

INTERNATIONAL FAMILY PLANNING

PART I. INTRODUCTION

The United Nations International Conference on Population met August 6-14, 1984 in Mexico City.¹ The conference was called to review the World Population Plan of Action which was adopted at the first World Population Conference held in Bucharest in 1974.² This Plan of Action emphasized the importance of accessibility to family planning information and services as well as their role as a basic human right.³

Three weeks earlier on July 13, 1984, in anticipation of the Mexico City Conference, the White House issued a policy statement imposing new restrictions on the use of government funds by international family planning organizations.⁴ The policy statement declared that "the United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part."⁵

1. Buckley, *Population Conference Held in Mexico City*, 84 DEP'T ST. BULL. 80 (Dec. 1984). The conference drew delegations from 149 countries which came to the Mexican capital to discuss the unrelenting growth of global population.

2. Planned Parenthood Fed'n of Am., Inc., *Fact Sheet*, July 20, 1984, at 1-2 [hereinafter cited as *Fact Sheet*]. The U.N. World Population Conference was held in Bucharest, Rumania in 1974. Representatives of 138 nations met to discuss population growth and development. The World Population Plan of Action affirmed the right of all couples and individuals: "... to decide freely and responsibly the number and spacing of their children and to have the information and means to do so."

3. Benedick, *Issues for the 1984 Population Conference*, 83 DEP'T ST. BULL. 58 (Dec. 1983).

4. *Policy Statement: International Conference on Population* (July 13, 1984) reprinted in Planned Parenthood Fed'n of Am., Inc., *Memo to Editors*, July 17, 1984, at 1-15 (the Planned Parenthood Informational Material is available by request, PPFA, 810 Seventh Ave.; NY, NY 10019, (212)541-7800) [hereinafter cited as *Policy Statement*].

The United States over the last ten years has not permitted its contributions to family planning assistance to be used to finance or promote abortion. The new policy merely tightens this existing restraint in several ways:

... when dealing with nations which support abortion with funds not provided by the United States Government, the United States will contribute to such nations through segregated accounts which cannot be used for abortion. Moreover, the United States will no longer contribute to separate non-governmental organizations which perform or actively promote abortion as a method of family planning in other nations. With regard to the United Nations Fund for Population Activities (UNFPA), the U.S. will insist that no part of its contribution be used for abortion. The U.S. will also call for concrete assurances that the UNFPA is not engaged in abortion or coercive family planning programs: if such assurances are not forthcoming, the U.S. will redirect the amount of its contribution to other, non-UNFPA family planning programs.

Id. at 8-9. See also Buckley, *supra* note 1, at 81. (plenary statement made by Ambassador James L. Buckley, head of the U.S. delegation on August 8, 1984).

5. *Policy Statement*, *supra* note 4, at 8.

While right-to-life groups feel vindicated,⁶ birth control proponents fear devastation of population control projects in developing countries.⁷ Ironically, the controversial policy appeared at about the same time as the World Bank's Report (Report) on population.⁸ The Report concluded that unless there is a significant decrease in the population growth rate, the present world population of 4.76 billion will increase to 10.5 billion before it levels off in the twenty-second century.⁹ One commentator has warned his readers of the severe stress that the world's population is already placing on the Earth's carrying capacity.¹⁰ He stresses the need for better management and conservation of living resources to prevent a potential Malthusian nightmare.¹¹ While such figures and warnings are sobering, voices for the Reagan administration deny that the world faces a population crisis.¹²

This article analyzes the potential conflicts that the Reagan administration's policy will likely arouse and the grounds upon which challenges to the policy may be based. A better understanding of the scope of the international family planning problem may also result from this analysis.

PART II. THE U.S. AND INTERNATIONAL FAMILY PLANNING

For years the United States has played a major role in the field of international family planning.¹³ The United States not only supports the

6. See, e.g., *The People Problem*, AM, Aug. 18, 1984, at 62; see also *Talking Sense on Population*, NAT'L REV., Aug. 10, 1984, at 15-16 [hereinafter cited as *Talking Sense*].

7. See, e.g., *U.S. Switch on Family Planning Raises Fear About Economic Development*, 16 NAT'L J. 1476, 1478 (1984) [hereinafter cited as *U.S. Switch*], which states:

The Population Crisis Committee has estimated that a \$50 million reduction in U.S. support for family planning could lead to 2 million additional unwanted pregnancies in the Third World each year. As a direct result, the Committee says 1.5 million additional births could occur, 6,500-15,000 more women might die in childbirth, at least 500,000 new abortions may be performed—most of them illegal—and 6,500 women could die from the consequences of botched abortions.

8. *The World Bank*, 1984 WORLD DEV. REP., 3 (1984) [hereinafter cited as *World Bank Report*]. (The World Development Report can be obtained by sending \$8.00 to: World Bank Report, 1818 H Street N.W., Washington, D.C. 20433).

9. See, e.g., *Global Population: growing by more than 200,000 a day*, U.S. NEWS & WORLD REP., July 23, 1984, at 52, which states that while it took millions of years for the Earth's population to reach 1 billion, during the last fifty years the total grew by 2.5 billion.

10. Nanda, *Symposium: Global Climatic Change*, 10 DEN. J. INT'L L & POL'Y 463 (1981).

11. *Id.*

12. The Reagan administration insists that free enterprise capitalism will cure the ills of the developing nations. James Buckley, who led the U.S. delegation to the Mexico City Conference, told reporters: "We reject the notion that we are caught up in a world population crisis." *Population: Trading Places*, NEWSWEEK, Aug. 20, 1984, at 50 [hereinafter cited as *Population*]; see also *Free Market as Contraceptive*, N.Y. Times, June 21, 1984, at A22, col. 1 [hereinafter cited as *Contraceptive*]; *Talking Sense*, *supra* note 6, at 15-16.

13. *Fact Sheet*, *supra* note 2, at 1-2. In the 1960's the implications of rapid population growth emerged as a global concern. The United States shared in this concern which was underscored by the United Nations interest in population issues.

efforts of private family planning agencies; it is also the largest single contributor to United Nations-sponsored programs.¹⁴ Much of the United States effort is channelled through the Agency for International Development (AID) population assistance programs.¹⁵ The AID budget for family planning worldwide has grown from its original appropriation of \$5 million in 1965 to \$240 million appropriated in 1984.¹⁶

While United States law previously prohibited the use of government funds for abortions, the new policy goes even further.¹⁷ International organizations must now pledge not to perform or promote abortions in any way before the United States will grant any family planning money.¹⁸ The executive branch has threatened cuts in the \$38 million destined for the U.N. Fund for Population Activities (UNFPA) and the \$13 million destined for the International Planned Parenthood Federation (IPPF). These budget cuts have been threatened even though less than one-half of one percent of the Federation's \$84.1 million budget goes to abortion-related activities.¹⁹

The IPPF is an association of more than 100 national family planning associations, primarily from the third world countries.²⁰ The IPPF does not advocate abortion, but it does condone it when it is a part of an individual national program.²¹ The IPPF is made up of independent organizations, some which support abortion and others which do not.

14. *Id.* at 2.

15. *Id.* at 2-3. AID was created by Congress in 1965 as a part of the War on Hunger. AID provides family planning assistance through four channels:

- (1) Direct bilateral from AID to LDC (less-developed countries) governments.
- (2) Through U.S.-based private organizations to NGOs (non-governmental organizations) and governments in LDCs.
- (3) Intergovernmental multilateral (e.g., United Nations Fund for Population Activities), in which MDC (more-developed countries) donations are pooled and redistributed to LDC governments and NGOs.
- (4) Private multilateral (IPPF), in which donor funds are pooled and redistributed to IPPF affiliates in LDCs.

16. *Id.* at 2. This fact sheet noted also that the AID budget has been more than offset by inflation, while the number of people needing family planning has increased by more than a third.

17. *The People Problem*, AM., Aug. 18, 1984, at 62; See *infra* note 79.

18. The restriction refers to use of non-U.S. government funds as well. See Planned Parenthood Fed'n of Am., Inc., *News Release*, July 18, 1984, at 1-2 [hereinafter cited as *News Release*].

19. For the projected 1985 contributions see *U.S. Bucks the Tide on Birth Control*, U.S. NEWS & WORLD REP., Aug. 20, 1984, at 8 [hereinafter cited as *U.S. Bucks*]; According to a National Journal article, in 1984 the U.S. gave the IPPF \$11 million, which was 19.5 percent of its \$56.5 million budget. *U.S. Switch*, *supra* note 7, at 1477; Projections on amounts that the family planning organizations stand to lose were contradictory. But note that only non-U.S. government money goes to abortion related activities.

20. *Fact Sheet*, *supra* note 2, at 3. The IPPF is a private multilateral agency in which donor funds are pooled and redistributed to IPPF affiliates in less developed countries.

21. *A Debate over "Sovereign Rights"*, TIME, Aug. 20, 1984, at 34 [hereinafter cited as *Sovereign Rights*].

Thus the IPPF is not capable of curtailing all abortion activity, which is required in order to be within the parameters of the Reagan administration policy.²² Consistent with United States law, the IPPF uses only private money to fund clinics that provide abortion-related services. According to the Planned Parenthood Federation of America (PPFA), repeated federal audits have failed to uncover any illegal use of the federal family planning contributions.²³

PART III. THE POLICY

In preparation for the United Nations International Conference on Population in Mexico City, the White House Office of Policy Development issued its policy statement.²⁴ According to one official,²⁵ the new policy merely sharpened the focus of the past position rather than advocating any radical change in policy.²⁶ While the United States expressed its intention to continue its support for world development and family planning, it stated that it would require greater commitments and assurances from fund recipients that U.S. moneys "are used in ways consistent with a respect for human dignity and family values."²⁷

The policy paper strongly advocates free market capitalism as a means of improving life in overpopulated nations.²⁸ It targets governmental (rather than individual) decision-making, price fixing, confiscatory taxes, and politics as the culprits behind the population boom.²⁹ Economic statism, according to the policy paper, disrupts the "natural mechanism for slowing population growth."³⁰ The policy statement takes the position that population growth is neither inherently good nor

22. *U.S. Switch*, *supra* note 7, at 1477; *Sovereign Rights*, *supra* note 21, at 34, quoting IPPF Deputy Secretary General Donald Lubin, "that out of 89 countries receiving IPPF grants in 1983, only twelve had abortion programs."

23. *Cutoff of Birth-Control Funds Will Beget Misery*, *The Wall St. J.*, Jan. 10, 1985, at 27, col. 1 [hereinafter cited as *Cutoff of Funds*]; see also *News Release*, *supra* note 18, at 2, whose source is the Alan Guttmacher Institute in Washington, D.C.

24. *Policy Statement*, *supra* note 4.

25. *Population*, *supra* note 12, at 50. James Buckley was the chief U.S. Delegate to the Mexico City Conference, and he is presently the president of Radio Free Europe/Radio Liberty.

26. Buckley, *supra* note 1, at 80; but see *Population Policy Fiasco*, *Washington Post*, June 16, 1984, at A14, col. 1, which was printed prior to the final revision of the original draft [hereinafter cited as *Policy Fiasco*].

27. Buckley, *supra* note 1, at 80-81. Buckley stated that strategies must be planned but that thinking must not be limited to considerations of economic and population factors alone. Buckley's reference to human dignity focuses on a different aspect and view than the argument presented *infra* at text accompanying notes 75-77.

28. *The People Problem*, *AM.*, Aug. 18, 1984, at 62.

29. *Policy Statement*, *supra* note 4, at 3; Buckley, *supra* note 1, at 80; but see *A Ticking Population Bomb*, *NEWSWEEK* June 25, 1984, at 43 [hereinafter cited as *Population Bomb*]; McNamara, *Time Bomb or Myth: The Population Problem*, 62 *FOREIGN AFF.* 1107 (1984); *Contraceptive*, *supra* note 12, at A22, col. 1.

30. *Policy Statement*, *supra* note 4, at 4.

bad; rather, it becomes an asset or a problem only when combined with other factors such as economic policy, social constraints, and the ability to put additional men and women to useful work. The drafters of the policy statement assert that by acknowledging that people are producers as well as consumers and by placing reliance on the creativity of private individuals working within a free economy, developing countries can promote economic growth to keep in step with population growth.³¹

Since 1973, U.S. law has not permitted the use of governmental family planning funds to finance or support abortion.³² In his address to the Mexico City Conference, Ambassador Buckley stated that the new policy tightens the existing restraint in three ways:

- (1) [W]here the United States contributes funds to nations which support abortion with other funds, the United States contributions to such nations will be made through segregated accounts which cannot be used for abortion;
- (2) the United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations;
- (3) before the United States will contribute funds to the UN Fund for Population Activities (UNFPA), it will insist that no part of its contribution be used for abortion. Additionally, the United States will also require concrete assurances that the UNFPA is not engaged in, and does not provide funding for, abortion or coercive family planning programs before any money is forwarded to the UNFPA. Should such assurance not be possible, the United States will redirect the amount of its intended contribution to other, non-UNFPA family planning programs in order to maintain the level of its overall contribution to the international effort.³³

31. See generally *Policy Statement*, *supra* note 4; see also Buckley, *supra* note 1, at 80. Buckley points out the success of a free market economy in a time of rapid population growth, citing Hong Kong and South Korea's prosperity. *Contra Contraceptive*, *supra* note 12, at A22 which notes that while "India, the world's largest democracy, [has a population which] is growing at an explosive 2 per cent per year, Cuba's population is growing very slowly."

32. See *infra*, text accompanying notes 78-95 which discusses Section 104 of the Foreign Assistance Act of 1961. This Act expressly prohibits the use of U.S. funds for abortions or involuntary sterilization. While generally it is believed that U.S. funds have not been put to illegal use, an article in THE NATION suggests that, with regard to the reference in the Act (§ 104f) prohibiting use of funds for involuntary sterilization, the Agency for International Development (AID) has illegally supported India's sterilization scheme with millions of U.S. dollars. The authors allege that "in Bangladesh, AID skirts the law by calling the [monetary] incentives, 'compensation payments.'" See *And The Poor Get Sterilized*, THE NATION, June 3, 1984, at 798-99.

33. Buckley, *supra* note 1, at 81 (quoting James L. Buckley).

Those who agree with the White House position believe that proponents of population control are overly simplistic in their approach to the world population problem. These White House advocates believe that when consumer demand exceeds production levels, the real problem lies in economic systems that corrupt human initiative and incentives; in short, excessive numbers of people are not the cause of such a supply/demand disequilibrium.³⁴ This policy position stresses that overcrowding is only a symptom and not the disease and that population control is not a panacea for the social and economic ills of the developing countries.³⁵

According to one report, of the 149 nations represented at the Mexico City Conference only three voiced support for the American position.³⁶ As an illustration, countries such as China and India are not likely to abandon their family planning policy regardless of U.S. efforts abroad, especially considering the pervasive poverty that exists and the sobering predictions of population growth for these countries. While rising standards of living may lead to reduced population growth, this is a slow process estimated to take from 100–150 years to complete.³⁷ In the opinion of one leader, the developing nations of the world cannot condone such an unreasonably slow solution to such an immediate and pervasive problem.³⁸

PART IV. THE OPPOSITION

The policy paper suggests that there has been an "overreaction by some" to the "population boom."³⁹ This claim is based on the determination that the annual rate of increase in global population has declined since the last Population Conference.⁴⁰ However, this overall decrease in the world's population growth rate occurred primarily due to the efforts of the developed nations while birth rates in most of the less-developed countries have remained at high levels.⁴¹ Furthermore, there has been a

34. *Talking Sense*, *supra* note 6, at 15, 16.

35. *Id.* at 16; *Policy Statement*, *supra* note 4, at 11.

36. These three supporters included Costa Rica, Chile, and the Vatican; *Population*, *supra* note 12, at 50.

37. *Sovereign Rights*, *supra* note 21, at 34.

38. *Id.* In the words of Kenya's Vice-President Mwai Kibaki, "no one has the right to ask the developing nations to wait."

39. *Policy Statement*, *supra* note 4, at 3.

40. In 1974 (the date of the Bucharest Conference), the annual rate was at two percent while today it stands at 1.7 percent. *See, e.g., A Ticking Population Bomb*, *NEWSWEEK*, June 25, 1984, at 43.

41. *Id.* For a detailed analysis of the trends in population growth *see* McNamara, *supra* note 29 at 1107. *See also The People Problem*, *supra* note 6, at 62 (noting that "France and West Germany fear that their population will decrease because of falling birth rates").

marked decline in the global mortality rate.⁴²

One commentator⁴³ disagrees with the administration's assessment of the global population situation. He believes that the world has underreacted and without significant efforts in the family planning area, the world will begin to see widespread use of coercive family planning policies.⁴⁴ This "underreaction" may be due in part to world population figures that have been distorted somewhat by China's effective birth control program as well as the relatively low fertility rates in the developed countries. China's success has been the result of uncompromising "encouragement" of one-child families which has reduced the fertility rate by one-half.⁴⁵ China's experience contrasts sharply with that of much of Africa, where the average fertility rate is eight children to one woman.⁴⁶ Africa, with less than a half billion people, will expand six times to a total of almost three billion before the world population stabilizes.⁴⁷ According to this commentator, unless the developed and developing nations of the world work together "to increase the knowledge and availability of contraceptives practices, . . . the penalties to the poor of the world, individuals and nations alike, will be enormous."⁴⁸

The World Bank issued its seventh annual Report in July of 1984.⁴⁹ The Report focuses on population change and its connection with world development. The Report concludes that while economic and social progress helps to slow population growth, rapid population expansion hampers economic development.⁵⁰ According to the Report, the developed countries are proof that as development progresses, fertility falls.⁵¹ However, the Report notes that "because current rates of population growth

42. *World Bank Report*, *supra* note 8, at 60.

43. Robert McNamara was Secretary of Defense from 1961 to 1968 and President of the World Bank from 1968 to 1981. His article (*see* McNamara, *supra* note 29) was to be distributed in a slightly expanded version at the World Population Conference in Mexico City.

44. McNamara, *supra* note 29, at 1120-21. McNamara warns of likely coercive policies: forced sterilization, high rates of abortion, and female infanticide. In his article, he cites experiences in China where overcrowding has led to extreme restrictions on individual liberty, referring to the November 1982 edition of the CHINA YOUTH NEWS which estimated that, if reports of the pervasive use of infanticide were correct, "one-third of the female babies had been killed." *Id.* at 1120-21, *citing* CHINA YOUTH NEWS, Nov. 1982; *See also* *Population*, *supra* note 12, at 50.

45. *People, People, People*, TIME, Aug. 6, 1984, at 6 [hereinafter cited as *People*]. China's "encouragement" includes financial rewards and penalties. For a discussion of China's incentive program, *see* *World Bank Report*, *supra* note 8, at 124; *See supra* note 43.

46. The fertility rate in Bangladesh is 6.3; in India it is 4.7. Contrast this to the Soviet rate of 2.4, the American rate of 1.8, and the Western European rate of 1.6 *People*, *supra* note 45; *see also* *World Bank Report*, *supra* note 8, at 51-78 for a broader discussion of world-wide fertility rates.

47. McNamara, *supra* note 29, at 1107.

48. *Id.* at 1108.

49. *World Bank Report*, *supra* note 8.

50. *Id.* at 185.

51. *Id.* at 186.

are so much greater in the developing world than they were at comparable income levels in today's developed countries, many developing countries cannot afford to wait for fertility to decline spontaneously."⁵²

The World Bank stresses the need for continuing and even greater financial support for international family planning.⁵³ In its final analysis, the Report states that "because poverty and rapid population growth reinforce each other, donors and developing countries must cooperate in an effort to slow population growth as a major part of the effort to achieve development."⁵⁴

Some of the most vociferous critics of the Reagan administration's policy hail from private organizations. The PPFA claims the policy is clearly a political payoff to the Administration's right-wing anti-abortion constituency.⁵⁵ The PPFA believes that the new policy will deny voluntary family planning to millions of impoverished women at risk of pregnancy. As a consequence, they will become pregnant and either bear unwanted children or resort to unsafe abortion.⁵⁶ The PPFA contends that the government violates the United States Constitution when it conditions the award of benefits; such as funds for family planning upon a denial or forfeiture of a constitutional right, such as the right to have an abortion.⁵⁷

Another opponent of the new policy is the Washington-based Population Crisis Committee (PCC).⁵⁸ The PCC disagrees with the Administration's correlation between rising incomes and falling birth rates. They point to Mexico's experience, where a rising income level in the 1960's was not followed by a drop in birth rates until the government initiated a family planning program as authority for this view.⁵⁹ The PCC argues that other nations have managed to lower their birth rates through family planning, notwithstanding relatively low income levels.⁶⁰ The PCC predicts that grim consequences will result from a budget cut in international family planning funds. It estimates that a \$50 million cut in U.S. funding could result in 2 million more unwanted pregnancies, which could lead to 1.5 million additional births, a possible increase in maternal deaths of 6,500 to 15,000 women and, ironically, an increase of about

52. *Id.* at 186; see also *supra* text accompanying notes 34, 35.

53. *Id.* at 181.

54. *Id.* at 185.

55. *Cutoff of Funds, supra* note 23, at 27.

56. *Id.*

57. *U.S. Switch, supra* note 7, at 1476, 1478. See *supra* text accompanying notes 80-125 for a discussion of the constitutional issues involved.

58. The PCC is an advocacy group promoting worldwide access to contraception.

59. *Sovereign Rights, supra* note 21, at 34.

60. *Id.*

500,000 abortions.⁶¹

PART V. LEGAL GROUNDS FOR OPPOSITION TO THE POLICY

The international family planning effort has received bi-partisan support in Congress over the last decade. However, the shift in executive policy illustrated by President Reagan's policy statement is not legislation and therefore does not require a congressional stamp of approval.⁶² Thus, the question arises whether the grant of executive privilege could place the President above the Constitution. One authority argues that this is indeed a potential threat. This commentator expresses concern over the trend toward "an advancing all-powerful executive immunity."⁶³ Under this view, federal courts have abdicated their judicial power and responsibility to review presidential actions in matters dubbed "foreign policy" or "political question."⁶⁴ Such decisions ignore a plethora of case law that has established that "the Executive has, indeed, no power or authority to act except in accordance with the Constitution as the supreme law of the land."⁶⁵ Nevertheless, at present, it is unclear whether a federal court would view this executive policy statement with disapproval. Interestingly, if congressional authority were needed, it is not clear that the policy would be approved. One report states that "fifty-nine members of Congress denounced the plan as 'radical and unsound.'"⁶⁶ While some say that the Reagan policy only goes a small step further than Congress has gone previously,⁶⁷ others see the policy as a very serious threat to international family planning programs that have successfully decreased maternal and infant mortality along with the demand for abortions.⁶⁸

61. *U.S. Switch*, *supra* note 7, at 1478.

62. *Id.* at 1479. However, since executive power is delegated, it seems apparent that the President must operate within that delegated power. *See, e.g., United States v. Guy W. Capps, Inc.*, 204 F.2d 655 (4th Cir. 1953).

63. Paust, *Is the President Bound by the Supreme Law of the Land?—Foreign Affairs and National Security Re-examined*, 9 HASTINGS CONST. L.Q. 719, 720; *see Narenji v. Civiletti*, 617 F.2d 745 (D.C. Cir. 1979), *reh'g denied*, 446 U.S. 957 (1980).

64. Paust, *supra* note 63, at 725-727.

65. *Id.* at 726; Paust later cites *Reid v. Covert*, 354 U.S. 1, 5-6 (1975). "The United States is entirely a creature of the Constitution . . . Its power and authority have no other source. It can only act [at home or abroad] in accordance with all the limitations imposed by the Constitution . . . [It] has no power except that granted by the Constitution." *Id.* at 752.

66. *U.S. Bucks*, *supra* note 19, at 8 (referring to a statement by Marshall Green of the PCC).

67. *The People Problem*, *supra* note 7, at 62, referring to Foreign Assistance Act, 22 U.S.C.A. § 2151b (1973) (forbidding the use of U.S. moneys for abortion related services).

68. *Grandstand Play*, NEW REPUBLIC, Aug. 27, 1984, at 9; *see also Cutoff of Funds*, *supra* note 23, at 27.

Because of the executive origin of the policy statement, some opponents are unclear on how the policy can be effectively challenged. Congress and the courts appear to be the most likely avenues of challenge.⁶⁹ This is an emotion-filled area with vocal proponents on both sides.⁷⁰ Congressional efforts to control population growth will no doubt be vigorously opposed by the vocal and politically powerful right-to-life constituency in and out of Congress.

The congressional population control lobby may seek to avoid the restrictions of the executive policy by encouraging Congress to earmark foreign aid funds for the IPPF.⁷¹ Thus, by getting funds earmarked for a certain group, the lobby might be able to count on the courts to ensure that the money is spent.⁷² Federal courts have made it clear that the right to choose to have an abortion as well as the right to provide referral and counselling services enjoys constitutional protection.⁷³

The federal courts have grounded the right to have an abortion in the elusive right to privacy; however, standing alone, there is no automatic application of such a right either to aliens abroad or, more generally, in an international context.⁷⁴ Nevertheless, one might argue that this same right is guaranteed internationally by virtue of the Universal Declaration of Human Rights, which recognizes the inherent dignity of humanity in general and specifically mentions privacy as a right to be protected from arbitrary interference.⁷⁵ The Universal Declaration also specifically protects the right of free speech including the "freedom to hold opinions without interference and to seek, receive and impart information and ideas, through any media regardless of frontiers;"⁷⁶ information, for example, about family planning. The foundation of this argument is that human dignity is a fundamental human right and is not

69. These are the available methods of challenge. The substantive arguments would involve the Constitution and especially the doctrine of the separation of powers. See *supra* text accompanying notes 63-65.

70. *U.S. Switch*, *supra* note 7, at 1479. Sharon Camp, vice-president of the Population Crisis Committee, pointed to Rep. Jack Kemp, Republican-N.Y., who used a filibuster in 1984 to hold up certain family planning grant agreements.

71. *Id.* The article's author indicates that family planning proponents in Congress have already succeeded in earmarking funds for the U.N. population fund. But he cautions that such efforts could encounter difficulties as a result of stop-gap measures within appropriations bills.

72. *Id.* See also *infra* text accompanying notes 96-125 for a discussion of the Supreme Court's views in this area.

73. *Roe v. Wade*, 410 U.S. 113 (1973), *reh'g denied*, 410 U.S. 959 (1973), and its progeny have established that the Constitution does protect these rights. See *infra* text accompanying notes 96-125 for a discussion of the extent of this protection.

74. *Id.*

75. G.A. Res. 217 A, U.N. Doc. A/810 at 71 (1948) (see preamble and article 12).

76. *Id.* at article 19. This is clearly relevant to family planning groups wishing to disseminate information.

limited to those who enjoy the protection of the United States Constitution.⁷⁷ However, it will not be an easy task to convince a federal court that the right to privacy, recognized domestically by the United States Supreme Court, exists internationally via the Universal Declaration of Human Rights. Nevertheless, it is an argument that deserves scrutiny.

Opponents of the Reagan policy assert a statutory argument as well as an argument based on constitutional case law. I will now examine each argument.

A. *The Foreign Assistance Act*

For many years, the United States has played a major role in assisting developing countries in the areas of family planning and health services. In 1973, Section 104 was added to the Foreign Assistance Act of 1961.⁷⁸ This section acknowledges the ongoing commitment of the United States in these areas and states in part:

- * The Congress recognizes that poor health conditions and uncontrolled population growth can vitiate otherwise successful development efforts.
- * While every country has the right to determine its own policies with respect to population growth, voluntary population planning programs can make a substantial contribution to economic development, higher living standards, and improved health and nutrition.⁷⁹

In the legislative history of Section 104,⁸⁰ Congress enunciated its collective concern and recognition of the need for family planning programs in the less developed countries. Congress noted the significance of the fact that the less developed countries accounted for about eighty-five percent of the world population growth.⁸¹ Furthermore, it was estimated that at the 1973 growth rate, world population would expand from 3.6 billion in 1973 to approximately 6.6 billion by the year 2000.⁸² It seems

77. Paust, *Human Dignity as a Constitutional Right: A Jurisprudentially Based Inquiry Into Criteria and Content*, 27 HOW. L.J. 145 (1984). In his article, Professor Paust presents a thorough if not exhaustive discussion of human dignity as a right inherent to all mankind. He relates the deprivation of the right to privacy to an "imbalance between the dignity of self and the dignity of others." *Id.* at 146.

78. 22 U.S.C.A. § 2151b (West 1973).

79. *Id.*

80. H.R. REP. No. 388 93d Cong., 1st Sess. 2 reprinted in 1973 U.S. CODE CONG. & AD. NEWS 2806, 2822.

81. *Id.* at 2823.

82. *Id.* Interestingly, an article in U.S. NEWS & WORLD REPORT eleven years later estimated 6.3 billion would be the total in the year 2000; see *Global Population*, U.S. NEWS & WORLD REP., July 23, 1984, at 52-53. A frighteningly similar forecast over a decade later seems to indicate that more needs to be done to check population growth.

apparent that many in Congress believe that population control is an essential element of world development.

Despite such lucid enunciations of congressional concern for the population growth rate and its potential effects on world development, the policy statement asserts: "The relationship between population growth and economic development is not necessarily a negative one. More people do not necessarily mean less growth."⁸³ With this statement, the Reagan administration seems to disregard much of the emphasis of Section 104. The PPFA contends that the policy not only ignores congressional intent, as noted above, but also contradicts the Reagan administration's policies on international family planning.⁸⁴ They point to a 1982 report entitled "AID Policy Paper: Population Assistance," which sets out the Reagan administration's interpretation of Section 104 of the Foreign Assistance Act. That report states in part:

- * Assistance for voluntary population and family planning programs is an *essential part* of a cost-effective program of U.S. development assistance. (emphasis added)
- * The underlying principles of U.S. assistance for family planning are voluntarism and informed consent.
- * The major focus of the U.S. program is voluntary family planning service delivery, plus information and education, training for service providers, research on contraceptive methods and delivery systems, and demographic and social science research.⁸⁵

Thus, private groups like Planned Parenthood fear that the Reagan administration is shifting away from its past commitment to the control of world population.⁸⁶

The contention of Planned Parenthood that the Reagan administration is contradicting its past expressions of intent seems at first glance to be a well-reasoned conclusion, especially in light of its ardent support of a free market cure for the ills of the developing countries.⁸⁷ However, the message at the Mexico City Conference stated:

We believe population programs can and must be truly voluntary, cognizant of the rights and responsibilities of individuals and families, and respectful of religious and cultural values. When they are, such programs can make an important contribution to economic and social development, to the health of mothers and children, and to the stability of the family and

83. *Policy Statement*, *supra* note 4, at 1-2.

84. Planned Parenthood Fed'n of Am., Inc., *Memo to Editors*, July 17, 1984.

85. Planned Parenthood Fed'n of Am., Inc., *Fact Sheet*, July 18, 1984, at 1.

86. *Id.*; but see James Buckley's argument noted in *Population*, *supra* note 12, at 50.

87. See Buckley, *supra* note 1, at 80.

society.⁸⁸

Ironically, this statement seems to coincide with the ideals of Planned Parenthood. Planned Parenthood is an advocate of reproductive freedom for every individual, regardless of race, age, sex, disability, or economic circumstances.⁸⁹ While it seems that the Reagan administration and the family planning advocates may have similar goals, their opinions diverge on the question of the extent of a person's reproductive freedom.

Section 104 of the Foreign Assistance Act includes a prohibition on using funds for abortions or research on abortions.⁹⁰ AID representatives have testified in Congress that no AID funds are used for abortions, and furthermore, that audits have not uncovered violations of the prohibitions.⁹¹ The IPPF claims that it is being punished for using non-U.S. government money to fund clinics that provide abortion-related services, notwithstanding the fact that this is consistent with both U.S. law as well as the law of many foreign countries.⁹²

Proponents of the Reagan policy contend that using separate accounts to fund abortion-related activities circumvents the "spirit of the law." These proponents believe that using the U.S. money for nonabortion services, which ultimately liberates privately generated funds to pay for abortions, is a violation of the United States law.⁹³ The chief lobbyist for the National Right to Life Committee contends that the United Nations is indirectly subsidizing China's coercive abortion programs by buying computers for use in their family planning program.⁹⁴ Family planning supporters respond to these accusations by asserting that access to family planning programs reduces unwanted pregnancies and, as a result, reduces the number of abortions, a result the Reagan administration ought to welcome.⁹⁵

B. *An Unconstitutional Condition?*

It has been more than a decade since the Supreme Court held in the controversial *Roe v. Wade*⁹⁶ decision that a woman has a constitutionally

88. *Id.* at 81.

89. *News Release*, *supra* note 18, at 3.

90. 22 U.S.C.A. § 2151b (West 1973) (*see part (f) 1 and 2*).

91. *See* Planned Parenthood Fed'n of Am., Inc., *supra* note 85, at 2. Separate accounts are used for U.S. government funds and other government and private funds; *See also Cutoff of Funds*, *supra* note 23, at 27.

92. *Cutoff of Funds*, *supra* note 23, at 27.

93. *U.S. Switch*, *supra* note 7, at 1476.

94. *Id.* at 1477.

95. *Contraceptive*, *supra* note 13 at A22, col. 1; *Policy Fiasco*, *supra* note 26, at 6; *U.S. Switch*, *supra* note 7, at 1478.

96. 410 U.S. 113, 166 (1973). *Roe* struck down state statutes criminalizing abortions.

protected right to choose to have an abortion.⁹⁷ Subsequently, the Court was faced with the question of whether it was constitutionally permissible for the government to favor childbirth over abortion by providing funding for the former and not the latter. At issue in *Harris v. McRae*⁹⁸ was the constitutionality of the exclusion of Medicaid reimbursement for therapeutic abortions.⁹⁹ The Supreme Court held that such exclusions were permissible and in accordance with the Court's decisions in *Roe*¹⁰⁰ and *Maher v. Roe*.¹⁰¹ In *Harris*, the Court relied on the reasoning used in *Maher* and held that although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those obstacles it did not create, such as indigency.¹⁰² The majority indicated that the government's choice not to fund medically necessary abortions left the indigent woman in the same situation that she would occupy had Congress chosen not to subsidize health care costs at all.¹⁰³

Despite the holdings in *Harris* and *Roe*, the government is not obligated to pay for abortions, even those deemed to be medically necessary. However, the doctrine of "unconstitutional conditions"¹⁰⁴ provides that while a citizen cannot demand that the government provide a particular benefit, once such a benefit is provided the granting of the benefit cannot be conditioned on the requirement that the recipient relinquish a constitutional right.¹⁰⁵ This doctrine was addressed, somewhat indirectly, in

97. *Id.* at 153.

98. 448 U.S. 297 (1980), *reh'g denied*, 448 U.S. 917 (1980).

99. The exclusion, popularly known as the Hyde Amendment, deals with the federal obligations imposed by Title XIX of the Social Security Act of 1935, 42 U.S.C. § 1396 (1976). This Act was passed to aid states in providing access to medical services to indigents through federal reimbursements of a percentage of the state's costs. The original version of the Hyde Amendment prohibited federal funding for abortions "except where the life of the mother would be endangered if the fetus were carried to term." See Pub. L. No. 94-439, § 209, 90 Stat. 1434 (1976). Later, Congress extended the provisions of the amendment to permit federal funding for abortions "for the victims of rape or incest." See Pub. L. No. 96-123, § 109, 93 Stat. 926 (1979).

100. 410 U.S. 113 (1973).

101. 432 U.S. 464 (1977). *Maher* upheld a Connecticut statute which excluded non-therapeutic abortions from Medicaid. See also *Poelker v. Doe*, 432 U.S. 519 (1977) *reh'g denied*, 434 U.S. 880 (1977) (following *Maher*).

102. *Harris v. McRae*, 448 U.S. 297, 317 (1980).

103. *Id.* at 317. See also Note, *The Supreme Court, 1979 Term*, 94 HARV. L. REV. 96, 97 (1980), citing J. FALKSON, HMOs AND THE POLITICS OF HEALTH SYSTEM REFORM 15-16, 24-25 (1980), and J. MEYER, HEALTH CARE COST OF INCREASES 7-9 (1979). The author of the Harvard note questions Stewart's view, noting that the existence of Medicaid "has generally increased demand and raised prices in the health care field."

104. This doctrine has inspired a significant amount of legal comment. See, e.g., Hale, *Unconstitutional Conditions and Constitutional Rights*, 35 COLUM. L. REV. 321 (1935); Merrill, *Unconstitutional Conditions*, 77 U. PA. L. REV. 879 (1929); Note, *Unconstitutional Conditions*, 73 HARV. L. REV. 1595 (1960); Note, *Committee to Defend Reproductive Rights v. Meyers: Abortion Funding Restrictions As an Unconstitutional Condition*, 70 CALIF. L. REV. 978 (1983) [hereinafter cited as *Funding Restrictions*]; Comment, *Another look at Unconstitutional Conditions*, 117 U. PA. L. REV. 144 (1968).

105. Comment, *supra* note 104, at 144.

*Harris*¹⁰⁶ and in *Maher*.¹⁰⁷ In both cases, the Court (in footnote form) indicated that a state's refusal to subsidize protected conduct, without more, did not impinge on the constitutional freedom of choice; however, "a substantial constitutional question would arise if Congress attempted to withhold *all* Medicaid benefits from an otherwise eligible candidate simply because that candidate had exercised her constitutionally protected freedom to terminate her pregnancy by abortion."¹⁰⁸ The Court analogized its hypothetical to the case of *Sherbert v. Verner*¹⁰⁹ where the Supreme Court held that South Carolina could not constitutionally withhold *all* unemployment compensation benefits from a claimant who would otherwise be eligible for such benefits but for the fact that her religion prohibited her from working on Saturday. The Court believed that such a restriction would force a choice between following the precepts of her religion and forfeiting benefits, or abandoning one of the precepts of her religion in order to accept work.¹¹⁰ The Court found this restriction to be the functional equivalent of imposing a fine against the recipient for Saturday worship.¹¹¹ While a state has significant freedom in choosing the benefits it will fund, its choices must be based on constitutionally permissible criteria.¹¹²

The distinction between selective funding,¹¹³ as upheld by the Supreme Court in *Maher* and *Harris*, and conditions that constitute a penalty on the assertion of a constitutional right should be recognized. The Supreme Court has made it abundantly clear that instances of selective funding in the context of abortion do not penalize the exercise of a constitutional right.¹¹⁴ A penalty does exist, however, when a state goes further and withdraws other benefits if a woman has an abortion.¹¹⁵ This

106. *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980).

107. *Maher v. Roe*, 432 U.S. 464, 474 n.8 (1977).

108. *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980).

109. 374 U.S. 398, 404-06 (1963); *see also* *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 263 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969); *Frost & Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 583, 592 (1926).

110. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

111. *Id.*

112. Note, *supra* note 103, at 99.

113. *See, e.g., Funding Restrictions, supra* note 104, at 991-92. The author describes selective funding to occur when a state merely does not reimburse a person for the cost of some specific behavior.

114. *See supra* text accompanying notes 96-116 for a discussion of cases where the court upheld the constitutionality of selective funding; *but see* *Committee to Defend Reproductive Rights v. Meyers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981). In this case the California Supreme Court held that, in certain situations, selective funding of childbirth and not abortion is a penalty on the exercise of a constitutional right, and therefore, constitutes an unconstitutional condition.

115. *See, e.g., Harris v. McRae* 448 U.S. 297 (1980), and *Maher v. Roe*, 432 U.S. 464, 475, n.8 (1977).

analysis is applicable to the international context although some analogizing must be employed. While the applicable case law refers only to state or federal funding of abortion, this line of cases could be utilized in the context of United States government aid to international groups such as the IPPF.¹¹⁶

In applying the Supreme Court's view of selective funding,¹¹⁷ it becomes apparent that no unconstitutional condition results from the restrictions on international family planning funding found in Section 104 of the Foreign Assistance Act.¹¹⁸ Congress has merely refused to fund abortions while it has continued to fund other methods of family planning and population control.¹¹⁹ While abortion is legal, Congress may encourage other family planning methods by providing funding for these preferred methods. However, by denying funding for nonabortion-related services unless the groups using these funds vow not to advocate or permit their private funds to be used for abortions, the administration is imposing a penalty upon both the advocacy and exercise of the right announced in *Roe*.¹²⁰

Family planning groups that may ultimately lose funding as a result of the new policy will no doubt seize upon the hypothetical set forth in *Harris*.¹²¹ By denying all governmental funds to these non-governmental family planning groups unless they end their support of abortion services, the Administration may be creating just the substantial constitutional question that the *Harris* opinion envisioned.¹²² Ultimately, the Reagan policy denies a benefit to an otherwise eligible candidate, solely because that candidate exercises a constitutionally protected right. Through its new policy, the administration is effectively requiring nongovernmental family planning programs to choose between supporting safe legal abortions for women and continuing to receive U.S. government family planning funds.¹²³

As discussed previously, current U.S. law has prohibited the use of government funds for abortion-related activity for a number of years.¹²⁴

116. See *supra* notes 75, 76, 77.

117. See *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980) (distinguishing between selective funding and penalties).

118. 22 U.S.C.A. § 2151b (West 1979 & Supp. 1985).

119. 22 U.S.C.A. § 2151b (f) (West 1979).

120. 410 U.S. 113 (1973).

121. 448 U.S. at 317 n.19 (1980).

122. *Id.*

123. *U.S. Switch*, *supra* note 7, at 1497; Planned Parenthood Fed'n of Am., Inc., *Fact Sheet*, July 21, 1984, at 2; *News Release*, *supra* note 18, at 2-3.

124. See *supra* text accompanying notes 78-95 for discussion of the Foreign Assistance Act.

The government¹²⁵ has the freedom to favor certain activities over others. However, the policy statement goes beyond favoring natural birth control over abortion; it effectively rewards natural population control and punishes abortion even though the latter activity has been endowed with constitutional protection. This preference appears to fit the criteria of an unconstitutional condition as set forth in *Maher* and *Harris*.

PART VI. CONCLUSION

Although executive privilege may play a large role in the final analysis of the Reagan policy statement,¹²⁶ it is clear that there are grounds upon which a challenge to the administration's attempt¹²⁷ to affect international family planning could be based. In implementing the policy statement, the Reagan administration is attempting to deny "citizens of other countries an option that—with the support of the majority of Americans—is available to its own citizens."¹²⁸

The Reagan policy statement represents a theoretical shift in the past position taken by the United States.¹²⁹ The policy's implementers will be a determining factor in making this apparent shift a reality. The language used in the policy vowing that the United States will no longer contribute to private organizations which perform or "actively promote abortions"¹³⁰ could be construed to reach even the most benign activity; if given a broad interpretation nearly all private family planning clinic could lose funding, since almost all such clinics provide counseling and referral services that include abortion as an alternative.¹³¹ Conversely, others argue that on social issues, the President's bark is worse than his bite¹³² and since he has mollified the New Right, he will not want to further antagonize the supporters of family planning within the moderate

125. Note that "government" in this context has in the past referred to Congress and legislation. The policy statement is not legislation, but its scope in current law must be defined, although this is not clear at the present; see Paust, *supra* note 63.

126. For a discussion of executive privilege, see *supra* text accompanying notes 62-66.

127. According to an article by Michael Kramer, President Reagan has stated that he "won't rest" until he gets a total ban on abortion, see *Reagan's War on Abortion*, NEW YORK, September 24, 1984, at 27 [hereinafter cited as *Reagan's War*].

128. See *Weak Compromise on Population*, Washington Post, July 16, 1984, at A10, col. 1 [hereinafter cited as *Weak Compromise*]. For the argument on the doctrine of unconstitutional conditions, see *supra* text accompanying notes 96-125.

129. See *supra* text accompanying notes 1-24.

130. *Policy Statement*, *supra* note 4, at 8; see also *supra* text accompanying notes 1-5.

131. *U.S. Switch*, *supra* note 7, at 1479.

132. See, e.g. *Presidential Pen*, TIME May 9, 1983, at 36, in which the writer points to issues like school prayer, busing and abortion, saying that "the President periodically pays lip service to the right wing's priority issues"; see also *Reagan's War*, *supra* note 127, at 27, in which the writer says "Reagan just talks tough on these issues in order to solidify his conservative and religiously driven political base; he would no more go to bat for their agenda in a second term than he has in the first."

wing of the Republican Party.¹³³

Is there truly a population crisis, or is it only a population boom as policy proponents dub the present and potential situation?¹³⁴ The World Bank predicts an impending catastrophe will result from the growing global population, while France and Germany fear their populations will decrease because of falling birth rates.¹³⁵ While the developed countries have their population growth rates under control, this is not the case in the rest of the world.¹³⁶ Industrialization often serves to diminish the number of laborers needed for productivity, and fertility usually declines. However, in agricultural, nonindustrialized nations, the demand for laborers remains high, and people need more children.¹³⁷ Combine this with a declining mortality rate and the population "boom" begins to look more like a crisis.

Both sides would probably agree that a crisis could potentially emerge if global population continues to increase as it has in the past.¹³⁸ However, they disagree on the means that should be employed to prevent such a crisis. Policy supporters believe that where the free market is allowed to work, population growth is an asset.¹³⁹ While this has proven true in specific instances in the past, the World Bank has determined that this is not the case today.¹⁴⁰ On the other hand, population control proponents concur on the need for economic development, but they fervently believe that control of population growth is a prerequisite to such economic development.¹⁴¹

A majority of America has voiced support for a woman's right to an abortion.¹⁴² Although federal law prohibits U.S. foreign aid money to be used for abortion, abortions are not *per se* prohibited.¹⁴³ Our own Supreme Court has said that while a state is not obligated to cover the expense of abortion, it cannot withdraw other benefits as a penalty for exercise of this protected right.¹⁴⁴ While the case law has developed in

133. *U.S. Switch*, *supra* note 7, at 1479.

134. *Policy Statement*, *supra* note 4, at 3.

135. *The People Problem*, *supra* note 6, at 62.

136. *McNamara*, *supra* note 29, at 1107.

137. *See generally World Bank Report*, *supra* note 8.

138. *See generally Benedick*, *supra* note 3.

139. *Id.*

140. *World Bank Report*, *supra* note 8, at 106; *see also supra* text accompanying notes 49-54.

141. *See Policy Fiasco*, *supra* note 26 stating: "It is true that economic progress and population control go hand in hand, especially when economic benefits are broadly distributed. But, as a new study by scientists at the Rockefeller Institute and National Academy of Sciences clearly shows, effective birth control programs are the most important check on population growth."

142. *Weak Compromise*, *supra* note 128, at A.10.

143. 22 U.S.C.A. § 2151b (West 1973).

144. *See supra* text accompanying notes 96-125.

response to domestic funding situations there is no reason why this rationale would not apply, *a fortiori*, to an international funding situation. Thus, the IPPF and the PPFA should have cognizable claims if they choose to pursue them.

Abortion is hardly an ideal method of family planning. Nevertheless, approximately 65 million couples in developing countries want no more children; therefore, unless appropriate methods of birth control are made more easily available, many of those couples will look to abortion as an answer to their problem.¹⁴⁵ The Reagan administration policy threatens a major funding source for a number of international agencies that have proven to be the most effective providers of family planning services in developing countries.¹⁴⁶ Ironically, if the new policy is implemented, an increased number of pregnancies with a corresponding increase in the number of abortions, along with higher infant and maternal mortality will result.¹⁴⁷ This is certainly not what the policy proponents intended. Furthermore, the administration has indicated that it would redirect the funds to alternative sources, possibly to foreign governments.¹⁴⁸ Many of these governments permit abortion; therefore, the administration is merely supporting government agencies at the expense of private agencies.¹⁴⁹ This result conflicts with the goals of an administration that fervently favors private initiative.¹⁵⁰

Whether the Reagan administration's policy will be implemented (and the extent of any such implementation) remains to be seen. If the federal government attempts to withhold all funding from groups that provide private funds for abortions, that action would penalize groups that both advocate and aid others in the exercise of a constitutionally protected right. Such a penalty appears to be an unconstitutional condition on the exercise of a constitutionally protected right. Such a policy may also abridge the first amendment right of family planning groups to exercise free speech. Only time will tell if these issues are resolved by the courts.

*Margaret T. Brenner**

145. *Sovereign Rights*, *supra* note 21, at 34; see also *Policy Fiasco*, *supra* note 26, at A14, stating that "more family planning aid . . . will reduce current reliance on abortion throughout the developing world."

146. *Weak Compromise*, *supra* note 128, at A10.

147. See *supra* text accompanying notes 43-48; *U.S. Switch*, *supra* note 7, at 1478; *Weak Compromise*, *supra* note 128, at A10, col. 2.

148. *Grandstand Play*, NEW REPUBLIC, August 27, 1984, at 9.

149. *Id.* at 9-10.

150. *Id.*

* J.D., University of Houston, 1986; Associate Editor, *Houston Journal of International Law* 1985-86. This comment was selected for publication from the *Journal's* Annual Writing Competition.

