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Death Penalty Dying: A Comparative Look at International Trends and the Saddam Hussein Decision

Mark W. Reid

Vice Chair, Comparative Law Committee

The death sentence recently handed down to Saddam Hussein has sparked renewed interest in the international debate over the issue of executing a head of state. Several European leaders were quick to publicly condemn the sentence.¹ The Spanish Prime Minister, foreign ministers of Italy and France, and the Finish President of the EU criticized the ruling as unethical and likely to lead to more violence in Iraq. No surprise here, considering that no EU member country employs the death penalty.² Most significantly, Tony Blair, the U.S.'s staunchest ally in the invasion of Iraq, noted in a recent London press conference that Britain opposed the death penalty, "whether it's Saddam or anyone else."³

The global trend over the past 30 years has been the abolition of the death penalty. While there were only 16 countries that had abolished capital punishment in 1977, that number rose to 122 by the end of 2005.⁴ In the EU, abolition is a condition of membership.⁵ This trend coupled with the fall of Communism led many Central and Eastern European countries to abolish it as well. In Central and South America, the practice has been largely eliminated due to democratization throughout the region in the 1980s. Many countries in Asia and Africa, on the other hand, have retained it.⁶

Many Americans might be surprised to learn that there are only five fully developed and democratic nations in the world that have the death penalty. Japan, South Korea, Taiwan, Singapore, and the United States.⁷ Within the U.S., 37 states allow for the death penalty. New York was part of that group until 2004, when the death penalty statute was declared unconstitutional.⁸

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The Remnants of War: Weapons of Armed Conflict in the Humanitarian Age

Jacob Leon Beier

Vice Chair, Human Rights Committee

Combating the forces of terrorism and collapsing repressive regimes worldwide to ensure the fortitude of national and global security will surely be a "long war."¹

The War on Terror has engaged the "weapons superpowers," primarily the United States of America and Israel, in a military struggle for preeminence. Military intervention and the drive for regime change has been expressed or implied as, *inter alia*, a necessary humanitarian mission abroad. The administration of these "weapons superpowers" propose that the use of preponderant military force is the most viable means of realizing security and prosperity in the unstable Middle East.

The use of at least two controversial weapons, cluster bombs and phosphorous weapons, by both the United States of America and Israel during the current War on Terror has alarmed many nations and human rights organizations. Furthermore, Hezbollah, the Shi'a militant and political body based in Lebanon, has also recently used cluster munitions in its persistent bombing of civilian areas in northern Israel.² This is a further reason for apprehension and a possible indication of non-state groups' escalating drive to compete and obtain devastating armaments provided by the many suppliers of the weapons of war.³

The *Geneva Conventions on Certain Conventional Weapons, Protocol III* prohibits making civilian populations or objects the target of incendiary weapons.⁴ Article 1 of the convention specifies that "incendiary weapons" "means any

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Worldwide, capital punishment is most prevalent in China which performs over 90% of the world's executions.⁹ But even China has recently made an effort to reduce this number by requiring that all death sentences be reviewed by the Supreme People's Court, the country's highest court.¹⁰ In demographic terms, while the trend has generally been toward abolition, the trend is towards retention in countries that have large populations and high population growth. Otherwise, the practice only exists in countries that are poor, undemocratic, or authoritarian states.

Given this trend and the current situation in Iraq, it is interesting to examine what this would mean for Saddam. Convicted for "crimes against humanity," including the deaths of 147 Shiites in Dujail, it is hard to imagine that the special tribunal set up to try him would have the power to impose the death penalty. However, the death penalty is not a forgone conclusion for those charged with war crimes against humanity. The Special Court for Sierra Leone does not hold the power to sentence former president Charles Taylor to death.¹¹ Yet, Professor David Crane, the former Chief Prosecutor who signed Taylor's indictment, has noted that he was responsible for destroying "two West African nations, Sierra Leone and Liberia, and was individually criminally liable for the murder, rape, maiming, and mutilation of over a *million* human beings."¹² One could argue that Charles Taylor's crimes were more heinous than Saddam's. The question remains for proponents and opponents alike: in which of these courts is the interest of justice better served?

Two countries destroyed by dictators, thousands of people dead as a result, international involvement in the fates of both of these war criminals, yet two distinctly different results. Why is this the case? A quick glance at the establishment of the tribunals might yield an answer. Each was established by governmental statute. In the case of the Sierra Leone Court, this was an arrangement between the UN and the government of Sierra Leone.¹³ In Saddam's trial, the Supreme Iraqi Tribunal derives its power from a resolution by the transitional government there, assisted in formation, of course, by the United States.¹⁴ Evidently, there is a dichotomy of trends. Where the EU or the UN is involved, capital punishment will not be an option. But when the U.S. is directly involved, the result is quite

different.

With appeal, Saddam is looking at the last two or three months of his life. By the end of January, perhaps by year's end, he will hang until he is dead.¹⁵ Charles Taylor, on the other hand, might be around quite awhile to live uncomfortably in a jail cell and contemplate the atrocities he committed. In which case is justice best served? The world has yet to agree on an answer.

¹ Article by Jeannie Shawl entitled *European Leaders Balk at Saddam Death Sentence* found at http://jurist.law.pitt.edu/paperchase/2006_11_06_in dexarch.php#116284072578264663.

² *Id.*

³ *Id.*

⁴ Wikipedia article on Capital Punishment at http://en.wikipedia.org/wiki/Capital_punishment.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ <http://www.deathpenaltyinfo.org/state/>.

⁹ http://en.wikipedia.org/wiki/Capital_punishment.

¹⁰ <http://www.deathpenaltyinfo.org/>.

¹¹ From the Wikipedia article on the Special Court for Sierra Leone at

http://en.wikipedia.org/wiki/Special_Court_for_Sierra_Leone.

¹² Professor Crane from his article entitled *Handing over Charles Taylor: It's Time* found on <http://jurist.law.pitt.edu/forumy/2006/03/handing-over-charles-taylor-its-time.php>.

¹³ The Statute of the Special Court for Sierra Leone can be found at <http://jurist.law.pitt.edu/paperchase/2006/11/saddam-prosecutor-says-appeals-court.php>.

¹⁴ The formal resolution can be viewed at <http://www.ictj.org/static/MENA/Iraq/iraq.statute.engtrans.pdf>.

¹⁵ Jurist article entitled *Saddam Prosecutor says appeals court likely to rule mid-January* found on <http://jurist.law.pitt.edu/paperchase/2006/11/saddam-prosecutor-says-appeals-court.php>.

Letter From the President

Andrew Rubin

Dear SUCOL Community,

For Syracuse University College of Law's International Law Society, it has been quite a year thus far. From the beginning, I knew that it was going to be a special year. ILS' first meeting welcomed a stunning number of new members. Our 1L vice chairs were elected from a very impressive and large group of interested 1Ls.

This year the ILS board wanted to add more to our calendar with the addition of a brown bag lunch series. Each brown bag lunch is intended to be a discussion on a current topic of interest in international law. Professor Banks led our first brown bag lunch with an analysis of North Korea's nuclear test and the response from the rest of the world. The discussion was lively and provided insight into a significant world event of the semester.

ILS did not restrain itself to just the Syracuse University campus. In October, more than 20 ILS members attended International Law Weekend in New York City where SUCOL's Professor Crane was a featured speaker. At the conference, we learned about a variety of topics in international law including arbitration in Latin America, capital markets regulation and environmental law. It was a fascinating weekend and a great experience for all who attended. I would like to thank the SUCOL Student Senate for helping make our trip possible.

To cap off a great semester, ILS was able to assist the Dean's office in hosting a group of judges from Russia. The judges were able to view a moot court and learn about legal education in the United States. In exchange, SUCOL faculty and students were able to learn about the judiciary and legal education in Russia. In addition to the SUCOL facilities, the judges were also treated to an orchestra rehearsal in Setnor Auditorium and a tour of the Carrier Dome.

The excitement has been building and I am looking forward to an even greater spring semester for SUCOL's International Law Society.

Sincerely,

Andrew Rubin

Remnants of War

weapon or munitions which primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof...[and]...can take the form of...shells, rockets, grenades, mines, bombs and other containers of incendiary substances."⁵ The convention does specify that incendiary weapons "do not include:...[m]unition which may have incidental incendiary effects, such as illuminants, tracers, smoke or signaling systems."⁶

In the case of cluster bombs, the incendiary quality of these munitions is obvious. Cluster bombs are designed to scatter explosive "bomblets" around a wide area and cause significant damage to structures as well as severe bodily injury to those in the bomb's vast footprint. Explosive remnants of war have become a significant impediment to relief efforts following the Israeli Defense Force's "shocking" and "completely immoral" use of cluster bombs preceding the ceasefire with Hezbollah.⁷ As returnees and humanitarian workers filter into southern Lebanon "[u]nexploded cluster bomblets pose an immediate threat."⁸

White phosphorous (WP) is more difficult to categorize. Historically, this chemical agent has been used as an illuminant to light the theater of battle during armed conflict as well as trace enemy targets. White phosphorus is a flammable chemical that causes severe burning of the skin and flesh upon contact and continues to burn until its supply of oxygen is stopped.⁹ Following the siege of Fallujah, in April 2004, the United States was accused of dropping white phosphorous bombs. The United States contends that the laws of war do not prohibit the use of white phosphorus, which they maintain is a conventional, not a chemical, weapon.¹⁰ This is a questionable assertion considering the composition of the weapon itself and its caustic effects that result from chemical reactions. Israel has also been accused and has recently admitted to using partially nasty white phosphorus shells during last summer's conflict with Lebanon.¹¹

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Remnants of War

Voices around the international community are questioning the use of cluster munitions and white phosphorus because of the humanitarian consequences weapons of this sort pose during and after armed conflict. The unexploded duds from cluster bombs that remain in Lebanon demonstrate “the need to halt the use of inaccurate and unreliable cluster munitions.”¹² It is almost impossible for those using the weapons to differentiate between combatants and civilians because of their wide coverage area, thus such weapons may not comport with the international humanitarian principle of distinction. In the case of white phosphorus, its present usage in the form of phosphorus bombs may be of such a nature that it should be reclassified as a chemical weapon.

While neither cluster bombs nor phosphorous weapons are specifically forbidden by international law at this point, many human rights groups argue that it should be prohibited. If the countries that use these types of weapons are adhering to the laws of war, it is clear that these standards should be reevaluated in order to coincide with the values set forth by international humanitarian law.

¹ Quadrennial Defense Review Report (Feb.6, 2006). Available at: <http://www.defenselink.mil/qdr/>

² Whitaker, Brian. *Hezbollah 'Used Cluster Bombs.'* *The Guardian*. Oct. 20, 2006. Found at: <http://www.guardian.co.uk/israel/Story/0,,1926853,00.html>

³ *Lebanon/Israel: Hezbollah Hit Israel with Cluster Munitions During Conflict*. Human Rights Watch. (Jerusalem, October 19, 2006). Found at: <http://www.hrw.org/english/docs/2006/10/18/lebanon14412.htm>

⁴ *Convention on Certain Conventional Weapons, Protocol III, Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons. Article II, Protection of Civilians and Civilian Objects.* (Geneva, 10 October 1980). Found at:

http://www.globalsecurity.org/military/library/policy/int/convention_conventional-wpns_prot-iii.htm

⁵ *Id.* Article I

⁶ *Id.*

⁷ Banks, David. *Israel Accused of 'Shocking Behavior' on Cluster Bombs.* *Times Online*. Found at:

http://www.timesonline.co.uk/article/0,,3-2336905_1,00.html

⁸ *Mine Action Co-ordination Centre South Lebanon Unexploded Ordnance Fact Sheet.* (October 8, 2006). Found at:

<http://www.mineaction.org/overview.asp?o=540>

⁹ *US used white phosphorus in Iraq.* Found at:

http://news.bbc.co.uk/2/hi/middle_east/4440664.stm

¹⁰ *Id.*

¹¹ Urquhart, Conal. *Israel Admits it Used Phosphorus Weapons.* *The Guardian*. (Oct. 23, 2006). Found at:

<http://www.guardian.co.uk/israel/Story/0,,1929007,00.html>

¹² *Convention on Conventional Weapons (CCW): Cluster Munitions, Explosive Remnants of War, and CCW Protocol V.* Human Rights Watch. Found at:

http://hrw.org/english/docs/2006/08/31/global14169_txt.htm

UN Initiative Helps Promote Sustainable Development by Providing Access to Information

Julie Narimatsu

Vice Chair, Environmental Law Committee

While those in the developing world take advantage of the most up-to-date information available at a moment's notice via the internet, subscriptions to scholarly journals, and instant contact with other professionals, the scientific community in the developing world has been suffering from an informational divide.¹

In October 2006, the United Nations Environment Programme, in conjunction with Yale University, took steps to alleviate this divide by launching a program called the “Online Access to Research in the Environment” (OARE).²

“In a majority of countries in the developing world, it's remarkably difficult to conduct scientific research. Without access to the literature, scholars don't know what's happening in their field of study, and if they're interested in conducting research that adds to the scientific record, they risk duplicating work someone else has already completed and wasting years of effort,” says Paul-Bendiks Walberg, a 2002 graduate of Yale School of Forestry and Environmental Studies and co-developer of OARE.³

With the cooperation of over forty organizations, including publishers, universities, NGO's, foundations and multilateral organizations, in its first phase, OARE is providing 70 of the poorest nations (based on per capita gross national product under \$1,000) free access to scientific publications with information regarding everything from forestry to environmental biotechnology to environmental law and economics, and including databases and search engines to assist individuals in identifying relevant information.⁴ The second phase will provide over forty more countries with low-cost access to the same.⁵

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UN Initiative

This is not the first time the United Nations has taken the initiative to provide much needed information for the developing world. In 2002, they launched a similar program via the World Health Organization called “Health InterNetwork Access to Research Initiative” (HINARI), to provide information to the medical community in developing nations.⁶ In 2003, a study estimated that over one million articles were downloaded, and perhaps surprisingly, figures show Ethiopia as being one of the biggest users of the program, illustrating that economic strength may not be the determinative factor in the success of the program.⁷ Furthermore, while internet costs continue to be high, many countries have used the HINARI program to help them obtain funding from other organizations.⁸ Currently, over 1100 organizations in over 100 countries are able to use the program.⁹

There is great potential for programs like HINARI and OARE. Scientists will have access to high-quality information at the click of a mouse, allowing their research to be better and more accurate.¹⁰ This, in turn, will allow scientific leaders in developing countries to better advise decision makers and help advance environmental progress in their country.¹¹ Furthermore, these programs will help prevent a “brain drain,” where scientific leaders do not return to their native countries after leaving to obtain an education, research experience, and jobs abroad.¹² With information being freely available, not only will they be able to conduct relevant and reliable research at home, they will also have the resources necessary to train and teach future generations of scientists.¹³

Like most programs of this scale, it is not without foreseeable problems. As the focus is on developing countries without much infrastructure in place, they will have inherent problems acquiring the affordable, reliable and fast internet service that make these programs most effective.¹⁴ Furthermore, the reach of these programs is not as encompassing as it could be. To be eligible for low-cost access, a country must have a per capita gross national product of less than \$3,000 per year.¹⁵ This leaves out many poor institutions in larger countries, like China, India and Brazil, whose expanding populations and deteriorating environment make this information just as vital.¹⁶

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Labor Market Flexibility is a Necessity for Global Competitiveness

Brian Slough

Vice Chair, International Business Committee

Regardless of a business's home country, the fierce competition in today's global market place requires flexibility in a business's operation. With countries around the world now competing against each other to provide the same goods or services, it is important for a nation's businesses to have flexibility in deciding how best to compete. One area where flexibility is essential for a business's success is vacation time and work week length.

In the European Union labor requirements regarding vacation time and the hourly work week differ from labor requirements in the United States. Citizens of the United Kingdom receive twenty-four days of vacation time while French citizens receive almost eight weeks of vacation time.¹ These regulations result in significant differences in time citizens spend working. French citizens worked an average of one thousand five hundred and twenty hours and United Kingdom citizens worked an average of one thousand six hundred and sixty nine hours in 2004.² In the same year American workers averaged one thousand eight hundred and twenty four hours on the job.³ The lack of mandated vacation time and the higher number of work hours which results, in the United States, may be a contributing factor of stress or fatigue. Acknowledging, however, that fatigue of the American worker can be harmful and that vacation time is necessary, should not be interpreted as a call for government regulation providing a minimum vacation time requirement. The debate between government regulation and a flexible business environment has been playing out in the European Union for the past few years.

The European Union sets workplace standards that must be followed by all member states. The European Union mandates things like a maximum work week, break time, and vacation time.⁴ Numerous

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UN Initiative

Nevertheless, the steps the United Nations and its partners have taken show great progress and promise in a world where access to information is essential to development. Hopefully, these programs will be continually evaluated and modified to ensure equitable distribution of information and help close the “Great Informational Divide,”¹⁷ leading to more environmental knowledge and awareness and furthering sustainable development throughout the developing world.

¹ Alan Bisbort, *Yale Program to Give Developing World Access to Global Scientific Research*, Env't Yale (2006), available at

http://environment.yale.edu/doc/2143/yale_program_to_give_developing_world_access/.

² Press Release, OARE, *Developing World to Receive Access to Critical Global Environmental Research* (Oct. 30, 2006), available at <http://www.oaresciences.org/en/>.

³ Yale Program *supra* note 1..

⁴ *Id.*

⁵ *Id.*

⁶ Srinivasa Vittal Katikireddi, *HINARI, Bridging the Global Information Divide*, 328 Brit. Med. J. 1190-93 (2004), available at

<http://www.bmj.com/cgi/content/full/328/7449/1190>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Yale Program *supra* note 1.

¹³ HINARI *supra* note 6.

¹⁴ *Id.*

¹⁵ *Developing World to Receive Access supra* note 2.

¹⁶ David Dickson, *Communicating science in an electronic era*, Sci. & Dev. Network, Nov. 3, 2003,

<http://www.scidev.net/Editorials/index.cfm?fuseaction=readEditorials&itemid=94&language=1>.

¹⁷ Yale Program *supra* note 1.

Labor Market Flexibility

countries, including France, Italy, and Spain, fully support these initiatives.⁵ The United Kingdom, however, exercises an option within the regulation that allows its companies to ignore the EU requirements. The United Kingdom's stance is that these requirements are too rigid and that business flexibility promotes economic growth.⁶ European Union members that are opposed to the United Kingdom, disregarding the requirements, believe that the opting out of these labor provisions is unhealthy for European workers and gives the United Kingdom a competitive advantage.⁷ By promoting a flexible labor market similar to the United States and resisting government regulation, the United Kingdom is attempting to create a healthy economic environment that will benefit all of its citizens.

All modern industrialized nations must follow the same course as the United Kingdom and the United States and promote labor flexibility if they desire to compete globally. Nations that over regulate their citizens' working time will put themselves in a competitive disadvantage to emerging business powerhouses like India and China that are developing rapidly and have an oversupply of educated-motivated workers. America does not have a mandated shorter workweek or minimum vacation time, nor should it consider such regulation. The businesses of a nation must be able to decide how to best use its labor force, to be competitive in the global market place, in a manner that the United Kingdom and United States markets provide to businesses. Although over work and lack of time off can be a detriment to a worker's well-being, businesses or nations that are not competitive will fail, resulting in even greater harm to the workforce.

¹ <http://news.bbc.co.uk/2/hi/europe/6122708.stm>

² <http://stats.oecd.org/WBOS/default.aspx?DatasetCode=CSP6>

³ *Id.*

⁴ <http://news.bbc.co.uk/2/hi/europe/6122708.stm>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

The Emergence of Intergovernmental Organizations (IGOs) and Associated Issues

Benjamin Kacher

Vice Chair, International Organizations Committee

A Changing World

As the world continues to shrink in terms of communication, organization, and travel time, intergovernmental organizations (IGOs) will become increasingly prominent. When we hear of IGOs we usually think of the United Nations (UN) and the European Union (EU) and the list usually stops there. However, there are many organizations that will play an increasingly prominent role on the world stage as globalization continues. Some IGOs, such as the UN and the EU are very familiar, while others are less familiar, such as the African Union (AU) and the Association of Southeast Asian Nations (ASEAN). Many other organizations are not clearly defined as IGOs, but fulfill similar purposes (ever heard of the World Intellectual Property Organization (WIPO)?). Some seem to have much power while others have little or no power. The purpose of this article is to raise some issues that accompany the growth of these organizations. Rather than answering the questions asked, this article should encourage readers to investigate the issues themselves in order to be more informed on these important matters.

How much power should IGOs have?

Should they have lots of power to do good in the world, or should their power be reigned in so that they don't infringe on the sovereignty of other states? It is nice to think of the UN going into troubled regions such as Cambodia and the Balkans so that we don't have to deal with other countries' messes, but what if the UN wants to tell us what we can and can't do? Some say that the UN needs more power; that its hands are tied by governments who are unwilling to allow the UN to exercise real power to effect positive change. However, others are fearful of any foreign power exercising that power within the borders of their own states. Should IGOs be allowed to rule states (such as in Kosovo), or does that exceed their mandate?

How democratic are IGOs?

Ban Ki-moon has been appointed to take the helm of the UN in 2007, when Kofi Annan will step down as secretary-general.¹ Did you vote for him? How did he get this position? The UN Security Council, which is the most powerful UN body, puts the victors of WWII in the positions of permanent members: USA, France, Great Britain, Russia, and China.¹ Why do these five states get the lion's share of the power? Who decides what courses of action IGOs will take? Do these organizations speak for the people? The majority of IGOs are independent actors and do not answer to elections or referendums. Some Europeans complain about the increasing power of the EU and its ability to subject European states to its will. However, they can also represent many oppressed people and/or less developed nations in Europe who would otherwise have little or no voice. Should they (IGOs) be completely autonomous or should they be under tight control of other actors? If they should be controlled by others, who should control them?

How should they be funded?

The current US administration's budget for fiscal year 2007 requests \$1.26 billion for the UN¹. The US is currently assessed to pay 22% of the UN's budget, although in reality, the US pays much less than this¹ Is this right? Who should foot the bill? Many nations don't even have enough money to pay their dues to the UN and other IGOs. Should individual actors even be allowed to contribute such a large percentage of any IGO's budget? Some might argue that IGOs that accept too much funding from any one source will become dependant on that source, and therefore, easily manipulated to the source's will.

What good do they do?

Sales coaches love to remind their pupils that buyers buy benefits. Applying this maxim to IGOs, what benefits are we getting from them? What benefits should we expect from them? Should we give them more power to carry out these missions, or should we curtail their power? Should we embrace IGOs or resist them? They can provide a forum for nations to discuss international issues and they can help restore order in war-torn areas, but they can also limit sovereignty and between states.

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cause tension between states.

So what?

These are just a few of the many issues associated with the rise of IGOs. There are many more difficult questions that we must face in the future in conjunction with these organizations. As we continue to educate ourselves and seek out solutions to these problems, solutions will come.

¹ <http://unsg.org> .

² <http://www.un.org/sc/members.asp>

³ <http://www.unausa.org/site/pp.asp?c=fvKRI8MPJpF&b=667579>

⁴ <http://www.unausa.org/site/pp.asp?c=fvKRI8MPJpF&b=1813833>

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