Human Rights Sanctions as Leverage: Argentina, A Case Study; Note

Gracia Berg

Follow this and additional works at: http://scholarship.law.nd.edu/jleg

Recommended Citation
Available at: http://scholarship.law.nd.edu/jleg/vol7/iss1/8

This Note is brought to you for free and open access by the Journal of Legislation at NDLScholarship. It has been accepted for inclusion in Journal of Legislation by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
HUMAN RIGHTS SANCTIONS AS LEVERAGE: ARGENTINA, A CASE STUDY

INTRODUCTION

Congress has enacted amendments to existing foreign assistance legislation to prohibit aid to a government which violates internationally recognized human rights. One of the reasons these amendments, known as human rights sanctions, have been enacted is to serve as leverage to force a government which violates human rights to change its human rights policy. Because of the widespread impact these amendments have had on American businessmen and United States foreign relations, it is important to discuss the factors affecting the effectiveness of the sanctions as leverage.

Congress first enacted human rights legislation in 1974 as a reaction against the "excessively pragmatic" foreign policies of the Nixon Administration and as a positive step toward a renewal of America's founding ideals. These efforts began in 1973 when Congressman Donald Fraser, Chairman of the Subcommittee on International Organizations and Movements of the House Foreign Affairs Committee, held extensive hearings to examine the role of the United States government in the protection of human rights. Subsequently, Congress has incorporated human rights concerns into educational programs, hearings on foreign governments, and resolutions denouncing governments.

Inasmuch as Congress plays only a limited role in foreign relations, its primary opportunity to affect human rights in other nations has been through

foreign assistance appropriations. Generally, the amendments have been worded negatively to prohibit aid, however, in rare instances Congress has used foreign aid as a positive incentive for nations to change their human rights policies.

A principal reason for enacting the statutes is to apply leverage against a violating nation to force it to change its domestic human rights policy. Equally important, and perhaps more often articulated, is a second goal of disassociating the United States from the human rights violators.

In discussing the human rights sanctions as leverage, Secretary of State Cyrus Vance, the Bureau of Human Rights and Humanitarian Affairs and the Bureau of Inter-American Affairs state that the sanctions have brought about significant human rights improvements. On the other hand, Henry R. Geyelin, President of the Council of the Americas, maintains that the policies are "ineffective and even counterproductive." The Congressional Research Service, in a recent study on the effect of human rights policies in fifteen countries concluded that "the record on direct and explicit use of the foreign assistance as leverage to bring about specific improvements in human rights conditions is hardly encouraging."

This diversity of opinion is, in part, attributable to the varying interdependence between individual foreign nations and the United States. As would be expected, if a foreign country is dependent upon the United States aid and the United States is not dependent on the foreign country, the policy is effective in reducing violations. If, however, the foreign country does not require the


9. 22 U.S.C. § 262d(a) (Supp. I 1977) states that the United States shall seek to "channel assistance toward countries other than those whose governments engage in ... " In application, aid has been given "in anticipation of improvements in human rights conditions." See text between footnotes 52 and 54; Chile was allowed the Commodity Credit Corporation credits to reflect approval of "encouraging political developments." Washington Star, May 5, 1978, A5. In 1977 Romania was extended most-favored-nation status by the President on evidence that it has substantially eased emigration. See: Extension of Most-Favored-Nation Status to Romania: Hearings before the Subcomm. on Trade of the House Comm. on Ways and Means, 94th Cong., 2d Sess. (1976) (statement of M. Nimitz), reprinted in 77 Dep't. St. Bull. 278, 280-1 (1977).

10. Supra note 3.


12. The Council of the Americas is a private, nonprofit association of over 200 United States corporations. Member companies comprise nearly 90% of United States private investment in Latin America.


15. Id., at 76: "... country that is interested in obtaining some form of benefit from the United States makes an effort to improve its human rights conditions," Latin America Hearings, supra note 11, at 78-9 (statement by Alexander Perry).
assistance of the United States or if the United States is dependent upon the foreign country, the sanctions will not be effective in bringing about a change in the human rights policy of the violating nation.

The purpose of this note is to discuss some of the factors which are relevant to the effectiveness of the human rights sanctions as leverage in countries not dependent on United States aid. The legislation currently in force will be reviewed and the present situation in Argentina will be studied to provide background for a discussion of the sanctions’ effectiveness. Argentina has been chosen as a case study because it presents a situation in which the United States has the option of exerting the full force of the sanctions because the United States is not dependent on Argentina. This note will not attempt to deal with the legality or the morality of the sanctions, nor will it discuss the effectiveness of the sanctions in attaining other goals such as promoting the United States image.

**LEGISLATION IN FORCE**

A brief summary of foreign assistance legislation terms may be helpful in understanding the sanctions. Foreign assistance legislation, as used herein, includes all types of money, equipment and training that the United States gives to another country. Assistance is classified as security, economic or financial. **Security assistance** includes grants and loans which transfer United States arms, military training or economic support to a foreign nation for national security reasons of either the receiving country or the United States. **Economic assistance** includes grants or loans given to a foreign nation for nonmilitary programs such as food, economic stabilization and general budgetary support. **Financial assistance** includes loans, credits or guarantees given either bilaterally or multilaterally. **Bilateral financial assistance**, which is aid given directly by the United States to another nation, allows the United States to retain full control over conditions governing the granting of such aid. **Multilateral financial assistance**, which is aid given with other nations through international financial institutions such as the World Bank, does not allow the United States sole control over granting conditions; decisions on loans are made by directors representing all member countries and the United States has only one voice among many.

---

16. The United States may be dependent on a foreign nation, for example, for oil as in the case of Iran or for military bases as in the case of the Philippines.
18. Loans are generally not considered “assistance” but will be included here because of the impact they have on the effectiveness of the sanctions. Information used to explain foreign assistance legislation is primarily derived from the foreign assistance statutes themselves and Center for Int'l. Policy, Human Rights and the U.S. Foreign Assistance Program: Fiscal Year 1978, Part I—Latin America (1978) [hereinafter cited as *Latin America*].
19. For example, the U.S. contributes 40% of the funds and has 23% of the votes at the World Bank.
Congress has enacted human rights amendments to seven\(^{20}\) of the United States foreign assistance programs. Although these amendments vary in force and scope, the most common, known as the Harkin Amendment,\(^{21}\) states:

No assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.\(^{22}\)

The annual human rights reports mandated by Congress deal with three categories of rights including respect for the integrity of the person; governmental policies relating to such vital needs as food, shelter, health care and education; and respect for civil and political liberties.\(^{23}\) The type of abuse sought to be prevented can be subdivided into specific requirements: there must be a consistent pattern of violations and not an isolated act of atrocity; the violation must be gross or extreme, not minor or insignificant; and it must be a violation of an internationally recognized human right, that is, one which is recognized by virtually all governments, by the United Nations in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration.\(^{24}\) An example of the types of violations is given in 22 U.S.C. § 2304:

\[
\ldots \text{torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges and trial, and other flagrant denial of the right to life, liberty, or the security of the person.}\(^{25}\)
\]

A reporting system is required under five\(^{26}\) of the seven statutes to determine which countries seeking foreign assistance violate human rights as defined above. These reports are prepared by the State Department as a part of the annual proposal to Congress for foreign assistance appropriations.

Once it has been determined that a country is a violator of human rights, aid will automatically be terminated unless the country comes under one of the exception clauses. The exception clause for security aid provides assistance if there are “extraordinary circumstances certified by the President” (of the


21. Representative Thomas Harkin introduced the first of these amendments and has been instrumental in the passage of the majority of the human rights amendments.


24. The United States has been widely criticized for promoting a Western view of human rights, i.e., civil and political rights. Although the United States is concerned with these rights, their primary emphasis has been on the integrity of the person. At the hearings of the Subcommittee on Foreign Assistance of the Senate in March 1977, it was said: “We must also take care that we do not impose United States values in raising the issues of human rights.” \textit{Human Rights Issues and Their Relationship to Foreign Assistance Programs: Hearings before the Subcomm. on Foreign Assistance of the Senate Comm. on Foreign Relations, 95th Cong., 1st Sess. 99} (1977). Vance, “Human Rights and Foreign Policy,” 7 Ga. J. Int'l. & Comp. L. 227 (1977).


United States) or "it is in the national interest of the United States." The exception clause for economic and financial aid states that aid will be given if the aid will "directly benefit the needy people" of the recipient nation.

Congress has also enacted human rights sanctions which cut off aid to specific countries. These amendments do not allow for any discretion in determining if a country has violated human rights or if the aid will meet the exception clause.

Charts I and II more fully explain the human rights sanctions. Chart I defines the types of foreign assistance programs under the general categories of security, economic and financial aid. Chart II gives the wording, exceptions, legislative history, criteria for determination of violations and reporting systems of each of the seven statutes which govern human rights sanctions.

APPLICATION OF HUMAN RIGHTS STATUTES TO ARGENTINA

Argentina As Model

Sanctions may realistically be expected to be effective only if either the violating country is economically dependent on the sanctioning country or if the sanctioning country is willing to rigorously apply the sanctions because it is not dependent on the violating country. Argentina provides a case study of a country upon which the United States is not dependent.

There are five reasons for using Argentina as a model.

First, Argentina is structured as a democracy. The Constitution incorporates guarantees of individual rights similar to those in the United States Constitution. The primary difference between the Argentina and the United States Constitution is that these rights may be suspended in Argentina when there is a "state of siege." Unlike the situation in Asia or Africa where new systems of government are being created, Argentina is being urged to return to its rule of law and basic democratic values.

31. Supra note 15.
32. Latin America Hearings, supra note 11, at 79 (statement by Alexander Perry, Jr.).
34. Id.; See e.g., Article 14 (freedom of press, religion, teaching and learning; equal pay for equal work, right of labor unions to strike); Article 15 (slavery abolished); Article 16 (all inhabitants equal before the law); and Article 18 (no ex post facto laws; no self-incrimination; right of defense by trial).
35. Id.; Article 23 provides: "In the event of internal disorder or foreign attack endangering the operation of this Constitution and of the authorities created thereby, the Province or territory in which the disturbance of order exists shall be declared in a state of siege and the constitutional guarantees shall be suspended therein . . . . " A "state of siege" has been in effect since the military coup of 1976.
36. Argentina is a party to the Universal Declaration of Human Rights (1948); the American Declaration of the Rights and Duties of Man (1948); and the International Covenant on Civil and Political Rights (1966).
CHART I: FOREIGN ASSISTANCE PROGRAMS COVERED BY HUMAN RIGHTS SANCTIONS

SECURITY AID

Military Assistance Program (MAP)\(^1\)
This program provides aid in the form of military equipment and/or services to foreign governments in the form of a grant. The U.S. retains title.

International Military Education and Training (IMET)\(^2\)
Instruction of foreign military officers and related civilian personnel is given by officers or other personnel of the U.S. The instruction may take place either here in the U.S. or in the recipient country.

Economic Support Program (ESP)\(^3\)
Formerly Security Supporting Assistance. Economic support is given for the purpose of promoting economic and political stability. Motivating factor in granting aid must be U.S. national security.

Foreign Military Sales on credit (FMS credit)\(^4\)
Military equipment, services, and training purchased from the U.S. Defense Department either through direct credit or guaranteed loans.

Foreign Military Sales for cash (FMS cash)\(^5\)
Similar to FMS credit except that cash is required.

Peacekeeping Operations\(^6\)
Assistance is given to both countries and international organizations for operations to help national security.

Commercial Arms Sales\(^7\)
Private U.S. companies are permitted to sell certain items directly to a foreign government. The Arms Export Control Act requires export licenses from the Office of Munitions Control in the State Department before these sales are permitted. Which items require this license is governed under the Act. Many items which can be used for military purposes are not included.

ECONOMIC AID

Agency for International Development (AID)\(^8\)
Assistance is given in the form of grants or loans for development, food and nutrition programs, population planning, economic stabilization programs, and general budgetary support.

P.L. 480 Food for Peace\(^9\)
Food donation program of the U.S. agricultural commodities distributed to Third World Countries by recipient governments or voluntary agencies. One-fourth of the program is in this donated category under Title II; the other three-fourths is sold under the Commodity Credit Corp.

FINANCIAL AID: BI-LATERAL

The Export-Import Bank of the United States (Eximbank)\(^10\)
This is an export credit and insurance agency of the government set up to facilitate export of U.S. goods and services. It provides money to other governments at low interest rates, longer maturities, and assumes risks neither private financial institutions nor exporters are able to bear, thereby enabling other governments to buy U.S. made products.

Overseas Private Investment Corporation (OPIC)\(^11\)
This government agency insures equity investment of U.S. corporations in Third World countries against expropriation, currency inconvertibility, and war, revolution or insurrection.

Commodity Credit Corporation (CCC)\(^12\)
Corporation of government specifically to provide price support for U.S. agricultural commodities in other countries. Operates under P.L. 480 in government to government sales.
Financial Aid: Multi-Lateral

International Bank for Reconstruction and Development (IBRD)\textsuperscript{13}
Loans given to promote economic growth in developing countries. U.S. provides approximately 25% of the capital. Division of the World Bank.

International Development Association (IDA)\textsuperscript{14}
Concessional loans only to poorest of the developing countries. The credits are for up to 50 years at a 0.75% service charge. U.S. provides approximately 37% of the capital. Division of the World Bank.

International Finance Corporation (IFC)\textsuperscript{15}
Investments of land and equity capital in private enterprises of member countries. Differs in that investments are not guaranteed by the host country. U.S. provides approximately 35% of the capital. Division of the World Bank.

Inter-American Development Bank (IDB)\textsuperscript{16}
Regional development bank. U.S. provides approximately 52% of the total capital.

Asian Development Bank (ADB)\textsuperscript{17}
Regional development bank. U.S. provides approximately 12% of the capital.

African Development Fund (ADF)\textsuperscript{18}
Regional development bank. U.S. provides approximately 18% of the capital.

Supplementary Financing Facility of the International Monetary Fund (Witteveen Facility)\textsuperscript{19}
Provides funds to members of the International Monetary Fund who face certain serious balance of payment problems.

Sources for Chart I:
### CHART II: HUMAN RIGHTS AMENDMENTS TO FOREIGN ASSISTANCE PROGRAMS

<table>
<thead>
<tr>
<th>SECURITY AID (§ 502B)</th>
<th>ECONOMIC AID (§ 116)</th>
<th>FINANCIAL AID:</th>
<th>MULTILATERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STATUTE</strong></td>
<td><strong>DATE FIRST ENACTED</strong></td>
<td><strong>HUMAN RIGHTS (HR) CLAUSE</strong></td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>22 USC § 2304</td>
<td>December 30, 1974</td>
<td>No assistance to government of any country which violates HR</td>
<td>12 USC § 635</td>
</tr>
<tr>
<td>22 USC § 2151n</td>
<td>December 20, 1975</td>
<td>No assistance to government of any country which violates HR</td>
<td>22 USC § 2199(l)</td>
</tr>
<tr>
<td><strong>EXCEPTION</strong></td>
<td><strong>AID PROGRAMS COVERED</strong></td>
<td>Financial or commercial considerations will be used only when clearly and importantly advance U.S. policy . . . in HR</td>
<td><strong>BILATERAL</strong></td>
</tr>
<tr>
<td>President certifies: extra-</td>
<td>AID, Peace Corp, P.L. 480</td>
<td>Shall take into account all available info regarding observation and respect for HR</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td><strong>DEFINITION OF HUMAN RIGHTS GIVEN</strong></td>
<td><strong>CONSIDERATIONS IN MAKING DETERMINATION OF VIOLATIONS</strong></td>
<td>No agreement may be entered if country violates HR</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>Gross &amp; consistent violations of internationally recognized HR</td>
<td>1. Relevant findings of international organizations - ICRC</td>
<td>Directors are authorized and instructed to oppose loan, extension of financial assis. or any tech. assis. to country which violates HR</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td><strong>AID PROGRAMS COVERED</strong></td>
<td>2. Extent of cooperation in permitting investigations</td>
<td></td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>MAP, FMS, police domestic intelligence, crime control, IMET, commercial sales, peacekeeping</td>
<td>1. Extent of cooperation w/investigations of groups like ICRC, OAS, UN</td>
<td>Submit to Congress an annual report on status of human rights in each country drawing funds</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>AID, Peace Corp, P.L. 480</td>
<td>2. Specific actions by Pres. or Cong. in regard to other aid</td>
<td></td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td><strong>EXCEPTION</strong></td>
<td><strong>AID PROGRAMS COVERED</strong></td>
<td>1. None given</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>President certifies: extraordinary circumstances or national interest</td>
<td>AID, Peace Corp, P.L. 480</td>
<td>1. All available information</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td><strong>AID PROGRAMS COVERED</strong></td>
<td>3. Extent benefit needy</td>
<td>1. Extent of coop. w/investigation of groups like ICRC, OAS, UN</td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>MAP, FMS, police domestic intelligence, crime control, IMET, commercial sales, peacekeeping</td>
<td>2. Actions by Congress on bilateral aid</td>
<td></td>
<td><strong>EXIMBANK</strong></td>
</tr>
<tr>
<td>AID, Peace Corp, P.L. 480</td>
<td>3. Extent benefit needy</td>
<td>1. Extent of cooperation w/investigation of groups like ICRC, OAS, UN</td>
<td><strong>EXIMBANK</strong></td>
</tr>
</tbody>
</table>

In brief, the table outlines the amendments applied to foreign assistance programs, detailing the statutes, dates of enactment, human rights clauses, exceptions, aid programs covered, and considerations in determining violations, aiming to ensure human rights are respected during these operations.
<table>
<thead>
<tr>
<th>Reporting Systems</th>
<th>Yes</th>
<th>Yes</th>
<th>No</th>
<th>No</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepares Reports</td>
<td>Sec. of State w/ HA</td>
<td>Sec. of State</td>
<td>President</td>
<td>Sec. of Treasury w/ Sec. of State</td>
<td>Sec. of Treasury w/ Sec. of State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receives Reports</td>
<td>Congress</td>
<td>Speaker of House and Committee on Foreign Relations</td>
<td>Speaker of House, Pres. of Senate, Comm. on Agricul., Nutrition and Forest</td>
<td>Speaker of House Pres. of Senate</td>
<td>Congress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>Annually and when requested w/in 30 days</td>
<td>Annually</td>
<td>Annually</td>
<td>Annually</td>
<td>Annually</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Chart I defines these aid programs.
EximBank is the Export-Import Bank.
OPIC is the Overseas Private Investment Corporation.
CCC is the Commodity Credit Corporation.
IFI are International Financial Institutions.

Human Rights Sanctions
Second, Argentina is advanced in socioeconomic development. This allows the attention of the United States to be focused on upholding the integrity of the person rather than in the costly problems of alleviating subsistence conditions.

Third, Argentina is not strategically necessary to the United States. America may impose sanctions without immediate concern for the United States defense commitments or national security.

Fourth, the United States has maximum bilateral access to Argentina. There is a close, long-standing relationship with Argentina as well as other Latin American governments as reflected in the extensive network of economic, military and political arrangements with the United States.

Fifth, the United States has greater multilateral influence in Argentina than in countries outside the Western Hemisphere. In addition to the pressure the United States can exert through the international financial institutions, the United States may also speak out against human rights violations in the forum of the Inter-American Commission on Human Rights and the Organization of American States. The United States also holds the controlling vote on special operations in the Inter-American Development Bank.

Human Rights in Argentina

Violations of human rights in Argentina have been consistently reported since the military junta took power in 1976. The annual report to Congress in that year stated that:

The right of life, liberty and security of person are violated regularly by terrorists at both ends of the political spectrum . . . [the] administration [has] looked the other way with regard to violations attributable to persons associated with the government. Right wing terrorism or counter-terrorism has been carried out by vigilante squads operating with apparent impunity. Leftist terrorism continues and has been responsible for hundreds of political assassinations and kidnappings.


38. The Philippines and Korea are two examples of countries considered strategically necessary to the national security of the United States. Aid to those countries has continued despite human rights violations. Argentina does not present any assertion of strategic interest. See: Foreign Assistance Authorizations: Hearings before the Senate Comm. on Foreign Relations and the Subcomm. on Foreign Assistance of the Senate Comm. on Foreign Relations, 95th Cong., 1st Sess. (1977).


Amnesty International, the Lawyer’s Committee for Human Rights in Argentina and other groups have consistently protested the situation in Argentina.43 The recent State Department report discusses the most often cited problems: “. . . unexplained disappearances of [from] 6,500 . . . [up to] 20,000 persons . . . substantial evidence that most of these persons were abducted by the security forces and interrogated under torture; as most have not reappeared, many observers believe that they were summarily executed.”44 Although the State Department also noted some improvements in the situation in the report, it is unclear what this means.45 Amnesty International does not believe that the present situation in Argentina reflects an improvement in the human rights policies of the government:

The critical factor to examine in determining whether the situation of human rights has improved is the overall structure of repression and whether any effort has been made to dismantle that structure. In the case of Argentina, (Amnesty International) is aware of no effort by the current regime to investigate the whereabouts of the anywhere from 10,000 to 15,000 people who have disappeared, to take judicial action against those who were responsible for these disappearances and to make clear and unequivocal statements that such disappearances, torture, and summary executions will not be tolerated in the future. In the absence of such action . . . it is fair to say that there has been no significant improvement in the overall human rights situation in Argentina.46

The gross and consistent violations of internationally recognized human rights which have taken place in Argentina have made it a prime target for human rights sanctions by the United States.

Withdrawal of United States Aid to Argentina

Responding to the above conditions, the Senate Foreign Relations Committee withdrew approximately one-half the Foreign Military Sales (FMS) appropriated to Argentina (fifteen million dollars) in February, 1977. The committee also directed the preparation of a plan to phase out military training programs for

44. Country Reports for 1979, supra note 23, at 239.
45. See text between footnotes 52 and 54 and between 71 and 72.
Argentina in fiscal year 1979. Argentina reacted by rejecting any FMS contingent on human rights including the fifteen million dollars offered for fiscal year 1978. It did, however, accept funds not attached to human rights clauses: fifty-four million dollars unexpended FMS from previous years, 700,000 dollars for Military Education and Training, cash sales and advisors.47

In addition, Argentina rejected any economic aid. This served only as a symbolic gesture since Argentina received its last grant from the Agency for International Development (AID) six years earlier, in 1971, and it has never been eligible for Food for Peace grants.48 However, this symbolic gesture was important because it marked the deterioration in bilateral relations between the United States and Argentina.49 Senator Edward Kennedy and Senator Frank Church felt that the human rights violations in Argentina warranted further sanctions and therefore on June 15, 1977, they introduced an amendment to stop all military aid to Argentina.50 This amendment included within its ban all Foreign Military Sales, International Military Education and Training and commercial sales by private corporations. Although there were strong denunciations of the Argentinian regime, the amendment was revised to postpone the cut-off until September 30, 1978. The Amendment was later expanded to prohibit aid for Peacekeeping Operations in 1978.51 The impact of this large cut-off was modified by allowing renewal of all licenses for military exports which were in effect before September, 1978.52

In July, 1978, the Export-Import Bank of the United States denied credits to Argentina because of human rights violations.53 This credit was for the purchase of 270 million dollars worth of turbine engines manufactured by Allis-Chalmers, a private United States corporation, for a dam on the Parana River between Argentina and Paraguay. Because of an uproar among the business community in the United States over this incident, the loan was reinstated "in anticipation of human rights improvements."54

FACTORS AFFECTING LEVERAGE OF HUMAN RIGHTS SANCTIONS

Determining future human rights policy requires an understanding of the factors affecting the leverage of human rights sanctions. There are three areas

48. Argentina is not eligible to receive Food for Peace grants since it exports food itself.
which merit discussion: (1) the human rights amendments are not comprehensive and thereby allow a violating country to exploit loopholes; (2) the United States private sector is neither constrained by the statutes nor motivated by the policies to discontinue its business relations with the violators; and (3) other nations continue to provide the sanctioned items either through multilateral institutions or as individual nations.

Loopholes in United States Government Aid

The United States government itself may continue to provide funds to violating nations either through programs not covered by the statutes or through loopholes in the statutes.

1. Programs Not Covered by Statutes

The Export-Import Bank of the United States, a government credit agency whose purpose is to facilitate export of United States goods, was until recently, covered under a human rights sanction. There were efforts made to apply a "Harkin Amendment" to this aid, but these were defeated because of pressure from the business community in the wake of the Allis-Chalmers incident, noted above. Instead, Congress repealed the provision in force and replaced it with the milder language of the present statute: "Nonfinancial or noncommercial considerations will be used only when they clearly and importantly advance U.S. policy in human rights." The argument advanced by those in favor of the current wording was that the primary purpose of the Export-Import Bank is to finance and facilitate exports and therefore the first consideration must be the trade objections and the balance of payments of the United States. The realistic effect of the Export-Import Amendment is the same as programs not covered by human rights sanctions.

There are also financial assistance programs which are not governed by any human rights amendments. The Inter-American Foundation, the International Narcotics Control and most export licenses are examples of programs which offered aid not conditioned on the human rights situation.

55. Pub. L. No. 95-143 2, 91 Stat. 1210 (1977) (current version at 12 U.S.C. § 635 (Supp. I 1977)) “and shall take into account the observance of the respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such export may have.”
57. See text between footnotes 52 and 54 and supra note 54.
2. **Discretionary Provisions of the Human Rights Statutes**

The human rights amendments for security and economic aid have never been used directly to withdraw United States assistance, as of 1979, because of the discretionery provisions of the statutes. The State Department has discretion over whether or not it characterizes a country as a human rights violator in its annual report to Congress. There is also discretion allowed in determining if a proposed program comes within one of the exception clauses and therefore may continue.

Since aid is only forbidden to a violating nation, the State Department reports of human rights conditions required under the statutes becomes crucial to the effectiveness of the sanctions. Five of the seven human rights statutes require an annual reporting system and the security aid statute provides for an additional report within thirty days of a request by a Congressman. The first report that was prepared by the State Department for Congress was a two page report stating that it was satisfied that those countries receiving economic aid had complied with the requirements of human rights sanction. Dissatisfied with this response, Congress has enacted progressively stricter requirements for comprehensive reports.

Even though there is input from organizations outside the State Department such as Amnesty International and the International Commission of Jurists, the ultimate responsibility for preparing the reports remains with the State Department. The bulk of the report is prepared by the Embassies in each country and by the Regional Bureaus. This presents an inherent conflict: the same person charged with developing open communication and good bilateral relations with the foreign country is expected to candidly and publicly review all negative factors. The result has often been a phenomenon called "clientism" in which the Foreign Service Officers minimize the shortcomings and exaggerate the virtues of the country to which they are assigned.

---

65. Supra note 26.
68. Chart II spells out the current statutory requirements.
69. Under the statutes, one of the criteria used in determining whether a country is in gross violation is its cooperation with the International Committee of the Red Cross, groups from the United Nations and the Organization of American States. The annual report to Congress states that "the reports draw on information . . . from published reports of international non-governmental organizations engaged in human rights activities and public actions and reports of human rights bodies of international governmental organizations." Report on Human Rights Practices in Countries Receiving U.S. Aid: Report to the Senate Comm. on Foreign Relations and the House Comm. on Foreign Affairs, 95th Cong., 2d Sess. 17 (1978).
71. Id.
The most recent State Department report has been criticized for biased reporting for the sake of bilateral relations in the case of Argentina:

Argentina . . . has been criticized by many rights organizations but . . . is being wooed by Washington to support the partial grain embargo against the Soviet Union.

Some U.S. officials reportedly sought to go easy on Argentina’s military regime as a means of helping to gain this support.72

Once a nation is found to be a violator of human rights,73 it may still receive United States government aid by demonstrating that the aid will benefit the needy74 of the violating country or that providing aid will be in the national interest of the United States.75 An Inter-Agency Committee76 has been set up to make some of these determinations. This high level decision making body consists of representatives of all the United States government organizations that are involved in foreign assistance such as Agency for International Development (AID), the directors of each of the international banks and the Department of Human Rights and Humanitarian Affairs (HA). The function of this committee is to make the final determination as to whether aid should be given.

Although the Inter-Agency Committee has now articulated some of the principles on which they make their decisions,77 there are still criticisms that the important decisions do not appear to be made on the basis of any formulated principles.78 The Congressional Research Service notes that, “each case seem[s] to be reviewed on its merits, and individual decisions [do] not seem to produce principles on which subsequent cases could be decided. The result is that decisions have been made that are hard to explain under the applicable statutory provisions.”79 For example, in 1979, AID gave 215.2 million dollars to twelve countries designated as human rights violators. Of this, 62.3% or 134.1 million dollars went towards programs which appear to benefit the needy while 37.6% or 81.1 million dollars did not go to the needy, but rather went toward expenses not part of the exception clause: administrative needs, feasibility studies, office equipment and payments to government officials. The World Bank gave loans in 1979 to eighteen countries designated as human rights violators. Of this, 45% went for projects for the needy such as agriculture, health, education and light capital projects while 55% went for projects that did not directly benefit the needy, such as industry infrastructure and balance-of-payments loans.80

74. Supra note 29.
75. Supra note 28.
76. Committee is chaired by Warren Christopher, deputy Secretary of State and is commonly referred to as the Christopher Committee.
77. Guidelines developed by the Christopher Committee: First, primary consideration is given to violations of personal rights rather than to abuses of economic or political rights. Second, foreign assistance is combined with a full range of diplomatic approaches. Third, assistance which directly benefits the needy is approved. Fourth, only compelling national security reasons justifies security assistance to countries with serious human rights problems. If aid is provided to these countries, sales to the police or others involved in human rights abuses are restricted. Fifth, decisions are based on trends in human rights conditions as well as the overall level of performance. Foreign Policy, supra note 49, at 23-5.
78. Foreign Policy, supra note 49, at 52 (statement by Stanley J. Heginbotham).
80. Latin America Hearings, supra note 11, at 57.
Business Relations with the Private Sector

United States government policy can only have a partial effect on relations with other countries because of the extensive United States citizen contact with foreign governments, including Argentina, through transnational corporations, banks and export-import transactions.

Although the business community expresses concern for human rights, it does not share the government's motivation for effectuating change. The business communities' motivation is for profit, a fact inherent in a capitalist system.

1. Transnational Corporations

Transnational corporate interests are often seen as being in direct conflict with human rights goals. Most transnational corporations do not feel that their interests conflict with human rights goals, but adopt General Motors' position that a profitable business contributes to the material well-being of the people in the host foreign nation. A United Nations' study on the effect of transnationals on human rights states: "transnational investors want low wages and stable trade unions which repressive regimes are best able to provide." Foreign investors "translate the transgression of these human rights into increased profitability." Argentina, for example, has enacted a highly restrictive labor law which prohibits unions from political activity and serves to fragment union organizations. The law allows up to ten years imprisonment for union activity. This results in lower wages which in turn provides a desirable environment for transnational corporate expansion.

2. Banks

Commercial lending sources have concerns similar to transnational corporations when they seek creditworthy customers. The United Nations study states: "a list of loans, and the banks making the loans indicates that banks prefer to provide loans to authoritarian regimes." The effect of these large scale private loans is that a violating country can avoid the pressure that sanctions would otherwise provide.

Exact statistics on the relations of United States private banks with foreign countries are difficult to compute because they must be compiled from diverse sources.

81. *Latin America Hearings*, supra note 11, at 23.
82. Transnational corporation is defined as enterprises which own or control production or service facilities outside the country in which they are based. They can be co-operatives or state-owned entities as well as corporations or private.
85. Some of the changes taken in Argentina include: 1) Prohibiting strikes; 2) Punishment of up to ten years imprisonment for union activity; 3) Military personnel placed in some factories to "increase productivity;" 4) Infantry corps present in industrial plant to oppose workers opposition; and 5) Longer work week in disregard of Provincial laws which placed work week at 44 hours. Argentina Information Service Comm., *Argentina Today: A Dossier on Repression and the Violation of Human Rights* 3, 8 (undated).
sources. However, the trend toward large private investments in Argentina since the withdrawal of government aid can be determined from the following facts: The North American Committee on Latin America (NACLA) reports that private United States banks lent Argentina over forty-six million dollars from 1977, when the sanctions were imposed, until the early part of 1978.88 Argentina itself claims that it expects credit to remain readily available and that local credit costs are falling off as a result of stiff competition from foreign lenders.89 The United States Commerce Department also concludes that United States commercial banks are eager to supply credits to Argentina now that its huge and rapidly growing foreign exchange reserves have established it as a very creditworthy customer.90

3. Export-Import Relations

Many United States firms have protested against the adverse impact a direct loss of sales has on their business as in the case of Allis-Chalmers, noted above.91 Their main concern, however, is the direct change in the economic climate from confidence in the United States as their primary supplier to mistrust and dissatisfaction. The American Association of Chambers of Commerce in Argentina states that Argentina considers the United States unreliable as a supplier and, rather than be embarrassed by human rights considerations, will look elsewhere for suppliers. Once other nations begin to sell to Argentina, United States businessmen are concerned that other countries will continue to sell to Argentina and that the impact will be felt twenty years from now as substantial export opportunities are diverted to foreign competitors.92

The cumulative evidence indicates that the United States is Argentina’s largest single trading partner but competition from other nations is increasing. Argentina’s exports to the United States have risen from 16.5% in 1975 to 21.3% in 1978. Argentina’s imports from the United States have increased 80.1% over the last five years, while Argentina’s imports from the European Economic Community countries are up 105.6%.93

Aid From Other Nations

1. International Financial Institutions

Multilateral lending agencies, more commonly known as International Financial Institutions (IFI), further erode the pressure that the United States might place on a violating government in two distinct ways. The IFIs supply funds which the United States has refused through bilateral channels. Further, the IFIs condition the granting of these needed funds on economic practices which are often achieved through the imposition of conditions adverse to human rights.

90. Foreign Economic Trends, supra note 37, at 10.
91. Supra note 54.
92. Latin America Hearings, supra note 11, at 55 and 77.
Decisions on loans through the International Financial Institutions are made by a vote of the Board of Directors of each lending institution. Although the United States supplies a large percentage of the funds, it does not have a controlling vote. The United States voting individually against a loan can have no effect since it has, for example, only 23% of the vote at the World Bank and 28.42% of the vote at the Inter-American Development Bank. When the aid given through bilateral sources is cut off, Argentina turns to the multilateral sources and despite United States attempts to block the monies, obtains the needed funds. For example, in 1974 the amount of funds that Argentina received from bilateral and multilateral sources was approximately the same. In 1976 when the United States withdrew bilateral aid, funds from the multilateral sources almost doubled.

The situation is changing as other countries vote with the United States against loans to countries who violate human rights. Since the human rights amendment was attached to the International Financial Institution Statute the United States has opposed over forty-eight loans to fifteen countries on human rights grounds. Other countries have voted similarly on twenty-five loans to five governments. As a result, a half dozen loans have been withdrawn from consideration.

The United States has voted adversely on thirteen loans to Argentina for human rights reasons from June, 1977 to December, 1978: three "no" votes and ten abstentions. It is not clear, however, which loans have been granted to Argentina over the opposition of the United States.

The International Financial Institutions also erode United States pressure by requiring only economic considerations in the granting of loans. In order to obtain a loan, a country must be "creditworthy," i.e., it must have, for example, a favorable balance of payments, a reduction of public expenditure and imposition of wage controls. In Argentina, the freeze on wages imposed under these economic policies has meant a decrease in the real wages of Argentinians by fifty percent in only two years. Representative Thomas Harkin states that these conservative policies are often "enforced by repres-

95. Id. at Appendix E 164.
96. See Annual Reports for the World Bank, Inter-American Development Bank, International Monetary Fund, Export-Import Bank for the years 1974 through 1979. In 1978 and 1979 the total amount of multilateral aid decreased because Argentina was no longer requesting aid from the International Monetary Fund; Argentina's balance of payments had improved so that it no longer needed the funds.
97. Executive-Legislative Interaction, supra note 2, at 38.
100. Id. at 15.
101. Supra note 94.
103. Supra note 86.
sion — by unionbusting, mass arrests, murder, torture, detention without charge [and] ... by allowing an 'acceptable' level of hunger and unemployment.”

Some change in the International Financial Institutions policy has occurred as evidenced by the fact that the directors now use criteria other than economic factors. They have also become more aware of the economic repercussions of revolutions which are a result of serious violations of human rights.

2. Individual Foreign Relations

Other individual nations will undoubtedly be available to provide the money and supplies required by the violating nation. If the individual nation does not have the required goods itself, it can purchase and resell them to the violating nation. It is common practice to circumvent an embargo by buying through a satellite or other smaller country. “As one expert remarked (recently), ‘If all the computers shipped to Vienna were really there, the city would sink.’”

Two examples relating to Argentina illustrate this point. In the Allis-Chalmers case, one day after the Letter of Interest was denied by the Export-Import Bank, Allis-Chalmers was notified by Japan and Great Britain that their respective government export banks would provide comparable financing for the right to supply the same equipment from their countries. A second example is seen in the area of military equipment. Shortly after military sales were prohibited by the United States to Argentina the Soviet Union and France began selling to Argentina.

CONCLUSION

Foreign assistance to Argentina has been cut because of human rights violations. However, there is no clear indication that this withdrawal of aid has had any effect on the human rights policies of Argentina. Rather than harming Argentina, the sanctions have caused a deterioration in bilateral relations and some loss of profit to the American business community.

The reason the sanctions have not been effective as leverage against Argentina is that the funds, business and required goods are available elsewhere.

106. World Bank Decisions, supra note 103, at 117.
108. Supra note 54, and Latin America Hearings, supra note 11.
There are three sources which supply Argentina. The United States government itself continues to provide aid either through programs not governed by human rights sanctions or through loopholes created by discretionery provisions in the statutes. The United States business community through its transnational corporations, banks and export-import relations also continues relations with Argentina. Other nations, both individually and through multilateral institutions, provide funds and supplies not available from the United States.

Even if Congress were to pass more comprehensive or more stringent legislation, some of the problems discussed would remain as factors inhibiting the effectiveness of the human rights sanctions. Inherent in the fact that the United States is a democracy and a capitalist society is the consequence that the government does not have complete control over the business dealings of its private citizens.

The immediate conclusion seems to follow that the sanctions should be stopped. However, this note has dealt only with the limited aspect of sanctions as leverage and those only as applied to non-dependent nations. The sanctions serve other functions. As mentioned before, the most obvious function is to disassociate the United States from the violating nation. The human rights sanctions are also used by the State Department in discussions with the leaders of violating countries as a rationale for otherwise diplomatically difficult discussions. Finally, the human rights sanctions have served an important function in providing hope to the individuals who have personally suffered imprisonment and torture under the violating government.

Gracia Berg