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Politics before Policy: The Bush Administration, International Family Planning, and Foreign Policy

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I. Introduction

Since taking office in January 2001, President George W. Bush has let politics interfere with, and even control, his foreign policy. While all presidents and politicians see the world through the lens of their political beliefs and make policy decisions accordingly, President Bush is so blindly adhering to his politics that his actions negatively impact some of his other stated goals. President Bush made his opposition to abortion clear while he was running for office, yet it was not clear to what extent this belief would impact his policy decisions once he was in office. But as has been clear since his first day in office, President Bush is committed to eliminating abortion overseas. The impact of his foreign policies, however, goes far beyond just eliminating abortion. President Bush's policies harm the very services that prevent abortion: family planning programs and services. And by doing so, President Bush sends the message that he is not only anti-abortion, but also anti-family planning and anti-woman (i.e., not working for the best interests of women).

This comment explores the actions taken by President Bush and his administration. Particular attention is given to the reinstatement of the "Mexico City Policy," cuts to funding for the United Nations Population Fund, and retreats from international agreements on population and development. This comment will examine how these actions are inconsistent with and contrary to the Bush Administration’s other foreign policy goals: increasing economic development in developing countries; promoting women’s rights, including family planning; and preventing and treating HIV/AIDS.

II. Background

A. Formation of United Nations Population Fund

The United Nations Population Fund (UNFPA) was
established in 1969, the creation of which was led by the United States. UNFPA "is the world's largest internationally funded source of population assistance to developing countries," and it was created with the following objectives:

To assist developing countries in providing quality reproductive health and family planning services on the basis of individual choice, and in formulating population policies that support sustainable development.

To advance the strategy endorsed by the 1994 International Conference on Population and Development (ICPD) and reviewed by special session of the United Nations General Assembly in 1999 (ICPD+5). The strategy focuses on meeting the needs of individual women and men rather than achieving demographic targets. Key to this approach is empowering women and providing them with more choices through expanded access to education, health services and employment opportunities.

To promote cooperation and coordination among United Nations organizations, bilateral agencies, governments, non-governmental organizations (NGOs) and the private sector in addressing issues of population and development, reproductive health, gender equality and women's empowerment.

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3 About UNFPA, supra note 1.

4 Id.
UNFPA works toward these objectives in three areas: reproductive health, including family planning and sexual health; population and development strategy; and advocacy.\(^5\) In providing assistance, UNFPA does not intrude on a country’s sovereignty: a country must request UNFPA’s assistance, and even though there is an “international agreement on population and development goals,\(^6\) each country decides its own approach.”\(^7\) Furthermore, UNFPA places a premium value on choice, especially the basic human “right to freedom of choice in the size and spacing of the family,” and will only support “voluntary population activities.”\(^8\) It makes sure that none of its programs use any form or coercion or otherwise violate any human rights.\(^9\) Finally, UNFPA has the mission of implementing and abiding by the goals and principles of the ICPD Programme of Action.\(^10\)

**B. UNFPA and the International Conference on Population and Development**

In 1994, 179 governments from around the world gathered in Cairo, Egypt, for the International Conference on Population and Development (ICPD).\(^11\) These 179 countries agreed by consensus that the best way to eradicate poverty, improve the health and longevity of people globally, and achieve sustainable development was to focus on basic human rights, including reproductive health rights.\(^12\) As part of the ICPD, the countries developed a twenty-

\(^5\) Id.

\(^6\) See discussion infra Part II. B.

\(^7\) About UNFPA, supra note 1.

\(^8\) Id.

\(^9\) Id.


year Programme of Action,\textsuperscript{13} which was endorsed by the United Nations General Assembly in December 1994.\textsuperscript{14} The Programme of Action set forth the following goals: "universal access to reproductive health care, including family planning and sexual health by 2015; universal access to primary education by 2015;" reducing infant and child mortality; reducing maternal mortality; and increasing life expectancy.\textsuperscript{15} It included the following principles as well:

Principle 4
Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in civil, cultural, economic, political and social life, at the national, regional, and international levels and the eradication of discrimination on grounds of sex, are priority objectives of the international community.

Principle 8
Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education,


\textsuperscript{14} About UNFPA, supra note 1; Key Actions, supra note 12, at 2.

\textsuperscript{15} About UNFPA, supra note 1.
and means to do so.16

The Programme of Action subsequently defines reproductive health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”17 In recognizing that many people do not have access to affordable, quality reproductive health care, the Programme of Action charged countries with the following goals:

All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should include, *inter alia*: family-planning counseling, information, education, communication and services; education and services for prenatal care, safe delivery and post-natal care; prevention and appropriate treatment of infertility; abortion as specified in paragraph 8.25, including prevention of abortion and the management of the consequences of abortion; treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counseling, as appropriate, on human sexuality, reproductive health and responsible parenthood.18

Providing family planning services and ensuring that individuals and couples have choices regarding the size and spacing of their children are essential components to achieving quality reproductive health care and sustainable development.19 The Programme of Action stresses, however, that “[i]n no case should abortion be promoted as family planning.”20 The focus of the Programme of Action is to eliminate unwanted pregnancies

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16 ICPD PROGRAMME OF ACTION *supra* note 13, at ch. II, princs. 4 & 8.
17 *Id.* ch. VII, para 7.2.
18 *Id.* ch. VII, para 7.6.
19 See *id.*
20 *Id.* ch. VIII, para. 8.25.
and eliminate the need for abortion, but in acknowledging that abortion is legal in some countries, the Programme of Action sets forth that abortion should, therefore, be safe.21 Likewise, it recognizes that even in countries where abortion is illegal, abortion occurs, and thus it is necessary to "deal with the health impact of unsafe abortion... and to reduce the recourse to abortion through expanded and improved family planning services."22

The implementation of the Programme of Action was left to each individual country, its national laws, religions, and ethical values.23 The international community, however, was charged with providing a significant portion of the funding,24 the collection and distribution of which was assigned to UNFPA and other U.N. organizations.25 It was "estimated that basic reproductive health services, including family planning, prevention of sexually transmitted diseases, and population research and policy formulation would require funds totaling $17 billion in the year 2000, $18.5 billion in 2005, $10.5 billion in 2010, and $21.7 billion in 2015."26

Five years following the Cairo conference and the adoption of the ICPD Programme of Action, there were many positive results:

Many countries have taken steps to integrate population concerns into their development strategies. Mortality in most countries has continued to fall in the five years since the adoption of the Programme of Action. The conference’s broad-based definition of reproductive health is being accepted by an increasing number of countries, and steps are being taken to provide comprehensive services in many countries, with increasing emphasis being given to quality of care. The rising use of family planning methods indicates there is greater accessibility to family planning and that more and more couples and individuals are able to choose the number and spacing of

21 ICPD PROGRAMME OF ACTION supra note 13, at ch. VIII, para. 8.25.
22 Id.
23 Key Actions, supra note 12, at 3.
24 Contributions to UNFPA are completely voluntary and are not included in the regular U.N. budget. About UNFPA, supra note 1.
25 ICPD PROGRAMME OF ACTION supra note 13, at ch. XIV, para. 14.11.
26 About UNFPA, supra note 1.
their children.\textsuperscript{27}

But it was clear that while some progress had been made, some countries had made very little progress or had faced impediments. A report to the U.N. General Assembly in 1999 noted that in some countries:

Women and the girl child continue to face discrimination. The human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) pandemic has led to rises in mortality in many countries, in particular Sub-Saharan Africa . . . . Maternal mortality and morbidity remain unacceptably high. Adolescents remain particularly vulnerable to reproductive and sexual risks. Millions of couples and individuals still lack access to reproductive health information and services.\textsuperscript{28}

It is clear that five years into the implementation of the recommendations set forth in the ICPD Programme of Action, there were still many reasons to renew the commitment to achieving the goals and objectives identified at the ICPD.\textsuperscript{29} The same governments not only reaffirmed their commitment to these principles and goals, but also set forth new specific key actions, stressing the importance of intensifying efforts to meet these goals.\textsuperscript{30} In particular, developed countries were urged to strengthen their efforts toward meeting their funding goals that were agreed upon at the ICPD.\textsuperscript{31}

\section*{III. Politics or Policy: Bush's Agenda}

Since his very first day in office, President Bush has been actively pursuing his anti-abortion, anti-family-planning, and anti-woman agenda. As any president or politician is apt to do, President Bush has infused his policies with his politics. While the anti-abortion agenda should come as no surprise, the way that it has been imposed on the world, in particular the developing world, has shocked the international community.\textsuperscript{32} As will be

\begin{flushright}
\textsuperscript{27} \textit{Key Actions, supra} note 12, at 3.
\textsuperscript{28} \textit{Id.} at 4.
\textsuperscript{29} \textit{Id.} at 3.
\textsuperscript{30} \textit{Id.} at 4-5.
\textsuperscript{31} \textit{Id.} at 23.
\end{flushright}
discussed below, the Bush Administration’s foreign politics are inconsistent with and will negatively impact some of its other stated foreign policy goals. This section will review the actions the Bush Administration has taken in the international arena with regards to abortion, family planning, and reproductive health. Particular attention will be given to the Bush Administration’s reinstatement of the Global Gag Rule, its focus on promoting abstinence-only sexual education internationally, and its decisions made in the latter half of 2002 that affect U.N. programs and goals, specifically the decision not to fund UNFPA and the decisions made at the Bangkok Conference.

A. The Writing on the Wall – Reinstating the “Global Gag Rule”

On January 22, 2001, President Bush reinstated the “Mexico City Policy,” dubbed the “global gag rule,” that President Reagan initially invoked in 1984 to deny “federal funds to family planning organizations that provide abortion counseling or services overseas, including organizations that lobby foreign governments on the issue of abortion.” Since the Helms Amendment to the Foreign Assistance Act of 1961 was passed in 1973, U.S. funds have not been permitted to be used “to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.” But the reinstatement of the

[hereinafter Cohen, Global Gag Rule].

33 See discussion infra Part IV.


36 Guidance on the Definition and Use of the Family Planning and Reproductive
"Mexico City Policy" goes further to prohibit U.S. funds from going to any international family planning organization that provides legal abortion services, even if the organization uses other sources of funding to provide those services. The policy also prohibits U.S. funds for any organization that provides information or counseling on legal abortion as an option for an unwanted pregnancy. Hence, the name "global gag rule," was adopted. Finally, U.S. funds are prohibited from going to any organization that advocates "in support of legal abortion in their own country . . . or participate[s] in a public information campaign on the availability of legal abortion." To receive or continue to receive any U.S. funds, an agency must comply with these restrictions on their services, even if the U.S. funds would not be used for these particular purposes.

This reinstatement of the "global gag rule" was widely condemned domestically and internationally. The policy restricts the freedom of speech in other countries — an action that would be unconstitutional if implemented in this country — and restricts medical professionals from offering the range of medical procedures that are legal in their countries. It thus unduly

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37 "Mexico City" Policy and U.S. International Family Planning Assistance, supra note 34.

38 Id.; Cohen, Global Gag Rule, supra note 32, at 2.

39 "Mexico City" Policy and U.S. International Family Planning Assistance, supra note 34; Cohen, Global Gag Rule, supra note 32, at 2. The "Mexico City" Policy, however, permits "antiabortion advocacy." Id.

40 Guidance on the Definition and Use of the Family Planning and Reproductive Health (FP/RH) Funds, supra note 36, at 3 n.3 (stating that "the Mexico City Policy requires that to be eligible for the receipt of USAID [or other U.S.] funds for family planning activities under cooperative agreements and grants, foreign Non-Governmental Organizations (NGOs) must certify that they will not engage in such activities whatever the source of funding."); Cohen, Global Gag Rule, supra note 32, at 2.


burdens family planning programs. But the impact of this policy extends far beyond family planning agencies, since in many countries, family planning programs and other reproductive health programs are integrated.\textsuperscript{43} For instance, Planned Parenthood Association of South Africa (PPASA) is an integrated program that receives U.S. funds for HIV/AIDS prevention and treatment, but also counsels on legal abortion services as well as other pregnancy options to women who are HIV positive.\textsuperscript{44} It will have to cease to provide the abortion services or lose its funding from the United States, which accounts for one-quarter of its budget.\textsuperscript{45} For all of these reasons, Democrat members of 106\textsuperscript{th} Congress attempted to pass legislation "to remove or ban the Mexico City restrictions" but were ultimately unsuccessful.\textsuperscript{46} The 107\textsuperscript{th} Congress was similarly unsuccessful.\textsuperscript{47} Reactions were so strong to this decision by the Bush Administration because of its severe consequences to international family planning and reproductive health programs overseas and because it was a sign of things to come.

\textbf{B. Abstinence Only and the Rights of the Child}

In May 2002, the U.N. General Assembly convened a special session to focus on how to improve the lives and health of children around the globe.\textsuperscript{48} The primary purpose of the session was to create a plan of action that would "address children's health, education, HIV/AIDS, protection from violence, abuse, and

\begin{footnotesize}
\begin{footnote}{Commercial Regulation); Cohen, \textit{Global Gag Rule}, \textit{supra} note 32, at 2.  
\textsuperscript{43} Cohen, \textit{Global Gag Rule}, \textit{supra} note 32, at 3.  
\textsuperscript{44} \textit{Id.}  
\textsuperscript{45} \textit{Id.}  
\textsuperscript{46} "\textit{Mexico City}" Policy and U.S. International Family Planning Assistance, \textit{supra} note 34.  
\textsuperscript{48} \textit{United Nations Special Session on Children - 2002}, International Planned Parenthood Federation, \textit{at} http://www.ippf.org/resource/meetings/unsscc/index/html (last visited Apr. 6, 2003).}
\end{footnotesize}
exploitation."49 One of the issues raised at the conference was whether to incorporate the Convention on the Rights of the Child50 into the plan of action.51 The United States, which alone with Somalia has not ratified this treaty,52 blocked consensus on adopting language from the Convention on the Rights of the Child into the plan of action.53 The United States also joined Iraq and Iran in advocating for removal of language regarding "reproductive health services and education," and joined Sudan, Libya, Syria and the Vatican in opposing "any acknowledgement of condom use as a way to fight AIDS and adolescent pregnancy."54 The United States strongly urged for the adoption of an "abstinence-only until marriage" sex education program, and wanted "family" to be defined as "marriage between a man and a woman."55

But while the United States is correct in saying that "abstinence is the only certain way to avoid both unintended pregnancies and STDs,"56 it ignores the realities that some

52 Frequently Asked Questions: Convention on the Rights of the Child, Amnesty International, at http://www.amnestyusa.org/children/crn_faq.html (last visited Apr. 18, 2003). Somalia has not ratified the Convention on the Rights of the Child because it currently does not have the governmental capacity to do so. Id. Ratification by the United States can be a lengthy process, but in the case of this treaty, ratification might be delayed for political reasons. See id. Some of the conservative groups in the United States have opposed ratification because of the belief that recognizing children's rights would undermine parental rights, and thus children would be encouraged "to sue [their] parents, join gangs, [and] have abortions." Id.; see also United Nations Special Session on Children - 2002, supra note 48.
55 United Nations Special Session on Children - 2002, supra note 48. These phrases for which the Bush Administration advocated were excluded from the final plan of action. Id.
adolescents face, and thus fails to provide adolescents with adequate information, skills, and tools to protect themselves in these other realities. Taking an abstinence-only approach to sex education is particularly irresponsible and dangerous in the context of the developing world.57 Girls, often ten years old or younger, are forced into marriage, sex trafficking, prostitution, or are the victims of sexual assault and coercion.58 For women aged fifteen to nineteen years in many developing countries, pregnancy is the number one cause of death.59 But in many of these countries, it is expected that a woman will marry young (before she reaches eighteen), and, generally, women start having children immediately.60 Furthermore,

[Y]oung brides in Africa and Asia tend to be married to men who are considerably older and these men have often had multiple heterosexual or homosexual experiences, raising the risk of sexually transmitted diseases including AIDS. Because girls forced into early marriages usually cannot attend school and are under family pressure to produce children, they do not have the opportunity or time to learn about sexuality, contraception, and disease.61

Though the Bush Administration’s proposals for additions or deletions to the language adopted at the special session were

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57 See e.g., Crossette, supra note 56.
58 Id. In parts of Africa, men believe that they can cure themselves of AIDS by having sex with a virgin girl. Ireland, supra note 54. This myth leads men to sexually assault young girls that they believe to be virgins and thereby spread the disease. Id.
59 Crossette, supra note 56.
60 Id.
ultimately defeated, the international community knew that this was not the last word from the United States on these reproductive health issues.\textsuperscript{62}

\textbf{C. Cuts to UNFPA Funding}

In July 2002, the Bush Administration withdrew its financial support to UNFPA, concluding that, in its view, funding UNFPA would violate the Kemp-Kasten Amendment.\textsuperscript{63} The Kemp-Kasten Amendment prohibits U.S. funds from going to “any organization or program which [sic], as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”\textsuperscript{64} To make this determination, President Bush sent an assessment team to the People’s Republic of China (PRC) in May 2002.\textsuperscript{65} The team had the mandate “to present factual findings on UNFPA’s association or participation with population-planning activities in China.”\textsuperscript{66} The team reported that there was no indication that UNFPA supported or participated in the management of a program that coerced people to have abortions or to be sterilized involuntarily.\textsuperscript{67} The team did find, however, that in at least some

\begin{itemize}
\item \textsuperscript{62} Crossette, \textit{supra} note 56.
\item \textsuperscript{64} The Kemp-Kasten Amendment to the Foreign Operations, Export Financing and Related Programs Appropriations Act for fiscal year 2002.
\item \textsuperscript{66} Id.
\item \textsuperscript{67} Letter from Colin L. Powell, \textit{supra} note 63. For an in depth look at the history of the PRC’s population program, UNFPA’s involvement in the PRC, and the U.S. funding of UNFPA from 1985 to 2001, see Tara A. Gellman, \textit{The Blurred Line Between Aiding Progress and Sanctioning Abuse: United States Appropriations, the UNFPA and Family Planning in the P.R.C.}, 17 N.Y.L. SCH. J. HUM. RTS. 1063, 1088-92 (2001).\end{itemize}
of the counties in which UNFPA worked in the PRC, that the computer equipment that the UNFPA provided facilitated the PRC’s practice of collecting fees and penalties for “out of plan” births. In these same counties, the team also found in the state-run facilities posters declaring, “that it is forbidden ‘to prevent legal births on the grounds of fulfilling the population plan.’”

Given these findings, the team recommended that the $34 million dollar grant of U.S. funding be released to UNFPA, but that none of it was to be used in China. The Bush Administration, however, made the decision to cut U.S. funding of UNFPA in its entirety. First, it interpreted the posters to “convey the clear

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68 Kemp-Kasten, supra note 65. The government of the People’s Republic of China has a detailed population and “planned-birth” policy in which it distinguishes between “legal births” and “out-of-plan” births. Id. An individual or a couple is typically fined for having an “out-of-plan” birth. Id.

69 Id.

70 U.S. to Axe Family Planning Funds, supra note 63. For most of the 1990s, the United States contributed to UNFPA even though Congress has reenacted the Kemp-Kasten Amendment as part of the foreign operations bill every year since 1985. Overview of History of Kemp-Kasten and UNFPA, U.S. Department of State, available at http://www.unfpa.org/news/2002/related_documents/usfundingreport02.pdf at 2 (on file with the North Carolina Journal of International Law and Commercial Regulation). In 1993, the United States Agency for International Development (USAID) found that “there was not a direct link between UNFPA’s program in China and coercive abortion and involuntary sterilization,” and, therefore, funding UNFPA did not violate the Kemp-Kasten Amendment. Id. The General Counsel of USAID further established that for an organization to be denied funds because of the Kemp-Kasten Amendment it would have to “[intentionally [provide] direct support for, or [help] to manage people or agencies who are clearly engaged in coercive abortion or involuntary sterilization.” Id. But the funding that the United States provided to UNFPA during this time was given with the condition that its funds not be used in China and with the stipulation that UNFPA document exactly where it used the U.S. monies. Id. In fiscal years 1996 and 1997, the United States contributed to UNFPA without restrictions because UNFPA did not have programs in China during those years. See discussion infra accompanying note 89. UNFPA reentered China under the conditions that the counties in which UNFPA was to work suspended their policies of birth quotas and that UNFPA and U.S. diplomatic staff in China were permitted to observe and assess the voluntariness of the family planning programs in those counties. Overview of History of Kemp-Kasten and UNFPA, supra note 70, at 2-3. Thus, the United States again funded UNFPA in 1998, but the funding was again subject to the condition that it not be used in China. Id.

71 Letter from Colin L. Powell, supra note 63. President Bush’s decision is consistent with that of his conservative forefathers. President Reagan first used the Kemp-Kasten Amendment to halt U.S. funds from going to UNFPA because of the population practices in China, and the first President Bush continued this denial of funds, and thus the United States did not fund UNFPA from 1986 through 1992. See Gellman,
message that it is not forbidden for government workers to seek to prevent out-of-plan births,"\textsuperscript{72} and seemed to see this as UNFPA condoning the coercive practices of the PRC. Second, in support of its decision, the Bush Administration argued that supplying the computer equipment "to the very agencies that employ coercive practices amounts to support or participation in the management of the program,"\textsuperscript{73} and thus funding UNFPA would violate the Kemp-Kasten Amendment and was precluded.\textsuperscript{74}

Indeed, the fines imposed for out-of-plan birth in the PRC are coercive.\textsuperscript{75} They are considered "social compensation fees" and are so exorbitant, often the equivalent of two or three annual incomes of the parties involved,\textsuperscript{76} that they should be condemned. It is not clear, however, that these are in fact the practices in the thirty-two counties in which UNFPA works in the PRC.\textsuperscript{77} The United Kingdom (UK) also sent an assessment team to China to evaluate the current population and reproductive health policies in China and returned with different conclusions than the U.S. team.\textsuperscript{78} It is noteworthy, that the UK sent a team to PRC in April 2002 for similar reasons that the United States sent an assessment team in May 2002. While Parliament was debating international development spending, amendments were proposed that would have restricted the UK's contribution to UNFPA and International Planned Parenthood Federation (IPPF) so as not to support "coercive population control practices such as forced abortion,

\textsuperscript{supra} note 67, at 1088-92. Additionally, in 1999, the Clinton Administration agreed to suspend funds to UNFPA as a trade for not having the "Mexico City Policy" or "Global Gag Rule" reinstated by the U.S. Congress. \textit{Overview of History of Kemp-Kasten and UNFPA, supra} note 70, at 3.

\textsuperscript{72} \textit{Kemp-Kasten, supra} note 65.

\textsuperscript{73} \textit{Id.}

\textsuperscript{74} \textit{Id.}

\textsuperscript{75} \textit{Id.}

\textsuperscript{76} \textit{Id.}


\textsuperscript{78} \textit{See id.} The UK team was only able to visit two of the thirty-two counties in China, \textit{id.} at 5, whereas the United States visited five, \textit{Kemp-Kasten, supra} note 65. It is not clear if any of the counties visited by the UK or the United States were the same.
forced sterilization and infanticide in countries such as China."\(^7^9\)

The UK team, however, found "no evidence of coercive FP [family planning], sterilization, or forced abortion practices in UNFPA supported counties."\(^8^0\) Rather, the team came to the conclusion that "the work of UNFPA in China is having a positive effect and is playing an important and catalytic role in the reform of RP/FP [reproductive health/family planning] services."\(^8^1\)

Furthermore, the UK team found that UNFPA’s program in the PRC emphasized maternal and child health as well as family planning, and focused on identifying and meeting adolescent reproductive health needs.\(^8^2\) The team questioned both medical professionals and women in the villages and communities of the counties where UNFPA works and found that "no one expressed any grievances or complaints of any kind, or knew of any abuses, in the years when UNFPA had supported the FP/RH [family planning/reproductive health] programmes in the villages."\(^8^3\) In fact, the team reported not only that "[t]he women stated that they were happy with the quality of sexual and reproductive health information, services and care they received," but that "[t]he older women felt that the information, the choice of services and the attitude of the FP [family planning] workers had changed for the better."\(^8^4\)

Finally, the UK team pointed out that there is an increased readiness to reform practices in China, and to expand UNFPA’s programs into other counties.\(^8^5\) The team did see the posters that the U.S. team saw and did note that the Chinese government admitted to its practice of fining citizens for having "more than one or two children," but also reported that the Chinese people generally seem to have internalized the desire to have smaller

\(^7^9\) China Mission Report by UK’s MP’s, supra note 787, at 1.
\(^8^0\) Id.
\(^8^1\) Id. at 2.
\(^8^2\) Id. at 4.
\(^8^3\) Id.
\(^8^4\) China Mission Report by UK’s MP’s, supra note 787, at 4. The report includes a note that although women answering the questions might have been biased when Chinese officials were present, the team received similar responses on the occasions when they were able to question women without the officials being present. Id.
\(^8^5\) Id. at 6.
families. In other words, many Chinese readily express a desire to have only one or two children so as to provide better education to those children and a better quality of life to their whole family. The team concluded that while there were still some "problems with reproductive rights, in some parts of China, the Chinese Government is moving in the right direction," and that the UNFPA programs are a critical influence in getting China to make these changes.

It should be noted that UNFPA withdrew its funding and programs from China in 1996 and 1997 to negotiate and prepare a new plan for carrying out population and reproductive health policies. UNFPA reentered China in 1998 under the condition that China remove or suspend any birth quotas or goals in the counties where UNFPA was to work. The Chinese government "also agreed to permit monitoring access and oversight by UNFPA Executive Board, U.S. diplomatic staff in China, and independent observers to assess the voluntary nature of family planning activities in the UNFPA program counties." These measures undertaken by the Chinese government and the stipulations of UNFPA for providing assistance to China indicate that China is in the process of reforming its practices and moving toward voluntary choice in the realm of family planning and reproductive health. But, as both the UK and the U.S. assessment teams report, coercion still exists in China. While coercive family planning, forced abortion, or forced sterilization practices should be condemned as human rights violations, not funding UNFPA is a mistake that has considerable consequences beyond China.

86 Id. at 5-6.
87 Id. at 4.
88 Id. at 7.
89 Overview of History of Kemp-Kasten and UNFPA, supra note 70, at 3.
91 Overview of History of Kemp-Kasten and UNFPA, supra note 70, at 3; White House Decision on UNFPA Funds Ignores Bipartisan Congressional Support, supra note 90.
92 See discussion supra and accompanying notes 72, 76, & 88.
Alternatively, the United States might have funded UNFPA but conditioned that funding was not to go to China as it did in the last two years. In 2000 and 2001, the United States stipulated not only that none of its monies should go to China, but also that the U.S. contribution to UNFPA would be reduced by the amount UNFPA spent in China from other sources.\(^93\) This would have the effect of condemning the coercive practices in China, but would not penalize the other countries that UNFPA supports.\(^94\) But by denying UNFPA any funds because of the programs in the PRC, which only receives slightly more than one percent of UNFPA’s budget,\(^95\) the United States will deny services to the other programs and people in the 140 countries that UNFPA serves.\(^96\) UNFPA estimates that this grant from the United States, which would have constituted twelve percent of UNFPA’s budget,\(^97\) “would have prevented two million unwanted pregnancies, nearly 800,000 induced abortions, 4,700 maternal deaths, nearly 60,000 cases of serious maternal illness and more than 77,000 infant and child deaths.”\(^98\)

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\(^93\) *Overview of History of Kemp-Kasten and UNFPA*, supra note 70, at 3.


\(^95\) Only slightly more than one percent of UNFPA’s budget goes to the PRC; in 2001, “UNFPA spent $3.5 million in China from its budget of $274 million.” *Id.*


\(^97\) The impact of not funding UNFPA also signals a retreat from the funding goals of ICPD where the developed countries, or donor countries, committed to giving one-third of the total funding necessary to carry out the objectives of the ICPD Programme of Action. Dr. Steven W. Sinding, Remarks at the Ministerial Segment of the Fifth Asian and Pacific Population Conference (Dec. 16-17, 2002), at http://www.unfpa.org/about/ed/2002/bangkok ministersinding.htm (last visited Jan. 31, 2003) [hereinafter Sinding, Remarks] (on file with the North Carolina Journal of International Law and Commercial Regulation). $17 million should have been raised by the year 2000, but not quite half of that had been raised by December 2002. *Id.*; Gellman, supra note 67, at 1097. Thus, the United States and other donor countries are already behind in meeting their agreed-upon goals.

\(^98\) *U.S. Pulls $34 Million Family Fund*, supra note 95 (referring to statement made by Thoraya Ahmed Obaid, Executive Director of UNFPA).
The Bush Administration’s justification for completely cutting U.S. funding to UNFPA is that “[r]egardless of the size of UNFPA’s budget in China or any benefit that its programs provide, UNFPA’s support of and involvement in China’s population planning activities allows the Chinese government to implement more effectively its program of coercive abortion.”99 Furthermore, the Bush Administration insists that the United States is “supporting family planning, reproductive health programs around the world to the same extent that [it] did before” this funding decision.100 White House Spokesman Richard Boucher specified that the $34 million dollar grant will go to the United States Agency for International Development (USAID) rather than to UNFPA and that these funds could be used in countries that have high unmet family planning needs to expand and enhance their programs.101 But Mr. Boucher then said that for this fiscal year, USAID “will maintain its current levels of support for family planning and reproductive health activities.”102

D. Bangkok Conference – Retreat from Objectives of ICPD

The Fifth Asian and Pacific Population Conference in Bangkok, Thailand cast a new light on the Bush Administration’s cuts to funding for international family planning and reproductive health programs. Rather than being about championing for human rights, the funding cuts seemed to be more about imposing a moral agenda on the international community. In mid-December 2002, over thirty countries, including the United States, gathered to meet in Bangkok to assess the progress made in the Asian and Pacific region since the ICPD, and to plan the next steps for the region to continue to work toward meeting the goals of the ICPD.103


100 Id.

101 Id.; U.S. Pulls $34 Million Family Fund, supra note 954.

102 UNFPA Press Briefing, supra note 99; see also discussion infra Part IV.B.

HIV/AIDS prevention, sex education, and other practical aspects of continuing to implement sound programs were key items on the agenda. The United States, however, stalled these discussions by refusing to reaffirm the stated goals and principles of the ICPD Programme of Action. Though the United States was integral in the creation of the Programme of Action in 1994, it signaled its retreat from the document and its goals when it voted to change the language in ICPD Programme of Action, which was incorporated into the Plan of Action that was developed as part of the Bangkok conference. The Bangkok Plan of Action reaffirmed the “global goals on population and sustainable development,” and, thus, signified a recommitment to the goals of improving the social and economic lives of women as set forth in the ICPD. As a solitary voice, the United States proposed two provisions to this Plan of Action that would have changed the language of the ICPD Programme of Action. The United States “pushed forcefully to delete or amend” the phrases “reproductive rights” and “reproductive health services.” The Bush Administration objected to these terms because it felt that they are code words used to promote and provide abortions. Likewise,

Remarks, supra note 97; Sinding, Partnerships and Resources, supra note 11.

104 James Dao, U.S. Raises Abortion Issue at Conference on Families, N.Y. TIMES, Dec. 15, 2002, at 1-4 [hereinafter Dao, Abortion Issue]. One Asian diplomat stated that many people were frustrated at not being “able to discuss what [they] really wanted to discuss, because the United States insists on renegotiating key Cairo concepts [sic] which we are not willing to do.” Id.


107 Dao, Over U.S. Protest, supra note 106.


109 Dao, Over U.S. Protest, supra note 106.

110 Id.

111 Id.; see also United States Refuses to ‘Reaffirm’ ICPD Agreements, supra note
the United States urged the removal of the word "adolescent" from the section on reproductive rights because it believes that this section encouraged underage sex.\textsuperscript{112} The U.S. delegation to the conference in Bangkok also wanted "to delete language calling attention to the impact of unsafe abortions on women’s health, and a reference to ‘consistent condom use’ as a means of reducing HIV infection,"\textsuperscript{113} and sought to insert language about natural family planning methods.\textsuperscript{114} Finally, in addition to these amendments and deletions, the Bush Administration wanted to attach a stipulation to the final plan, condemning abortion, but this attempt was also unsuccessful.\textsuperscript{115}

The U.S. retreat from the principles and goals of the ICPD Programme of Action is political, but not logical. As previously noted, the United States was alone in its opposition to keep the language of the ICPD Programme of Action intact.\textsuperscript{116} In fact,

\begin{itemize}
\item \textsuperscript{105} Obaid, Remarks, supra note 103; Sinding, Remarks, supra note 97; \textit{U.S. Accuses Population Conference of Blocking its Anti-Abortion Views}, supra note 106.
\item \textsuperscript{112} Dao, \textit{Over U.S. Protest}, supra note 106; \textit{U.S. Accuses Population Conference of Blocking its Anti-Abortion Views}, supra note 106.
\item \textsuperscript{114} Dao, \textit{Abortion Issue}, supra note 104; Dao, \textit{Over U.S. Protest}, supra note 106. Advocating for natural family planning methods, which are the "traditional" methods such as withdrawal and periodic abstinence when a woman is ovulating, is particularly ironic in juxtaposition to the Bush Administration’s stance. USAID reports that when "traditional methods of family planning are replaced by more modern methods, abortion rates decline." \textit{Family Planning Prevents Abortion}, POP Briefs (USAID/Center for Population, Health and Nutrition, Washington, D.C.), Nov. 2001.
\item \textsuperscript{115} Dao, \textit{Over U.S. Protest}, supra note 106. The responses to the United State’s opposition to this language in the Bangkok Plan of Action and in the ICPD Programme of Action were strong. Nasreen Pervin Huq of the Helen Keller International Group, based in Dhaka Bangladesh accused the United States of "trying to impose its ideologies" on the rest of the world. \textit{U.S. Accuses Population Conference of Blocking its Anti-Abortion Views}, supra note 106. Different groups and government ministers asserted that this position of the United States was going to jeopardize women’s health in the region. \textit{U.S. Anti-Abortion Stance Under Attack at U.N. Meeting}, supra note 113. U.S. Congresswoman Carolyn B. Maloney said that the U.S. stance was "another example of the Bush Administration versus the world that, regrettably, will be at the expense of women." Dao, \textit{Abortion Issue}, supra note 104.
\item \textsuperscript{116} \textit{U.S. Accuses Population Conference of Blocking its Anti-Abortion Views}, supra note 106; see text accompanying note 109.
\end{itemize}
"[e]very other delegation disagreed with the United States. They have insisted that contrary to American interpretation, globally agreed principles adopted at a key Cairo conference in 1994 do not promote abortion or premarital adolescent sex in any way."**117**

With regards to abortion, the Programme of Action clearly states:

> In no case should abortion be promoted as a method of family planning. All governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education, and family-planning services should be offered promptly, which will also help to avoid repeat abortions.**118**

It is difficult to see the concern that the Bush Administration has with this language since it does not impose any standard on the international community to make abortion legal, nor does it promote abortion, but rather it unambiguously recognizes that every country has the power to make its own decisions regarding abortion and all aspects of reproductive health.**119** Nor does the language on abortion suggest that women should be counseled to have abortions.**120** The Programme of Action is based on the principle that "[a]ll human beings are born free and equal in

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**118** *ICPD PROGRAMME OF ACTION supra* note 13, at ch. VIII, para. 8.25.

**119** *See* Obaid, Remarks, *supra* note 103.

**120** *See* ICPD PROGRAMME OF ACTION *supra* note 13, at ch. VIII, para. 8.25.
dignity and rights."\textsuperscript{121} One of these rights is that "couples and individuals have the basic right to decide freely and responsibly the number and the spacing of their children."\textsuperscript{122} The Programme also sets forth the principle that "[r]eproductive health-care programmes should provide the widest range of services without any form of coercion."\textsuperscript{123} This means that a woman's choice to have five children will be equally respected as that of another to only have one child; the focus of reproductive health-care is placed on providing information and resources to support any choice.

Moreover, the way in which the ICPD Programme of Action defines reproductive health and health-care does not suggest that these are code words for abortion.\textsuperscript{124} Rather, reproductive health is defined holistically as:

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\item a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which [sic] are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of
\end{itemize}
\end{quote}

\textsuperscript{121} Id. at ch. II, princ. 1.
\textsuperscript{122} Id. at ch. II, princ. 8.
\textsuperscript{123} Id.
\textsuperscript{124} Id. at ch. VII, para. 7.2.
methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.\textsuperscript{125}

The only piece of this definition that seems to even hint at abortion is the phrase that advocates for people to have a choice regarding “other methods of their choice for regulation of fertility which [sic] are not against the law.”\textsuperscript{126} While some countries may consider abortion to be another method of fertility regulation, it cannot be said that abortion is promoted since the decision as to whether abortion is legal is up to each individual country.\textsuperscript{127}

As further evidence that reproductive health and health care are not code for abortion, it is helpful to see the comprehensive range of services that are encompassed in reproductive health. In carrying out the goals of the ICPD Programme of Action, UNFPA states that reproductive health-care services consist of family planning; maternal and child care, prenatal and postnatal care, infertility counseling and treatment; and prevention and treatment of “reproductive tract infections and sexually transmitted diseases, including HIV/AIDS.”\textsuperscript{128}

\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} See text accompanying note 119.
Alternatively, perhaps the Bush Administration believes that providing care for unsafe abortion promotes abortion because such practices could be interpreted to imply that abortion should be safe and, therefore, legal. But this belief again ignores that countries will decide for themselves whether abortion will be legal within their boundaries. Furthermore, it belittles the serious health consequences that result from unsafe abortion. USAID, citing the World Health Organization (WHO), reports that “complications of unsafe abortion are responsible for 13% of all maternal deaths” and that “[i]n most of these cases, women die or are disabled because they do not receive medical treatment for their complications soon enough.” It is also estimated that 55,000 unsafe abortions occur every day and 200 women die every day as a result. Given that the vast majority (ninety-five percent) of these fatalities from unsafe abortion occur in the developing world, it is not only understandable that the ICPD Programme of Action would include a provision recognizing the negative impact of unsafe abortion on women’s health, but laudable as well.

Finally, this claim by the United States that the Programme of Action promotes abortion ignores that it was carefully developed and agreed to by the consensus of 170 countries, all of whom sought to ensure that their individual cultural, religious, and ethnic values and practices would be respected and their sovereignty upheld. It is not a radical document or agenda. No other


129 See text surrounding note 119.

130 Family Planning Prevents Abortion, supra note 114.

131 Id.

132 Id.


134 See Appelbe, supra note 133.
country objects to the language that the United States initially helped to create, even those where abortion is illegal. It is quite likely that these countries would not have signed onto the Programme of Action if they had felt that it promoted abortion. It is not clear whom the United States believes itself to be protecting.

In addition to claiming that the language of the ICPD Programme of Action promotes abortion, the Bush Administration claims that it encourages underage sex. The ICPD Programme of Action emphasizes providing information and choices to adolescents. Likewise, it stresses that reproductive health-care programs are most effective when the adolescents are involved "in identifying their reproductive and sexual health needs and in designing programmes that respond to those needs." The Programme of Action specifically sets forth the objectives of

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135 See U.S. Accuses Population Conference of Blocking its Anti-Abortion Views, supra note 106 (saying that "[e]very delegation, except the Americans, spoke strongly about the need to preserve the Cairo principles").

136 Sinding, Remarks, supra note 97 (noting that many "countries in which abortion is illegal approved the Programme of Action because they understood very well that the terms ‘reproductive health services’ and ‘reproductive rights’ include abortion only in those countries where abortion is legal.").

137 The United States is making this objection even though abortion is legal in the United States. Though, admittedly, abortion would likely be illegal in the United States if the Executive had the power to nullify Supreme Court decisions. The foreign arena is the perfect place for President Bush to promote an anti-abortion/anti-family-planning agenda. See e.g., Loder, supra note 35. The U.S. Constitution grants most of the power regarding foreign affairs to the Executive, which has been traditionally supported by the judicial and legislative branches’ deference to the President on foreign matters. See e.g., United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-20 (1936) (discussing that the President should be afforded greater discretion and flexibility in handling external affairs than he might have in domestic affairs where Congress would have greater oversight). Therefore, President Bush does not need to worry about his actions being reversed. Furthermore, he can appease the conservative religious right faction of the Republican Party by pursuing an anti-abortion rights agenda abroad without the risk of losing his political support from the moderates or from the women in the party, since it will not be American women who will be affected by these policies. See Loder, supra note 35.


139 ICPD PROGRAMME OF ACTION supra note 13, at ch. VII, para. 7.43.

140 Id.
providing age-appropriate counseling and sexuality education.\textsuperscript{141} It also encourages parental involvement in the health of adolescents.\textsuperscript{142} Finally, while the Programme of Action promotes "responsible and healthy reproductive and sexual behavior, including voluntary abstinence,"\textsuperscript{143} it also recommends providing "special family planning information, counseling and services" to those teens that are sexually active and ensuring prenatal and parenting support to those that become pregnant.\textsuperscript{144} While this approach can hardly be said to encourage or promote underage sex, it acknowledges that adolescents might be having sexual relations and addresses teenage sexuality openly and comprehensively.\textsuperscript{145} By doing so, the Programme of Action allows those who engage in sexual intercourse access to information and the means to protect themselves from becoming pregnant or from contracting a sexually transmitted infection.\textsuperscript{146} As Dr. Steven Sinding, Director-General of IPPF stated at the Bangkok conference:

[the ICPD called for sensible programs to help young people understand the consequences of unprotected sex and to urge responsible behaviour, including abstinence. But it recognized that many young people will have sex, whether we adults like it or not, and that they should be educated about the risks they incur, for the sake of their health, as well as their future happiness and wellbeing [sic]. That is not endorsing teenage sex

\textsuperscript{141} Id. at ch. VII, para. 7.44(a).

\textsuperscript{142} Id. at ch. VII, para. 7.45. While encouraging parental involvement in an adolescent's health care, the ICPD Programme of Action also seeks to ensure that adolescents will not be prevented from receiving reproductive health services they need without parental involvement. Id. Of particular concern is providing private and confidential services to adolescents who are victims of sexual abuse or who have sexually transmitted infections. Id.

\textsuperscript{143} Id. at ch. VII, para. 7.44(a).

\textsuperscript{144} Id. at ch. VII, para. 7.47.

\textsuperscript{145} See id. (addressing education and counseling on responsible sexual behavior, providing treatment for sexual abuse, incest, and reproductive health infections, and promoting cultural and social values).

\textsuperscript{146} At the U.N. population conference in Ottawa, Canada in November 2002, Dr. Steven Sinding of IPPF criticized the United States for advocating that abstinence-only programs, saying that this policy "will not save hundreds of thousands of young people from having unwanted pregnancies or contracting HIV or other sexually transmitted infection." Appelbe, \textit{supra} note 133.
— it is taking a sensible attitude and promoting responsible behaviour.\textsuperscript{147}

When these actions regarding international reproductive health, such as cuts to funding and challenges to the language used in the ICPD Programme of Action, are taken as a whole, they clearly communicate President Bush’s political agenda. The moral agenda strives to eliminate abortion and the discussion of abortion, even in the countries where it is legal, and promotes abstinence as the only method of birth control and as the only method for preventing the spread of HIV/AIDS. These international actions, and similar actions taken domestically\textsuperscript{148} have only the support and backing of the conservative and religious right.\textsuperscript{149} Thus, these actions amount to President Bush imposing this agenda and his political and moral values on the international community so as to appease only a small group. The danger is that these actions will have greater negative impacts for the President and the international community.

\textbf{IV. Inconsistencies in President Bush’s Policies}

President Bush is not only imposing a moral agenda on the world, but he is also negatively impacting his other foreign policy goals. The Bush Administration’s actions since taking office are inconsistent with and contrary to its other foreign policy objectives of increasing sustainable economic development in developing countries; promoting women’s rights, including providing family planning services; preventing and treating HIV/AIDS in

\textsuperscript{147} Sinding, Remarks, \textit{supra} note 97.

\textsuperscript{148} \textit{See Fact Sheet: Bush’s Other War, supra} note 42; \textit{The War Against Women}, N.Y. \textit{TIMES}, Jan. 12, 2003, at 4-14.

\textsuperscript{149} \textit{See} Press Release, National Right to Life Committee, Inc., National Right to Life Response to Reports that the Bush Administration Will Enforce Kemp-Kasten Anti-Coercion Law and De-Fund UNFPA, UNFPA’s Support for China’s Pervasively Coercive Program (Jul. 20, 2002), \textit{at} http://www.nrle.org, (praising President Bush’s decision to not fund UNFPA) \textit{(on file with the North Carolina Journal of International Law and Commercial Regulation)}; \textit{see also} Cohen, \textit{Global Gag Rule, supra} note 32, at 1 \textit{(stating that reinstating the “Mexico City Policy” President Bush’s payback to conservatives for getting him elected)}; \textit{White House Decision on UNFPA Funds Ignores Bipartisan Congressional Support, supra} note 90 \textit{(stating that the decision to cut funding to UNFPA was fueled by a report by Population Research International, which is an anti-family planning agency, and by the urging of Republican Congressman of New Jersey, Chris Smith, who has long objected to the U.S. funding UNFPA)}. 
developing countries; and promoting national security.

A. Sustainable Economic Development

President Bush has said that America is founded on the "commitment to individual freedom and democracy" and has pledged to "uphold the vital principles of freedom, equality, and opportunity" and to "advance the rights of all people" throughout the world.\textsuperscript{150} He has also said that "combating poverty is a moral imperative,"\textsuperscript{151} and that the United States is committed to "bring hope and opportunity to the world's poor."\textsuperscript{152} He declares that "[d]eveloped nations have a duty not only to share [their] wealth, but also to encourage sources that produce wealth, economic freedom, political liberty, the rule of law and human rights."\textsuperscript{153} "President Bush wants to close the growing divide between nations that are making progress and those that are falling deeper into need and despair,"\textsuperscript{154} and, to that end, has proposed that aid to developing countries be linked to political and economic reforms.\textsuperscript{155} Particularly, countries that demonstrate that they have "good governance," have invested in the "health and education of their people," and have "sound economic policies that foster enterprise and entrepreneurship" will be rewarded with foreign assistance.\textsuperscript{156} Along these lines, expanding trade and fostering democracy are primary foreign policy goals of the Bush Administration.\textsuperscript{157}

\begin{footnotes}
\item[153] \textit{Id.}
\item[154] \textit{Helping Developing Nations, supra} note 151.
\item[155] Bush, Remarks, \textit{supra} note 152; \textit{Helping Developing Nations, supra} note 151.
\item[156] Bush, Remarks, \textit{supra} note 152; \textit{Helping Developing Nations, supra} note 151.
\item[157] Bush, Remarks, \textit{supra} note 152; \textit{Helping Developing Nations, supra} note 151.
\end{footnotes}
Similarly, the Bush Administration has underscored that the United States is committed to advancing women’s rights around the world.\textsuperscript{158} “Increasing women’s economic opportunities; broadening women’s political participation; and enhancing U.S. outreach to women in South Asia, the Middle East and Africa” will be the primary focus of the Bush Administration in working to advance women’s rights.\textsuperscript{159} In particular, the Bush Administration conveys that “increasing women’s economic opportunities” is a key component to its foreign policy, and emphasizes that “[i]ncreasing women’s economic engagement not only benefits the individuals directly involved, but also improves the material wellbeing [sic] of society as a whole.”\textsuperscript{160} One of the ways that the United States will work toward this goal of improving economic opportunities for women is to work “with communities to improve health care, encourage family planning\textsuperscript{161} and reduce domestic violence.”\textsuperscript{162}

This stated position of the Bush Administration reflects the international consensus that “[w]omen are key to development.”\textsuperscript{163} The ICPD Programme of Action states that “[t]he empowerment and autonomy of women and the improvement of their political, social, economic and health status is a highly important end in itself. In addition, it is essential for the achievement of sustainable


\textsuperscript{159} \textit{Id.}

\textsuperscript{160} \textit{Fact Sheet: U.S. Policy: Increasing Women’s Economic Opportunities,} U.S. Department of State, Apr. 15, 2002, available at http://www.state.gov/g/wi/rls/9382.htm; see also \textit{Fact Sheet: U.S. Commitment to Advancing Women’s Rights, supra} note 158 (quoting Secretary of State Colin Powell as saying, “Worldwide advancement of women’s issues is not only in keeping with the deeply held values of the American people, it is strongly in our national interest as well.”) (on file with the North Carolina Journal of International Law and Commercial Regulation).

\textsuperscript{161} \textit{See discussion infra} Part IV.B.

\textsuperscript{162} \textit{Fact Sheet: U.S. Policy: Increasing Women’s Economic Opportunities, supra} note 160.

In particular, lower fertility levels and greater women's equality have been linked to increased economic prosperity and productivity. The same, however, has not been true for countries that have not adequately invested in reproductive health and health-care, and have not focused on promoting women's equality. Rather, these countries have seen continued high fertility, which "can deny opportunities for socioeconomic development; contribute to high levels of infant mortality; and strain public resources for health, education, and other vital services," all of which are factors contributing to increased poverty. Thus, there is a clear correlation between reducing fertility and getting out of poverty. Women that have fewer children are more likely to participate in the workforce. The resulting increase in household income positively affects the family's health and nutrition, presumably because the family can thus afford more medical care as needed and can have more food or better food. Having more women in the workforce also has a positive impact on the country's gross domestic product. Fewer children also means that the family resources are not spread as thin: families can better afford fees for school, medical and other services, and family land - usually farms - is passed down.

164 ICPD PROGRAMME OF ACTION supra note 13, at ch. IV, para. 4.1.
170 Id. at 22.
171 Id. at 22.
172 Id.
173 Each additional child that a family in a developing country has reduces the chance that a sibling will get treated for common childhood infections by 2-8%. State of the World Population 2002, supra note 61, at 34.
in larger portions so that the value is not depleted by subdividing the land over many generations.\textsuperscript{174} Lowering fertility and thus focusing on improving women’s lives is necessary to achieving sustainable development.

Family planning and reproductive health programs are integral in both lowering fertility and improving women’s lives, and thus it follows that investing in family planning and reproductive health is necessary to move towards sustainable development and economic prosperity.\textsuperscript{175} Family planning programs “encourage lower fertility”\textsuperscript{176} by providing women with the means to choose when to have children and how many.\textsuperscript{177} Most couples prefer to have fewer children and women and men recognize that for reasons of financial stability and general health and well-being that it makes sense to have smaller families.\textsuperscript{178} But even when women would prefer to have fewer children, they often do not have access to information about contraceptives or other ways to

\textsuperscript{174} Id. at 20, 23.


\textsuperscript{176} State of the World Population 2002, supra note 61; see also Family Planning: A Development Success Story, The World Bank Group, May 1994, available at http://www.worldbank.org/html/extd/hnp/population/fp_en.htm in section on Family Planning’s Role in Development: Benefits of Family Planning (citing study that “as of 1990, without family planning programs there would have been 400 million more births [in developing countries]” and that infant mortality would have been higher by 10 deaths in every 1000) (on file with the North Carolina Journal of International Law and Commercial Regulation).

\textsuperscript{177} See Family Planning Saves Women’s Lives, POP Briefs (USAID/Center for Population, Health and Nutrition, Washington, D.C.), Nov. 2001; Family Planning Prevents Abortion, supra note 114. Note that these are position papers distributed by USAID, a government agency, but it is difficult to say if they accurately reflect the Bush Administration’s philosophy on family planning since they were published in November 2001 and are based on data gathered during the Clinton Administration. See id.; Family Planning Saves Women’s Lives, POP Briefs (USAID/Center for Population, Health and Nutrition, Washington, D.C.), Nov. 2001. Though it never expressly refers to family planning, the recent USAID publication, FOREIGN AID IN THE NATIONAL INTEREST: PROMOTING FREEDOM, SECURITY, AND OPPORTUNITY, USAID (2002) [hereinafter FOREIGN AID IN THE NATIONAL INTEREST], might more accurately reflect the Bush Administration’s approach to family planning. See id.; see also discussion on fertility declines infra in text accompanying notes 199-203.

\textsuperscript{178} Bulatao, supra note 167.
control their fertility.\textsuperscript{179} Family planning programs meet this need and break down these barriers by “increasing access to contraception and promoting wider knowledge about proper use and low health risks” of birth control and family planning methods.\textsuperscript{180} “Today, over half of all couples in developing countries are using contraception, whereas less than 10 percent were doing so 30 years ago.”\textsuperscript{181}

Family planning programs have led to smaller family sizes,\textsuperscript{182} which, in turn, leads to greater autonomy and independence for women.\textsuperscript{183} “Women with smaller, healthier families are likely to have increased opportunities for the participation in educational, economic, and social activities.” The World Bank Group demonstrates this increased independence with the following example:

[T]he average Thai woman, who has slightly more than two children can expect to spend only 10 years of her life caring for a child under the age of six, while her counterpart in Kenya, with nearly seven children to raise, spends 23 years—two-thirds of her reproductive life—caring for at least one pre-school-age child.\textsuperscript{185}

It thus follows that the woman with fewer children, who will spend less time caring for young children, will be “better able to take advantage of educational and employment opportunities than women with large families.”\textsuperscript{186} These increases in women’s participation in education and the workforce will provide women the economic opportunities that the Bush Administration purports to desire.

\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{182} Id.
\textsuperscript{184} Id.
\textsuperscript{185} Family Planning: A Development Success Story, supra note 176.
\textsuperscript{186} Id. in section on Family Planning’s Role in Development.
Additionally, family planning programs have been very successful in reducing poverty, and promoting sustainable development. Many countries have “significantly improved their citizens’ quality of life over the past three decades” because they have invested in comprehensive family planning programs. President Bush’s decision not to fund UNFPA and other international organizations is detrimental to the very family planning programs that have been cause for the increased economic prosperity and developmental success around the world. The money not only would have prevented abortions, unwanted pregnancies, maternal deaths, and new HIV/AIDS infections, but also would have benefited countries’ progress toward development. These cuts to funding and to the programs are inconsistent with the Bush Administration’s stated foreign policy goals and priorities of reducing poverty, increasing economic development, and promoting and advancing the rights of women.

Not surprisingly, the Bush Administration disagrees. It advocates a shift in focus of foreign assistance that would favor promoting democracy, health, and education as a means to

187 Id. in section on Family Planning’s Role in Development. See also discussion of other benefits of family planning infra Part IV.C.


189 Family Planning: A Development Success Story, supra note 176 in section on Family Planning’s Role in Development.

190 U.S. to Axe Family Planning Funds, supra note 63; see also text accompanying note 98.

191 See Helping Developing Nations, supra note 151; see also text accompanying notes 151 & 152.

192 See text accompanying notes 158-60.
increase economic growth. Though the Bush Administration still includes health as part of the focus, it advocates for changing the approaches in providing health assistance. Developing countries are divided into two groups: the first group has seen dramatic improvements in health while the second group has seen "health indicators [that] have stagnated or worsened." It seems that for the first group, reproductive health is no longer a priority and thus "[g]lobal health programs can shift their focus from women of reproductive age and children under 5 to entire families, including income earners and elderly dependents." For the second group, however, "public health interventions will have to remain focused on reproductive and maternal and child health – but must examine the strategies to do so." No suggestions for how these strategies might be improved or changed are offered.

The Bush Administration suggests that the focus on global health should shift away from family planning because fertility rates are declining. As the Bush Administration asserts, fertility rates are falling in part because "contraceptive use has risen and should continue to do so," because contraceptive use benefits families and adds to their quality of life. But rather than supporting the theory underlying international family planning programs in the last two decades that "lower fertility reduces poverty" and population and family planning programs help to reduce fertility, the Bush Administration adheres to a different theory. The theory adopted, which was first introduced in 1986, suggests that "good economic policies do more to reduce

193 FOREIGN AID IN THE NATIONAL INTEREST, supra note 177, at iv.
194 See id. at 73-74.
195 Id. at 73.
196 Id.
197 Id.
198 See FOREIGN AID IN THE NATIONAL INTEREST, supra note 177.
199 Id. at 75.
200 Id. at 76.
201 Id.
202 This theory was first put forth under President Reagan, whose international family planning assistance programs are coincidentally mimicked by the current President Bush. See supra notes 34 & 71 supra and text accompanying these notes.
poverty than fertility and family planning programs.”\textsuperscript{203} “Good economic policies” involve focusing on good governance, providing adequate resources, and discourage corruption.\textsuperscript{204} This is certainly consistent with the Bush Administration’s focus on providing foreign assistance to those countries that participate in sound economic reform.\textsuperscript{205} Focusing on good economic policies rather than family planning is inconsistent, however, with the other foreign assistance goals of the Bush Administration. It does not make sense to ignore family planning if the Bush Administration also wishes to accomplish its goals of encouraging health and education in developing countries and of emphasizing increasing women’s economic opportunities and women’s equality issues.\textsuperscript{206} To achieve the latter goal, the Bush Administration has said that part of its focus would be on family planning needs.\textsuperscript{207}

This shift away from family planning is the approach that the Bush Administration seems to be advocating for even the second groups of countries, which it describes as having high fertility and infant mortality rates, high prevalence of HIV/AIDS and other sexually transmitted infections, and low life expectancy.\textsuperscript{208} The Bush Administration’s solution to this problem is that “[a]s economies grow and people become more educated in general and better informed about family planning in particular, they recognize the benefits of smaller families. With the uncertainty that AIDS posed in some parts of the world, expectations are that the momentum of fertility declines will continue unabated.”\textsuperscript{209} In support of this argument, the Bush Administration points out that the youth today, compared to their parents, “are from smaller families, are better educated, and have benefited from more

\textsuperscript{203} FOREIGN AID IN THE NATIONAL INTEREST, supra note 177, at 76.
\textsuperscript{204} Id.
\textsuperscript{205} See supra notes 155 & 156, and accompanying text.
\textsuperscript{206} See supra notes 156 & 162, and accompanying text.
\textsuperscript{207} Id. Interestingly, this emphasis on the importance of economic development through sound economic policies appears in the “Improving People’s Health” section of the USAID publication. FOREIGN AID IN THE NATIONAL INTEREST, supra note 177.
\textsuperscript{208} Id. Interestingly, this emphasis on the importance of economic development through sound economic policies appears in the “Improving People’s Health” section of the USAID publication. FOREIGN AID IN THE NATIONAL INTEREST, supra note 177, at 73 & 76.
\textsuperscript{209} Id. at 76 (citation omitted).
Thus, if the studies hold true, they will likely not only desire to have fewer children but also will in fact have fewer children than their parents.\textsuperscript{211}

While there is somewhat of a chicken and egg problem, regarding which comes first, economic development or decreases in fertility, both approaches would likely impact each other. De-emphasizing the role of family planning and other reproductive health services in developing countries will negatively impact economic growth and sustainable development in these countries.\textsuperscript{212} The "birth dearth" theory, which is the theory espoused by the Bush Administration, is not valid for developing countries.\textsuperscript{213} This theory implies that "population growth is no longer an important policy concern and therefore that family planning should no longer be a public policy priority."\textsuperscript{214} But this approach is based on evidence from the "highly developed nations... where fertility rates are below replacement level (defined as 2.1 births per couple)."\textsuperscript{215} In spite of declining fertility rates, "the world's population is still growing" and it will continue to grow into the next century.\textsuperscript{216} The vast majority of this growth will occur in the developing world: almost one-third of the world's population are people under age fifteen living in developing nations, and as they are heading into their reproductive years, the world's population is going to continue to grow even if "they average fewer children per woman than their parents' generation."\textsuperscript{217} How much growth results from this next

\begin{footnotes}
\item[210] Id. at 77.
\item[211] Id.
\item[213] See id.
\item[214] Id.
\item[215] Id.
\item[216] Family Planning: A Development Success Story, supra note 176 in section on The Unfinished Reproductive Revolution; International Family Planning Programs: Criticisms and Responses, supra note 212.
\item[217] Family Planning: A Development Success Story, supra note 176 (section on The Unfinished Reproductive Revolution).
\end{footnotes}
generation having children will depend on their access to contraceptives and family planning information.\textsuperscript{218} Thus, this increase in the numbers of people coming into reproductive age actually increases the demand for family planning services.\textsuperscript{219} Rather than moving away from a focus on family planning or cutting funds to international family planning programs, to best accomplish its stated foreign policy goals of promoting economic development and advancing women’s economic opportunities, the Bush Administration should be increasing its funding to these international programs and promoting expanding and improving the programs that are in place.\textsuperscript{220}

Even assuming, however, that the Bush Administration would be effective in meeting its goal of economic development, shifting away from family planning programs does not make sense for at least two reasons. First, the cost of providing family planning services is low compared to its benefits.\textsuperscript{221} On average, family planning programs in developing countries cost “between US$1 and $1.25 annually per capita . . . or about US$10-20 per contraceptive user per year.”\textsuperscript{222} Plus, “family planning programs save money.”\textsuperscript{223} “Studies in several countries show that for every dollar invested in family planning, governments save as much as $16 in reduced expenditures in health, education, and social services.”\textsuperscript{224} Second, there are other reasons to continue and even

\begin{footnotesize}
\textsuperscript{218} Id.; International Family Planning Programs: Criticisms and Responses, supra note 213.
\textsuperscript{219} Family Planning: A Development Success Story, supra note 176 (section on The Cost of Providing Family Planning) (noting that “[m]erely to maintain the current levels of contraceptive prevalence, the number of contraceptive users in developing countries would have to increase by 20 percent.”).
\textsuperscript{220} See e.g., id., (section on The Unfinished Reproductive Revolution).
\textsuperscript{222} Family Planning: A Development Success Story, supra note 176 (section on The Unfinished Reproductive Revolution).
\textsuperscript{223} Id.
\textsuperscript{224} Family Planning Funding 2001, supra note 221; see also Family Planning: A Development Success Story, supra note 176 in section on The Cost of Family Planning (demonstrating that in Zimbabwe where only US$19 is spent annually on a contraceptive user but US$40 is spent for one woman to have a child, and US$120 is spent per year for a child to go to primary school, the savings could be as much as $121-130 million by 2015 if fertility continues to decline at the same rate).
\end{footnotesize}
expand upon family planning programs. For example, such programs positively impact the health and well-being of women, children, and families.

B. Family Planning Policy

Though the Bush Administration's stated policy on economic development suggested that there was going to be a shift away from family planning as a part of foreign assistance, the Bush Administration has expressly said the opposite. When reinstating the "Mexico City Policy," the Bush Administration made sure to include statements that it would continue to support international family planning programs. Likewise, as mentioned in the above section on economic development, the Bush Administration has specified that family planning is part of its plan for increasing economic opportunities for women. Finally, the Bush Administration emphasized that the cuts in funding to UNFPA would not affect its overall commitment to support family planning. These statements suggest that the Bush Administration is committed to promoting family planning internationally and has only made these cuts in funding because of its objection to abortion. Reinstating the "Mexico City Policy" and refusing to fund UNFPA and other international family planning organizations do not just affect abortion, however, they negatively impact family planning programs and services as well.

When he reinstated the "global gag rule," President Bush said that doing so would "make abortion more rare." But if anything, the policy might have the reverse effect. The "Mexico City Policy" limits and restricts funding to family planning agencies and services, which reduce the prevalence of abortions by reducing unplanned pregnancies. "By increasing access to

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225 See discussion infra in Parts II & III.
227 Fact Sheet: U.S. Policy: Increasing Women's Economic Opportunities, supra note 160; see also supra note 162 and text accompanying text.
228 See UNFPA Press Briefing, supra note 99; see also notes 100-02 and accompanying text.
229 Cohen, Global Gag Rule, supra note 32, at 1.
230 International Family Planning Programs: Criticisms and Responses, supra note
contraception counseling, supplies, and services, family planning programs play a strong role in reducing the incidence of abortion.231 Imposing restrictions on those organizations that may receive funding for family planning impedes the access to contraception.232 Furthermore, in countries where abortions are legal and are "widely performed in hospitals and health centers, the gag rule may be expected only to diminish access to contraceptive services, increasing the woman’s risk of another unintended pregnancy and the likelihood of a repeat abortion."233 It thus seems that the actual target behind the "Mexico City Policy" is not so much reducing abortion as it is reducing family planning.

That the reinstatement of the "Mexico City Policy" is anti-family planning is further evidenced in that only assistance going to family planning programs is affected; other foreign assistance is not so restricted.234 In other words, an agency that provides family planning services, including abortion services, HIV/AIDS services, and child health services, would be barred from receiving U.S. assistance for family planning, but would still be able to receive U.S. funds for the HIV/AIDS and child health services.235 The "Mexico City Policy" thus seems to have the false premise that "U.S. funds should not subsidize groups that use their own funds for abortion-related activities," and seems to have family planning programs as its intended targets.236

In deciding not to give the $34 million allocated grant to UNFPA, the Bush Administration announced that it would instead be giving this money to USAID.237 It was suggested that these funds might be used to expand and improve programs in countries

213 (section on Abortion and Contraceptive Use); Cohen, Global Gag Rule, supra note 32, at 1.

231 Family Planning Saves Women’s Lives, supra note 177.


233 Id.

234 Id.

235 Id.

236 See id. at 1-2.

237 UNFPA Press Briefing, supra note 99; U.S. Pulls $34 Million Family Fund, supra note 95.
that have considerable unmet family planning needs. But it soon became clear that USAID’s budget for family planning was not seeing an increase and, actually, will see a decrease in fiscal year 2003. Furthermore, that $34 million was slated to go to USAID’s Child Survival Program, rather than its Population and Health program. While the Child Survival Program does have family planning as one of its many focus areas, it is not the program’s primary service or area of expertise. While family planning is an important component of the program, it is nonetheless a small component of the program. The issue is not

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238 UNFPA Press Briefing, supra note 99; U.S. Pulls $34 Million Family Fund, supra note 95.

239 See UNFPA Press Briefing, supra note 99.

240 Cohen, The President’s Overseas Reproductive Health Policy, supra note 226 (stating that President Bush requested that funding be cut from USAID’s family planning and reproductive health programs in fiscal year 2003); Member Alert, National Family Planning & Reproductive Health Association, Congress Finalizes FY 2003 Budget Appropriations, at http://www.nfprha.org/uploads/appropsFY2003.pdf (last visited Apr. 18, 2003) (showing that USAID received $446 million in FY 2002, but only $425 million in FY 2003 and FY 2004, and that UNFPA was supposed to get $34 million in FY 2002, $35 million in FY 2003, and $25 million in FY 2004, but noting that since the FY 2002 funds to UNFPA were redirected, it is likely that those for the FY 2003 and FY 2004 will be as well) (on file with the North Carolina Journal of International Law and Commercial Regulation).

241 See Letter from Colin L. Powell, supra note 63.


244 See id.

245 Even if USAID were spending the money on family planning programs, there are reasons to fund UNFPA as well. For instance, UNFPA serves over 140 countries and has the trust and respect of the governments and organizations with which it works. Thoraya Ahmed Obaid, Remarks at the 2002 International Parliamentarian’s Conference on the Implementation of the ICPD Programme of Action (Nov. 21-22, 2002), at http://www.unfpa.org/about/ed/2002/ottawa.htm (last visited Jan. 31, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation). “It is
whether the Child Survival Program should be funded, nor whether it is a worthwhile program. The point is that the Bush Administration is putting forth rhetoric that it will continue to fully support and encourage family planning and that it is just targeting abortion, but, in fact, it is targeting family planning as well.

C. Women's and Human Rights

The Bush Administration has said that focusing on respect for women is a key factor shaping Bush's foreign policy, but the actions of the Bush Administration suggest that women's rights and women's lives are at the bottom of Bush's agenda. First, by targeting international family planning, the Bush Administration is targeting women around the world. Family planning programs save women's lives and health by allowing women to "postpone early, high-risk pregnancies; prevent dangerous late pregnancies; and avoid unplanned pregnancies."246 "In many countries, pregnancy-related problems are the leading cause of death, resulting from births that are too close together, too early, or too late in life," and, thus, family planning is essential in preventing these deaths.247 Family planning also reduces the numbers of abortions, especially unsafe abortions, which generally are illegal abortions and often cause death or other serious health consequences.248 Therefore, family planning programs are essential to giving women greater independence and autonomy by giving them choices and control over their bodies and the spacing of their children.249

Health benefits from family planning programs are even

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246 Family Planning Saves Women's Lives, supra note 177.

247 Id.; Health Benefits of Family Planning, supra note 183, at ch. 1.

248 Family Planning Saves Women's Lives, supra note 177; International Family Planning Programs: Criticisms and Responses, supra note 213 (section on Abortion and Contraceptive Use).

249 Bulatao, supra note 167.
greater when they are coupled with other reproductive health services. Family planning programs provide a forum for women to get information and to talk about a variety of health options, such as maternal and child health care, pre- and post-natal care, and the prevention and treatment of HIV/AIDS. In fact, "[c]ommunity-based family planning programs are often the primary, or only, source of health care for women." Thus, supporting family planning programs is essential to improving women's health and lives more generally, and since the Bush Administration is not supporting family planning programs, it is harming women's health and women's lives.

Finally, women benefit because their children benefit. Family planning programs greatly impact children's health. Postponing first pregnancies, lengthening the time between births, and avoiding pregnancy at an advanced age all benefit the health and survival of the mother and child. Using contraceptives to lengthen the time between births of children, saves children's lives.

When births are spaced less than two years apart, particularly less than 18 months, infants are more likely to be premature and have a low birth weight, two factors that lead to increased mortality. The average chance of dying in infancy increases by about 60-70 percent for children born less than two years apart; the chance of dying before the age of five years increases by about 50 percent.

Increasing the spacing between children also benefits the older child, because the mother is able to continue breastfeeding the older child for a longer period of time. Moreover, infant mortality is also greater when a woman becomes a mother at an age under eighteen years old, because she is significantly more

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251 Id.; see discussion infra in Part IV D.
252 Family Planning Saves Women's Lives, supra note 177.
253 Family Planning: A Development Success Story, supra note 176.
254 Health Benefits of Family Planning, supra note 183, at ch. 1.
255 Id.
256 Id.
likely to have premature or low birth-weight babies than is a woman who is aged 25-34 years.\textsuperscript{257} Thus, family planning programs benefit children as well as women.

Additionally, the Bush Administration harms women's rights and human rights by working to redefine reproductive rights. The international community generally accepts the right to reproductive health as a human right.\textsuperscript{258} The ICPD Programme of Action states that:

>[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents.\textsuperscript{259} These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.\textsuperscript{260}

This statement about reproductive rights incorporates the holistic definition of reproductive health.\textsuperscript{261} Thus, reproductive rights encompass "voluntary quality family planning," safe motherhood, counseling and treatment for infertility, prevention and treatment of HIV/AIDS, sexually transmitted infections, and other reproductive tract infections.\textsuperscript{262} By advocating for the

\textsuperscript{257} Id.

\textsuperscript{258} See e.g., ICPD PROGRAMME OF ACTION supra note 13, at ch. VII, para. 7.3.


\textsuperscript{260} ICPD PROGRAMME OF ACTION supra note 13, at ch. VII, para. 7.3.

\textsuperscript{261} Id.; see note 125 and accompanying text.

\textsuperscript{262} UNFPA Programme Activities, supra note 128.
removal of "reproductive rights" from the ICPD Programme of Action and related U.N. documents and platforms, the Bush Administration is removing a woman's access to quality health care, her right to have control over her child bearing, and her ability to gain greater independence and autonomy over her life. As Steven Sinding of IPPF has said, "Hiding behind the word 'abortion,' Bush is single-handedly attempting to roll back commitments made at this and previous world conferences and to ignore agreed-upon human rights and fundamental freedoms." Furthermore, since the United States recognizes the right to choose whether to have children, when and how many as constitutional rights for women, the Bush Administration's actions overseas amounts to the imposition of the President's morals on the women outside of this country. In other words, Bush is imposing restrictions on women in developing countries that are not imposed on women in the United States. Aside from the race-related and class-related aspects of such a policy, it is hypocritical and suggests the Bush Administration is not really concerned with advancing women's rights.

D. HIV/AIDS Programs

Another way that the Bush Administration's foreign policy actions are inconsistent with his stated goals is in the area of HIV/AIDS programs. In May 2001, President Bush announced that the United States would commit $200 million to new Global

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263 See discussion supra in Part III D.

264 Bush's 'War on Women': IPPF Calls on World Leaders to Take a Stand, supra note 188.

265 See Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) (upholding Roe and recognizing that women do have a right to terminate a pregnancy); Roe v. Wade, 410 U.S. 113 (1973) (invalidating a state law that prohibited abortions in that it violated a woman's right to privacy and bodily autonomy); Griswold v. Connecticut, 381 U.S. 479 (1965) (holding that Connecticut's statute prohibiting the use of contraceptives was unconstitutional because it infringed on a couple's privacy rights).

266 U.S. Accuses Population Conference of Blocking its Anti-Abortion Views, supra note 106.

Fund to Fight AIDS, Tuberculosis and Malaria, as envisioned by the G-8 (Group of Eight) countries,\textsuperscript{268} to combat HIV/AIDS.\textsuperscript{269} The Global Fund continues to be "major global priority" for the Bush Administration.\textsuperscript{270} Then most recently, in his 2003 State of the Union address, President Bush reaffirmed his commitment to "wage and win the war against HIV/AIDS," when he pledged $15 billion over the next five years for an Emergency Plan for AIDS Relief.\textsuperscript{271} But his actions will harm these programs as well and will defeat his goals of preventing the further spread of and expanding and improving HIV/AIDS in the developing world.\textsuperscript{272}

\textsuperscript{268} See Overview, The Global Fund to Fight AIDS, Tuberculosis and Malaria, available at \url{http://www.globalfundatm.org/overview.html} (last visited Mar. 12, 2003) [hereinafter Global Fund Overview] (on file with the North Carolina Journal of International Law and Commercial Regulation). The G-8 countries: U.S., Britain, Canada, France, Germany, Italy, Japan, and Russia meet every year to discuss "the major international economic and political issues," and to come to some sort of agreement as to how to approach these issues. Questions About the G-8, Evian Summit 2003, \url{http://www.g8.fr/evian/english/navigation/the_g8/questions_about_the_g8.html#question2} (last visited Apr. 17, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation).\textsuperscript{269} President George W. Bush, Remarks During Announcement of Proposal for Global Fund to Fight HIV/AIDS, Malaria and Tuberculosis (May 11, 2001), at \url{http://www.whitehouse.gov/news/releases/2001/05/20010511-1.html} (on file with the North Carolina Journal of International Law and Commercial Regulation). The Global Fund is also focused on preventing and treating malaria and tuberculosis as well as HIV/AIDS. See id.; Global Health Priorities for the HHS Office of the Secretary, Office of Global Health Affairs, at \url{http://www.globalhealth.gov/globalhealthpriorities.shtml} (last visited Feb. 4, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation); Global Fund Overview, supra note 268. The purpose of the Fund is to attract, manage and disperse additional resources through a new public-private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals. Id.\textsuperscript{270} Global Health Priorities for the HHS Office of the Secretary, supra note 269. Other Global Health priorities include working on an international treaty regarding Framework Convention for Tobacco Control (FCTC); child health; biosecurity planning; and strategic multi- and bilateral relationships. See id.\textsuperscript{271} Fact Sheet: the President's Emergency Plan for AIDS Relief, The White House, Jan.29, 2003, available at \url{http://www.whitehouse.gov/news/releases/2003/01/20030129-1.html} (on file with the North Carolina Journal of International Law and Commercial Regulation).\textsuperscript{272} Helping Developing Nations, supra note 151 (discussing the Bush Administration's commitment to fight HIV/AIDS).
First, as previously discussed, by targeting international family planning programs and eliminating the funding to these programs, the Bush Administration will also be targeting HIV/AIDS programs, because the programs are often integrated. In fact, with the recent Emergency Plan for AIDS Relief, the Bush Administration has limited the funding to agencies that do not provide abortions services or counseling. Though on the one hand this restriction appears redundant in that it is consistent with the "Mexico City Policy," it will have the effect of even further limiting funding to many health agencies and offices in developing countries.

Moreover, HIV/AIDS programs will be harmed because of the Bush Administration’s emphasis on abstinence-only programs and its formidable reluctance to have condoms listed in U.N. documents as options for preventing the transmission of HIV/AIDS. Providing and promoting the use of condoms is the most practical way to prevent the transmission of sexually transmitted infections (STI’s), including HIV/AIDS. In Africa, most of the new infections are transmitted through sexual conduct, and studies have shown that using condoms correctly and consistently "reduces the risk of contracting HIV ‘as much as

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273 See text accompanying notes 43, 44.
275 See id.
276 See supra notes 234, 235 and accompanying text. This restriction might seem to remedy the inconsistency in funding discussed above by applying the “Mexico City Policy” to programs other than just family planning programs, and thus might be interpreted to mean that it is not family planning that is targeted, but just abortion. See Cohen, Global Gag Rule, supra note 32, at 1 (discussing that President Bush said that the "Mexico City Policy" was to eliminate abortion). But in discussing this restriction on the AIDS funding, the Bush Administration made it clear that it is anti-family planning. "As long as none of the money is diverted to family planning activities, they [groups/programs] will be able to receive the funding.” Bush’s AIDS Plans to Include Abortion Restrictions, supra note 274 (quoting a Bush Administration Official).
277 See supra notes 54, 113 and accompanying text.
While abstinence is the most effective method for preventing transmission of HIV, practicing abstinence often requires changing attitudes, behaviors, and intimate relationships, all of which take time. Thus, programs that promote condom use in conjunction with efforts to change attitudes, behaviors, and sexual practices are the most successful programs at preventing transmission of HIV/AIDS and other STIs. Arguably, President Bush has recognized that condoms are an essential component to reducing HIV infections, because he has said that the provision of condoms is included as part of his recent Emergency Plan for AIDS Relief. But it still remains to be seen whether the Bush Administration is truly committed to providing condoms and whether it will include comprehensive condom education as part of this plan.

Evidence that the Bush Administration may not be so committed is that funding faith-based organizations, many of which traditionally advocate for abstinence-only means of prevention and protection, are also included as part of this plan. Likewise, only $1 billion is designated to go to the Global Fund to Fight AIDS, Tuberculosis, and Malaria, which means that the United States will retain control over the majority of this spending, making the funds subject to the conditions set by the United States. Thus, given the Bush Administration's adamant urging to remove references to condom use in the international documents, it is likely that once the full details of the Emergency Plan for AIDS Relief are released, condom use will not be a large part of the plan.

If President Bush does not include condoms as significant

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279 Id.
280 See e.g., id.
281 See id.
284 See id.; Fox, supra note 282.
285 See id.; Fox, supra note 282.
portion of his plan for HIV/AIDS relief, then fewer HIV infections will be prevented and countries will have a more difficult time achieving economic and sustainable development. Already there are significantly fewer condoms provided to the developing world than what is needed to prevent further transmission of HIV. The more infections there are in any given country, the greater the strain on human resources and the greater the negative impact is on the country's economy. "By draining human resources, the epidemic distorts labor markets, disrupts production and consumption, and ultimately diminishes national wealth. Some countries bearing the brunt of such effects now face the prospect of 'un-developing' – of seeing their development achievements dissolve in the wake of the epidemic." HIV prevention is thus a necessary component to any plan for bettering economic sustainable development, and condoms are essential to preventing the spread of the disease.

E. Security

Since September 11, 2001, combating global terrorism has been one of the most primary, if not the most primary, pieces of President Bush's foreign policy, but his actions against international family planning programs and the women who benefit from these programs may hinder his work to protect national security. President Bush has said:

Defending our Nation against its enemies is the first and fundamental commitment of the Federal Government. Today, that task has changed

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286 See Why Condoms Count in the Era of HIV/AIDS, supra note 278 (discussing that eight billion condoms were needed in 2000 to meet the demand in developing countries, but only 950 million, one-eighth of what was needed, were provided).


288 Id.

289 Id. at 19 (describing the three prongs necessary to combat the HIV/AIDS epidemic: prevention, treatment, and reducing the "impact of AIDS on social and economic development").

290 See Why Condoms Count in the Era of HIV/AIDS, supra note 278.
dramatically. Enemies in the past needed great armies and great industrial capabilities to endanger America. Now, shadowy networks of individuals can bring great chaos and suffering to our shores for less than it costs to purchase a single tank. Terrorists are organized to penetrate open societies and to turn the power of modern technologies against us.

To defeat this threat we must make use of every tool in our arsenal—military power, better homeland defenses, law enforcement, intelligence, and vigorous efforts to cut off terrorist financing.

But it seems that the Bush Administration is sabotaging one of the tools in its arsenal by cutting funding and support to family planning programs internationally. “While we may be able to secure our borders militarily, the United States is neglecting one of the surest, most cost-effective means of protecting our nation: reducing poverty, ignorance, suffering, and despair in volatile nations.” In March 2002, at the United Nations Financing for Development Conference, many countries, including the United States, linked terrorism to poverty, advocating that “[p]overty in all its forms is the greatest single threat to peace, democracy, human rights and the environment... It is a time-bomb against the heart of liberty.” As discussed above, one of the ways to reduce


292 Martinson, supra note 96.


294 U.N. Summit Links Poverty to Terrorism, supra note 293 (quoting Mike Moore, Director-General of the World Trade Organization); see also Eisner, supra note 293 (citing the President of the World Bank, James Wolfensohn, as saying that “[t]errorism will not be defeated... unless world poverty is eradicated.”).
poverty is through promoting and providing family planning services.\textsuperscript{295} Thus, it follows that one of the tools in the Bush Administration’s arsenal is to promote family planning rather than set out policies that discourage it.\textsuperscript{296}

There is some dispute, however, as to whether terrorism does arise out of poverty. Indeed, the United States has backed away from believing that there is a direct connection.\textsuperscript{297} Rather, poverty may be a way of recruiting people to join a terrorist group, but poverty does not cause terrorism.\textsuperscript{298} Moreover, some analysts have said not only that poverty does not cause terrorism, but also that poverty is not a recruitment tool.\textsuperscript{299} "[T]errorists draw their support and their human ammunition not from the most impoverished, illiterate in their societies, but from the educated and (relatively) well-off."\textsuperscript{300} But while these same analysts do not suggest that reducing poverty would necessarily reduce terrorism, they do suggest that terrorists come from countries where there is "a lack of political freedom, the repression of women, and a dramatic isolation from creative ideas and culture."\textsuperscript{301} Thus, focusing on improving the status and rights of women would help to meet the Bush Administration’s goal of combating terrorism, and an easy and cost-effective method for doing so is to focus efforts on family planning and reproductive programs and services in the developing world.\textsuperscript{302}

\textsuperscript{295} See discussion supra in Part IV A; see also Martinson, supra note 96.

\textsuperscript{296} See id. (stating that the continued rise in the world’s population will create a pressure that "is bound to fuel insecurity, migration, human health concerns, degradation of land, disruption of trade, great human suffering and resentment," and that "America’s response to this threat is inadequate.").


\textsuperscript{298} Id.; see also Eisner, supra note 293 (stating that "[t]errorism isn’t an economic crime; it’s a violent form of political engagement.").

\textsuperscript{299} See, e.g., id.

\textsuperscript{300} Id.

\textsuperscript{301} Id.

\textsuperscript{302} See discussion supra in Pts. IV. A & IV. C; see also Martinson, supra note 96.
V. Conclusion

Restricting an agency’s ability to offer particular reproductive health services if it receives U.S. funding, limiting the services provided by UNFPA by cutting U.S. funding to the international organization, and retreating from wanting the international community to advocate and provide reproductive health services will negatively impact many of the Bush Administration’s foreign policy goals. In particular, these actions represent significant setbacks to the status and independence of women around the world. To remedy these wrongs it may be time for women around the world to act. For women to have control over their bodies and their lives, they may need to be louder in their demands for family planning services and reproductive rights so as to preserve their own health and that of their children. It may mean that those of us in the United States need to contribute where our country is not, so that women in developing countries might continue to have access to information, contraceptives, and health care. Likewise, women in the United States must demand that our legislators revisit again and again the funding of UNFPA and other international agencies and demand that President Bush keep his commitments to women and to family planning, and, thereby, recognize that these are the surest ways of eliminating abortion. It is time for the United States to stop putting politics before policies, and to focus on the people its politics affect.

Kaci Bishop

See UNFPA’s 34 Million Friends Campaign at http://www.unfpa.org/support/34million.htm (seeking 34 million people to contribute $1 each).