. A lack of monetary resources is a large part of the problem, fortunately there are numerous policy options and strategies that Latin American states can adopt in order to address the problem in a cost effective or more intensive manner, depending on each state's resources and unique legal, economic, and political resources.

Addressing the persistent counterfeiting and piracy of intellectual property (IP) in Latin America is an increasingly critical component of enhanced economic performance in the region, which receives higher foreign direct investment (FDI) as a percentage of gross domestic product (GDP) than any other region in the world¹ and where particular countries have seen annual percentage GDP growth rates on par with those of China in the past decade.² Private sector growth is the key to this economic performance, yet counterfeiting severely encumbers it. For example, Latin American firms regularly miss out on potential income from licensing fees due to intellectual property theft. At US-based IBM, as much as \$200 billion of revenue each year comes from software licensing fees alone.³ Counterfeiting and piracy also restrict the payouts of research and development in the region because legitimate producers only partially recover costs due to persistent competition

1 *Global Economic Prospects: Technology Diffusion in the Developing World*. (Washington, DC: World Bank, 2008) 115.

2 "GDP Growth (Annual %)" *World Bank*. Web. 05, May 2011. <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?cid=GPD_30>.

3 David Lea. "The Expansion and Restructuring of Intellectual Property and Its Implications for the Developing World" *Ethical Theory & Moral Practice* 11:1 (2008), 7.

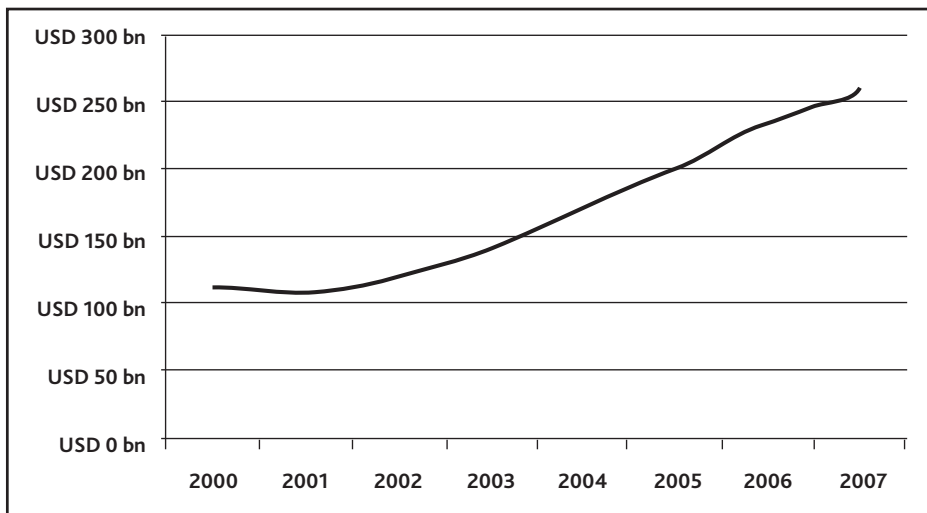
from counterfeiters. Pirated Latin American pharmaceuticals easily enter the market in as little as two weeks after originals ones are released.⁴

The magnitude of counterfeit production in the region, and in the world for that matter, is unknown, as no reliable methodology exists to calculate it. However, authoritative sources estimate outstanding amounts. The International Chamber of Commerce places the annual cost of counterfeiting between 5% and 7% percent of global trade.⁵ Scholars and private sector employees agree that counterfeiting and piracy is detrimental to economies and society because it restricts business growth, employment, and gross domestic product (GDP).^{6,7} Consumer health and safety are also a prime concern. Commonly produced counterfeit goods include medicine, baby formula, cement and even spare commercial aircraft parts.⁸

Some scholars have noted that counterfeiting can have a beneficial effect on the overall economy of a country because it provides affordable goods and employment in low-income states.⁹ Yet the main body of evidence suggests otherwise. Counterfeit production operations work underground to avoid detection, preventing them from taking advantage of economies of scale or luring investors to expand.¹⁰ In Peru, 15% of gross manufacturing income in the extralegal sector is paid out in bribes, making illegal business even less profitable.¹¹

Fortunately, Latin American governments can take advantage of a range of policy option and strategies to advance their economies through enhanced IPR enforcement, specialized IP initiatives and agencies, and by taking advantage of the opportunities provided by relevant inter-governmental agencies.

Figure 1: Evolution of trade in counterfeit and pirated products (upper limit)



4 “Enforcing Your Rights in Latin America” *Managing Intellectual Property*. (Dec. 2006/Jan. 2007), 68.

5 *The Economic Impact of Counterfeiting and Piracy*. (Paris: OECD, 2008), 71.

6 “Enforcing Your Rights in Latin America”, 69.

7 *The Economic Impact of Counterfeiting and Piracy*. 19.

8 “Havoscope Black Market Product Ranking” *Havoscope*. Web. 05 May 2011. <<http://www.havoscope.com/products/ranking/>>

9 Alberto Chong, José Galdo and Jaime Saavedra. “Informality and productivity in the labor market in Peru” *Journal of Economic Policy Reform* 11:4 (New York: Inter-American Development Bank, 2008), 229-245.

10 Carlos Correa. *Intellectual Property rights, the WTO, and Developing Countries: the TRIPS Agreement and Policy Options*. (London and New York: Zed Books Ltd, 2000), 155.

11 *Ibid*.

COMPETITIVE AND ECONOMIC ENVIRONMENT CONSIDERATIONS

In addition to approaching international IPR agreements differently, Latin American countries must also consider the costs and benefits associated with reforming their IPR regimes with respect to their unique economic environments. As economies progress from low-income to mid-income economies, the propensity of additional IPR laws and IPR enforcement (laws and enforcement being unique from one another, i.e. more laws do not necessarily correlate with more enforcement depending on actual enforcement capacity) have more or less impact.^{12,13} For example, low-income economies would not benefit from increased IPR enforcement due to a lack of enforcement capacity due to limited resources, but would benefit from increased IPR laws designed to win favor from foreign trade partners. The Dominican Republic is one such country that has recently benefited from increased integration with US trade regulations, including IPR norms.¹⁴ However, most Latin American countries have achieved mid-income economies and so increased IPR enforcement will have a greater impact than IPR law reform.¹⁵ The majority of Latin America is prepared to focus more on IPR enforcement rather than focusing on legal frameworks.

ADVANTAGES OF MULTILATERAL OVER BILATERAL AGREEMENT

By necessity, most Latin American countries must work within the framework of the World Trade Organization (WTO) and the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) to gain trade access to foreign markets. The WTO and its accompanying TRIPS are seen as overly-

restrictive, often for good reasons,¹⁶ but when compared to alternative bilateral trade agreements, such as those offered by the USA and EU, they offer greater freedom with regard to national policy choices.^{17,18} Bilateral agreement regulations typically exceed multilateral trade agreement regulations and severely diminish developing countries' future market maneuverability.¹⁹ However, the WTO and TRIPS leave significant autonomy for IPR policy adjustments to fit domestic needs.^{20,21} Under WTO regulations countries can customize their laws and grant patents that are more narrow in scope than those of trade partners to allow wide-ranging research exceptions to IP laws for domestic innovators.²² Compulsory licensing, licenses issued without consent of the license holder in cases of duress, allowed under TRIPS is another example. China often considers a foreign patent-holder's refusal to deal satisfactory grounds for issuing a compulsory license.²³ Working within the constraints of the TRIPS agreement offers the greatest advantage for most Latin American countries; deep integration under bilateral agreements should be deferred.

JUDICIAL TRAINING AND COURT REFORM

Strong IPR regimes do not always correlate with low counterfeiting and piracy rates or even with higher measures of welfare.²⁴ China, Brazil, and

12 Juan Ginarte and Walter Park "Determinants of Intellectual Property Rights: a Cross-National Study" *Research Policy* 26 (1997), 9.

13 Keith Maskus, *Intellectual Property Rights in the Global Economy* (Washington, DC: Institute for International Economics, 2000), 154.

14 *Technology Diffusion in the Developing World*, 178.

15 Maskus (2000), 152-54.

16 TRIPS and WTO trade regulations often have negative economic consequences in developing countries: see Correa (2000). However, many scholars, including Correa, note that TRIPS leaves significant and often under-utilized room for beneficial economic policy customization. See Maskus (2000) and Shadlen (2005).

17 Kenneth Shadlen, "Exchanging Development for Market Access?" *Review of International Political Economy*, 12:5 (2005), 755.

18 *Ibid.*, 751.

19 *The Economic Impact of Counterfeiting and Piracy*, 214.

20 Shadlen, 755.

21 Carsten Fink and Keith E. Maskus, editors. *Intellectual Property and Development: Lessons from Recent Economic Research*. (Washington, DC: The International Bank for Reconstruction and Development and The World Bank, 2005), 13.

22 Shadlen, 761-762

23 *Ibid.*, 762.

24 *The Economic Impact of Counterfeiting and Piracy*, 136.

Peru all possess relatively strong IPR regimes, yet they still host massive counterfeit production operations.^{25, 26} Latin American countries that experience this dichotomy can reduce counterfeit activity by targeting its drivers of production. The OECD finds that weak legal frameworks drive the supply of illicit production.²⁷ Latin American courts often process these cases poorly because they lack experience and understanding in this legal realm. The results are slow and costly procedures that reduce the incentive for firms to bring IP offenses to court.²⁸ Latin American countries can bolster their court systems by introducing specialized courts and investing more in judicial education. Brazil has done this by introducing two IP expert panels into its Federal Court of Appeals.²⁹ Chinese Taipei has created a training academy for IP professionals including judges, prosecutors, and customs agents.³⁰ Thanks to these strategies both countries have improved their competitive business environments by strengthening their legal frameworks.

GENERAL PUBLIC SECTOR EDUCATION

Improving judicial capacity to handle IP offenses will have the greatest effect on competitive environments only if the overall social understanding and aversion to counterfeiting increases. Judges often consider IP offenses "victimless" crimes and give weak sentences.³¹ Yet there are countless victims of IP crime and they are not limited to big businesses. Decreased employment quality, increased crime, and increased threats to consumer health and safety are all identified symptoms of counterfeiting.³² Interpol, the US Customs Agency, and the World Intellectual Property Organization (WIPO) are among many

bodies that have worked with public and private employees throughout the world to provide IP training. Last year Interpol conducted a training seminar in Hong Kong for police and customs agents to address the international dimensions of intellectual property.³³ The US Customs Agency already operates the Americas Counter Smuggling Initiative in Latin America to counter smuggling by providing training to customs officials.³⁴ Indian courts have recently handed down several landmark rulings in trademark and patent cases by including hereto unheard of punitive damages in addition to customary yet weaker compensatory damages.³⁵ Latin America can achieve a stricter culture of law regarding IP as India has done by taking advantage of the aforementioned training resources

CONSUMER EDUCATION

Latin American countries can also address demand drivers of counterfeit goods. This will be a key strategy in countries that have already carried out a considerable IPR strengthening reforms but have not achieved desirable reductions in counterfeit production. Historically, awareness campaigns have seen marginal success, but if coupled with a greater emphasis on enforcement, they are likely to generate positive effects similar to those experienced to some degree in countries like Taiwan and Brazil. The Taiwanese and Brazilian governments both sponsor ad campaigns that have been cited as effective measures.³⁶

The Creative Commons (CC) license system presents another way to promote respect for IPRs. A relatively new approach to IP that emerged in the United States, the CC license makes more moderate claims to copyrights than traditional ones, granting exclusive rights to profits derived from a copyright

25 Ibid.

26 Clarisa Long, editor. *Intellectual Property Rights in Emerging Markets* (Washington DC: The AEI Press, 2000), 109.

27 *The Economic Impact of Counterfeiting and Piracy*. 40.

28 *Managing Intellectual Property*. 67-68.

29 *The Economic Impact of Counterfeiting and Piracy*. 217.

30 Ibid., 189.

31 *Managing Intellectual Property*. 67.

32 *The Economic Impact of Counterfeiting*.

33 "INTERPOL and Hong Kong Customs training course against intellectual property crime focuses on international dimension" *Interpol News*. Web. 15 March 2011. <<http://www.interpol.int/public/ICPO/PressReleases/PR2010/News20101026.asp>>

34 Stephen E. Flynn. "Beyond Border Control" *Foreign Affairs* 79:6 (2000), 66.

35 *Economic Impact of Counterfeiting and Piracy*. 234.

36 *The Economic Impact of Counterfeiting and Piracy*. 252.

but exceptional freedom for personal use.³⁷ Dr. Lawrence Lessig, a founder of the CC license, notes that in the Middle East the modest approach of this license seems to encourage respect for copyrights in the region where IP is not widely respected.³⁸

Awareness campaigns can be costly, but have displayed potential for increased success. Latin American governments can promote the use of the CC license simply by instructing their patent offices to recommend it to ideal copyright applicants.

BILATERAL INTELLIGENCE AND OPERATIONS

Bi-lateral customs operations and intelligence cooperatives between countries in Latin America have great potential to improve detections of counterfeit goods at borders and target known producers of those goods. This is because trans-border shipping is often the only occasion authorities have to systematically gather information on counterfeit and pirated goods.³⁹ In 2005, Brazil and Paraguay signed a Memorandum of Understanding to formalize bilateral intelligence sharing on piracy and improve customs operations at their shared border.⁴⁰ In subsequent bilateral seizure operations Brazil and Paraguay seized tens of thousands of pirated CDs and DVDs, mostly of Brazilian musicians, and hundreds of CD burners.⁴¹ Interpol has conducted a series of highly successful cooperative seizures in well-known Latin American markets as part of their Operation Jupiter, a collaborative project between Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay, which has confiscated over \$200 million worth of goods including illegal drugs.⁴² Applying better strategy

border customs offices to better focus intelligence efforts.

SPECIALIZED IP ORGANS

Much of Latin America is eager to increase IPR protection in order to sustain domestically owned IP. To effectively increase protection institutions such as specialized IP courts, IP training for customs and police officers, and even new legislation (e.g., legislation to introduce currently non-existent protection for IP like computer circuits) must be introduced to adequately equip most existing Latin American IP infrastructures. However, the greatest barrier to this is the political task of introducing IP-protecting institutions into governmental systems that have never possessed them.⁴³ Peru has piloted an effective alternative to new institutions with its National Institute for the Defense of Competition and for the Protection of Intellectual Property (INDECOPI). This specialized public organ fills in a gap left by judicial authorities by helping local producers protect their trademarked geographical indicators and authors their patents.⁴⁴ For example, Peruvian producers of a unique tropical fruit, the cherimoya, living in the Cajamarca region received help from INDECOPI to combine resources to apply for a trademark and subsequently prosecute violators of that trademark in court.^{45,46} A government organ like INDECOPI cannot fully replace an IP competent judicial system, but it is a model that can be used as long as gaps remain in institutional coverage.

37 "About" *Creative Commons*. Web. 28 April 2011. <<http://creativecommons.org/about>>

38 WIPO Magazine. 1:2011 (Geneva: WIPO, 2011). 4.

39 *The Economic Impact of Counterfeiting and Piracy*. 172.

40 *Ibid.*, 218.

41 "Latin America: Authorities in Brazil and Paraguay mount anti-piracy crackdown" *International Federation of the Phonographic Industry*. Web. 15 March 2011. <http://www.ifpi.org/content/section_news/20070309.html>

42 "INTERPOL-led operation in Americas nets fakes worth 200 million dollars" *INTERPOL Media Releases*. Web. 26 March 2011. <<http://www.interpol.int/public/icpo/pressreleases/pr2011/pr008.asp>>

43 A World Bank IPR development project in Mexico between 1992-96 sought increase Mexican firm competitiveness by decreasing the time required to process patent applications. While the total cost of the project was less than anticipated, \$32.1 million, a Bank review of the project noted that it failed to increase the number of patents awarded to Mexican nationals.

44 "INDECOPI (Peru): The Promotion of Marks and Other Distinctive Signs to Compete in the Market" *Small and Medium-Sized Enterprises*. Web. 13 March 2011. <http://www.wipo.int/sme/en/best_practices/peru.htm>

45 Infringing a trademarked geographical indicator is as easy as placing a false sticker on a piece of fruit.

46 "INDECOPI (Peru). The Promotion of Marks".

OFFSET IP ADMINISTRATION COSTS

IPR regimes are a combination of various state institutions: the judicial system, customs agency, police force, and patent office. Improving IPR protection is a matter of improving each part of this system; however, initial set-up costs and annual recurring costs will be high. Brazil's patent office, for example – one of Latin America's most advanced in terms of IPR protection – can only afford to employ roughly half the patent examiners that the US or UK offices do.⁴⁷ This severely limits the speed at which Brazilian firms can acquire and enforce patents. But there are alternative avenues that Latin American countries can use to increase their application turnover rate. The Patent Cooperation Treaty (PCT), managed by the World Intellectual Property Organization (WIPO), handles patent applications on an international level by utilizing examination authorities in several industrialized countries.⁴⁸ Cooperation through regional patent offices could also reduce the cost of patenting.⁴⁹ Latin American patent offices can direct domestic patent applicants to the PCT and subsidize a portion of PCT application fees to unload some of their applications without having to invest in additional patent capacity at home.

THE WORLD INTELLECTUAL PROPERTY ORGANIZATION'S SUPPORT SYSTEMS

WIPO offers assistance in regards to patent drafting, licensing, IP institutional policy and business strategy through its advisory capacity in addition to easy and access and potentially reduced costs to its various systems of obtaining international IPR protection.⁵⁰ Individuals and firms from developing countries can receive a discount of up to 90% on their application fees

to WIPO international IP registration.⁵¹ Latin America has yet to take full advantage of some of these WIPO services. For example, WIPO provides expert legislative advice concerning policy options allowed under international trade laws. Various scholars agree that there is still much room for policy adjustment among WTO members bound by seemingly restrictive trade policies.⁵² WIPO has also had success with new patents issued to Latin American university researcher centers. The University of Campinas in Brazil created its own technology transfer office with the help of WIPO in order to patent and license marketable discoveries such as the university's Fentox, a reagent used to destroy environmental contaminants.⁵³ Latin American countries can take a proactive approach to consulting with WIPO on a more regular basis to enhance their national productivity and economic output by increasing protection of domestic IP assets.

PRIVATE INDUSTRY INITIATIVES

Private industry – particularly US industry because of its proximity and subsequent close economic ties to Latin America –⁵⁴ plays a central role in combating counterfeiting and piracy. Initiatives such as the US-based Business Software Alliance (BSA) have been coordinating industry efforts to improve IP policy and enforcement internationally in order to improve business environments in foreign markets. In 2009, the initiative sent board members to Brazil to meet with IT-related government ministries, IT companies, and the University of Sao Paulo IT and its researchers to support and highlight effective IP policies.⁵⁵ BSA

51 WIPO An Overview: 2010 Edition” (Switzerland: WIPO, 2010), 24.

52 Shadlen, Maskus, Correa. Even Carlos Correa, a respected WTO and TRIPS critic, admit this.

53 “WIPO An Overview,” 33.

54 The World Bank found that geographic proximity correlates strongly with FDI flows. Jordan receives a large amount of FDI from the UK just as many Latin American countries, especially Mexico, does from the USA. See *Global Economic Prospects: Technology Diffusion in the Developing World*. (Washington, DC: World Bank, 2008)

55 *Progress Through the Economic Storm: 2009 Year in Review*. (Washington DC: Business Software Alliance, 2009), 15.

47 Carlos A. Primo Braga, Carsten Fink and Claudia Paz Sepulveda. *Intellectual Property Rights and Economic Development*. (Washington, DC: World Bank, 2000), 43.

48 “IP Services” Web. 7 March 2011. <<http://www.wipo.int/services/en/>>

49 Braga, Fink, Sepulveda. 44.

50 WIPO's Madrid, Hague and Lisbon systems provide international IP protection to trademarks, industrial designs and appellations of origin (geographic indicators) respectively.


also sent members to Mexico who worked with Mexican lawyers to expand the authority of the Mexican Institute of Intellectual Property, which acts as an IP enforcement agent.⁵⁶ Partnerships with foreign firms will be additionally useful to invite more FDI into Latin America. By opening itself to foreign business, Mauritius has bolstered its domestically owned export firms. Fifty percent of firms operating in export-processing zones are locally owned, founded, managed and staffed by employees who had previously received on the job training in locally operated foreign firms.⁵⁷ Latin American private firms and government agencies must invite such initiatives from various industry initiatives to augment their IP training resources and create valuable ties with foreign firms.

POLICY RECOMMENDATIONS

Latin American countries must cautiously implement a mixture of the above policy recommendations and institutional alternatives depending on their unique circumstances. While strong IPR protection reduces counterfeit production in high-income economies, it is debatable whether or not it has the same efficacy in low and middle-income economies.⁵⁸ Law enforcement capacity, available distribution channels, and existing physical capital (e.g., equipment for copying CDs or textile manufacturing) are just a few of many factors.⁵⁹ Indeed, some countries with strong IPR regimes continue to be centers of illicit production.⁶⁰ Countries that possess sparse law enforcement capacity, for example, should seek assistance in law enforcement training before introducing new and costly institutions like specialized IP courts.

Targeting counterfeit and pirated markets will

inevitably disturb the regional Latin America economy, to which illicit production and extralegal employment is so common. Keith Maskus, frequent consultant to the World Bank, UNCTAD, and WIPO, asserts that the TRIPS Agreement will shift income and benefits to businesses and away from information users, or customers, in the short run, but that it will eventually spread the benefits of IP “with a broader scope” within the developed and developing worlds.⁶¹ However, among other scholars,⁶² he is confident that governments will be fully capable to adopt policies to manage societal harm. The goal should be to increase private sector activity to promote overall welfare through the creation of jobs and wealth.

Luckily, there are multiple strategies Latin American countries can utilize that do not require IPR reforms. Assistance from WIPO and non-Latin American trade partners, improvements to legal institutions, and supplementary government organs, collectively, can measurably improve business environments and private sector growth by targeting counterfeiting and piracy. The goal should not be to eliminate the problem all at once with sweeping policy reforms, but to manage it, maintaining an understanding that it will always be present to some degree. It is certain that Latin America has little foothold to make gains in the international economic order without addressing counterfeiting and piracy. 

⁵⁶ Ibid., 16.

⁵⁷ *Global Economic Prospects: Technology Diffusion in the Developing World*. 117.

⁵⁸ *The Economic Impact of Counterfeiting and Piracy*. 136.

⁵⁹ Economic development may explain IPR protection and not *vice versa*. Also, while patent protection tends to increase during a shift from a low to mid-income state, patent protection declines as the ability to imitate new technologies increases. See Ginarte and Park (1997).

⁶⁰ Peru, Brazil, and China have all introduced strong IPR reforms yet are still well-known centers of illicit production.

⁶¹ Maskus (2000). 26.

⁶² See Braga, Fink, Sepulveda (2000).

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European Economic Reform: Crisis Driven Change

A comprehensive strategy
for increased European
growth and stability

– Nick Timchalk

ABSTRACT

While the 2007 economic crisis negatively impacted most European Union nations, the recovery revealed many EU economic policy weaknesses. Numerous countries requested and received financial bailouts in order to avoid sovereign default; others recovered their economic strength. This white paper proposes a comprehensive strategy for the Eurozone-17 to promote growth and stability among all its members. After a thorough discussion of possible options, it is concluded best to pursue a combination of preventative, stabilizing and corrective policies for Eurozone members. Increasing macroeconomic surveillance through independent councils would successfully allow the EU to deepen its understanding of the economic conditions of its members. Adapting fiscal policies for national economies, combined with utilizing economic safety nets as an incentive to follow the Maastricht criteria, creates an environment to follow economic guidelines and stabilize the Eurozone. Finally, developing a safeguard from additional sovereign default risks through a permanent bailout fund will provide a viable corrective policy. The combination of these three policies will allow for greater economic congruence and stability among members, thus lessening the amount of economic fragmentation.

BACKGROUND

The economic crisis of 2007 revealed weaknesses of the European Union (EU) as an economic community. These weaknesses impacted EU members in a myriad of ways; some were affected more than others and persist in struggling, while others progressed on a faster road to recovery. Currently, the EU encounters a breadth of economies with varying sovereign economic institutions giving rise to a fragmented economic community.

Germany's rapid growth is evident. Its economy expanded 3.6% in 2010¹ and has a relatively low unemployment rate. Oppositely, countries such as

¹ The Economist. (2011, February 3). Angela in Wunderland. (<http://www.economist.com/node/18070170>) *The Economist*.

Greece, Ireland, Italy, Portugal and Spain (referred to as GIIPS) experienced a vastly different situation in terms of economic recovery (Appendix 1). Fragmentation carries negative externalities, such as a financial crisis in one country that may easily spread to another if the appropriate mechanisms are not in place to prevent and/or correct it.

In an international community, national governments part with a certain amount of national sovereignty for the benefit of the whole. The Treaty of Rome provides a basis for all EU economic policies by liberalizing trade within EU members and initiating one fixed external tariff for the community. Its goal was to increase stability, promote economic activity and raise the standard of living for members, which it succeeded in doing. The Treaty left room for nations to develop their own economic policies; however, it states that countries must 'approximate' domestic policies in order to ensure that the common market functions properly. This allows for flexibility, with hope that members will pursue policies that result in further integration and benefit the common market. Furthermore, the Maastricht Treaty (1992) laid out two fiscal requirements for member states. First, the annual government deficit to GDP ratio must not exceed 3%. Secondly, the government debt to GDP ratio must not exceed 60%. The Stability and Growth Pact, conceived by the Eurozone-17, assists in monitoring and enforcing these requirements.

The EU developed the European Monetary Union (EMU), a vital economic institution for European members. This ultimately integrated 17 members under one currency, the Euro. The EMU established the European Central Bank (ECB) in order to control and regulate monetary policies for the Eurozone. Proper management of monetary, fiscal and structural policies produces price stability, employment and economic growth. The EU took the responsibility of monetary policy through the ECB; however, it left fiscal and structural policies for the nation to develop, resulting in difficult policy coordination for members.² The goal of this white paper is to discuss the various ways in which improved EU economic policies would culminate in

overall greater economic growth and integration for the EU.

OPTIONS

Although many of the following policies are focused on the Eurozone-17 countries, it should be noted that they could be adapted for the entire EU-27.

Monetary Policy Control with the Stability and Growth Pact (Status Quo)

The ECB manages inflation and adjustment of the supply of money to result in price stability for the Eurozone. Until 2007, inflation stabilized around two percent and countries acted fiscally responsible to the three percent rule. Spain and Ireland ran surpluses for several years prior to 2007 (Appendix 2). The recent global recession revealed the numerous cracks and weaknesses of the union. The status quo contains several issues. Without having a strong fiscal enforcement mechanism, countries can run up a large amount of debt. That, compounded with the interconnectedness of the European market, consequentially affects others in the union (such as the case with Greece). Additionally, the "no bailout" clause contains loopholes.³ Means of enforcement for policies developed by the ECB exist but, due to the political nature of the EU, strict enforcement rarely occurs.

Competitiveness Pact

Recent EU sessions revealed a proposition to create a competitiveness pact to unite countries' economies further through common fiscal and/or economic structural policies.⁴ This Franco-German proposal further integrates policymaking for members through increased coordination and standards. The pact would consist of the 17 Eurozone members and others who choose to join. Objectives for the pact encompass further integration of economic policies. Some examples include: abolish wage indexation, raise pension ages

2 McCann, D. (2010). *The Political Economy of the European Union*. (pp. 32-39). Cambridge, United Kingdom: Polity Press.

3 Gros, D., & Mayer, T. (2010). How to Deal with the Threat of Sovereign Default in Europe: Towards a Euro(peak) Monetary Fund. In *Intereconomics* (Vol. 2, pp. 64-68).

4 European Council. (2011). 4 February 2011 Conclusions. (pp. 12-13). Brussels: General Secretariat of the Council

and devise a common base for corporate taxes.⁵ By increasing the amount of policy coordination, all involved countries can draft congruent economic policies and forge a more stable European economy.

The positive aspects of this policy also contain its downfalls. Because of the vast policy differences between countries' current policies, it will prove difficult to get everyone to agree. For example, Ireland has the lowest corporate tax rate in the Eurozone (12.5%); this results in a high level of foreign direct investment (FDI).⁶ Ireland would likely never accept raising their tax rate to match the competitiveness pact standards. Doing so greatly affects the amount of FDI they receive and in turn, negatively impacts their economy. This exemplifies how political feasibility would greatly hinder the effectiveness of the pact.

Adaptive Fiscal Policy Enforcement

Means of enforcement exist for those who do not maintain the fiscal standards outlined in the Maastricht Treaty, yet they are often not utilized in order to avoid political conflicts.⁷ Therefore, members must establish stronger standards at the national level. Standards can be established by implementing appropriate incentives for members, such as allowing only nations that achieve (or are clearly on their way to achieving) the required fiscal standards to access EU economic safety nets.⁸ Wyplosz (2010) suggests that members should come forward to the EU Commission, or a new committee, with their own solution to their particular fiscal problems. If their plan were not approved, the European Financial Stability Facility

(EFSF)⁹ would not support assistance for the country until they produce an acceptable solution. This would successfully incentivize the issue.

The policy's problems would arise with countries that falsely report their statistics. Greece reported that they consistently followed the Maastricht criteria but we learned that this is far from true.¹⁰ Wyplosz (2010) recommends the European Court of Justice (ECJ) to step in and solve the disparities that arise with the policy. Yet, this would involve warranting the ECJ to mediate between national laws and the EU approved solution, a legally arduous task to undertake.

Fiscal Enforcement via Tax Disincentive

A recent proposal¹¹ uses taxes as a deterrent for deviating from the Maastricht criteria. This is conceptualized through the EU promising a guarantee for assistance with government debt if (i) the nation commits to adopting strict expenditure rules issued by the Commission or Ecofin Council and (ii) they will adopt a law for an automatic tax increase when a country does not follow its adjustment path. The tax would contribute towards the safety net fund.

This proposal lays out a possible disincentive for members in crisis and would hopefully result in following the adjustment path developed for them. In terms of political feasibility, it would be difficult for a country to adopt an automatic tax at the control of an outside institution. Larch et al (2010) denounces this proposal on the claims that it does not offer a way to solve sovereign default.¹² This is to say, what if a country agrees to (i) but not to (ii)? It would still result in a sovereign default,

5 Charlemagne. (2011, March 10). The Divisiveness Pact. (<http://www.economist.com/node/18330371>) *The Economist*.

6 BBC News. (2011, March 11). Eurozone 'agrees in principle' on policy co-ordination. (<http://www.bbc.co.uk/news/business-12711183>) *BBC News*.

7 Calmfors, L. (2010). *Fiscal Policy Coordination in Europe*. European Parliament, Policy Department A: Economic and Scientific Policies. (p. 3) Brussels: European Parliament.

8 Wyplosz, C. (2010). The Eurozone's Levitation. In R. Baldwin, D. Gros, & L. Laeven, *Completing the Eurozone Rescue: What More Needs to be Done?* (pp. 33-36). London: Centre for Economic Policy Research.

9 The EFSF is the current safeguard in place to finance loans for members in need of rescue. They work alongside the ECB and the IMF in order to develop rescue packages for financially struggling members. It was created on May 9, 2010 and is set to expire in 2013. <http://www.efsf.europa.eu/about/index.htm>

10 Greece consistently reported budget deficits below the required 3% of GDP. It was later discovered that the real number was 5%.

11 Bofinger, P., & Ried, S. (2010). A New Framework for Fiscal Policy Consolidation in Europe. *Intereconomics*, 45 (4), 203-211.

12 Larch, M., Noord, P. v., & Jonung, L. (2010). *The Stability and Growth Pact: Lessons from the Great Recession*. European Commission, Directorate-General for Economic and Financial Affairs. (pp. 38-40). Brussels: European Union.

which has a strong likelihood to spread to the other interconnected markets of Europe.

Transfer of Resources

There is a vast difference between the economic structures of northern European members and of those in the south. For example, Germany holds a strong competitive advantage in exports, compared to the lack of export demand from GIIPS. As an economic community, Germany must do its part as a leader and help those who lag behind. Countries with surpluses that exhibit larger amounts of growth hold obligations to assist those members with deficits by investing their surpluses into weak countries. This would stimulate growth and result in overall convergence among EU members.

From a fairness standpoint, this seems like a viable option. Yet, the problems with this are twofold. First, to penalize a country with a budget surplus for its competitive advantage creates a disincentive towards economic growth. In turn, this would never be politically feasible. To force an economically prosperous nation to hand over its winnings to a small, far away country is "politically dead."¹³ Finally, if the strong economy did agree to this policy, their fiscal contributions might spur some growth, but it would not stimulate significant change.

Structural Reform

Alesin and Perotti (2010) argue that reform should not focus solely on fiscal deviations. Core countries that exhibit strong economies are not innocent from deviating from the Maastricht requirements. Although Germany might currently be viewed as the golden economy, issues persist within its economy. Its export-oriented market overwhelmingly contributes to their economic success. That being said, Germany lacks domestic demand. Southern countries do not currently hold the export strength that the northern countries do (Appendix 3). Therefore, members must assess their current structural economic situation and make reforms and investment where needed in order to fully maximize their economic potential.

13 Alesina, A., & Perotti, R. (2010). Germany Spending is not the Cure. In R. Baldwin, D. Gros, & L. Laeven, *Completing the Eurozone Rescue: What More Needs to be Done?* (pp. 79-81). London: Centre for Economic Policy Research.

"Structural reforms are always the hardest,"¹⁴ but they are essential for Europe to move forward and grow as a community. Additionally, a recent EU Commission report recommends that members with surpluses should pursue measures to strengthen growth and stimulate domestic demand.¹⁵ With the plethora of issues that many states face, it may seem difficult to focus on structural reforms to promote growth. The inherent focus on fixing national debt and budget deficit problems remains forefront, but as soon as those are in order, countries must promote domestic demand and fully utilize their competitive advantages.

Banking System Stress Tests

Many issues are attributed to the global recession but "the lack of a coordinated banking policy deepened the problem."¹⁶ Effectively, core members, such as Germany and France, lent more to periphery members, such as Greece and Portugal, than the other way around (Appendix 4). A large amount of liability for core members exists by holding a substantial amount of debt from the periphery, enabling an economically risky situation; ergo, a crisis in the periphery directly impacts the core.

In order to make certain that the European banking system recovers stronger than before, it would be important to perform stress tests.¹⁷ These would test banks to determine whether or not they hold enough capital in case a financial meltdown occurred again. If they fail the assessment, Eichengreen (2011) suggests enacting force to raise more capital or the authorities will take over control. Because of the highly integrated banking system in the EU economy, an overarching body, such as the Commission, must administer the tests. The United States has already performed these stress

14 Baldwin, R., & Gros, D. (2010). Introduction: The euro in crisis- What to do? In R. Baldwin, D. Gros, & L. Laeven, *Completing the Eurozone Rescue: What More Needs to be Done?* (pp. 1-22). London: Center for Economic Policy Research.

15 European Commission. (2010). *Macro Structural Bottlenecks to Growth in EU Member States*. European Union, Directorate-General for Economic and Financial Affairs. (pp. 4-5). Brussels: European Union.

16 Baldwin, and Gros, 2010.

17 Eichengreen, B. (2011, March). The Euro's Never-Ending Crisis. *Current History*, 110 (734), 91-96.

tests in an effort to reduce the amount of risk banks hold for another failure. The national prerogatives towards banking regulation limit this policy greatly. Sovereign economies favor their banks having the most market share. Consequentially, by revealing their true status via EU run stress tests, they will likely lose market share if deemed not passing.

Increased Macroeconomic Surveillance

Not having a clear picture of macroeconomic figures from countries led to major issues and the sovereign debt crisis in Greece. They reported an average budget deficit of 2.9% of GDP, when the correct figure was 5.1%.¹⁸ Setting up independent fiscal surveillance councils would greatly help with increased statistical accuracy.¹⁹ Calmfors argues that these independent councils would increase fiscal transparency that would make nations more accountable to the Union. The councils would need complete political independence, composed with a majority of academics to serve as council members, and adapted to fit each country with its particular circumstances. A separate entity performing the surveillance provides unbiased and high-quality analysis.

Issues would arise with getting countries without independent fiscal councils to establish them. Sweden, Hungary, Slovenia, the UK and Denmark have these councils in place but persuading others to install them might be difficult. As a minimal requirement, countries that provided false statistics in the past should establish these independent councils.

European Monetary Fund

The Maastricht Treaty contains a "no-bailout" provision; however, in order to quickly react to a financial crisis, some economists argue for the creation of a European Monetary Fund. There are plans to create a permanent bailout fund by 2013 called the European Stability Mechanism (ESM);

this will replace the current European Financial Stability Facility.²⁰

Gros and Mayer (2010) thoroughly discuss how to implement this mechanism with four main components: the financing mechanism, conditionality, enforcement and orderly default. The countries that are unable to meet the Maastricht requirement(s) would contribute the most to this fund. Countries with strong finances would not need to contribute as much because in times of crisis, they would rely less on the Fund for assistance. In terms of conditionality, a country may only receive the amount of funds equal to the amount they contributed. If the country requires more, they would be subject to a strict adjustment program supervised by the Ecofin Council. Thus, the conditionality scheme avoids the moral hazard problem.

The largest issue with this is asking countries that have fiscal difficulties to contribute the greatest amount to the fund. It seems counterintuitive; however, Gros and Mayer (2010) argue that these contributions would be made long before a crisis situation arises during times of moderate debt levels.²¹

POLICY RECOMMENDATIONS

It is recommended to craft policy with the combination of adaptive fiscal policy, increased macroeconomic surveillance and the creation of a European Stability Mechanism. Although some other options might also prove successful, the combination of these three policies would create the most improvement.

By implementing the adaptive fiscal policy outlined above, countries will draft policy pertinent to their current economic condition. This is critical because overarching fiscal policy coordination would not be politically feasible. Additionally, using access to the European Stability Mechanism as an incentive for members would help to make the Maastricht criteria more serious. If countries

18 Pisani-Ferry, J., Sapir, A., & Marzinotto, B. (2010). *Two Crises, Two Responses*. (pp. 1-8). Bruegel Policy Brief.

19 Calmfors, L. (2010). *Fiscal Policy Coordination in Europe*. European Parliament, Policy Department A: Economic and Scientific Policies. (pp. 6-7). Brussels: European Parliament.

20 European Union. (2010). *European Stability Mechanism (ESM) – Q&A*. Press Release. From: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/636>.


21 Gros and Mayer, 2010.

do not come forward with an adequate solution to their fiscal imbalances, they will not be able to rely on the ESM in a crisis situation. Instead, they would rely solely on the IMF and bilateral loans that would carry even more rigid provisions than if the country developed their own guidelines. The additional provision incentivizes following the fiscal requirements by forcing the greatest deviators to contribute the most to the ESM.

Increased macroeconomic surveillance through the implementation of independent national fiscal councils would exponentially assist in a stronger European Monetary Union. Instead of relying on the Commission to monitor, independent councils would provide a closer account of present fiscal statuses of countries. By acting politically neutral, they would accurately report to the Commission and Ecofin Council about the status and circumstances of a country without the influence of a politically driven entity.²²

Finally, the development of the European Stability Mechanism would provide the safeguards that EU members need (since markets are so intensely interconnected and failure of one could easily trigger a domino effect for others). Quick and effective responses must be implemented when a crisis occurs. A fund in place would allow for the appropriate actions to avoid a massive collapse of the European economy. With suitable safeguards for the moral hazard problem (i.e. a tiered contribution system and access to the fund only after enacting an approved fiscal plan) there would not be an issue of members taking advantage of being bailed-out.

The combination of stricter fiscal enforcement, increased surveillance, and a crisis resolution mechanism would improve the economic situation in Europe.²³ Consequentially, it will permit those countries that struggle economically to gain access to the resources they require if an effort is made on their part. This will not safeguard Europe

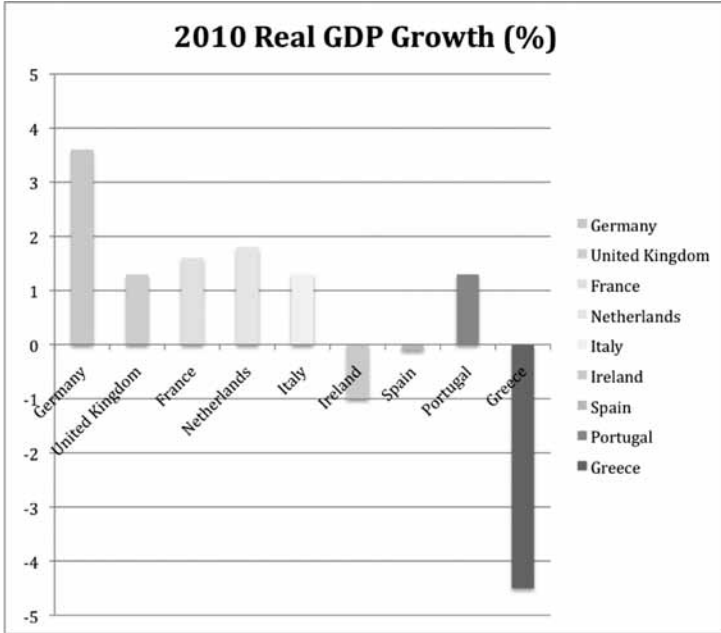
from another economic crisis, but it allows for a preparedness that was starkly absent in 2008. The Eurozone has a long road ahead of them; these policies will create a basis for fostering growth and stability. 

22 Statistics are normally derived from national accounts, which are state run.

23 Larch, M., Noord, P. v., & Jonung, L. (2010). *The Stability and Growth Pact: Lessons from the Great Recession*. European Commission, Directorate-General for Economic and Financial Affairs. (pp. 43-45). Brussels: European Union.

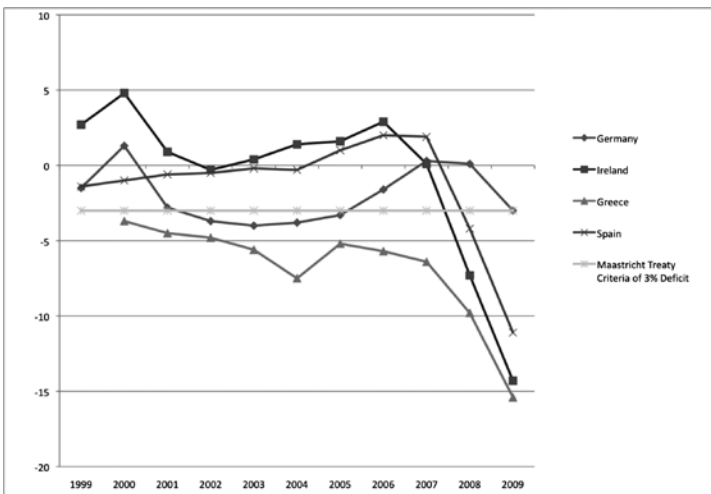
APPENDICES

Appendix 1: Real GDP Growth for 2010



Data collected on 05-08-2011 from Eurostat. <http://epp.eurostat.ec.europa.eu>

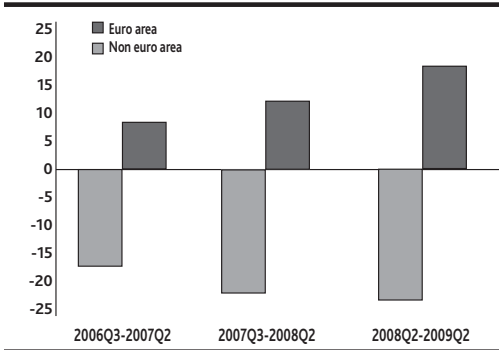
Appendix 2: Government Deficit/Surplus (% of GDP)



Data collected on 05-08-2011 from Eurostat. <http://epp.eurostat.ec.europa.eu>

Appendix 3: Exports of goods and services

**Net Financial flows -Germany
(as % of GDP) (1)**



(1) Positive number indicates net inflows, and a negative one indicates net outflows.

Source: Deutsche Bundesbank.

Data collected on 05-08-2011 from Eurostat. <http://epp.eurostat.ec.europa.eu>

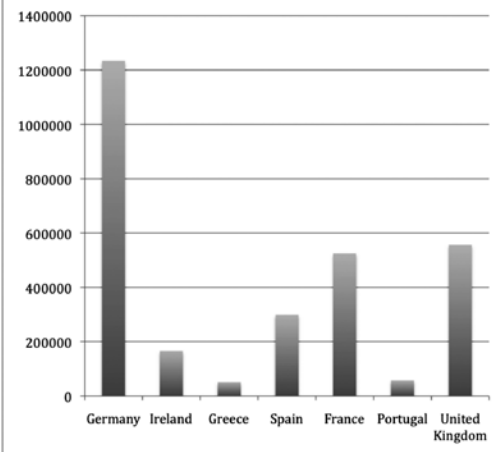
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Appendix 4: Germany-Net Financial Flows

**2011 Exports of Goods and Services
(Millions of Euros)**



Extracted from: European Commission. (2010). Surveillance of Intra-Euro-Area Competitiveness and Imbalances. Directorate General for Economic and Financial Affairs of the European Commission, Brussels.



Providing Effective Tuberculosis Care for Vulnerable Populations in Eastern Europe

Comprehensive
Policy Perspectives

– Austin Warren

ABSTRACT

Tuberculosis (TB) is a disease that primarily strikes at the margins of society, however due to its highly communicable nature and history as the world's second deadliest infectious disease it remains one of the most pressing concerns to global health. In Eastern Europe, high rates of patient mortality, low rates of treatment success, and the highest rates of multidrug resistant TB in the world present the greatest challenges to TB control. Efforts to improve these statistics must focus on overcoming the economic, health system, sociocultural, and geographic barriers that prevent the most vulnerable populations, including prisoners, the poor, HIV infected, and minorities from receiving effective treatment. The recommended policy solution is to implement precise improvements upon existing prison health care systems in each country. These changes will lead to the prevention or cure of up to 30,000 cases of TB throughout the region annually.

At a meeting of the World Health Assembly in May 2009, the international community resolved to “achieve universal access to [the] diagnosis and treatment of multidrug-resistant and extensively drug-resistant tuberculosis.”¹ This act was one of the latest in a long series of efforts taken by global actors over the past 20 years to rid the world of not only multidrug-resistant and extensively drug-resistant tuberculosis, (MDR-TB/XDR-TB) but of all strains of tuberculosis (TB) entirely. To achieve this goal the world community must now turn its attention to a major global source of the MDR-TB threat: Eastern Europe.

Despite tuberculosis' history as the second most deadly infectious disease known to humankind, the international treatment standard of directly-monitored pill-based chemotherapy administered over a six-month period (DOTS) can cure up to

¹ World Health Organization. *Multidrug and extensively drug-resistant TB (M/XDR-TB)*. Copenhagen: WHO, 2010. Web. 29 Mar 2011. (pg. 2)

90% of TB cases.² However, if patients are not given proper treatment or do not adhere to it, their strain of TB can develop a resistance to the first-line drugs Isoniazid and Rifampicin. This is what makes MDR-TB and XDR-TB so notoriously difficult, costly, and dangerous. They require the use of second-line drugs which are more toxic, 10 times more expensive, and need to be taken for up to two years.³ In spite of these increased costs, treatment of MDR-TB only succeeds 30.9% of the time.⁴

Although Eastern European cases of TB constitute only 4% of the global total, 15 countries in the region have been identified by the World Health Organization (WHO) as having "high-burdens" of MDR-TB⁵ (Appendix 1). According to the WHO Regional Office for Europe (WHO), in 2008 13.8% of new TB cases in Eastern Europe were MDR-TB, the highest percentage in the world.⁶ Additionally, over 55,000 TB patients died, and only 66% of medical treatments were successful, the lowest success rate in the world.⁷ Such high mortality combined with such low treatment success signals the existence of deep systemic issues with TB control efforts in the region that must be addressed.

Those who are the most at risk of tuberculosis in Eastern Europe live at the margins of society. They are prisoners, minorities, those infected with HIV, the poor, homeless, and alcohol or drug-

users.⁸ According to WHO and leading experts, numerous economic, health system, sociocultural and geographical barriers prevent these vulnerable populations from receiving treatment.⁹ Their findings are that a health care sector focused on overcoming these barriers would pay dividends in the fight against TB and would increase overall social equity.¹⁰ Numerous policy recommendations aimed at achieving these goals and providing treatment to vulnerable populations in Eastern Europe are now considered.

INTEGRATE TB CARE INTO PRIMARY HEALTH CARE SECTOR

Historically, National TB Programmes (NTPs) in Eastern Europe have been highly specialized stand-alone organizations of TB clinics and hospitals.¹¹ Such an organizational structure exacerbates many of the geographic barriers preventing the sick from accessing the care they need. Moreover, weak links between Primary Health Care (PHC) givers and TB clinics contributes to low rates of treatment adherence and to the spread of TB throughout vulnerable communities.¹¹ Consequently, WHO and the Stop TB Partnership have recommended the dissolution of these structures in favor of an integration of TB care into the PHC sector.¹²

Such a change in organizational structure would help overcome many of the geographic barriers preventing TB sufferers from receiving treatment, as well as increase institutional capacity to properly treat other infectious diseases. However, many health care workers in rural areas are underpaid, lack proper tuberculosis education and reliable diagnostic equipment, and are prone to bias against certain patients.¹³ Consequently, discrimination

2 European Union. *Drug-resistant tuberculosis: challenges, consequences and strategies for control*. London: The Royal Society, 2009. Web. 27 Mar 2011. (pg. 5); Fitzpatrick, Christopher, Katherine Floyd, Christian Lienhardt, and Judith Mandelbaum-Schmid. World Health Organization. *Global Plan to Stop TB 2011-2015*. Copenhagen: WHO, 2010. Web. 29 Mar 2011. (pg. vi)

3 World Health Organization. *Multidrug and extensively drug-resistant TB (M/XDR-TB)*. (pg. 2)

4 European Centre for Disease Prevention and Control/WHO Regional Office for Europe: Tuberculosis surveillance in Europe 2008. Stockholm, European Centre for Disease Prevention and Control, 2010. (pg. 4)

5 World Health Organization Regional Office for Europe & KNCV Tuberculosis Foundation. *Wolfheze 2010: 20 year jubilee -- bridging the gaps, where do we stand after 20 years?*. The Hague: , 2010. Web. 27 Mar 2011.(pg. 14)

6 European Centre for Disease Prevention and Control: Tuberculosis surveillance in Europe 2008. Stockholm (pg. 17)

7 How health systems can address inequities in priority public health conditions: the example of tuberculosis. Copenhagen, WHO Regional Office for Europe, 2010. (pg. 2)

8 Intensified Action to Control TB in Europe: background paper and action plan. Assisi, Italy, World Health Organization Stop TB Partnership. 2005. 1-8. Web. 27 Mar 2011. (pg. 3)

9 How health systems can address inequities in priority public health conditions (pg. 19)

10 How health systems can address inequities in priority public health conditions (pg. 7)

11 Intensified Action to Control TB in Europe: background paper and action plan. (pg. 6)

12 Ibid. (pg. 7)

13 Ibid. (pg. 6)

and corruption prevent many vulnerable populations from receiving the high-quality no-cost TB care international law guarantees them.¹⁴ Unfortunately, promoting PHCs within national TB control strategies without accompanying measures to ensure the protection of patients' rights could exacerbate deficient health care treatment available to marginalized populations within Eastern Europe.

COLLABORATE WITH PRIVATE SECTOR IN PUBLIC-PRIVATE MIXES

One TB control strategy that has been increasingly utilized by many countries is the creation of professional collaborations between NTPs, private health care providers, NGOs, and civil society. Known as Public-Private Mixes (PPMs), these collaborations are promoted by WHO in its Stop TB Strategy.¹⁵ Many Eastern European countries should consider expanding PPMs because they will further assist in breaking down the traditional stand-alone structure of TB clinics that has limited vulnerable populations' access to treatment.

PPMs can be promoted by providing for-profit health care providers refresher training courses on TB treatment standards, and by creating a single reporting mechanism that all providers can use to report the detection and treatment outcomes of new TB cases.¹⁶ Although many PPMs have been successful, dramatically improving treatment success rates to above the global target of 85%, an increasing number of PPMs are not including incentives that have been effective in establishing lasting collaborations between the public and

private health-care sectors in the past.¹⁷ Certain incentives, such as offering subsidized access to pharmaceuticals, must be included in PPM agreements in order to ensure that TB sufferers receive the long-term quality-care they need. Otherwise, failed treatments and the creation of new strains of MDR-TB will limit the effectiveness of PPMs as a useful tool for TB control strategy in the region.

INTEGRATE NATIONAL TB AND HIV PROGRAMS

A chief concern for TB control efforts throughout Eastern Europe is the rising rate of HIV. This is because of the extraordinarily lethal nature of HIV and TB co-infection. According to WHO, "People living with HIV, representing over 10% of annual TB cases, are up to 37 times more likely to develop TB than people who are HIV-negative," adding that, "in 2009, TB accounted for one in four deaths among HIV-positive people [around the world]."¹⁸ Consequently, it has been suggested that NTPs and anti-HIV programmes throughout Eastern Europe integrate and collaborate toward their shared goals.¹⁹

From an infrastructural perspective, such a policy strategy would provide numerous benefits, including more efficient training for health care workers, a more secure pharmaceutical drug supply, and improved case detection rates for both HIV and tuberculosis.²⁰ However, from a patient-driven perspective, such a policy would not overcome many of the geographic barriers preventing the

14 Schaaf, Marta. Open Society Institute & Global Lung Foundation. *Confronting a Hidden Disease: TB in Roma Communities*. New York, NY: , 2007. Web. 27 Mar 2011. (pg. 9)

15 How health systems can address inequities in priority public health conditions (pg. 3)

16 United States. *Health Systems in Europe and Eurasia 2008*. , 2008. Web. 27 Mar 2011. (pg. 14); Global Tuberculosis Control: WHO Report 2010. Geneva: World Health Organization, 2010. Print. (pg. 15-16)

17 Lal, S S & Uplekar, Mukund & Katz, Itamar & Lonnroth, Knut & Komatsu, Ryuichi & Yesudian Dias, Hannah Monica & Atun, Rifat. *Global Fund financing of public-private mix approaches for delivery of tuberculosis care*. *Tropical medicine & international health : TM & IH*. 2011. (pg. 5)

18 Fitzpatrick, Christopher, Katherine Floyd, Christian Lienhardt, and Judith Mandelbaum-Schmid. World Health Organization. *Global Plan to Stop TB 2011-2015*. Copenhagen: WHO, 2010. Web. 29 Mar 2011. (pg.v)

19 Maher, D. "Implications of the Global Financial Crisis for the Response to Diseases of Poverty Within Overall Health Sector Development: the Case of Tuberculosis." *Tropical Medicine & International Health : Tm & Ih*. 15.1 (2010): 11-7. Print. (pg. 15)

20 Ibid. (pg. 15)

sick from receiving proper treatment. Moreover, the integration of anti-TB and HIV clinics could create even more powerful stigmas and social barriers that would prevent many TB sufferers from visiting the clinics and hospitals that could treat them. Consequently, this proposal should not be implemented in absence of other proposals that would more effectively overcome these geographic and social barriers to treatment.

INVEST IN PUBLIC EDUCATION

A challenging aspect of the global TB epidemic is the widespread lack of knowledge about the dangers tuberculosis presents to both the individual and society. In Eastern Europe many members of vulnerable populations believe that TB

is chronic and untreatable. They are often unaware that it can be fatal when left untreated.²¹ This is especially the case among minorities such as the Roma.²² This reveals an educational barrier that prevents many people from seeking treatment, which partly explains why TB has remained such a persistent problem at the edges of society. Efforts to increase awareness about TB among the poor, homeless, drug users, and ethnic minorities would do much to improve TB control efforts throughout the region.

Existing projects to educate groups such as the Roma have resulted in significant increases in both general awareness about TB, and in people's stated

21 Schaaf, Marta. Open Society Institute & Global Lung Foundation. *Confronting a Hidden Disease: TB in Roma Communities*. (pg. 7)

22 Ibid. (pg. 7)

REGION (NUMBER OF MEMBER COUNTRIES)	NUMBER OF COUNTRIES THAT REPORTED COMPLETE DATA ON HRD (% OF REGIONAL TOTAL)	NUMBER OF COUNTRIES THAT REPORTED SOME DATA ON HRD (% OF REGIONAL TOTAL)	NUMBER OF COUNTRIES THAT DID NOT REPORT ANY DATA ON HRD (% OF REGIONAL TOTAL)
African (46)	12 (26%)	13 (28%)	21 (46%)
Americas (36)	9 (25%)	2 (6%)	25 (69%)
Eastern Mediterranean (22)	13 (59%)	3 (14%)	6 (27%)
European (53)	0	8 (15%)	45 (85%)
South-East Asia (11)	4 (36%)	4 (36%)	4 (27%)
Western Pacific (36)	13 (36%)	3 (8%)	3 (27%)
Number of high-burden countries (out of 22)	7 (32%)	10 (45%)	5 (23%)
Total (204)	51 (25%)	35 (16%)	120 (59%)

Development of Human Resources as a Component of the Stop TB Strategy²⁹

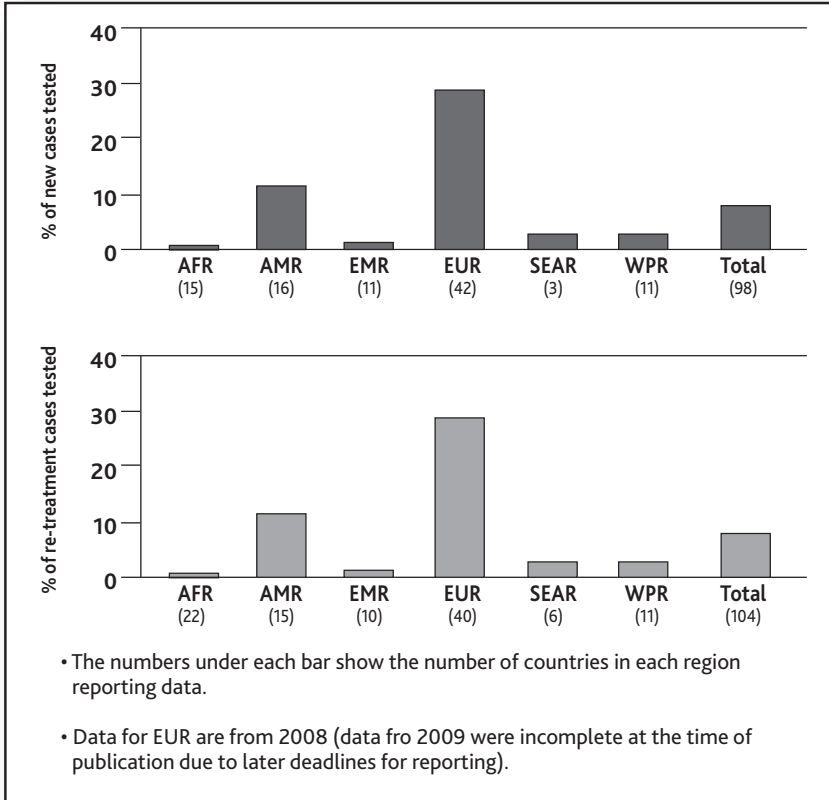
willingness to seek out medical treatment for it, an increase from 63% to 99% of respondents in one study.²³ Conducting such projects across the region could do much to reach out to the most vulnerable communities. However, a weakness of public education efforts is that they do not address other barriers: geographic, sociocultural, and health system that could still prevent TB sufferers from receiving treatment.

23 Ibid. (pg. 24)

IMPROVING HUMAN RESOURCE THROUGHOUT THE HEALTH CARE SYSTEM

A key weakness of Eastern European health care systems is the severe lack of public knowledge about the development of the human resources operating within them. In WHO's 2010 Report on TB control, over 45 European countries, 85% of the entire region, did not report any data on the development of their human resources – the lowest of any region.²⁴ This lack of transparency suggests the existence of systemic deficiencies that must be addressed if TB control efforts are to be successful.

24 Global Tuberculosis Control: Who Report 2010. Geneva: World Health Organization, 2010. Print. (pg. 24)



Diagnostic Drug-Susceptibility Testing for new and retreatment TB cases by region, 2009 32

A key element of an HR development strategy is the proper education of all health care workers (HCWs) about the proper treatment of tuberculosis. Experts suggest providing, "better support in [HCWs'] initial training and retraining programmes based on a common set of standards for TB basic and clinical science, epidemiology and disease management so as to facilitate the uniform adoption of standards of TB care."²⁵ Moreover, salaries, staff incentives, and the proper recording of all HR development activities should be reviewed annually, in order to ensure that disparities in treatment quality do not arise between different geographic areas within the region.²⁶

IMPROVE LABORATORY CAPACITY TO PERFORM DRUG-SUSCEPTIBILITY TESTING

Although around 40% of TB cases in Europe are tested for drug-susceptibility each year, this percentage is still much lower than global targets.²⁷ Consequently, new cases of TB are often wrongly assumed to be susceptible to first-line drugs.²⁸ This poses a severe risk to patients because the subsequent failure of these TB cases to respond to drug chemotherapy often leads to treatment failure, MDR-TB, and death. In order to combat dangerously high rates of MDR-TB and treatment failure, drug-susceptibility testing must be greatly increased throughout the region.

The most effective way to achieve this goal is by supporting the development of laboratory capacities in the region.²⁹ The European Union recognizes its interests in helping Eastern Europe cure itself of MDR-TB, and released a working paper recommending that unified action be taken in order

to improve not only the physical infrastructure of laboratories in Eastern Europe, but also technical capabilities as well, so that drug-resistant strains of TB can be quickly identified.³⁰ Such a strategy would greatly enhance cooperation between high- and low-burden countries, while also empowering health care systems in Eastern Europe to address public health concerns beyond tuberculosis. A weakness of this strategy, however, is that its benefits would largely be redistributed to the majority of society, rather than to the vulnerable populations that are the lynchpin of the TB epidemic.³¹

INVEST IN RESEARCH AND DEVELOPMENT

A frequent recommendation for the control of TB, particularly MDR-TB, is to increase funding for the research and develop new diagnostics, vaccines, and first and second-line drugs.³² Such efforts are promoted in WHO's Stop TB Strategy.³³ This is because the diagnostic most commonly used to identify active cases of tuberculosis is sputum-smear microscopy, a technique that is 125 years old, time-consuming, and dependent on lab capabilities.³⁴ Moreover, the only anti-TB vaccine available, the attenuated live BCG vaccine, does not work against TB in adults. Additionally, no new first or second-line drugs have been developed to fight TB in over 40 years.³⁵ Advocates of renewed investment argue that controlling TB effectively will require faster diagnostics and stronger drugs than are currently available.

The hope of such a policy focus is that with quicker diagnosis and shorter treatment-schedules,

25 Fears, Robin, Stefan Kaufmann, Voker ter Meulen, and Alimuddin Zumla. "Drug-resistant tuberculosis in the European Union: opportunities and challenges for control." *Tuberculosis* 90. (2010): 182-87. Web. 27 Mar 2011. (pg. 184)

26 Global Tuberculosis Control: Who Report 2010. (pg. 24)

27 Global Tuberculosis Control: Who Report 2010. (pg. 21-22)

28 European Union. *Drug-resistant tuberculosis: challenges, consequences and strategies for control.* (pg. 14)

29 World Health Organization. *Multidrug and extensively drug-resistant TB (M/XDR-TB).* (pg. 2)

30 European Union. *Drug-resistant tuberculosis: challenges, consequences and strategies for control.* (pg. 14)

31 How health systems can address inequities in priority public health conditions (pg. 4)

32 Fears, Robin, Stefan Kaufmann, Voker ter Meulen, and Alimuddin Zumla. "Drug-resistant tuberculosis in the European Union" (pg. 185)

33 How health systems can address inequities in priority public health conditions (pg 2)

34 Fears, Robin, Stefan Kaufmann, Voker ter Meulen, and Alimuddin Zumla. "Drug-resistant tuberculosis in the European Union" (pg. 185)

35 Ibid.(pg. 185)

adherence rates would increase dramatically and fewer strains of MDR-TB would develop. However, such expectations are not guaranteed. Furthermore, it would take many years of financial investment before new diagnostics and drugs were available for public use. Consequently, investing in research and development is not a necessary consideration for our current goal of improving TB treatment available to vulnerable populations in Eastern Europe.

IMPROVE PRISON HEALTH CARE SYSTEMS' RESPONSE TO TB

Improving the provision of health care in prisons has not traditionally been a part of the TB control strategy in Eastern Europe. However, due to frequent overcrowding and poor living conditions, prisons have proven themselves to be "community reservoirs" of TB, particularly MDR-TB.³⁶ Inside prisons, incidence rates can be up to 40 times higher than outside.³⁷ Moreover, prisons are filled with young, uneducated, and socioeconomically disadvantaged adult males, the same population that is already at the greatest risk of developing TB. Improving prison health care systems will greatly strengthen national TB control strategies.

Educating prisoners about both how TB is spread and their rights to receive quality health care irrespective of their legal status will reduce the incidence of TB in prisons.³⁸ Additionally, increasing prisons' capacities to screen for TB in new arrivals and current inmates, as well as to isolate the sick and infectious, will dramatically reduce incidence rates. To be truly effective, these changes must occur alongside the integration of prison health care systems into each country's Ministry of Health.³⁹ This will promote an increase in the

quality of DOTS treatment, drug-susceptibility testing, drug supplies, and the training of prison medical staff. For countries that have already instituted these changes, the threat of TB in prisons has dropped precipitously.⁴⁰ Building upon prior success is necessary to combat TB throughout the region.

POLICY RECOMMENDATION

The eradication of tuberculosis around the world will require a truly unified global effort; however, Eastern Europe must attenuate its response to the unique challenges, needs, and concerns that it faces. Across the region, the greatest threat that TB poses to public health comes not in the form of high incidence or prevalence rates, but rather in its high rates of patient mortality and low treatment success, coupled with a dangerously high number of strains that have developed multidrug or extensive drug-resistance. Additionally, the TB burden is not shared evenly across all of Eastern European society. Particular socioeconomic and ethnic groups living at the margins of society face a much greater risk of developing tuberculosis during their lifetimes, yet they have fewer opportunities to receive the treatment necessary to save their lives and prevent them from being a health risk to others. These are the vulnerable populations to whom we must now turn.

Many of the policy options that have been presented promise a variety of advantages and benefits for the entire health care system in Eastern European countries. They are attractive options. However, due to the imbalanced nature of the TB threat their adoption would continue to leave many vulnerable populations underserved. Among the policy options presented, only one would provide sufficient and effective tuberculosis care in the location where those who require it can most easily be reached and where the greatest number of transmissions can be prevented: prisons.

In 2004, around ten percent of all TB cases in Eastern Europe were among current prisoners, with even higher proportions of MDR-TB cases

36 How health systems can address inequities in priority public health conditions (pg. 8); World Health Organization. Regional Office for Europe. *Status Paper on Prisons and Tuberculosis*. Copenhagen: WHO, 2007. 29 Mar 2011 (pg.3)


37 "Azerbaijan, Georgia 'Show The Way' To Fight TB In Prisons." *Radio Free Europe Radio Liberty*. 23 Mar. 2010. Web. 27 Mar 2011.

38 Ibid.

39 World Health Organization. Regional Office for Europe. *Status Paper on Prisons and Tuberculosis*. (pg. 13-14)

40 International Centre for Prison Studies. *Improving prison Healthcare in Eastern Europe and Central Asia*. , 2006. Web. 27 Mar 2011. (pg. 2)

represented. This represents an annual 30,000 TB cases that will be prevented or cured through the implementation of the improvements mentioned above upon prison health care systems throughout the region.⁴¹ It is an absolute necessity that governments in Eastern Europe provide high-quality health care in prisons, not just because the number of TB cases among current prisoners and the formerly incarcerated is so disproportionately high, but also because of the positive externalities that these efforts would provide.

The adoption of efforts to improve prison health care systems would not only cure individual sufferers, it would also lead to much greater benefits for the rest of society within Eastern Europe. It would arrest the cycle of poverty and illness that promulgates the spread of tuberculosis among vulnerable populations, and would enable victims of TB to begin contributing to society again. By utilizing prison health care sectors as a tool to stem the growing tide of TB, particularly MDR-TB, Eastern European countries will bolster not only domestic health security, but regional and global health security as well. 

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Appendix 1:



World Health Organization. Global Plan to Stop TB 2011-2015. Copenhagen: WHO, 2010. Web. 29 Mar 2011. (pg. 34)



Improving the Efficacy of UN Peacekeeping

– Connor Arbiter

ABSTRACT

Although UN peacekeeping missions play a pivotal role in conflict resolution, struggles requiring the assistance of peacekeepers have evolved in such a way that traditional standards no longer correspond to the practical requirements of missions. The current directives for peacekeeping missions often put peacekeepers in situations in which they cannot act effectively, thus jeopardizing both peacekeepers' safety and the mission. At a higher level, missions are too often undertaken without a clear conceptualization of the desired end state. Reforms to UN peacekeeping, while remaining politically feasible, must give peacekeepers more freedom to effectively execute the mission mandate. At the same time, missions must be constructed and carried out in such a way that lasting peace can be established during the life of the mission while engaging local parties to continue the peace process after withdrawal of peacekeepers so that DPKO does not need to repeat previous missions in order to resolve the conflict.

INTRODUCTION:

In 1992, the UN Department of Peacekeeping Operations (DPKO) was officially created by newly elected Secretary-General Boutros Boutros-Ghali. In 2007, the UN General Assembly created the Department of Field Services to assist in creating and overseeing the support systems for peacekeeping missions. Although the UN has been conducting peacekeeping missions since 1948, it was not until more than forty years later that Boutros-Ghali, recognizing the altered political climate of the post-Cold War international system, acknowledged the need for a permanent and independent UN body to oversee these missions. In his speech, *An Agenda for Peace*, he describes the new situation facing the UN:

Thirteen peace-keeping operations were established between the years 1945 and 1987; 13 others since then. An estimated 528,000 military, police and civilian personnel had served under the

flag of the United Nations until January 1992... The costs of these operations have aggregated some \$8.3 billion till 1992.¹

Although only addressed briefly in the speech, Boutros-Ghali effectively illustrates the increasing importance of peacekeeping missions in the total activities of the UN. The work of DPKO is crucial in the post-Cold War world and its necessity is underscored by the increasing number of requests for peacekeepers the UN receives from belligerents seeking to establish settlements.² Since 1992, DPKO has completed a total of thirty-four more peacekeeping missions; currently, the department is engaged in fifteen missions worldwide.

Given the broad nature of its mandate and the difficulty of its work, DPKO is continuously facing new challenges, and has endured almost constant external criticism. Since its first mission in the Middle East in 1948, to the one most recently begun in the Democratic Republic of the Congo in 2010, DPKO has been forced to adapt to diverse, and often evolving, mission types. As with the absence of an independent department until 1992, the adaptations DPKO has undertaken have traditionally been in response to existing problems while very little has been done to attempt to anticipate and prevent future issues. Further complicating the matter, changes in the department must often be conservative and modest to remain politically feasible, therefore they frequently have only a nominal effect on the problems they seek to address. Criticisms of DPKO include slow responses to emerging crises and inefficacy, often continuing the same mission indefinitely (UNTSO, UNMOGIP) or repeatedly returning to the same area. Out of the sixty-seven peacekeeping missions the UN has undertaken, eighteen of these have been missions to states or regions that had already been served by DPKO; Haiti alone has been the site of six peacekeeping missions and Angola has seen four missions within its borders.

1 Boutros-Ghali, Boutros. *An Agenda for Peace*. UN General Assembly, New York, NY. 17 June 1992. <http://www.un.org/Docs/SG/agpeace.html>

2 The UN notes that the number of peacekeepers deployed worldwide has grown from roughly 10,000 in 1991, to nearly 92,000 in 2008. See "Surge in uniformed UN Peacekeeping personnel from 1991 to 2008." *United Nations Peace Operations: Year in Review 2007*. January 2009: 52.

SOLUTIONS:

In order to overcome the obstacles that DPKO faces, a combination of ideological changes on the part of the UN and its member states and structural changes to the DPKO itself need to be undertaken.

I. Structural Changes

Perhaps the most easily recognizable and simplest problems to address are the structural changes needed for UN peacekeeping. Most scholars and the majority of UN reports have focused on these issues.

Brahimi Report

Beginning in March 2000, a UN panel, chaired by the former Foreign Minister of Algeria, Mr. Lakhdar Brahimi, undertook a thorough examination of the peace and security activities of the UN. The purpose of the panel was to identify deficiencies in the current policies and methods as well as to provide "concrete and practical" recommendations for improving these procedures in the future.³ The panel presented its report to Kofi Anan and the Security Council in August 2000. The report is commonly referred to as the Brahimi Report, after the chairperson of the council.

The numerous recommendations put forth in the Brahimi Report highlight the need for more coordination and direction in future peacekeeping missions. Early in the report, the panel recommends serious reassessment of the way in which the Security Council drafts mission mandates. The panel found that mandates that were not clear, strong, achievable and did not practically reflect the situation on the ground were ineffective or detrimental to the mission.⁴ With the intention of increasing the speed of troop deployment, the report encourages furtherance of the UN standby arrangement system of reserve troops and officers⁵ and the consolidation of bureaucracy in DPKO over actions such as budgeting and troop procurement.⁶ It encourages a commitment to establishing stronger headquarters for peacekeeping missions;

3 *Report of the Panel on UN Peacekeeping Operations*, UN, 23 August 2000 (*Brahimi Report*). A/55/305-S/2000/809. i.

4 *Ibid.* ix.

5 *Ibid.* para 117.

6 *Ibid.* paras 95 and 166.

proposals in this section included the need for sufficient funding and staffing of mission headquarters in order to improve their ability to more effectively manage the situation on the ground.⁷ Finally, the report calls for the creation of Integrated Mission Task Forces, staffed and supported by other UN departments, to plan and provide intelligence for peacekeeping missions.⁸

Rapid Reaction Force

In the mid-1990s, following the end of the Cold War, Canada undertook its own investigation of UN peacekeeping operations. Recognizing its role as a leader in providing peacekeeping personnel and funding to UN missions, it evaluated how the UN could be more effective and responsible in responding to international crises. The investigation lasted one year and consulted experts from numerous countries. It was presented to the UN in September 1995.

The Canadian report calls for the establishment of a rapid reactionary force to be made permanently available to the UN.⁹ The proposal is not a new concept; the idea had been discussed in the UN for several years and had been formally put forth a year earlier by Denmark in a report they presented to the UN, "Report by the Working Group on a Multinational UN Standby Forces High Readiness Brigade." The author of the Canadian report justifies the creation of such a force by citing a study conducted by the Henry L. Stimson Center that found that the UN had an average of six weeks after the initial deployment of a peacekeeping mission to demonstrate its competence to the local population, a necessary condition for the implementation of any peacekeeping mission.¹⁰ The report argues that such a force would have been instrumental in controlling the situations faced by UN peacekeeping missions in Angola (UNAVEM I, 1993) and Rwanda (UNAMIR, 1994).¹¹

7 Ibid. paras 178 and '97.

8 Ibid. para 245.

9 Alvarado, Lieutenant Colonel Max G. *Canada's Proposed Peacekeeping Reform: A Rapid Reaction Force for the United Nations*. 1996. 9.

10 Ibid. 9. Reference to Durch, William J. and Barry M. Blechman. "Keeping the Peace: The United Nations in the Emerging World Order." The Henry L. Stimson Center. Report No 2. March 1992. ii.

11 Alvarado. 9.

The report urges that DPKO create a small, permanent, operational-level headquarters with command of five thousand multi-national military and civilian troops on immediate standby.¹² This vanguard would be deployable within a very short period of time after receiving orders from the Security Council. The headquarters would be staffed by thirty-five to fifty individuals, both military and civilian, seconded or loaned to the UN. The headquarters would be responsible for controlling and deploying the force as well as for providing planning and logistical support for forces in the field. The rapid reaction force would be made up of units maintained by UN members. It would be quickly deployable as a traditional peacekeeping force and would be replaced later by a UN peacekeeping force that, in the meantime, would have been assembled and organized by DPKO for the specific mission.¹³

New Horizon

On the eve of the tenth anniversary of the Brahimi Report, the DPKO and the Department of Field Services issued an unofficial internal report (a "non-paper") entitled *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* (New Horizon Report) to continue dialogue about reforming UN peacekeeping. The non-paper was based on the research of *Building on Brahimi: a Coalition for Peacekeeping in an Era of Strategic Uncertainty* by New York University's Center on International Cooperation.

The thrust of the non-paper's argument is the need for partnership at all levels to cooperatively work towards the successful completion of UN peacekeeping missions. The first section of recommendations, Partnership in purpose, focuses on the establishment and management of missions. Proposals in this section include calls for strong and clear mandates that reflect achievable objectives,¹⁴ echoing similar proposals from the Brahimi Report. But the New Horizon Report also urges better dialogue between troop and police

12 Ibid. 10.

13 Ibid. 16- 17.

14 *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* (New Horizon). Department of Peacekeeping Operations and Department of Field Services. July 2009. 2.

contributing countries and the Security Council¹⁵ as well as stronger lines of communication between headquarters and mission leaders.¹⁶ The next section, Partnership in action, addresses the procedures for successful mission completion in the field. In it, the non-paper proposes guidance for mission planners and better training and equipment for troops to help them respond better to the new, more difficult nature of peacekeeping missions in the twenty-first century.¹⁷ The final section, entitled Partnership for the future, explores possible reforms to the structure and methods of DPKO. Proposals include longer rotations for peacekeeping workers¹⁸ and improvement of dialogue with relevant regional organizations to establish localized logistical frameworks.¹⁹

UK-France Initiative

In 2009, France and the UK, on behalf of the UN Security Council, began a review of several issues with UN peacekeeping. The review, in part, analyzed the progress made on the proposals put forth by the New Horizon non-paper. It paid particularly close attention to the emphasis placed on updating concepts of mission operation and rules of engagement as defined in the mandates of peacekeeping missions, which are written by the Security Council.

The final report of the review has not been published, but information on the findings of the investigation has been released. France, in particular, emphasizes the need for definitive conclusions to missions.²⁰ To that end, the Security Council has discussed the need for establishing clear exit strategies from the outset of peacekeeping missions, including a formal projection of the desired end state of the situation.²¹ Along the same lines, the Security Council is discussing methods for employing strategies for the transition of power during the life of the mission to bring about conclusions to

peacekeeping missions and to ensure that local parties are capable of carrying on the work of peace building after the UN has left.²² The final report will provide greater detail on the specifics of how to bring about such procedures for concluding peacekeeping missions.

UN Logistical Framework

Since the beginning of UN peacekeeping operations in 1945, there has been continuous discussion about the possibility of creating a standing UN army. For numerous reasons, including infringement on state sovereignty and the difficulty of financially maintaining such a force, the idea has always been disregarded.²³ What has not yet been proposed is the creation of a permanent UN peacekeeping group specifically for logistical support.

Instead of creating an expensive, combat based military force, the UN should consider the creation of a permanent logistical support group. Made up of two thousand to four thousand military and civilian personnel, such a group could effectively act as a framework upon which any type of peacekeeping mission could be built. Specializing only in the procedures necessary to support a traditional UN peacekeeping force of troops in the field, a logistical support group would allow the Security Council to request only the specific troops necessary for each mission. The group could act as primary specialists in particular operations where their numbers were insufficient to accomplish all necessary tasks; such as providing leadership, training and oversight of contracted workers. Since the time immediately following the negotiation of a ceasefire between the belligerent parties is often the most peaceful time of a peacekeeping mission,²⁴ the UN support group could even be deployed without the security of UN peacekeeping troops (or with marginal security from private security contractors²⁵) if it

15 Ibid. 6.

16 Ibid. 14.

17 Ibid. 13.

18 Ibid. 31.

19 Ibid. 34.

20 Aroud, Gérard. (2010, 2 February). Speech to the Security Council of the UN: New York, NY. S/PV.6270.

21 See generally, William J. Durch. "Supporting Peace: the End." *Prism* 2.1 (December 2010): 43-56.

22 "February 2010: Peacekeeping." Security Council Report. http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.5764297/k.2C9F/February_2010brPeacekeeping.htm

23 Spearin, Christopher. "Private Security Companies and Humanitarians: A Corporate Solution to Securing Humanitarian Spaces?" *International Peacekeeping* 8.1 (spring, 2001): 20-43. 35-37.

24 Durch, William J., ed. *The Evolution of UN Peacekeeping*. New York, NY: St. Martin's Press, 1993. 24.

25 Spearin, 39.

was necessary to provide immediate aid to the civilian population. Such a group would decrease the response time for the deployment of a UN peacekeeping mission because a substantial percentage of the mission personnel would already be available to the Security Council.

Truth and Reconciliation Commissions

There is reasonable concern about the fate of conflicts after the withdrawal of UN peacekeepers.²⁶ Exhibited by cases such as Haiti, Angola, the Democratic Republic of the Congo and the Middle East; the local groups have exhibited an inability to continue the work of peacekeepers, forcing DPKO to protract the length of peacekeeping missions or to return to the state or region to attempt to secure peace. The frequent inability of relevant parties to carry on the peace building work during or after the life of a mission has negatively affected the perception of the efficacy of DPKO.

The creation of truth and reconciliation commissions in the aftermath of conflict has been effective in numerous nations. Ghana, after two politically turbulent decades, and South Africa, in the aftermath of Apartheid, both employed truth and reconciliation commissions to help their nations confront the atrocities that occurred and move past them in a way that benefitted their populations.²⁷ Such committees assist in the crucial process of disarmament, demobilization and reintegration (DDR) by absolving many combatants of culpability for their actions and bringing them back into society. Furthermore, truth and reconciliation commissions allow societies to undertake their own recovery by investigating the true underlying causes that led to conflict and then address those issues to prevent future violence.

II. Ideological Changes

In addition to structural reforms to DPKO, ideological changes must be adopted by the UN and its member states to allow DPKO to operate more effectively.

Robustness of the Mission

The Brahimi Report, as well as many subsequent proposals, argues for the need for more robust doctrine in peacekeeping missions; this is defined as the potential for peacekeepers to use force when necessary to carry out the mission mandate.²⁸ Historically, such actions had been discouraged as it was feared that they would jeopardize the UN's neutrality. The Brahimi Report argues, however, that impartiality on the part of DPKO has often been detrimental to the mission when it treated equally the aggressor and victim or a party that adhered to the conventions of the ceasefire and a party that ignored such protocols. It further asserts that under such circumstances, attempts to remain neutral and treat all parties equally could even amount to complicity with evil.²⁹

The report argues that rules of engagement on the ground must not be so stringent that they prevent peacekeeping troops from carrying out the mandate. The report states that troops must be authorized to use force when necessary to defend themselves and to intercede on behalf of the civilian population to interrupt or prevent violence. Such freedom to engage must not be constricted to stroke-for-stroke responses but should allow ripostes sufficient to neutralize a threat.³⁰

Mission Commitment

One of the greatest detriments to UN peacekeeping has been the tentativeness with which member states have donated troops to DPKO. The Brahimi Report reminds the UN and its members that willingness on the part of member states to donate troops to a peacekeeping operation must imply a willingness on behalf of the country to accept the risk of sustaining casualties in the execution of the mandate.³¹ While the UN and DPKO does not wage war, all parties must remain cognizant that peacekeeping missions are conducted in situations where conflict has recently occurred and where there is the threat of the renewed outbreak of violence at any moment. It maintains, however, that the Security Council and DPKO will always give

26 See *The Evolution of UN Peacekeeping*. 35-36.

27 See Valji, Nahla. *Ghana's National Reconciliation Commission: A Comparative Assessment*. International Center for Transnational Justice: September 2006, and *Truth and Reconciliation Commission*. Truth and Reconciliation Commission of South Africa. <http://www.justice.gov.za/trc/>

28 *Brahimi Report*. para 62.

29 *Ibid.* ix.

30 *Ibid.* para 49-50.

31 *Ibid.* para 52.

an honest assessment about the risks associated with a particular mission.³²

Member states must not attempt to withdraw their troops from a UN peacekeeping mission even in the event that they sustain casualties. Such a situation was seen by Belgium during UNAMIR in 1994, and the result was the disastrous collapse of the peacekeeping mission and further inaction on the part of the UN that facilitated the genocide that occurred from April until June of that year. Troop and police contributing countries must adopt a strength of purpose to support peacekeeping missions to the fulfillment of their mandates. As Ambassador Ibrahim Gambari of Nigeria contends in *Ghosts of Rwanda*, the withdrawal of UN peacekeeping troops is contradictory to the spirit of the UN Charter and to the maintenance of peace and security in the world.³³

Importance of Internal Communication

Despite the focus given to the improvement of communication in numerous reports on peacekeeping reform, none have addressed the importance of communication upward through the chain of command. In several missions, there was an absence of consideration given to peacekeepers on the ground who attempted to make requests to higher authorities either at planning level or in the Security Council.

Durch notes that in every mission, there is what peacekeepers call a "ground truth" that carries with it implications for the success or failure of a mission.³⁴ As deployed UN peacekeepers are in the best situation to observe the ground truth and make assessments about the equipment and actions necessary for the successful completion of the mission's mandate, mission planners and bureaucrats in DPKO and in the Security Council must be willing to listen and follow the recommendations of peacekeepers on the ground. Consequences for the failure to do so are most evident in UNAMIR: General Dallaire continuously attempted to communicate with the Security Council but was effectively ignored and the mission

was never truly given the opportunity to succeed.³⁵

Cooperation Among Member States

Durch argues that one of the three keys to successful peacekeeping missions is the cooperative support of the Great Powers.³⁶ His book was written in 1992, immediately following the end of the Cold War, during a time in which the major powers could monopolize the Security Council with little opposition. And while the changing nature of the international system is making the Great Powers increasingly less important, his fundamental argument about the necessity of cooperation among member states within the Security Council remains relevant. It is a lack of cooperation, Durch reasons, that often leads to ambiguous and weak mandates. He writes that mandates often reflect the political play in the Security Council and the opinions of the various Council members about a mission.³⁷ If certain members wish to pursue a particular mission, they may negotiate with other members, creating a less assertive mandate in an attempt to appease all parties.

In such cases, however, the Security Council must seriously consider abstaining from undertaking such a mission when consensus cannot be achieved. Durch observes that an ambiguous mandate that gives peacekeepers very limited authority endangers the UN forces on the ground by forcing them to act conservatively to ensure that they do not surpass the mandate's restrictions.³⁸ The Brahimi Report argues that such a mandate can sometimes do little to help the fragile peace if the mandate makes only the most minimal actions to advance the peace process.³⁹ Instead, members of the Security Council must decide authoritatively on whether or not to intervene and to then cooperatively support that decision through the creation of a strong and clear mandate.

35 Melvern, Linda. "The Security Council in the Face of Genocide." *Journal of International Criminal Justice* 3 (2005): 847-860. 852, 857.

36 *The Evolution of UN Peacekeeping*. 12.

37 *Ibid.* 26.

38 *Ibid.* 27.

39 *Brahimi Report*. para 56.

32 *Ibid.* para 52.

33 *Ghosts of Rwanda*. Frontline: The Triumph of Evil. PBS, 2005 (film). 39:38.

34 *The Evolution of UN Peacekeeping*. 26.

RECOMMENDED SOLUTION:

Only a combination of structural changes to DPKO and ideological changes in the UN and among its member states will bring about the changes necessary to improve the efficacy of UN peacekeeping. As Durch explains, however, even these changes will not guarantee success, as one of the primary determinants of mission success is the cooperation of belligerent parties in working towards peaceful conflict resolution.⁴⁰ Nevertheless, failure to undertake peacekeeping reform will almost guarantee future catastrophes as seen in UNAVEM I and UNAMIR, as well as lack of progress in other missions.

Progress has been made on many of the proposals from the Brahimi Report but many structural changes are still lacking. A strengthening of the Integrated Mission Task Forces still needs to be seen to give peacekeeping commanders better intelligence to more carefully plan operations toward the achievement of the mission mandate. The Security Council must always remain cognizant of the need for clear and practical mandates and must give more importance to the conception of the desired end result of the mission, including provisions for a clear strategy for transition of power to local groups and withdrawal of UN peacekeepers. Towards that goal, the Security Council should employ truth and reconciliation commissions to engage the affected society in the peace process and allow it to effectively overcome the true causes of the conflict.

These structural changes to UN peacekeeping will be hollow if they're not accompanied by definitive ideological changes. Mission mandates must not inhibit peacekeepers from engaging parties that attempt to disrupt the mission. It must be recognized that peacekeepers cannot force peace on a population,⁴¹ and to that end, the Security Council must draft mandates that clearly delineate appropriate and inappropriate actions. The Security Council must also decide collectively and authoritatively whether or not to

undertake new missions in order to not jeopardize UN peacekeepers and fragile peace agreements by drafting weak mandates in attempt to appease all Council members. Troop and police contributing states must be reminded that the donation of personnel to a peacekeeping mission necessarily includes the acceptance of the risks associated with situations of imminent violent conflict and that they must not withdraw their troops should they sustain casualties. Finally, mission planners must maintain communication with mission commanders and adapt strategies to the ground truth as reported by the deployed peacekeepers.



⁴⁰ *The Evolution of UN Peacekeeping*. 12.

⁴¹ Johansen, Robert C. "Enhancing United Nations peace-keeping." *The Future of the United Nations System*. Ed. Chadwick F. Alger. Tokyo, Japan: United Nations University Press, 1998. 89-126. 96.

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Repatriation of Cultural Property and Its Continued Protection

Policy Options for Latin American and Caribbean States

– Kirsten Ward

ABSTRACT

Cultural heritage property, such as works of art and religious relics are integral to conceptualizations of national identity. Such items are the legacy of civilizations, speaking for the people that produced them. However, theft of cultural property is rampant. A lucrative market in antiquities encourages looting of historical sites, and before that imperial powers removed cultural items from colonial possessions and placed them in museums and private collections. With the rise of independent nation-states, especially in former colonies, there has been a call in the international sphere for the return of those stolen artifacts, and a greater demand to preserve cultural property. This paper reviews the controversy over cultural property, and offers policy recommendations for Latin American and Caribbean states for preserving cultural heritage. The options take into account claimant states' disadvantages in seeking repatriation of artifacts, as well as the rights of private collectors and countries possessing those items. This paper emphasizes the importance of cooperative partnerships at the domestic and international level to achieve effective preservation of cultural property. The most beneficial policy is one that protects a state's right to its own cultural heritage without denying other states and individuals the opportunity to appreciate those items.

BACKGROUND

Works of art and other cultural artifacts have been the spoils of war and empire throughout human history. Egyptian obelisks decorate Italian plazas, and the British Museum houses treasures from Ireland to India. These foreign objects have been incorporated into the national narrative of the states that currently possess them, becoming part of the cultural identity of both the colonizers and the colonized.¹ Since the flourishing of national identity movements following the First World War, as well as the reassertion of the rights of indigenous peoples, a demand for the return, or repatriation,

¹ Vrdoljak, Ana Filipa. *International Law, Museums, and the Return of Cultural Objects*. New York: Cambridge University Press, 2006. p. 90.

of art and artifacts removed from former subject states has gained in prominence.

Cultural property, which the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (henceforth UNESCO 1970) defines as "property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science,"² has become a policy concern for former colonial possessions. In Latin America and the Caribbean, looting has occurred in 50 percent of documented archaeological sites in Peru,³ 71 percent of sites in Belize,⁴ and 85 percent of Guatemalan sites.⁵ Colonial churches as well as pre-Columbian locations have been sacked.⁶ Collected data verifies that massive amounts of cultural property have been illicitly removed from the region.

However, this illicit export of cultural property from Latin America and the Caribbean did not cease with the end of colonialism. To this day there is a lucrative international market for antiquities, divided between wealthy collectors in so-called "market nations" and suppliers in often impoverished "source nations."⁷ Often, citizens of a source nation participate in the looting of their own cultural heritage, as participating in the illicit trade in antiquities provides a heretofore unavailable source of income.⁸ It appears that high levels of

poverty help to fuel the illegitimate market for cultural artifacts.

The problem, then, is multifaceted. Source countries have lost cultural property by way of colonialism and war, and continue to lose this valuable resource through the illicit trade in art and other cultural artifacts. Not only must states concern themselves with recovering lost cultural property but also preventing future losses. Any course of action regarding cultural property must consider policy at both national and international levels, and take in to account the rights of source and market countries.

THE CASE AGAINST REPATRIATION

Some individuals and states, particularly consumers of exported cultural property, advocate against repatriation of cultural property. In many cases, when art and artifacts were removed from a country of origin, the conditions of removal were not illegal.⁹ This is compounded by the fact that of the three major international agreements regarding preservation of cultural heritage—UNESCO 1970, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague 1954), and UNIDROIT¹⁰ Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT 1995)—none are retroactive. Thus, it can be argued that no legal standards exist suggesting repatriating objects removed prior to ratification of these conventions is the most preferable solution.

Numerous museums oppose restitution, insisting their diverse collections of cultural property serve the common good. Hague 1954 specifies that "damage to cultural property belonging to any people...means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."¹¹ Though the agreement refers to preserving cultural heritage in times of war, it indicates that cultural preservation has universal value, and all peoples

2 United Nations Educational Scientific, and Cultural Organization. *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. Paris, 1970.

3 Brinkman, Manus. "Reflexions on the Causes of Illicit Traffic in Cultural Property and Some Potential Cures." *Art and Cultural Heritage: Law, Policy and Practice*. Ed. Barbara T. Hoffman. New York: Cambridge University Press, 2006. 64-67. p. 65.

4 Ibid.

5 Valdés, Juan Antonio. "Management and Conservation of Guatemala's Cultural Heritage." *Art and Cultural Heritage: Law, Policy and Practice*. New York: Cambridge University Press, 2006. 94-99. p. 95.

6 Ibid.

7 Hoffman, Barbara T. "Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy." *Art and Cultural Heritage: Law, Policy and Practice*. Ed. Barbara T. Hoffman. New York: Cambridge University Press, 2006. 1-18. p. 3.

8 Valdés in Hoffman 2006. p. 95.

9 Vrdoljak, 2006. p. 28.

10 International Institute for the Unification of Private Law

11 United Nations. *Convention for the Protection of Cultural Property in the Event of Armed Conflict*. The Hague, 1954.

have a responsibility to it. This perspective is often referred to as “cultural internationalism.”¹² Museum personnel maintain that their institutions educate visitors and allow access to cultures they may not otherwise have the opportunity to study.¹³ The source country may not have such an audience. Furthermore, modern states are not synonymous with the ancient cultures that produced antiquities.¹⁴ For example, modern Peru is not the same as the Incan Empire, which leads some to question why Peru deserves Incan treasures over other potential claimants.

SOURCE COUNTRIES

Contemporary Causes of Destruction and Loss of Cultural Heritage in Source Countries

Though the European empires are relics of the past, former colonies still lose much of their tangible cultural property to the former imperial powers by way of the international trade in art and antiquities. Brinkman compares art trafficking to that of drugs, observing there is a “demand from wealthy consumers and...there is a huge supply in regions where poverty reigns.”¹⁵ Preservation of cultural heritage can be regarded as a luxury in impoverished states. This is certainly the case in many countries in Latin America and the Caribbean. The illicit movement of cultural objects out of many countries is due in large part to ignorance; a lack of “heritage education” has resulted in little national awareness of the problem, and officials are often unaware that cultural property is smuggled out of the country.¹⁶

Guatemala illustrates the effects of poverty on preserving cultural heritage: over 90 percent of looting of archaeological sites in the country is the

work of impoverished farmers, who are organized and paid by an intermediary who sells the stolen items to collectors.¹⁷ The motivation for poor Guatemalans to destroy their own cultural heritage is tied to their socioeconomic situation. Looting provides an income that was not previously available. Governments as well as citizens are typically disadvantaged as well. The cost of repatriation, which often includes compensation for the previous owner, tends to belong to the requesting state. Less affluent countries, such as Peru, find it difficult to pay for the financial cost of restituting cultural property.¹⁸ Lack of education and poverty are detrimental to the preservation of cultural heritage within a country, and solutions to the issue must consider these factors.

Cultural Heritage Education

Source countries may not ever recover all cultural artifacts and artwork residing in collections in other states, but they can take steps to prevent further loss of cultural property. UNESCO 1970 requests of member states “to endeavor by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations, and illicit exports.” Barbados is one of those party states that have undertaken the effort to educate its populace about its cultural heritage in attempt to preserve it. Barbadian museums have lobbied their government and the public to convince them of the importance of preserving cultural heritage, and have even advised the drafting of related legislation.¹⁹ Though public funds are frequently lacking, museums often benefit from private funds, which can be directed to educational and public awareness campaigns. Not only are the museums an educational resource, but their activism contributed to the development of the “Pathway to a Heritage Strategy,” a plan undertaken by the Barbadian government to develop a sound cultural heritage education policy. This preservation education will bring economic benefits to Barbados; like many Caribbean states,

12 Merryman, John Henry. “Two Ways of Thinking About Cultural Property.” *American Society of International Law* 80.4 (1986): 831-853. p. 837.

13 Cuno, James. “View from the Universal Museum.” *Imperialism, Art, and Restitution*. Ed. John Henry Merryman. New York: Cambridge University Press, 2006.15-34. p. 19.

14 Ibid p. 27.

15 Brinkman in Hoffman 2006. p. 64.

16 Cummins, Alistandra. “The Role of the Museum in Developing Heritage Policy.” *Art and Cultural Heritage: Law, Policy and Practice*. Ed. Barbara T. Hoffman. New York: Cambridge University Press, 2006. 47-51. p48.

17 Valdés in Hoffman 2006. p. 95.

18 Guerrero, Blanca Alva. “Repatriation of Cultural Properties: The Peruvian Experience.” *Museum International* 61.1 (2009): 145-149. p. 147.

19 Cummins in Hoffman 2006. p. 49.

it is dependent on tourism, and cultural heritage can be utilized in developing that industry.²⁰ The Barbadian example takes an interagency approach, utilizing the strengths of each sector.

Inventory

An official registration or inventory of cultural artifacts within a country is beneficial as a means of preserving cultural heritage and for establishing claims of repatriation. Though an incomplete tool for preventing the theft of cultural objects, creating an inventory of cultural property, such as Peru's National Registry for Property Part of National Cultural Heritage,²¹ can strengthen a country's claim for repatriation of an artifact, as it is likely to not be returned without verification of origin.²² Burden of proof is on the claimant country. There is successful precedent for registries of cultural artifacts. The catalog Looting in Angkor was instrumental in the restitution to Cambodia of a Brahma statue that was sold in London.²³ Registries may also be of use in the legitimate export of cultural items, providing an official record and enabling proper authorization. An inventory may be managed by a state, or entrusted to an intergovernmental or nongovernmental entity, such as an archival institution, thus defusing some of the costs of preserving cultural heritage.

INTERNATIONAL COOPERATION

Bilateral Agreements Between States

As none of the three major international frameworks regarding cultural property are retroactive, bilateral agreements are another effective means of facilitating the actual restitution of artwork and other cultural artifacts. The United States has signed multiple Memoranda of Understanding with Latin American and Caribbean states that have provided for the restitution or loan of cultural property. The agreement with

Guatemala streamlined the process for repatriating Guatemalan artifacts discovered in the US.²⁴ Since 1997 the US has maintained such a commitment with Peru; the US returned thousands of items to the South American country.²⁵ Peru also made bilateral repatriation agreements with Germany, the United Kingdom, and Uruguay, among others.²⁶ Peru and Guatemala have set a precedent for bilateral negotiations as a potential means of repatriation. Though many market countries are still resistant to return artifacts, the example set by a major power like the United States can influence other states.

Agreements Between States and Individual Organizations

If states are unwilling to be party to or enforce Hague 1954, UNESCO 1970, or UNIDROIT 1995, the private sector provides different recourse for states seeking restitution and prevention of further cultural property loss. Before the United States adopted UNESCO 1970 in 1983, private institutions such as Harvard and the Brooklyn Museum took it upon themselves to resist obtaining illegally exported artifacts.²⁷ In Guatemala, private collectors have voluntarily registered cultural property in the absence of effective government action.²⁸ The ability of a state to communicate directly with private individuals and organizations possessing cultural property is an important asset in reclaiming cultural property. Claimant states can lobby the institutions without the middleman of diplomatic intervention. However, the most prominent institutions, such as the Louvre and British Museum, have been among the most reluctant to repatriate cultural property.²⁹

Law Enforcement and Legal Cooperation

Hague 1954, UNESCO 1970, and UNIDROIT 1995 are all important for managing illicit transfer of cultural property, but a truly effective framework requires further legislation and implementation of applicable laws at both the national and

20 Ibid p. 50.

21 Batiievsky, Jack and Jorge Velarde. "The Protection of Cultural Patrimony in Peru." *Art and Cultural Heritage: Law, Policy, and Practice*. Ed. Barbara T. Hoffman. New York: Cambridge University Press, 2006. 100-108. p. 102.

22 Brinkman in Hoffman 2006. 51.

23 Ibid p. 66.

24 Valdés in Hoffman 2006. p. 96.

25 Guerrero 2009. p. 148.

26 Ibid p. 147.

27 Valdés in Hoffman 2006. p. 94.

28 Ibid.

29 Vrodljak, 2006. p. 92.

international levels. Peru has passed several laws regarding protection of cultural heritage, including Article 226 of the Criminal Code, which establishes illicit excavations and unauthorized removal of artifacts as crimes punishable by prison sentences.³⁰ The United States enacted The Convention on Cultural Property Implementation Act, which provides for restricting the import of cultural property of nations party to UNESCO 1970.³¹ Precedents exist for both source and market states in combating the illegitimate trade in cultural property. National legislation presents an official condemnation of looting, supporting moral arguments against looting.

Without proper enforcement, though, such laws are useless. Market nations, like the US, tend to employ well-funded and well-trained police and customs forces, enabling them to maintain commitments to protecting cultural property. Canadian customs, for example, intercepted and returned to Peru a shipment of pre-Columbian artifacts that was illicit and thus violated the Canadian Cultural Property Export and Import Act.³² Specialized branches of law enforcement can also facilitate the protection of cultural heritage. Italy's national police force maintains operations focused on stolen art and takes responsibility for maintaining an Internet database of Italian cultural property.³³ However, such initiatives require substantial funding, which is a barrier for many Latin American states. Countries must also invest in monitoring such law enforcement endeavors, and ensure officials are not subject to corrupt behavior such as accepting bribes.

POLICY RECOMMENDATION

The most effective policy concerning the restitution of cultural property and preventing its illegitimate export in Latin America and the Caribbean will require a multifaceted approach, but a key component is the role of museums

within source countries. Cultural institutions are typically beneficiaries of private funding, which is of particular importance in poor countries with minimal budgets. Utilizing the resources of museums places less pressure on public finances. In developing a working relationship with museums and libraries, governments will find not just a means of protecting and preserving cultural property within these organizations, but also a partner in creating public awareness and legislation. The case of Barbados has shown museums can provide input regarding the economy as well. The country's Barbados Heritage Assets Incentive Scheme is a Sun-focused economic strategy developed with the assistance of the Barbados Museum.³⁴ In exchange for working with governments, museums within source countries will benefit from an increased public profile. When feasible, governments should also provide cooperating museums with financial support, in addition to public moral support.

Cultural institutions within source countries are also beneficial in developing a registry of cultural property. Museum and archival personnel are equipped with the knowledge and resources to help find, identify, catalog, and preserve artwork and other cultural artifacts.

Museums cannot fulfill all the necessary obligations for preserving cultural heritage. Legislation concerning cultural property is required, as well as investment in attendant enforcement of those laws. Latin American and Caribbean states often struggle with limited resources, but improving law enforcement contributes to stability as well as transmitting to the populace the import of protecting cultural heritage. States can also receive external funding to support efforts at enforcing cultural property laws. Cambodia established a police force dedicated to guarding the monuments at Angkor with financial backing from France and UNESCO.³⁵ Less wealthy countries are not prevented from protecting cultural property due to their economic situation. To discourage corruption, external funds can be contingent upon observation of law enforcement personnel.

30 Batievsky and Velarde in Hoffman 2006. p. 102.


31 "International Cultural Property Protection." *Cultural Heritage Center*. US Department of State. 7 May 2011. <<http://exchanges.state.gov/heritage/culprop.html>>.

32 Hoffman 2006. p. 4.

33 Brinkman in Hoffman 2006. p. 66.

34 Cummins in Hoffman, 2006 p. 51.

35 Sun, Kérya Chau. "Angkor Sites, Cultural World Heritage." *Art and Cultural Heritage: Law, Policy and Practice*. Ed. Barbara T. Hoffman. New York: Cambridge University Press, 2006. 148-156. p. 152.

Pursuing diplomatic ends to recovering and protecting cultural heritage is recommended as well, though the effectiveness of international and bilateral agreements is limited. Official engagement of museums within source countries, bolstered by effective law enforcement, is the most proactive solution for providing a space for the protection of cultural property, as well as creating a base of support for repatriation claims. 

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International Institute for the Unification of Private Law. Convention on Stolen or Illegally Exported Cultural Objects. Rome, 1995.



Flags of Convenience: Improving the Implementation of Maritime Policy

– Bonnie Magnuson

“Whosoever commands the sea commands the trade; whosoever commands the trade of the world commands the riches of the world and consequently the world itself.”

—Sir Walter Raleigh, 1650

ABSTRACT

The practice of “flag of convenience” ship registries specifically designed to attract foreign shipowners significantly impacts the modern maritime system. A number of flag of convenience states poorly implement international maritime safety, labor, and environmental standards. This causes a host of transnational problems such as weapons and drug smuggling, human trafficking, more frequent ship collisions, poor labor conditions, use by terrorists to covertly transport men and supplies, costly illegal fishing, major oil spills, and issues of hidden liability. The crux of the problem lies in flag of convenience states either not having the will or the ability to implement the international maritime standards that regulate these issues. This paper explores various policy solutions to encourage the implementation of maritime standards and diminish the harmful effects of flags of convenience then recommends a combination of port state control, market access restrictions, and second and international registries as a solution.

BACKGROUND

The practice of registering a ship under the flag of another nation to reap particular advantages or to avoid restrictions dates back to at least the 16th century.¹ However, the modern phenomenon of “flag of convenience” (FOC) regimes specifically created to attract foreign shipowners arose in Panama during the rum-running days of US Prohibition and surged after WWII.² No legal definition of FOCs exists, but they are distinguished by a high percentage of foreign-owned ships in the fleet and a lower willingness and/or ability on the part of the “flag state” to enforce international

1 Stopford, Martin. *Maritime Economics*. 2nd ed. London: Routledge, 1997, 433.

2 Carlisle, Rodney P. *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience*. Annapolis, MD: Naval Institute Press, 1981, xiii-xvi.

standards.³ Based on these criteria, the International Transport Workers' Federation (ITF) lists 32 states widely accepted as FOCs (see Appendix 1).⁴

Because of the oceans' sheer vastness, marine regulation has always challenged governments, and FOCs, also known as open registries, add a problematic layer of complexity. The 1982 UN Convention on the Law of the Sea (UNCLOS) protects each nation's ability to register any ship it pleases: "Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag."⁵ UNCLOS gives a flag state jurisdiction over ships flying its flag and the responsibility to ensure their safety at sea as well as compliance with international standards,⁶ but many FOC states either have not ratified or do not enforce international environment, safety, and labor standards. Additionally, open registries have much more lax domestic requirements—shipowners generally pay no tax on profits, have no practical restriction on crew nationality, and possess considerable freedom over corporate activity—as well as poor enforcement of those requirements. Consequently, FOC ships cause a host of transnational problems. Although flag states do not necessarily mean to create havens of criminal activity, their lenient regulations aid human trafficking, drug smuggling, and weapons smuggling. Terrorists can use FOCs to covertly transport men and weapons;⁷ in 2002, Israeli authorities apprehended a ship registered to Tonga en route to the Palestinian Authority with 50

tons of arms.⁸ A major labor concern, FOCs have a reputation for substandard living and working conditions, low wages, and relatively high loss of life. The source of many collisions, FOC vessels have a higher-than-average ship loss rate.⁹ As 15% of the world's fishing fleet, FOC ships account for \$1.2 billion in illegal fishing each year.¹⁰ FOC vessels take the blame for many of the major oil spills over the past half-century, including the 2010 Gulf of Mexico catastrophe caused by the Deepwater-Horizon oilrig registered to the Marshall Islands. Often, the owner of an FOC ship cannot be identified and held liable for damages.

As the system stands, shipowners essentially choose the flag with the level of regulation they like; if regulation standards increase, they "reflag" to another state. Given that over 90% of international trade travels by sea and the top five open registries comprised 49.3% of the world fleet of 99,741 ships,¹¹ FOCs are a significant yet under-publicized issue. An evaluation of potential methods to improve the implementation of maritime safety, labor, and environmental standards and eliminate or diminish the negative effects of flags of convenience follows.

ELIMINATE FLAGS OF CONVENIENCE

After oil spills in 1999 and 2000 due to the FOC ships Erika (Malta) and Prestige (Bahamas), EU member states called to ban all FOC ships from EU ports. Groups have often proposed elimination of open registries, for example by requiring all ships to be registered in the home country of the owner under international law. Returning so many ships to the traditional maritime states with their higher standards would eliminate many substandard ships,

3 International Transport Workers' Federation (ITF). "What are Flags of Convenience?" *Flags of Convenience Campaign*. ITF. Web. 10 March 2011. <<http://www.itfglobal.org/flags-convenience/sub-page.cfm>>.

4 ITF. "FOC Countries." *Flags of Convenience Campaign*. ITF. Web. 10 March 2011. <<http://www.itfglobal.org/flags-convenience/flags-convenience-183.cfm>>.

5 "United Nations Convention on the Law of the Sea." 10 December 1982. Web. 29 March 2011. <http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm>. Article 91.

6 "United Nations Convention on the Law of the Sea." Articles 94 and 217.

7 Organisation for Economic Co-operation and Development. Directorate for Science, Technology and Industry. Maritime Transport Committee. *Ownership and Control of Ships*. March 2003. Web. 29 March 2011. <www.oecd.org/dataoecd/53/9/17846120.pdf>, 5.

8 Winchester, Nik. "Flags Must Hoist a Different Standard." *The Sea* 165 (September/October 2003): 4. Seafarers International Research Centre. Web. 24 February 2011. <<http://www.sirc.cf.ac.uk/>>, 4.

9 Cafruny, Alan W. *Ruling the Waves: The Political Economy of International Shipping*. Berkeley: University of California Press, 1987, 110.

10 Young, Emma and James Randerson. "Marauders of the High Seas." *New Scientist* 188.2524 (5 November 2005): 12-13. *Academic Search Premier*. Web. 21 March 2011.

11 As of 2009. International Maritime Organization (IMO). Maritime Knowledge Centre. *International Shipping and World Trade: Facts and Figures*. October 2009. Web. 14 February 2011. <<http://www.imo.org>>, 7-8, 11.

the complaints against open registries, and the possibility of “reflagging”—re-registering to another state with lower standards. However, states have never seriously acted upon such proposals.¹²

The substantial benefits of the FOC system make elimination impractical. FOCs have neutrality benefits: Panamanian-registered ships ferried Jewish refugees from Poland to Palestine from 1938 to 1939.¹³ The traditional maritime states levy vastly higher taxes and administrative fees; a 1996 study of Korean shipping found that Korean-flagged ships paid US\$450,000 annually while open registry ships paid US\$5000.¹⁴ Eliminating FOCs would greatly increase the cost of consumer goods, crippling the international trading system. Crew costs, which comprise up to 50% of a ship’s operating costs, would skyrocket with a requirement to employ nationals.¹⁵ Open registry states would lose a significant source of revenue; registry activities represent 1/6 of Liberia’s national revenue.¹⁶ Certain open registries have respectable standards and should not be eliminated. Furthermore, FOC states will not likely agree to abolish open registries under international law. It is better to focus on increasing standards than eradicating open registries.

INCREASE MARITIME STANDARDS

Increasing standards represents the classic approach to the problem of flags of convenience. By increasing international standards, states hope to set a higher bar and reduce the chances of an FOC ship causing a labor, safety, or environmental crisis. For example, current international regulations on seafarer fatigue sometimes inadequately protect

crews from injury and ill health.¹⁷ However, when examining existing standards on maritime transport, it becomes immediately apparent that legions of international conventions already establish high standards. Existing conventions regulate safety, collision prevention, load lines and tonnage measurement, maritime pollution, oil spills and response, fishing and conservation, seafarer training and certification quality, and seafarer wages and leave, to name a small sample.

In 1986, the Convention on Conditions for Registration of Ships (CCROS) attempted to make states more accountable for their shipping.¹⁸ However, it requires 40 ratifications and has only 14 (see Appendix 2).¹⁹ Of the FOC states, ten have ratified fewer than 45% of all safety, labor, and environmental agreements, which may not even be the important ones.²⁰ The success of conventions on fishing in particular relies on ratification, as one dissenter ruins effectiveness. Furthermore, even when a state has ratified agreements, it may have neither the will nor the means to enforce them. Evidently, the problem hinges on a lack of widespread ratification and implementation of existing standards by FOC states, and sovereign states have the right to not ratify agreements. Simply presenting increased standards for ratification is not effective.

SET NATIONAL LIMITS ON FLAGS OF CONVENIENCE

Nations wishing to increase the enforcement of standards could regulate their own citizens’ access to open registries in the hopes that those citizens would only flag in high-quality registries or the national registry. Any state could extend

12 DeSombre, Elizabeth R. *Flagging Standards: Globalization and Environmental, Safety, and Labor Regulations at Sea*. Cambridge, MA: The MIT Press, 2006, 205.

13 Carlisle, 64-65.

14 Economic and Social Commission for Asia and the Pacific (ESCAP). *Framework for the Development of National Shipping Policies*. New York: United Nations, 1999, 110.

15 Stopford, 161.

16 DeSombre, *Flagging Standards*, 78.

17 Bloor, Mick and Ramesh Datta. “The SIRC Column.” *The Sea* 168 (March/April 2004): 4. Seafarers International Research Centre. Web. 24 February 2011. Retrieved from <http://www.sirc.cf.ac.uk/>, 4.

18 ESCAP, 188.

19 United Nations. “United Nations Convention on Conditions for Registration of Ships.” *Treaty Collection*. UN, 2011. Web. 30 March 2011. <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&lang=en>.

20 Belize, Bolivia, Burma, Cambodia, Comoros, Equatorial Guinea, Honduras, Lebanon, Mongolia, Sao Tome and Principe. DeSombre, *Flagging Standards*, 42-43.

such a policy to other areas of concern. Without eliminating the ability to register in any FOC state, as that policy has already been discounted, states could limit their citizens to only above-standard registries. This would require states to specifically name the substandard registries. New Zealand, Spain, and Japan have all legislated against their citizens participating in open-registry fishing. Spanish nationals can be penalized for activities of their foreign-flagged ships.²¹ However, the Spanish policy has not prevented Spanish ships from "flagging out" to open registries.²² Given sufficiently high incentives, shipowners may relocate to a different state to avoid the high operating costs of a national registry. Additionally, such policies might be challenged at the WTO as discriminatory.

In the 1970s, the US considered FOC ship quotas to limit access to open registries. Arguments in favor included increasing US jobs in shipbuilding, ships, and supporting industries and bettering protection of the marine environment, but the measure never passed. The arguments against, which included increased cost of consumer goods and US vessels having a poorer safety record than Liberia at the time, outweighed support for the quota policy.²³ Considering these examples, limiting access to FOCs does not seem a viable option.

MAKE STANDARDS MORE ENFORCEABLE

More easily enforced standards might increase enforcement by open registry states. Most FOC states do not willfully avoid enforcing international standards but simply lack enforcement ability. Ronald Mitchell, an environmental politics professor at the University of Oregon, argues that international conventions prohibiting the discharge of oily waste from the ballast tanks of oil tankers present a very difficult-to-enforce and expensive standard. Concentrating on equipment standards by verifying if each tanker has the required pollution-prevention equipment, conversely, is

much easier.²⁴ Without lowering international standards, the international community can make requirements more enforceable by using proxy methods to implement the standards. However, this strategy does not apply to all areas of concern; the only way to ensure seafarers have the proper training consists of actually checking their training and credentials.

Another method to make standards more enforceable is technical cooperation between states. The International Maritime Organization (IMO) runs a technical cooperation program that matches member states possessing less enforcement ability (including many FOC states) with better-positioned members. The partnerships arrange training, workshops, and seminars.²⁵ Still, the onus to actually enforce standards remains on the flag state. This solution is therefore unreliable and would only work in FOC states with sufficient resources.

MANDATE A "GENUINE LINK"

States often discuss the idea of mandating a "genuine link" between ship registries and their ships as a way to convince FOC states to only register the number of ships they can truly monitor. In fact, a number of international agreements require a "genuine link," but either these agreements are not in force, are not binding, or, if they are in force, define the link very weakly or not at all, leaving ship-registry relations to the discretion of flag states as before.²⁶ A 1978 UNCTAD working group concluded that a "genuine link" meant economic ties such as ownership by a national or employment of a certain number of nationals as crew.²⁷ Supporting this, CCROS established a legal definition of "genuine link" as ownership by a national and/or nationals making up a "satisfactory part" of the crew.²⁸ Other potential ways to mandate a "genuine link" include

24 DeSombre, *Flagging Standards*, 62-63.

25 IMO, *International Shipping and World Trade*, 39.

26 DeSombre, *Flagging Standards*, 67.

27 Cafruny, 249.

28 "United Nations Convention on Conditions for Registration of Ships." 7 February 1986. Web. 28 March 2011. <<http://www.admiraltylawguide.com/conven/registration1986.html>>. Articles 7-9.

21 DeSombre, *Flagging Standards*, 154.

22 DeSombre, *Flagging Standards*, 155.

23 Carlisle, 187-89.

requiring the nationality of the captain to match the ship's registration or obliging the ship to visit a port in its state of registration at least once a year. All these measures, though, have substantial undesirable implications for the efficiency and cost of international shipping. Additionally, FOC states would need to ratify any definition of a "genuine link" to make it enforceable—a highly unlikely outcome, as previously mentioned.

LOWER INCENTIVES TO REGISTER ABROAD

If states could decrease incentives for shipowners to flag out, more ships would voluntarily remain under the national flag and national enforcement of standards. According to a 1997 study, shipowners registered under FOCs list crew costs as the main reason to flag out.²⁹ In contrast, shipowners cited escaping from bureaucratic control as their reason only 17% of the time and the high cost of standards compliance only 12%.³⁰ A state lowering its domestic regulations on shipping—particularly labor regulation—would certainly reduce incentives to register abroad. However, domestic industries might accuse the government of favoritism to the shipping industry, and a state could be pressured to lower standards in all industries.

In order to prevent ships from flagging out yet maintain standards in industries other than shipping, several traditional maritime states have successfully created their own open registries with conditions favorable to shipowners.³¹ Second registries are those set up in a territory of the state; international registries are given the name of the state itself. Thirteen such registries exist today, belonging to Denmark, France, Germany, the Netherlands, New Zealand, Norway, Portugal, Spain, and the UK, and most have high safety and environmental standards and moderate labor regulation.³² Ships register there because

of the freedom to hire internationally and the reputational advantages.³³ Other states could choose to implement this successful method of increasing standards by creating their own second or international registries.

CONTROL MARKET ACCESS OF SUBSTANDARD SHIPS

Profit-making unquestionably motivates most shipping decisions. Shipowners want cheap, efficient, and reliable transportation.³⁴ Anything that impacts an FOC ship's ability to deliver goods to consumers could influence shipowner behavior. Consider the example of illegal, unreported, and unregulated fishing. Trade restrictions have very effectively persuaded states to join international fishing agreements and even individual shipowners to uphold fishing standards, whether or not their flag requires it.³⁵ For example, the US limits access to its market of 300 million consumers to only tuna caught using fishing methods safe for dolphins. This approach has significantly increased standards in the fishing industry. States can take this lesson and apply it to the issues of FOCs: a state could prohibit the domestic sale of goods shipped under substandard conditions that endangered the environment or the lives of seafarers. The WTO will strike down environmental trade restrictions that discriminate against a state, but it has approved the US restriction on dolphin-safe tuna because of its fair and nondiscriminatory application.³⁶ It is important that states restrict the market access of substandard ships rather than FOC states.³⁷

33 DeSombre, *Flagging Standards*, 83.

34 Branch, Alan E. *Economics of Shipping Practice and Management*. London: Chapman and Hall, 1982, 64.

35 DeSombre, Elizabeth R. "Fishing under Flags of Convenience: Using Market Power to Increase Participation in International Regulation." *Global Environmental Politics* 5.4 (November 2005): 73-94. *Academic Search Premier*. Web. 26 March 2011, 76.

36 DeSombre, Elizabeth R. and J. Samuel Barkin. "Turtles and Trade: The WTO's Acceptance of Environmental Trade Restrictions." *Global Environmental Politics* 2.1 (February 2002): 12-18. *Academic Search Premier*. Web. 26 March 2011, 13.

37 Barkin, J. Samuel and Kashif Mansori. "Backward Boycotts: Demand Management and Fishery Conservation." *Global Environmental Politics* 1.2 (May 2001): 30-41. *Academic Search Premier*. Web. 27 March 2011, 30-32.

29 Bergantino, Angela S. and Peter B. Marlow. *An Econometric Analysis of the Decision to Flag Out: Final Report*. Cardiff, England: Seafarers International Research Centre, June 1997, 12.

30 Bergantino and Marlow, 29-30.

31 Stopford, 434.

32 DeSombre, *Flagging Standards*, 42-43.

This solution allows a state to proactively increase implementation instead of asking another state to enforce standards. It also eliminates the problem of reflagging, as a substandard ship could not deliver its goods no matter what flag it flies. However, this policy might cause a domestic political uproar, as it may hurt flagged-out US producers' ability to access the US market. Also, enforcement could be difficult. Overall, though, this is a highly effective policy.

IMPROVE PORT STATE CONTROL

Coastal states can inspect and detain any ship wishing to enter their territorial waters, a policy called "port state control" (PSC). The decision to inspect partly depends on the reputation of a ship's flag. Ships flying substandard FOCs are much more likely to be inspected and potentially detained, interrupting the delivery of goods and causing the shipowner thousands of dollars in lost revenue and repair costs.³⁸ PSC thus keenly incentivizes either reflagging to a better open registry or pressuring one's registry to improve its reputation. For example, Liberian shipowners, fearing a loss of revenue because of the flag's poor reputation, pressured Liberia into improving inspections and ratifying major agreements in the 1980s. Liberian ships now have a better record than some traditional registries.³⁹ Ten PSC regimes, usually formed by "Memoranda of Understanding" (MOUs), cover most of the coastal states.⁴⁰ MOUs create systemized processes of enforcing standards from key international conventions.⁴¹

PSC does have several weaknesses.⁴² Fear of expensive consequences of a wrongful detention makes PSC authorities hesitate to detain ships. Indemnification statutes for PSC actions made in good faith like those in Australia and New Zealand

would improve PSC.⁴³ The effectiveness of PSC varies between states, particularly when officials are poorly paid and susceptible to bribery; further harmonization of methods would improve this.⁴⁴ Better sharing of information, the publication of specific detentions, and support by domestic legislation would improve the efficiency of PSC.⁴⁵ Overall, PSC addresses FOC issues very effectively.

RELY ON CLASSIFICATION SOCIETIES

As private businesses, classification societies class ships based on technical plan reviews before construction, surveys during construction, and periodic maintenance surveys afterward. Classing is mandatory for insurance, and port states can refuse entry to non-classed ships. When accepting ships, registries specify which of approximately 50 classification societies their ships may use.⁴⁶ If all states agreed to use only classification societies with records of accurate ship classing, improvement of standards could occur rapidly, as substandard ships would be excluded from all flags. Consisting of the ten most reputable classification societies, the International Association of Classification Societies (IACS) provides an example of high-quality classification societies that could be used in such an approach.

The classification society approach possesses certain disadvantages. As a paid service, classification societies' interests ultimately lie with the shipowners, so they may be biased in their approval.⁴⁷ Classification societies inspect only the physical characteristics of ships, so although they may effectively enforce international safety and environmental standards, they can do nothing about labor or operations.⁴⁸ Furthermore, this solution relies on action by the FOC states. As this approach would decrease the number of ships a state could register, FOC states would not likely agree to it. States could remedy this

38 Bloor and Datta, 4.

39 DeSombre, *Flagging Standards*, 98-99, 182.

40 IMO, *International Shipping and World Trade*, 20.

41 Hare, John. "Port State Control: Strong Medicine to Cure a Sick Industry." *Georgia Journal of International and Comparative Law* 26 (1996-1997): 571-594. *Hein Online Law Journal Library*. Web. 28 March 2011, 578-79.

42 Hare, 71.

43 Hare, 590-91.

44 Bloor and Datta, 4.

45 Hare, 577-82.

46 Stopford, 424-426.

47 Cafruny, 268.


48 DeSombre, *Flagging Standards*, 183.

final disadvantage by not allowing ships classed by substandard societies into their ports, creating effects similar to PSC, although this does nothing to overcome the other problems with this solution

POLICY RECOMMENDATION

The problems associated with flags of convenience do not result from the existence of the flags themselves, since FOCs can be quality registries, as this paper has indicated. Rather, the problems stem from the varying levels of ratification and implementation of international safety, labor, and environmental standards that result from states without the will or ability to enforce standards. The Marshall Islands, with a population of 67,000, GDP of US\$161.7 million,⁴⁹ and 5% of the world fleet,⁵⁰ may want to effectively police its fleet, but its resources limit its enforcement abilities. FOC states may not intend to foster lawlessness in the shipping industry, but they essentially create what FOC expert and Wellesley professor Elizabeth DeSombre terms a “competition in regulatory laxity.”⁵¹ Shipowners can choose which level of regulation works best for their purposes with no consideration to what works best for everyone.⁵²

Any solution that relies on action by a flag of convenience state has less potential for effectiveness, given that each FOC state wants to attract ships to their registry and is loath to do anything that jeopardizes the appeal of their flag. Good solutions will therefore not be aimed at FOC states but rather at substandard ships. By targeting shipowners and incentivizing registration with higher-quality flags, states can increase international implementation of standards and, through shipowner pressure, encourage implementation by FOC states.

Further increasing standards though international conventions does nothing to combat the problem of ratification and implementation and cannot effectively solve the problem. In addition to decreasing incentives to register abroad through second or international registries, the best policies rely on economic incentives by restricting market access to only above-standard ships and improving port state control, both of which have proven themselves effective in the past. These policies would lead most shipowners to insist on reputable registries in order to ensure access to valuable markets and avoid losing time through inspection and detentions. Implementation of standards would rise worldwide. Additionally, these policies would eliminate the problem of reflagging to another low-standard registry, because they would subject all FOCs to the same pressures. These policies put the focus on ships not following standards rather than on states, making them much more effective and ensuring that they do not run afoul of the World Trade Organization's nondiscrimination principles. In the attempt to diminish the negative effects of flags of convenience, the economic solutions of port state control and restricting market access as well as the introduction of more second and international registries are the best policies to follow. 

49 United States. Central Intelligence Agency. “Marshall Islands.” *The World Factbook*. CIA, 16 March 2011. Web. 31 March 2011. <<https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>>.

50 IMO, *International Shipping and World Trade*, 11.

51 DeSombre, *Flagging Standards*, 5.

52 Winchester, 4.

Appendix 1: Flag of Convenience Countries

The ITF's Fair Practices Committee classifies the following countries as flags of convenience:

Antigua and Barbuda
Bahamas
Barbados
Belize
Bermuda (UK)
Bolivia
Burma
Cambodia
Cayman Islands
Comoros
Cyprus
Equatorial Guinea
French International Ship Register (FIS)
German International Ship Register (GIS)
Georgia
Gibraltar (UK)
Honduras
Jamaica
Lebanon
Liberia
Malta
Marshall Islands
Mauritius
Mongolia
Netherlands Antilles
North Korea
Panama
São Tomé and Príncipe
St. Vincent and the Grenadines
Sri Lanka
Tonga
Vanuatu

Appendix 2: Ratifications of the Convention on Conditions of Registration of Ships

Albania
Bulgaria
Côte d'Ivoire
Egypt
Georgia
Ghana
Haïti
Hungary
Iraq
Liberia
Libya
Mexico
Oman
Syria

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Interview with Captain Ulrich Reineke

JANUARY 25, 2011

How has NATO grown and changed since its inception?

NATO was founded in 1949, basically as a military alliance to counter Warsaw Pact aggression. Or, as its first Secretary General put it, to keep the Americans in, the Russians out, and the Germans down. And this mentality has remained unchanged during the Cold War. And this changed with the fall of the Berlin Wall because the security environment changed at that time. So, since international institutions are always a little bit behind the actual developments, which is also good, it took a couple of years, but with the operations in the Balkans, NATO changed because we are now some sort of security institution that provides services for peace and freedom, democracy perhaps in other nations.

But NATO still has the responsibility to provide defense when necessary?

Yes, the NATO treaty has remained unchanged, and there's the Article 5, which is corrective defense, but over the decades, NATO has always changed its security strategy. So while the foundation and basic document have remained unchanged, whenever we felt that we should change our strategy, we changed it. The last change of strategy is very recent; it's from November 2010.

What is the Knowledge Support Section, and how does play into the greater role of NATO as a whole?

The Knowledge Support Section, which is my section, is part of the Knowledge Center, and the Knowledge Center and the Joint Forces Command gives knowledge support for the three operations which we are leading. The heart of the Knowledge Center is the Knowledge Development Section, which does the analytical work. The Knowledge Support Section provides services within the Knowledge Center, which is geospatial support, so we provide all the maps to the military; we do the security issues; counter intelligence, and we also provide the computer systems on which we do our work.

How closely do you work with other Joint Force Commands and their Knowledge Support Sections? Are all the Joint Force Commands working independently, or how much collaboration do the Joint Force Commands have?

Our internal structures are pretty much alike, so we run the same computer systems. We do training together; for example, if we need to train analysts, we can do it at our place and the other Commands can join us, or if Lisbon is training analysts, we send our people over to Lisbon to get trained. We exchange information on how to set up our computer systems, for example, so there's constant collaboration among the specialists in our three commands. We're now doing a huge exercise, in which we hand over the responsibility for an operation from one Joint Command to another, and my specialists are already talking with Lisbon, the other Joint Force Command, how this will be done on the technical side.

NATO is obviously a multi-national military with 28 current members. How does such a multi-national military work together to resolve problems, differences in goals and expectations in any kind of situations, both military and peacekeeping?

Within our structure it's very easy. Nations send military personnel to the military structure of NATO. Our working language is English. We bring in our

professional experience, and we work together pretty much as if it were a national command post.

Externally, it's driven by the kind of operation, so every operation is different. NATO is doing two naval operations, two more or less land-focused operations, and one training mission—the NATO Training Operation in Iraq—KFOR in Kosovo, ISAF in Afghanistan, Ocean Shield and Operation Active Endeavor as naval operations. The way we work in these operations depends very much on the kind of operation. So, in Kosovo, we are in a post-conflict environment, so we monitor what the international community has achieved. And we monitor some very sensitive spots—churches, monasteries—which need to be not protected, by looked after. And Afghanistan, I don't think I have to explain that there's still war fighting on going against the Taliban, so we not there yet, so it's a completely different story.

Are there ever any major problems between NATO states that one state wants to address a certain issue one way and another state wants to address it another way?

Yes, we are talking about independent nations, and what NATO needs is always a unanimous decision before we take any action. Within NATO, the NATO council or the NATO bodies in which we discuss such issues, there is open and frank discussion. We usually reach a compromise that satisfies everybody, and the time for differences is over. So it works quite well.

What are the most important issues facing NATO today, both externally and internally?

The burning issue for NATO is ISAF in Afghanistan, because all NATO nations signed up to change this country and to make it a peaceful, prosperous place. I think this is our major challenge externally. Internally, it is to further transform NATO from a military alliance that was once designed to counter a real military threat from the Warsaw Pact and that's the new strategic concept—collective defense, management of crises, and outreach and cooperation.

How does NATO interact with the UN on military and diplomacy issues, with the ISAF structure specifically?

That is usually relatively simple. The operation itself is very complex, but the structure is relatively simple. NATO in general waits for a UN Security Council mandate, or a request from the United Nations to act. When this request is there, then the NATO countries sit together and decide politically if they and what they can do for the United Nations, and there is United Nations mission in Afghanistan, so the supremacy for the whole international community's efforts in Afghanistan lies with the United Nations, and we are contributing to this as NATO with the International Security Assistance Force.

How much of what NATO does is involved with the United Nations?

You cannot say it is a percentage. In general, NATO says no military action without a UN mandate, because that provides us with the legal basis. So in the Operation Ocean Shield, where we combat piracy off the coast of Somalia in the Indian Ocean, it's a UN mandate to protect vessels from the World Food Programme. In Kosovo, it's a UN-mandate mission. In Afghanistan, it's a UN-mandated mission. Our major missions are mandated by the United Nations.

How do NATO and the UN decide whether there will be a UN Peacekeeping force or a NATO operation?

The UN decides. If they can find the resources through a UN force generation process, then they can handle that on their own or if they need support from NATO. If you look at the current UN missions, those are missions of monitoring and control, but they're not combat missions. So UN forces do not go somewhere they are to fight. They are there to protect, to monitor, while NATO forces connect in a more robust way.

What is involved in rebuilding operations on the ground level?

The military does not rebuild. We provide the safe and secure environment in which other institutions can do that. Even if today, for KFOR, we are talking about a post-conflict situation, when NATO deployed

troops into this Serbian province, there was the risk of Serbian military opposition, so it was not clear at the beginning that there would not be military conflict. We were very lucky, or it was maybe obvious that the Serbians would not risk that, but that's basically the success story. The success story is that we are now in a post-conflict situation, and other institutions like the European Union can do reconstruction and economic growth while NATO with its military is providing the safe and secure situation.

How has NATO changed and adapted with the growing strength of the European Union?

...The military aspect or the security aspect of the European Union is just a very small part of the European Union, while NATO remains a military alliance and exercises military power. They cooperate at this stage well on the military field, but the European Union is much more comprehensive and has a lot of different tasks which go very much beyond the things NATO is doing.

Do you anticipate that the growth of the European Union will change the function of NATO in the future?

I personally do not think so. Because the European Union is active on so many areas, the military part of the European Union being only a small part of this, there will be a role for NATO in the future for Euro-Atlantic partnership, for cooperation and outreach, and purely through the military field, through military action providing a safe and secure environment while the European Union has so many other capabilities and services it can provide that you cannot really compare the European Union with NATO anymore. It's two completely different issues.

When the United States gets involved in an issue and they come to NATO asking for support, how much influence do they have in determining NATO options and goals?

Well, we had such a situation in the past with ISAF. ISAF started with lead nations, and when Germany and the Netherlands were lead nations of ISAF, they realized this was becoming a very complex and demanding

operation, so they requested that NATO would discuss this, if NATO could not take over the responsibility for ISAF. So, actually, any NATO nation could bring up any issue and say, "I propose that we take this up together." In reality, nations must ask themselves if they really should do it, and if all of the other NATO nations would sign up for it, because otherwise it would be a loss of face, so I do not think that nations will bring up individual unilateral things in NATO. That's my personal opinion, that NATO will remain in alliance that will basically act if NATO as alliance or one of the member states is attacked, or if the United Nations identifies an issue and requests support from NATO, but not because one of the member states has an issue in some part of the world and says, can you help me out. In the past, I assume that has been more the part of the issue of the Coalitions of the Willing.

What is your own experience in the differences among working with the German Navy versus working with NATO versus working with the UN?

It's not so much whether you work for or with NATO or the UN on the Navy. We change our posts every two to three years. So if you're commanding a frigate, for example, it doesn't matter whether you are working under a NATO operation or a UN operation, because your main concern is to be an efficient commanding officer of the ship. Your considerations about the mission, the aim of the mission, are different because the types of the missions are different. When you work in NATO HQ, you work with an international staff, but you work with a staff. Staff work is not so much different from the German staff or the NATO staff. The language is different; the structures are a little bit different, but that doesn't make that much of a difference. So actually, it is not so much the place where you work but the type of operation you deal with or if you are on a prominent post, such as the commanding officer of a ship, having the responsibility of all the people who are with you.

Can you tell us a little bit about the different operations you've done, then, and how those varied?

With the Navy, I have done largely embargo operations, which means to control the seas. For example, in the mid-nineties, in the Atlantic, because the United Nations enforced an arms good embargo

against Serbia. Then the United Nations interim forces in Lebanon. We did a control of shipping off the Lebanese coast. Then I was for three months in charge of the logistic detachment in Djibouti, ensuring logistic support for German units, which were operating in the Indian Ocean. So, fortunately, there have been no Naval warfighting missions in the past, neither for our forces nor for other forces. So the focus at this time is boarding operations, controlling ships, searching ships, and enforcing embargos.

Can you explain a little bit more what it is that you do for the Knowledge Support Section, what processes you go through, and how that information is used for NATO?

I'm basically in charge of four areas, one is geospatial support, so the products we have in knowledge development very often need to be put on maps to visualize, because military operations always deal with the area in which you operate. So yesterday, during my speech, I showed the project of building a bridge in this artificial environment. So you need maps, geospatial support, imagery to do your military work. Another aspect is security issues, so who has what kind of access to information. Third issue is the computer systems, the web systems on which we exchange our information from one headquarters to another. The fourth issue is thinking ahead, conceptual work.

How do allegiances to individual states play into working in an international military?

Well, I am in the German military, and I'm loyal to Germany. It's Germany that has joined NATO in this part of NATO. I act on behalf of NATO, and I get my orders from a Turkish general who is paid by his government and is loyal to his government. There is some delegation of authority to NATO concerning this, but I am completely under German rules and German regulations. There is no NATO law or NATO rules or regulations that would govern my acts.

Then there are people who are hired by NATO and have a contract with NATO. I don't even have a contract with NATO. There is a post in the NATO command structure which is given to Germany, and Germany sends a German office to this post, but I have not signed any document with NATO that I am employed by NATO.


Because this is a post allotted to Germany, are you then not able to move up the structure of NATO?

No. I cannot be promoted inside NATO, because my boss is Turkish and has a Turkish post. NATO cannot decide on my promotion. It's Germany who decides when to take me back and how to employ me in the future?

Are most NATO command posts like that? Spots reserved for certain nations?

Yes, that's the principle, which makes it better, because if I put all my effort into what I'm doing, it's not to get promoted by NATO. It's unbiased; it's really because I believe it should be done that way.

Do you believe that this structure has a positive influence on the way NATO is run, to not have people vying for promotions?

...Our promotion depends and continues to depend on our national structures. The advantage to our system is that our national governments can always say "go there, do a good job, and when you come back, we'll see what we can do for you." We provide our best services for two years without thinking about promotion. However, you put out people every two or three years, so you lose the expertise. In other institutions, they stay in for ten years, fifteen years, twenty years. 

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