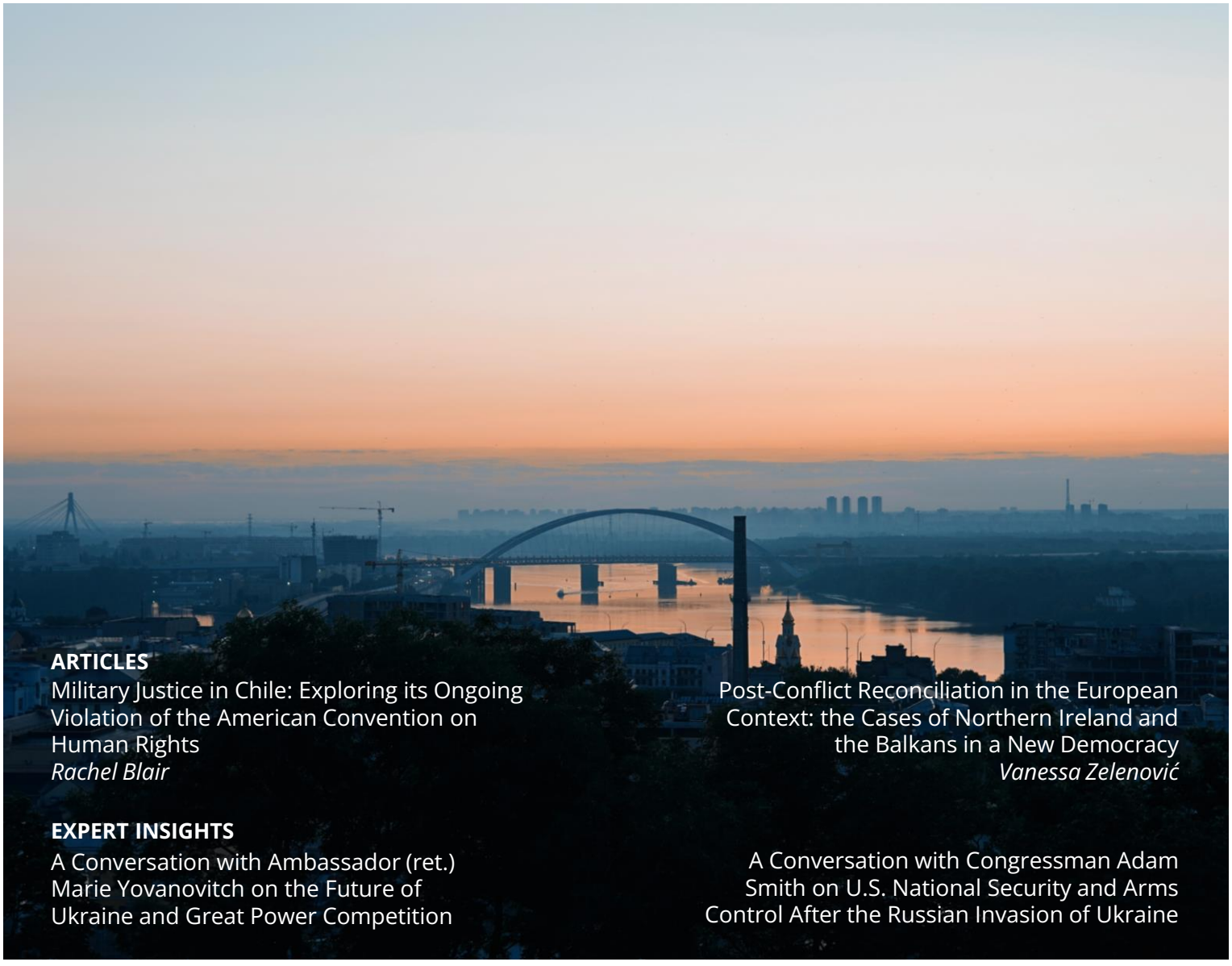
JACKSON SCHOOL JOURNAL OF INTERNATIONAL STUDIES

Vol. 11, No. 1 **Spring/Summer 2023**



HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES
UNIVERSITY of WASHINGTON

JACKSON SCHOOL JOURNAL OF INTERNATIONAL STUDIES

Vol. 11, No. 1 Spring/Summer 2023

The Jackson School Journal of International Studies features outstanding undergraduate research on topics in international studies. The Journal publishes annual issues with the generous support and financial assistance from the Office of Postsecondary Education, International and Foreign Language Education, U.S. Department of Education.

For print copies of the Jackson School Journal, please contact the Center for Global Studies, Henry M. Jackson School of International Studies, University of Washington, (206) 685-2354. The views expressed in this Journal are those of the authors and not necessarily those of the editors or the Henry M. Jackson School of International Studies.

Cover photo: Kyiv, Ukraine, by Victoria Prymak. *Articles cover:* Bosnia and Herzegovinia, by Abdurahman Iseini. *Expert insights cover:* Kyiv, Ukraine by Eugene Chystiakov. All under Unsplash license.

CENTER FOR GLOBAL STUDIES
HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES
UNIVERSITY of WASHINGTON

From the Editors

Conflict and Conciliation

Dear readers,

Thank you for reading the Spring/Summer 2023 issue of the Jackson School Journal of International Studies.

We started work on this issue not long after the Russian invasion of Ukraine; as of writing, the war has continued into a bitter second year. Just as the war has reconfigured foreign policy priorities over the last year–from a 'zeitenwende' in German defense policy to the growing clout of the developing world's middle powers–we anticipate that it will have a lasting impact. For one, the war has heightened the sense of urgency around deterring armed conflict. And even when hostilities cease, difficult questions about conciliation and social reconstruction lie ahead for the Ukrainian and Russian people.

With that in mind, we have focused this issue on conflict and conciliation. Vanessa Zelenović writes about post-conflict reconciliation in the European context, offering analysis of how EU institutions supported reconciliation processes in parts of Europe–including the Balkans, the last major battlefield in continental Europe. Rachel Blair writes about military justice in Chile and how military jurisdiction in human rights cases relates to the country's post-Pinochet social progress.

Following the articles, our Expert Insights section (which features interviews of distinguished visitors) draws these conversations into the present. We ask former U.S. Ambassador to Ukraine Marie Yovanovitch to conceptualize a just conclusion to the war in Ukraine and discuss U.S.-led support for the country's defense. And we speak with Congressman Adam Smith, then-Chair of the House Armed Services Committee, about the prospects for arms control and the specter of great power competition.

Armed conflict can be a dispiriting topic. It has been a disappointing couple of decades, perhaps, for those who hoped that economic integration and democratic expansion would inch us closer to a "perpetual peace." Even then, the works we present offer a kind of optimism about how societies can deter and emerge from conflict. And they illuminate why studying war matters–because a world without it is still within our reach.

Phillip Meng, Jingyi Pan, Casper Pei-Shen Suen, and Wendi Zhou
The 2022-23 Editorial Board

Acknowledgements

We wish to thank our peer reviewers, as well as faculty reviewers Professor Stephen Meyers and Dr. Francis Abugbilla, for their participation in the article review process.

We are deeply grateful to the Center for Global Studies, and to Phillip Shekleton and Harriet Sanders, for their outstanding support of the Journal's administration.

JS
J.

jsis.washington.edu/jsjournal

Contents

Articles

Post-Conflict Reconciliation in the European Context: The Cases of Northern Ireland and the Balkans

Vanessa Zelenović

ABSTRACT

This paper asks how EU membership can impact the success of post-conflict reconciliation through an analysis of two cases: Northern Ireland and the Balkans. The two variables to measure reconciliation are cross-community relations and democratization. First, this paper evaluates EU-led cross-community projects. Regarding Northern Ireland, the EU Peace Fund II was met with mixed results and suggested that Catholics had an overall more positive view. Surveys conducted reveal that polarization persists in other ways. For the Balkans, the Regional Youth Cooperation Office's biggest challenge is a lack of funding. Surveys reveal that citizens have a desire for reconciliation and EU membership but are pessimistic about the prospects for both. Democratization was measured by assessing the stability of Stormont in Northern Ireland and the fulfillment of the chapters of acquis 23 and 24 by the Western Balkans. The constant suspensions of Stormont reveal the fragility of the Good Friday Agreement. For the Balkans, the promise of accession does lead to temporary gains in their democracy ranking. However, this diminishes when accession seems less likely. This paper also considers two important developments: Brexit and the accession of Slovenia and Croatia. Brexit revealed how ingrained EU norms were in the GFA and how the absence of the EU can reverse progress made. The accession of Croatia and Slovenia shows that the EU fails to hold member states accountable to standards of democratization and cross-community relations. The paper concludes that, while imperfect, an absence or lack of commitment from the European Union is worse.

Just as the 1992 Maastricht Treaty formally established the new European Union, conflict erupted in the Balkans. The breakup of Yugoslavia brought a brutal ethnoreligious war that lasted throughout the 90s. This also coincided with the 30-year-long conflict in Northern Ireland between Catholic Irish Nationalists and Protestant British Unionists. The EU did not have the necessary capabilities to prevent or mitigate these conflicts; however, the EU could and did play a role in reconstructing these two regions to ensure its founding principles of peace and stability. Thus, the central question of this paper is: *how effective has the European Union been in facilitating reconciliation in the post-conflict societies of the Balkans*[1] *and Northern Ireland, and what role does EU*[2] *membership play in the success of these efforts?*

This paper is focusing on Northern Ireland and the Balkans as these are the two most salient examples of the EU getting involved in inner-European post-conflict reconciliation. These two conflicts shared a lot of similarities in that they were spurred by nationalist, religious, and economic tensions. There are also salient differences between the two regions. However, the biggest difference this paper will focus on is each region's relationship with the EU. When the Good Friday Agreement was signed, Northern Ireland (by way of the UK), was a member of the EU, while no Balkan countries were during the 1990s. Thus, this paper can compare these two reconstruction efforts based on this key difference, while accounting for some of the other factors that may lead to divergent outcomes.

It's important to have a consistent definition of reconciliation and the variables representing this term when comparing these two conflicts. Going by PEACE II's working definition, which was established by the EU, there are five components to reconciliation: "(1) Developing a shared vision of an interdependent and fair society; (2) Acknowledging and dealing with the past; (3) Building positive relationships; (4) Significant cultural and attitudinal change; and (5) Substantial social, economic, and political change" (The Peace Programmes, n.d. para. 22). This paper will further emphasize that reconciliation must be felt at the local level in that individuals must be able to live with the (former) enemy and not resort to violence to deal with problems. Thus, one clear way of measuring this is cross-community relations. The next variable, democratization, may not seem obvious at first. However, the handbook on "Reconciliation after Violent Conflict" states that "the best form of post-conflict government is a democratic one" because it is "clearly the most effective way of implementing those (democratic) principles - equality, representation,

participation, accountability and so on" (Bloomfield et al, 2003, p. 10). Democratic governance also enables the previously warring groups to engage in dialogue in order to build a representative society.

If membership can facilitate reconciliation, then it would be wise for the EU to continue to pursue the Balkans' accession and show that the EU is still committed to the region. If membership has no impact or even a negative outcome on reconciliation, then the EU might want to reassess the ways in which it engages with these regions, if it still chooses to engage. My hypothesis is that the European Union's approach to reconciliation in Northern Ireland would be more effective compared to the Balkans due to the region having EU membership. The literature on reconciliation is vast and complicated, and this paper hopes to contribute by assessing the efficacy of the role of the EU in this regard.

Methodology

I will be drawing on distinct sources for the Balkans and Northern Ireland. For cross-community relations in Northern Ireland, this paper will examine the EU PEACE II Fund and a public opinion survey by the University of Liverpool. PEACE II was chosen as it focused more on cross-community relations than its predecessor, PEACE I, and it also had more literature about it. Additionally, there is survey data on how participants felt about the effectiveness of PEACE II. The University of Liverpool study surveyed about 100 electors "representing each of the 18 Northern Ireland parliamentary constituencies" (Shirlow & Tonge, 2019, p. 1). For the Balkans, this paper will examine the Regional Youth Cooperation Office (RYCO) with an interview with a Balkan representative, and public opinion surveys by RYCO and the Balkan Barometer. RYCO was chosen as it was the most salient case of the European Union supporting a cross-community organization. Additionally, RYCO conducted a "Shared Futures" survey on the youth's perspective. The Balkan Barometer, which surveys over 6,000 citizens each year, was also used due to its prominence and funding from the EU (Balkan Barometer, 2021, p. 14).

Other methods for examining democratiziation is by examining the European Union's Chapters of Acquis. Chapter 23: Judiciary and Fundamental Rights, and Chapter 24: Justice, Freedom, and Security of the Western Balkans when it[3]comes to EU accession. This paper will also utilize the Economic Intelligence Unit's Democracy Index. For Northern Ireland, this paper will examine the stability of Northern Ireland's parliament, the National Assembly, or Stormont, and adherence to the Good Friday Agreement. This method was chosen because the National Assembly is the first instance of true democratic representation being achieved for both Catholics and Protestants in Northern Ireland, and the GFA was the instrument that brought that forward. After examining these two main variables, this paper will summarize and compare the two cases. Then, this paper will also briefly consider Brexit and the accession of Croatia and Slovenia into the European Union. These two developments show real-life examples of what happens when a state leaves the EU (and thus loses access to reconciliation strategies) and when Balkan nations do join the EU.

Background

The Yugoslav Wars

The Yugoslav Wars were a series of conflicts that lasted from 1991 to 2001. For the purposes of this paper, only events that led up to the 1990s war will be examined. While Yugoslavia did enjoy better living standards compared to other communist countries, these benefits were not enjoyed equally. Because Croatia and Slovenia accounted for 40% of Yugoslavia's economy (Glenny, 2021, p. 580), citizens there tended to live better. Additionally, republics that had a higher income were far less likely to want to "share the wealth" than poorer countries. This worsened tensions between these nations, as there was this perception that Serbia was being favored in terms of representation (Glenny, 2021, p. 580), despite not being the economic powerhouse of the region. The economic inequalities between the republics were exacerbated by ongoing ethnoreligious tensions.

The president of Yugoslavia, Josip Broz Tito, suppressed any nationalist uprisings and instilled pan-Yugoslavism across the region. After his death in 1980, nationalist leaders, such as Slobodan Milošević for Serbia and Franjo Tuđman for Croatia, gained control and used nationalist rhetoric to further their power and divide the country. The fact that Yugoslavia was incredibly ethnically diverse, and many ethnicities lived outside of their "origin country" made the situation even tenser. Once Croatia, Slovenia, and Bosnia declared independence between 1991-1992, with Bosnia and Croatia having significant Serbian minority populations, war broke out as Serbia tried to preserve Yugoslavia. In the end, this conflict would culminate in genocide, ethnic cleansing, 140,000 deaths, and the displacement of over four million people (Transitional Justice, 2011).

The EU functioned more as a political-economic institution, and it had not properly developed its defense capabilities and was incapable of devoting the military resources necessary. Thus, NATO mostly dealt with the war. However, many NATO members were also part of the EU and did not want to see a resumption of conflict. Thus, one method

the European Union had for preventing another outbreak of conflict and reconciling this region was through European integration. If all of the former Yugoslav states were in the EU, then they would adopt EU norms and learn to live together. Thus, the EU has been engaged in this region since the 1990s with the goals of "peace, stability and economic development" through integration (Munter, 2021).

Northern Ireland

The Troubles was a conflict that lasted in Northern Ireland from 1968 to 1998 and formally ended with the signing of the Good Friday Agreement. As with the Balkans, the history of this region and conflict is long and complex. The conflict was also spurred by economic, political, and ethnoreligious tensions. Before proceeding further into the details, it is important to note that those who identify as Catholic often see themselves as Irish and identify as nationalists, while those who are Protestant usually consider themselves British and unionists. Catholic nationalists viewed the British and Protestants as their oppressors and wanted to either be separated from the United Kingdom or reunited with mainland Ireland. Protestant unionists, on the other hand, did not want to break away from Britain as they would then become a minority in the Catholic-majority Republic of Ireland (Cochrane, 2021, p. 83). Since the 1600s, the economy was slated to benefit Protestant settlers as the land was given to them by England (Cochrane, 2021, p. 47). This was significant as Ireland's economy was agricultural and was the primary means of wealth accumulation. These early economic advantages would benefit Protestants politically in the future and would cement Catholic resentment. An example of this is that Catholics faced housing and job discrimination in the 20th century due to the power Protestants had over these institutions (Cochrane, 2021, p. 104). As a response to this discrimination, the Northern Ireland Civil Rights Association (NICRA) was formed. Unionists saw this movement as a threat to Northern Ireland and any NICRA protests were met with counterprotests and police brutality, which would then turn to more widespread violence until paramilitaries were formed. As a response to the deteriorating situation, Britain returned power to Westminster through direct rule on April 1st, 1972 (Cochrane, 2021, p. 149). This region would continue to experience consistent violence until the signing of the GFA.

Cross-Community Relations

Northern Ireland and the EU PEACE II Fund

The GFA emphasized the importance of cross-community projects by stating that it "...particularly recognises that young people from areas affected by the Troubles face particular difficulties and will support the development of special community-based initiatives based on international best practice" (The Northern Ireland Peace Agreement, 1998, p. 20). The European Union's PEACE Funds were designed to foster these stated cross-community initiatives. PEACE I was criticised for lacking "distinctiveness" and appearing more like "a standard economic regeneration programme with a Peace label rather than a Special Programme for Peace and Reconciliation as had been promised" (The Peace Programmes, n.d. para. 6). Thus, the point of PEACE II was to better promote reconciliation and "provide evidence that it was being achieved" (The Peace Programmes, n.d. para. 7). PEACE II lasted from 2000 to 2006; from 1999 to 2004, the European Union invested 835 million euros and then extended the program to 2006 with an additional 160 million euros (Bush & Houston, 2011, p. 43). The stated goal of PEACE II was to intervene "in civil society to address the structural and social–psychological sources of the conflict" (Arnold et al, 2009, para. 6). These projects were focused "directly on increasing mutual understanding and promoting reconciliation, with organisers drawn from both unionist and nationalist communities" through a variety of "cross-border educational and cultural exchanges, community arts training initiatives, multimedia projects, and recreational programmes" (Lagana, 2021, p. 171). Additionally, PEACE II works in tandem with the GFA as it takes into consideration unionist-nationalist and South/North relations when conducting its initiatives (Lagana, 2021, p. 170).

PEACE II was built on the premise that economic aid can facilitate reconciliation as "high levels of poverty and economic deprivation" can cause tensions between conflicting communities (Arnold et al, 2009, para. 10). In distributing this aid, the EU took a bottom-up approach by allowing local communities to decide how to best use the funding. These projects had to "demonstrate how they had a direct or indirect effect on one or other of the Programmes objectives" and "demonstrate this impact by reference to: (1) geographic areas that had been significantly affected by the conflict; (2) social and / or economic sectors that had been adversely affected by the conflict; and (3) groups within society that had been adversely affected by the conflict" (The Peace Programmes, n.d. para. 10). Additionally, "projects were also requested to demonstrate effectively how the project contributed to the development of reconciliation, mutual understanding, and respect between and within communities and traditions, in Northern Ireland and between Ireland and the border counties of Ireland" (The Peace Programmes, para. 11). Respondents to a survey in the "The EU Peace Fund" study stated that PEACE II allowed for creative projects to emerge that otherwise would have been financially unfeasible in these communities and that it did encourage contact between the different ethnicities and religions (Arnold et al, 2009).

However, despite the EU trying to take a bottom-up approach, there was still doubt that external forces could contribute to reconciliation and, instead, may cause individuals to become dependent on these institutions to solve their problems (Brück & Ferguson, 2018). This meant these projects were not sustainable in the long-term without EU support as "the two central (in Northern Ireland) administrations did not easily recognise that community development and innovation were not self-sustainable and cross-community projects, even the most successful, rarely had a mainstream budget line" (Lagana, 2021, p. 174). There is also another criticism that the funding did not reach the communities that needed them most. Since the communities themselves had to apply for funding, those with the least social cohesion were arguably less capable of identifying their problems and providing solutions to them (Brück & Ferguson, 2018). This was clear even to the managers of the project, as it became obvious that "those who were good at writing applications were more successful in getting funding" (The Peace Programmes, n.d. para. 15).

Public opinion should also be considered to assess whether or not these initiatives made a noticeable impact on the lives of everyday citizens and cross-community relations. A survey conducted by "The EU Peace Fund" shows that 63% of respondents believe that "economic integration assists in promoting peace and reconciliation in Northern Ireland" (Arnold et al, 2009, para. 39). However, there were disparities based on religion. Catholics were more supportive of these peace initiatives than Protestants. Catholics were also more likely to believe that these initiatives could facilitate reconciliation (Arnold et al, 2009). Some factors that could contribute to these results are the fact that Catholics got more funding compared to the portion of their population, with them receiving "an estimated 51.4% of the total, compared to a Protestant share of 48.6%," despite them making up 45.2% of the population compared to the Protestant's 54.8% (Lagana, 2021, p. 174-175). This was due to multiple reasons, such as "higher levels of deprivation in Catholic areas; a greater tendency by those living in those areas to apply; and higher levels of community-based activity in the Catholic community" (Lagana, 2021, p. 175). Despite this, Protestants felt they were still not receiving a fair share, and this furthered their disillusionment in the peace process (Lagana, 2021, p. 173). Another factor is the fact that the EU wanted more funding to go to border areas, which Belfast opposed as they felt this would be benefitting the nationalist-oriented councilors there (Lagana, 2021, p. 174). These results expose that a "zero-sum" mentality still exists in Northern Ireland, especially on behalf of the Protestant community in that efforts to support the Catholic community can be viewed as detrimental to their standing as British Protestants.

Northern Ireland and Public Perceptions of Reconciliation

There seems to be a shift in opinion toward reconciliation in recent years. A 2019 survey with a sample size of 100 conducted by the University of Liverpool found that 58.1% of Sinn Fein voters would support a Truth and Reconciliation Commission. Once "no opinion" votes were removed, the number skyrocketed to 90.4%. For the Democratic Unionist Party, the figure was 49.1%, and, once "no opinion" votes were removed, it rose to 73.4% (Shirlow & Tonge, 2019, p. 2). However, despite these promising numbers, the survey also reveals a number of significant divisions between the two communities. The Irish Language Act was a point of contention and played a central role in the dissolution of Stormont in 2017. This Act would give the Irish language the same status as English in the region (Burke, 2018). 69.5% of Catholics supported the Irish Language Act versus 10.7% of Protestants. SF and DUP voters tended to also be less socially liberal and "inter-community" minded than other groups (Shirlow & Tonge, 2019, p. 2). While it is also important to note that SF and DUP voters tend to be more "extreme" than more moderate religious or non-religious voters, those two parties were in charge of Northern Ireland until February 2022 (Edgar & Flanagan, 2022). Probably the most striking difference between Catholics and Protestants is the state of the union. While slightly more respondents believed the Irish reunification would occur, 94.5% of Protestants wanted to remain in the UK in 2019 as compared to 90.3% in 2010, and 13.6% of Catholics wanted to remain as compared to 17.8% (Shirlow & Tonge, 2019, p. 3). These divisions point to barriers that still persist when it comes to achieving reconciliation.

The Balkans and RYCO

Created in 2016 from the Western Balkan Summit, the purpose of RYCO, among other things, is to facilitate reconciliation between the Western Balkan countries. The premise of RYCO echoes the "Franco-German reconciliation process" facilitated by the EU in that it wishes to build "the shared narrative that shows the importance of dealing with the past is to go from reconciliation to deep, peaceful, and efficient cooperation" (Western Balkans Youth Forum, 2021, p. 2). Furthermore, RYCO was partially inspired by the EU Erasmus+ program which has facilitated student exchanges at a university level among EU countries (Western Balkans Youth Forum, 2021). Additionally, various RYCO projects are partially funded by the European Commission (Brakaj, 2022). The European Union recognizes that the "youth of the region" is an "important partner in making the region a better place, while RYCO has been recognized as a concrete mechanism for this change. Within the Strategy, RYCO was acknowledged as a part of the six flagship initiatives – specific actions that the EU will take over the next years to

support[4] the transformation efforts of the Western Balkans in areas of mutual interest" (RYCO Biannual Report 2018, 2018, p. 20). One of RYCO's goals is to improve the perception of the Western Balkans in the eyes of the EU by "promoting cultural exchanges and the visibility of WB6 in the media to raise the profile of the Western Balkan region in European countries;" increasing "cooperation between Universities from WB6 and other EU member states;" and initiating "town twinning program between WB6 and other EU member states" (Western Balkans Youth Forum, 2021, p. 12). In this regard, RYCO is important in helping the Balkans move up in the accession process and rebuild friendly relations, which are both important goals for the EU in this region. Since then, RYCO has received "unequivocal support" from the region (RYCO Biannual Report 2018, 2018, p. 21). As national governments are the main sources of funding for RYCO, there is no doubt that a desire to join the EU plays an important role in their support for the organization. Thus, without the promise of EU accession, RYCO may not be able to operate.

RYCO's Projects

RYCO is an intergovernmental organization supported by the six Western Balkan states. Its main function is to give grants to projects and teach civil society about reconciliation. For the most part, these projects are supposed to inspire dialogue between previously warring regions. In an interview with an RYCO representative, she stated that RYCO encourages participants to step outside of their comfort zone and that these previously held prejudices should not be ignored. Noting that this may be contentious, she added that participants are told to speak about their prejudices in a careful manner (Brakaj, 2022). In terms of the efficacy of this strategy, she stated that her projects went well and that many friendships were formed. Even if young people still felt uncomfortable, they worked together to address that discomfort (Brakaj, 2022). A report surveying over 5,400 Balkan youth conducted by RYCO shows that "61-91% of young people agree that youth exchanges can have a positive impact on relations" (Shared Futures, 2021, p. 16). The youth will be the future leaders of these regions, so it is essential that reconciliation efforts include them and their opinions as well.

While there is a lack of quantitative information on RYCO, there is qualitative data about what it has accomplished so far. The RYCO representative noted that, with their incipient EU-supported Superschool project, which is centered around youth exchange, they had received 127 proposals and selected the 30 best projects aimed at supporting the peacebuilding and reconciliation processes and intercultural learning and dialogue among schools, students, and their communities (Brakaj, 2022). The 2018 RYCO biannual report stated that, out of 421 applications, 34 were ultimately supported by RYCO (RYCO Biannual Report 2018, 2018, p. 17). In general, the number of projects supported by RYCO tends to be under 100, and their duration can last between a couple of days to a few months.

This is where it is important to keep in mind the role of the EU. The EU's funding comes mostly in the form of grants (RYCO 2017 Annual Report, 2017). The RYCO Representative noted that two projects supported by the European Commission, in particular, were Enhancing Youth Cooperation and Youth Exchange in the Western Balkans and Western Balkans School Exchange Scheme (Brakaj, 2022). However, RYCO has noted in its reports that it has had challenges with funding, and this is due, in part, to the restrictive nature of EU grant proposals. "The challenge primarily emanates from the financial decision of the EC to grant RYCO with" 500,000 Euros "provided that it represents a maximum of 25% of the overall budget of the project proposal. Therefore, in order to be able to obtain this amount, RYCO has to present a budget of 2 million Euros, out of which its contribution is 1.5 million euro consisting of activity costs" (RYCO Biannual Report 2018, 2018, p. 5). Because this money was not released on time, RYCO had to operate under budget for a time.

Balkan Public Opinion on EU Accession, Democratization, and Reconciliation

The 2021 Balkan Barometer, which is co-funded by the EU, showed that Balkan citizens overwhelmingly support reconciliation, more than any previous year. There is also a strong underlying sense of solidarity "with close to two-thirds (59%) of all respondents focusing on what brings the region together rather than what drives it apart," though this is less compared to 2019 (Balkan Barometer, 2021, p. 13). Support for EU membership is also high at 62% as compared to 59% in 2019 and 56% in 2018 (Balkan Barometer, 2021, p. 13). Additionally, "for the first time since the inception of the Barometer, the EU is perceived as the most preferred trading partner, with two-thirds advocating for further improvement of trade and investment links with it" (Balkan Barometer, 2021, p. 93).

While these are positive developments, Balkan citizens are still pessimistic about the actual possibility of joining the EU, "with only one-fourth of respondents remaining optimistic about EU accession by 2025" (Balkan Barometer, 2021, p. 15). In fact, North Macedonia and Serbia are neutral to EU integration while Bosnia now has a more negative view of it. Kosovo was the most supportive at 91% (Balkan Barometer, 2021, p. 44). Furthermore, Balkan citizens are discontent with the region as a whole due to unemployment and lack of economic development. However, there is a strong belief that regional cooperation

can assist in improving socio-economic situations. This view is most strongly held by Serbia (86%) then followed by Montenegro (82%). North Macedonia and Kosovo had a more negative view on reconciliation and its constructive power (Balkan Barometer, 2021, p. 41), which could be due to ongoing ethnic tensions in both regions between Slavs and Albanians.

Another interesting perspective to consider is the youth. RYCO conducted a study focusing primarily on the thoughts of young people in the region. As with the barometer study, there seems to be a trend toward regional cooperation. "42% of young participants expected regional relations to improve" (Shared FUTURES, 2021, p. 15). When it comes to the factors that can lead to reconciliation, "up to 47 percent of youth think the EU accession process is the most important factor in creating long-term peace and stability in the Western Balkans, although responses vary highly by ethnicity" (Shared FUTURE S, 2021, p. 15). The variations tend to match the ones seen in the Balkan Barometer, with Serbians and Montenegrins having a more optimistic view than those from Kosovo or North Macedonia. In any case, the support for EU accession is supported by what the RYCO representative said in our interview, that young people want to be closer to the EU and view it as an important partner (Brakaj, 2022). Other important factors were "a well-functioning democracy, teaching peace and tolerance, dialogue between leaders and economic prosperity" (Shared FUTURES, 2021, p. 15), which are factors that are also identified as important in this paper. However, as with the other survey, there are also dismal truths in the RYCO study, such as the fact that 52% of participants see themselves living abroad in the future, furthering the brain drain of this region (Shared FUTURES, 2021, p. 14).

Summary of Section

Both regions have received support from the European Union for cross-community projects in some capacity. Northern Ireland received more funding for PEACE II than RYCO did. While PEACE II did lead to some improvements in relations, it was met with criticism, mostly that it did not reach the most vulnerable communities. Additionally, Catholics were more supportive of the project than Protestants, revealing the "zero-sum" mentality that persists in the region. Unfortunately, since RYCO is still new, the same in-depth data could not be gathered. Due to receiving less funding, RYCO could not tackle as many projects as the EU Peace Fund. "The PEACE II progress report estimated that the measure had involved 63,924 participants, the largest number of any measure, and that its 76 funded projects 'supported' 558 cross-border projects" (Lagana, 2021, 170) compared to RYCO's 34. Indeed, funding is a continual problem for RYCO, especially with the initial grant-based mechanism that the EU typically uses for such projects[5]. However, as with Northern Ireland, there seems to be support for reconciliation and these types of projects. Still, support does not mean that this change will occur, especially if the poor economic situation also means that the youth and future of the region are leaving, with most headed to EU nations anyway. The Balkan public opinion surveys seemed to have a more optimistic tone than their Northern Irish counterpart. This could be due to the fact that Northern Ireland has left the EU, while the Balkans still have the prospect of joining. The Northern Ireland survey revealed the persistent divisions that run deep into society, such as over the state of the union, despite support for a Truth and Reconciliation Commission. While there has been a more positive trend toward reconciliation in the Balkans in recent years, there are also some concerning elements in these results. Namely, the lack of faith in EU membership and certain countries having a more sour attitude towards reconciliation efforts. It seems that the countries less likely to join the European Union have a more negative appraisal than those who are more likely.

Democratization

Northern Ireland and the Good Friday Agreement

The Good Friday Agreement was signed on April 10th, 1998, and it dedicated itself "to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements" (The Northern Ireland Peace Agreement, 1998, p. 2). The GFA was built on EU principles and documents, such as the European Convention on Human Rights, the European equality law, and free movement provisions, and also the fact that the Republic of Ireland and the United Kingdom would remain part of the EU (McCrudden, 2017). The ECHR is mentioned multiple times and is a central document to the entire agreement. One of the safeguards for protecting communities is adherence to the ECHR; thus, any legislation breaching it will be rendered void (The Northern Ireland Peace Agreement, 1998, p. 7). The ECHR also serves as a basis for the Northern Ireland Human Rights Commission (The Northern Ireland Peace Agreement, 1998, p. 18) and equivalent proposals taken by the Irish government (The Northern Ireland Peace Agreement, 1998, p. 19). Moreover, the EU is often cited as a binding force for the different states. For example, The North/South Ministerial Council, which focuses on cooperation between the Republic of Ireland and Northern Ireland, has to "consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU

framework" (The Northern Ireland Peace Agreement, 1998, p. 14). The GFA even highlighted "EU Programmes such as SPPR, INTERREG, Leader II and their successors" as possible areas for cooperation and implementation (The Northern Ireland Peace Agreement, 1998, p. 15).

One of the fundamental principles of the GFA was power-sharing between the unionists and nationalists (The Northern Ireland Peace Agreement, 1998, p. 7-8). "There would be a first minister and deputy first minister, one from each community" and a "new 108-seat assembly was to be established" in Stormont (Cochrane, 2021, p. 362). Stormont would be a prime symbol of an ongoing reconciliation between these two groups in terms of transforming Northern Ireland into a democracy. However, Stormont would be suspended a total of five times during its short existence. In measuring democratization, this paper will cover these five suspensions and their implications for the EU-backed Good Friday Agreement.

1. February 11 - May 30, 2000

The first suspension occurred after the IRA did not state when it would begin decommissioning. The IRA decommissioning their weapons was especially important to the UUP, along with the other unionist parties. The GFA also stated that paramilitary organizations on both sides would disband and decommission within two years of the 1998 referendum (The Northern Ireland Peace Agreement, 1998, p. 22). The failure to do so meant reconciliation could not move forward. Direct rule was again imposed until the IRA stated they would allow international inspections of their secret weapons arsenal (Guardian News and Media, 2001). On May 30th, power was returned back to the Assembly.

2. August 10, 2001 and September 22, 2001

These suspensions were both only 24 hours yet they are still important as they revealed the issues Northern Ireland was facing with democratization. There were still disagreements about the IRA decommissioning. On July 1st, 2001, unionist First Minister David Trimble resigned in protest, with other UUP ministers following suit (History of the Assembly, n.d.). The assembly was suspended to deal with this crisis. Although these suspensions were short, and David Trimble was eventually re-elected, they do reveal the ongoing tensions between the two communities that the GFA still had yet to ameliorate. It would not be until 2005 that the IRA decommissioned its weapons (Cochrane, 2021, p. 476). However, by then, direct rule was imposed yet again.

3. October 14, 2002 - May 7, 2007

On October 4th, 2002, three Sinn Fein party members were arrested on spying charges (History of the Assembly, n.d.). The UUP made it clear that they would leave if Sinn Fein remained in Stormont. To prevent another government collapse, direct rule was imposed during this controversy. With the IRA decommissioning its weapons, and the St Andrews Agreement being reached to continue the GFA, the government was ready to be restored in 2007 From 2007 to 2012, there was finally some government stability in Northern Ireland. However, despite progress being made, there were still complaints about Stormont that reveal the deep-rooted issues still not being addressed. Sinn Fein and the Democratic Unionist Party were the two major parties in charge, and they were both accused of compromising their beliefs (Cochrane, 2021, p. 483). This reveals the zero-sum mentality still rooted in the minds of citizens in Northern Ireland. Furthermore, the effectively two-party system diminished the voices of other parties and continued playing into the sectarianism that still existed in Northern Ireland. These issues would play a role in the eventual collapse of the government for the fifth time.

4. January 9, 2017 - January 11, 2020

The cracks in Stormont started to expose themselves in 2012. The first was the failure of the Renewable Heat Initiative (RHI). This initiative was supposed to encourage businesses to switch from fossil fuels to renewable energy. However, RHI ended up being incredibly expensive and revealed the dysfunctions of Stormont (Cochrane, 2021, p. 499). Another issue was the lack of implementation of the new Irish Language Act. This upset Sinn Fein, and they accused the DUP of not following the GFA. These various factors led to the resignation of nationalist Deputy First Minister, Martin McGuinness, in 2017 and the suspension of the National Assembly yet again. During this time, direct rule was not imposed, and the civil service undertook daily administrative tasks without making policy decisions (Sargeant, 2020).

It took three years, but power was returned to Stormont yet again in 2020 after various compromises were made on

the Irish Language Act and other issues. The new decade was met with the New Decade, New Approach Agreement. This agreement promised necessary reforms, such as ensuring a fairer multi-party system and that the withdrawal of a party does not lead to the immediate collapse of government (Haughey, 2020).

As seen above, Stormont has been besieged with issues and instability since its inception. Interestingly enough, both sides have accused the other of violating the GFA. Therefore, there still exists this idea that the GFA is this ideal that has yet to be properly achieved. However, the good-natured promise of power-sharing in the GFA has led to a larger issue of ministers weaponizing this guarantee to try and get what they want instead of utilizing Stormont as an area for healthy debate. On February 4th, 2022, First Minister Paul Givan resigned due to disagreements with the Northern Ireland Protocol which meant that Sinn Féin's Deputy First Minister Michelle O'Neill also lost her governing duties (Flanagan, 2022).

Stormont is functioning without an executive, which is allowed under new legislation passed by Stormont to prevent suspensions and direct rule (Flanagan, 2022). Even when the National Assembly was in charge, regular people believed that their needs were not being met (Cochrane, 2021, p. 464). Thus, the EU's promises of democratization have not been met in Northern Ireland and, with the EU now gone and Brexit, new challenges have arisen to further challenge the GFA and Stormont.

The Balkans' Complicated Democratization

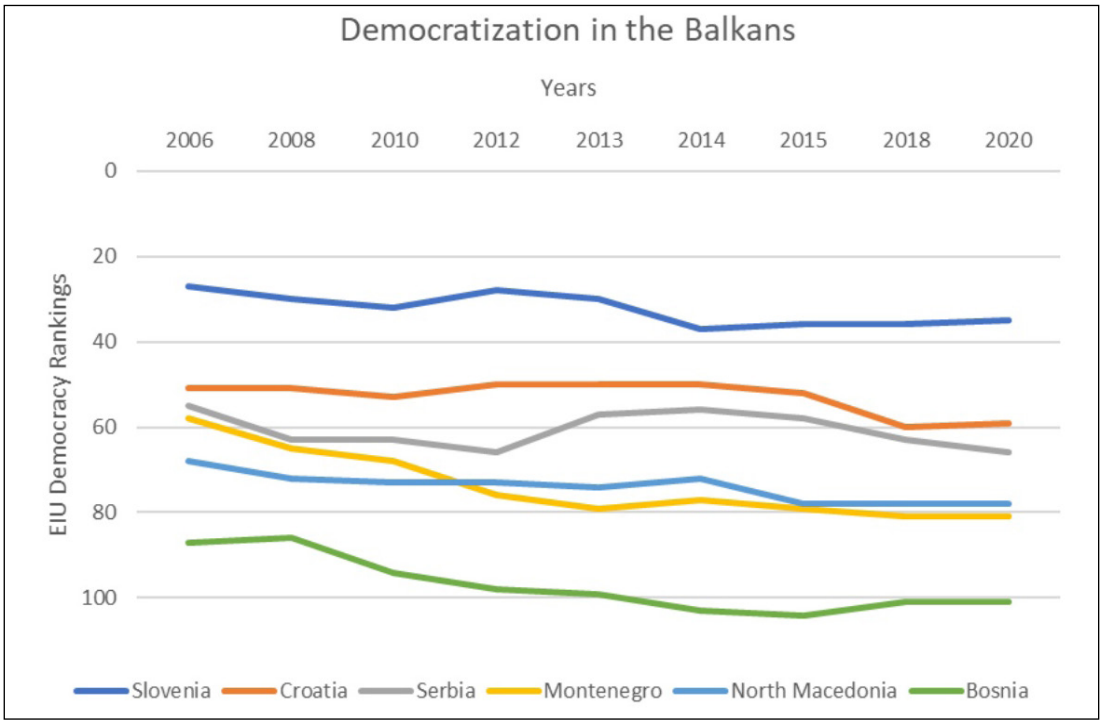
The Western Balkans have had difficulties democratizing and fulfilling the European Union's criteria. Serbia and Montenegro have progressed the furthest so far, with Serbia beginning negotiations in 2014 and Montenegro in 2012. When these countries began negotiations and forged closer ties with the European Union, their democracy rankings improved, especially Serbia's. However, after many years and accession still being out of sight, their democratization has deteriorated. These breakdowns are due, in part, to the failure of these countries to implement the necessary reforms to close chapters 23 and 24. European membership is the goal and is seen as a means of reconciliation but there is no motivation to implement the reforms necessary. In 2020, the European Union reinvigorated the accession process to address long-standing concerns. Among these reforms included better communication on both sides and more political accountability. The change relevant to this topic was with the negotiation process. Instead of going chapter by chapter, negotiations would now be organized into "thematic" clusters, and "negotiations on each cluster will be opened as a whole – after fulfilling the opening benchmarks" (Enhancing the Accession Process, 2020, p. 4). A big part of this change is the emphasis put on chapters 23 and 24 as the benchmark chapters for the Western Balkans as they address the main areas of reform needed for the region. Serbia seems to have recognized this and, on January 16th, 2022, held a referendum to strengthen the independence of the judiciary. While this is a step in the right direction, reforms have often fallen short of expectations and are seen as merely a way of reaching the benchmarks to close chapters. Therefore, until the EU demands actual progress, it will be hard to see an actual change in Serbia and Montenegro's democratization.

Democratization is even more complicated for the countries that have not even begun negotiations. North Macedonia has not made any real progress in fulfilling chapters 23 and 24. Bosnia and Kosovo, which are both only potential candidate countries, have not even begun negotiations (Press Corner, 2021). This adds to the ironic situation in that forging ties with the European Union was supposed to encourage democratization, yet all of the Balkan nations are less democratic than they were 20 years ago, as seen in Figure 1.1. There are times when democratisation does improve, most notably in Serbia after 2012, and this could be due to trying to Europeanise and begin negotiations with the EU. However, this trend does not last long before democratisation lapses again. EU reports state that Bosnia's political institutions are still polarized and that "the blockage of the State institutions and the calls to roll back reforms are of deep concern" (Press Corner, 2021). With Kosovo, progress is stalled until its relations with Serbia can improve, a stipulation that has also frozen Serbian accession. This points to this confusing progress where some reconciliation and democratization has to have occurred before accession can take place yet EU membership is supposed to be the means of achieving reconciliation.

Summary of Section

Neither region has had a straightforward path to democratization. Although the GFA had good intentions in ensuring equal representation for nationalists and unionists, its constant suspensions and collapses reveal the deeper issues still rooted in society. When Stormont does manage to run, its citizens are still dissatisfied. This points to another problem with the GFA in that it can be interpreted as sectarian in and of itself. It asserts power-sharing between Catholic nationalists and Protestant unionists when there are many people who identify themselves as both or neither. It is also important to note that hostilities between Catholics and Protestants in this region have lasted for centuries and that the 30-year-Troubles are still fresh in the minds of many. Therefore, it may still be too early to accurately state whether or not the GFA has been effective. There is also nothing to compare the new Stormont government against, as Northern Ireland was under the UK's direct rule from

FIGURE 1. EIU Democracy Rankings of Balkan Countries



Note: The source data for this figure did not include Kosovo. Data is from the Economist Intelligence Unit.

1972 and, when it was autonomous, the Catholics were often excluded. The fact that the GFA was able to create some form of democratic government and win support from unionists and nationalists is still a tremendous feat for the European Union. Even still, it is not perfect, and Northern Ireland has changed since 1998. Thus, reforms would be necessary to reflect this change and ensure the stability of Stormont.

Unfortunately, it seems that democratization has remained unchanged or even gotten worse in the Balkans. When the prospect for EU membership is highest, democratization appears to be at its best. However, as the process drags on, democratization also begins to decline. The European Union has made attempts to show its dedication to the Balkans, such as by revising the accession process to hopefully streamline it, but it has come a little too late. And, even when these countries do join the EU, there is no guarantee that democratization will improve.

Other Dimensions: Croatia & Slovenia and Brexit

Whereas some Balkan countries are now part of the EU, Northern Ireland has effectively left the EU. Given the unique situation of Northern Ireland, the Northern Ireland Protocol was put in place to allow goods to still travel freely to Ireland, an EU member, and checks on these goods would occur between Northern Ireland and the rest of Britain (Edgington & Morris, 2022). This protocol is controversial for many reasons. It effectively creates a border in the Irish Sea and further separates Northern Ireland from the rest of Britain, which has upset unionists. The recent resignation of First Minister Paul Givan was due to the DUP's upset with having an Irish Sea border. However, creating a border between Northern Ireland and the Republic of Ireland could also cause tensions amongst nationalists and potentially undermine the GFA. Thus, while the shared EU membership of the Republic of Ireland and Northern Ireland (along with the rest of the UK) made the GFA possible, the lack of EU membership could now negatively affect any reconciliation achieved. However, it will be interesting to see how the recent Windsor Framework may impact this.

Brexit also challenges the very fabric of the GFA. The GFA is built on the assumption that the Republic of Ireland and Northern Ireland would remain in the EU, thus, rights "deriving from the EU" serve as the main basis for the GFA (McCrudden, 2017, p. 4). For example, the human rights protections of the GFA are based on the European Convention on Human Rights. Other rights afforded to the people of Northern Ireland under the EU include "the European Single Market's four freedoms (free movement of goods, capital, services, and people), and rights such as EU equality law" (McCrudden, 2017, p. 4). EU law is also superior to domestic law; therefore, any British or Irish law that contradicts the EU is rendered null and void, which would help ensure equality under the GFA. In this regard, the

EU also monitors domestic law and any possible violations of the GFA. With the EU gone as a mediator, this can lead to a change in interpretations and implementations of the GFA. After Brexit, EU law supremacy will disappear, the EU Charter of Fundamental Rights will become irrelevant, and EU law's general principles, including the EU's fundamental rights jurisprudence, will also be rendered void (McCrudden, 2017). Thus, instead of following the EU model and norms, Britain will effectively be the main adjudicator for the GFA.

This all points to why it was important for the EU to get involved in the first place. Westminister's failure to protect the rights of both unionists and nationalists equally led to the need for the GFA. Without the EU and its focus on rights, it may be harder to sustain the GFA and uphold its guarantee. It is through leaving the EU that Northern Ireland realizes how important the organization was for maintaining peace.

Croatia and Slovenia

Croatia and Slovenia were the most economically developed Yugoslav republics, which can explain why they were able to join the EU relatively quickly. Even still, lingering animosity between the states almost prevented Croatia from joining. Slovenia tried to block Croatia's accession multiple times, with the first time being in 2009 due to territorial disputes that began with the Yugoslav wars (Slovenia Blocks Croatia, 2018). After that issue was referred to international arbitration, Croatia's bid was blocked again in 2012 over a bank dispute that also went back to Yugoslavia. While these issues were resolved, this does show how local issues can be weaponized to preclude further European integration. Croatia has also done the same to Serbia due to their own animosities. In 2016, Croatia brought up reservations about opening chapters 23 and 24 for Serbia. They did not see progress being made with the rule of law, especially in regards to "the lack of Serbian cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY); the mistreatment of the Croatian minority in Serbia; and the universal jurisdiction of Serbian courts over war crimes committed in other parts of the former Yugoslavia" (Kmezić, 2016, para. 2). The EU stated that these were mostly bilateral issues and that opening the chapters could even lead to a resolution of these controversies (Gotev & Poznatov, 2016). Relations between Slovenia and Croatia have been friendly since Croatia joined the EU, but Croatia and Serbia have a much more complicated and violent relationship. Since Serbia is not a member yet, it is hard to assess whether relations will ease; however, the fact that tensions exist at the accession process points to the continued animosity between the nations and the failure of the EU to remedy the situation.

Additionally, despite Croatia and Slovenia being the most advanced Balkan nations, they have also had mixed results with democratization. According to figure 1.1, both countries were their most democratized right when they joined the EU. However, the graph also shows that democratization substantially worsened in both countries years after joining the EU. This all points to a larger issue within the European Union. While the EU may encourage democratization as part of the accession process, there seem to be no checks afterward. Therefore, it is easy for countries that already had a fragile foundation of democracy to relapse and turn authoritarian again. While that has not been the case for Slovenia and Croatia, as they still have fairly good democracy rankings for the Balkans, that could be an issue for any other Balkan country that joins the EU. Thus, while the EU may encourage democratization, there is still the question of whether or not they can sustain it.

Conclusion

Answering the question of how EU membership affects reconciliation in previously warring regions is tricky. In the wider scheme, these case studies show that there are genuine efforts being made by the international society to bring about reconciliation in post-conflict societies. It also shows that, overall, these societies are receptive to these efforts and that there is a want to reconcile. However, it takes more than just a desire for change to bring about change. As seen above, the results of European intervention have been mixed. For Northern Ireland, the implementation of the GFA has been imperfect, and Stormont has been suspended or collapsed multiple times. The effectiveness of EU-led peace projects, such as the PEACE II, is also called

into question when considering if it reached the communities that needed it most. Additionally, public opinion surveys reveal that, while there is a want for reconciliation, society is still divided, especially among ethnoreligious lines. This created a catch-22 where the disillusionment in reconciliation "reinforced the need for EU programmes...but at the same time minimised the successes of EU cross-border and cross-community initiatives in the region" (Lagana, 2021, p. 173). Still, Brexit also shows the problem of removing the EU as a mechanism for reconciliation. With the EU gone, it is seen just how ingrained its values and norms are into the principles, implementation, and oversight of the GFA. Also, while the peace projects are imperfect, they still have reported some success in bridging gaps in communities.

On the other side are the Balkans. Of the seven former Yugoslav countries, only two have joined the EU. Although the five other countries have worked with the European Union for almost two decades, accession seems less and

less likely (Fraenkel, 2016). Democratization has either stagnated or decreased in the Western Balkans due to this reason. Even Croatia and Slovenia, who have relatively good democracy rankings, are seeing a decrease in democratization despite being members of the European Union. This reveals a lack of accountability on behalf of both the EU and member states to uphold democratization. Without a healthy, functioning democracy, reconciliation is harder to achieve. Surveys conducted by RYCO also prove this point. The fact that RYCO exists reveals that there is a positive trend toward reconciliation, and there is strong support for regional cooperation in both the RYCO and Balkan Barometer studies. However, the fact that accession has taken decades has left many Balkan citizens disillusioned and can de-incentivize them from helping to improve democratization and cross-community relations.

The issue of reconciliation is gaining renewed attention. The EU and UK are currently undergoing debates about the Northern Ireland Protocol. Any changes can lead to backlash from either the nationalists or unionists. This issue, along with the resignation of First Minister Paul Givan, will certainly play a role in the upcoming Northern Ireland elections. In Bosnia, Milorad Dodik is stoking ethnics tensions amongst Bosnian-Serbs and Bosnian-Croats have also begun calling for independence, eerily similar to what occurred in the 1990s (Sito-Sucic, 2022). While the European Union can no longer play a central role in Northern Ireland, it can still have an impact on the Balkans. If it wants to fully engage, it must make greater progress in finally granting the Balkans membership or, at least, providing more long-term, steady fundings to reconciliation projects in the region. However, it is their decision on whether to fully engage or not.

Endnotes

1 When referring to the Balkans, this paper means the seven countries of the Former Socialist Federal Republic of Yugoslavia. These include Serbia, Croatia, Bosnia & Herzegovina, Slovenia, Montenegro, Macedonia, and Kosovo
(not fully recognized).

2 This paper was written in 2022 and may not be up-to-date with current developments (e.g. the impact of the Ukraine war on Balkan politics).

3 The Western Balkans refer to Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, and the disputed territory of Kosovo.

4 These initiatives include: (1) the rule of law; (2) security and migration; (3) socio-economic development; (4) transport and energy connectivity; (5) the digital agenda; and (6) reconciliation and good neighbourly relations.

5 To read more on EU funding, go to EU Funding for Beginners

References

Arnold, J, et al (2009, November 11). *The EU peace II fund and the International Fund for Ireland: Nurturing cross-community contact and reconciliation in Northern Ireland.* Taylor & Francis. Retrieved March 15, 2022, from https://www.tandfonline.com/doi/abs/10.1080/14650040903141323

Balkan Barometer 2021 - Public Opinion. Regional Cooperation Council. (2021). Retrieved March 15, 2022, from https://www.rcc.int/pubs/122/balkan-barometer-2021--public-opinion

Bloomfield, D. (2003). *Reconciliation after violent conflict handbook - idea.* Retrieved March 15, 2022, from https://www.idea.int/sites/default/files/publications/reconciliation-after-violent-conflict-hand book.pdf Brakaj, Flutura. (2022, Feb 1). Personal communication [Personal interview]

Brück, T., & Ferguson, N. T. N. (2018, May 8). *Money Can't Buy Love but Can It Buy Peace? Evidence from the EU Programme for Peace and Reconciliation (PEACE II).* ISDC. Retrieved March 15, 2022, from https://isdc.org/publications/money-cant-buy-love-but-can-it-buy-peace-evidence-from-the- eu-progra mme-for-peace-and-reconciliation-peace-ii/.

Burke, C. (2018, February 14). *Explainer: What is the Irish Language Act and why is it causing political deadlock in Northern Ireland?* TheJournal.ie. Retrieved March 15, 2022, from https://www.thejournal.ie/irish-language-act-explainer-3851417-Feb2018/.

Bush, Kenneth, & Kenneth Houston. (2011). *THE STORY OF PEACE: Learning from EU PEACE Funding in Northern Ireland and the Border Region.* International Conflict Research Institute.

Cochrane, F. (2021). *Northern Ireland: The fragile peace.* Yale University Press.

Edgar, D., & Flanagan, E. (2022, February 3). *DUP: NI first minister Paul Givan announces resignation.* BBC News. Retrieved March 15, 2022, from https://www.bbc.com/news/uk-60241608

Edgington, T., & Morris, C. (2022, February 3). *Brexit: What's The Northern Ireland Protocol?* BBC News. Retrieved March 15, 2022, from https://www.bbc.com/news/explainers-53724381

Enhancing the accession process - a credible EU perspective for the western balkans. European Neighbourhood Policy and Enlargement Negotiations. (2020, February 5). Retriåeved March 15, 2022, from https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-p erspectiv e-western-balkans_en

Flanagan, E. (2022, February 12). *Stormont without NI leadership for third of its lifespan.* BBC News. Retrieved March 15, 2022, from https://www.bbc.com/news/uk-northern-ireland-60249249

Fraenkel, E. (2016, March). *The EU and the Western Balkans: Do they share a future?* CIDOB. Retrieved March 15, 2022, from https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_145_the_e u_and_t he_western_balkans_do_they_share_a_future/the_eu_and_the_western_balkans_do_they_sh are_a_fut ure

Glenny, M. (2001). *The Balkans: Nationalism, War and the Great Powers, 1804-1999.* Penguin Books.

Gotev, G., & Poznatov, M. (2016, April 12). *Tensions grow over Serbian accession talks.* www.euractiv.com. Retrieved March 15, 2022, from https://www.euractiv.com/section/enlargement/news/tensions-grow-over-serbias-accessio n-talks/

Guardian News and Media. (2001, September 19). *Northern Ireland timeline: May 2000 to September 2001.* The Guardian. Retrieved March 15, 2022, from https://www.theguardian.com/uk/2001/sep/19/northernireland.derekbrown

Haughey, S. (2020, February 28). *Back to Stormont: The New Decade, New Approach Agreement and What It Means for Northern Ireland.* Wiley Online Library. Retrieved March 15, 2022, from https://web-p-ebscohost-com.offcampus.lib.washington.edu/ehost/detail/detail?vid=0&% 3Bsid= 28 b8bcbf39-dd1e-456f-ace8-80fc89c147da%40redis&%3Bdata=JnNpdGU9ZWhvc3Qtb Gl2ZQ%3D%3D#AN=142479780&db=a9h.

History of the Assembly. Northern Ireland Assembly. (n.d.). Retrieved March 15, 2022, from http://www.niassembly.gov.uk/about-the-assembly/history-of-the-assembly/#7

Kmezić, M. (2016, May 24). *Croatia's blocking of Serbia's EU integration: Another case of bilateral conditionality in the Balkans.* EUROPP. Retrieved March 15, 2022, from https://blogs.lse.ac.uk/europpblog/2016/05/17/

croatias-blocking-of-serbias-eu-integration-an other-cas e-of-bilateral-conditionality-in-the-balkans/.

Lagana, G. (2021). *The European Union and the Northern Ireland Peace Process*. Palgrave Macmillan.

McCrudden, Chris (2017). *The Good Friday Agreement, Brexit, and Rights.* The British Academy.

Munter, A. D. (2021, October). *The Western Balkans: Fact sheets on the European Union: European Parliament.* Fact Sheets on the European Union | European Parliament. Retrieved March 15, 2022, from https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans.

Press corner. European Commission - European Commission. (2021). Retrieved March 15, 2022, from https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5275

RYCO 2017 Annual Report. RYCO. (2017).

RYCO Biannual Report 2018. RYCO. (2018).

Sargeant, J. (2020, June 29). *Direct rule in Northern Ireland - the Institute for Government.* Institute for Government. Retrieved March 15, 2022, from https://www.instituteforgovernment.org.uk/explainers/direct-rule-northern-ireland

Shared Futures. Shared Futures. (2021). Retrieved March 15, 2022, from https://shared-futures.com/wp-content/uploads/2021/06/Shared-Futures-Youth-Perceptions-on-Peace-i n-the-Western-Balkans.pdf

Shirlow, Peter, & Jon Tonge (2019). *NI General Election Survey 2019*.

Sito-Sucic, D. (2022, February 19). *Bosnian Croats say may push for own region unless election law changes.* Reuters. Retrieved March 15, 2022, from https://www.reuters.com/world/europe/bosnian-croats-say-may-push-own-region-unless-ele ction-law changes-2022-02-19/

Slovenia blocks Croatia's EU Progress. Balkan Insight. (2018, May 28). Retrieved March 15, 2022, from https://balkaninsight.com/2009/06/24/slovenia-blocks-croatia-s-eu-progress/

The Northern Ireland Peace Agreement (1998, 10 April).

The Peace Programmes Learning Platform Level 1 Reconciliation (n.d.). Retrieved May 1, 2023 from https://peaceplatform.seupb.eu/en/story-of-peace/key-themes/reconciliation/

Transitional justice in the former Yugoslavia. Transitional Justice in the Former Yugoslavia | International Center for Transitional Justice. (2011, April 29). Retrieved March 15, 2022, from https://www.ictj.org/publication/transitional-justice-former-yugoslavia.

Western Balkans Youth Forum 2021 - Rycowb.org. Regional Youth Cooperation Office. (2021). Retrieved March 15, 2022, from https://www.rycowb.org/wp-content/uploads/2021/07/Regional-Youth-Agenda_fin_05072021.pdf.

Military Justice in Chile: Exploring its Ongoing Violation of the American Convention on Human Rights

Rachel Blair

ABSTRACT

Between 1973 and 1990, Chile was ruled by Augusto Pinochet, a military dictator known for his persecution of leftists and political opponents. Although Chile transitioned to democracy, ratified the American Convention on Human Rights, and joined the Inter-American System for the protection of human rights (IAHRS) in 1990, Pinochet's legacy of human rights abuse lingers. The Chilean military justice system exemplifies this through its ongoing jurisdiction over cases in which military personnel harmed civilians, which violates the Convention's guarantee of access to competent courts and fair trials. This research fills a gap in the existing literature on this violation by exploring the following question: how do the combined structural weaknesses of the Chilean judiciary and IAHRS limit the Chilean military justice system's compliance with the Convention? To address this question, I analyzed the foundational documents of the Chilean judiciary and IAHRS with a focus on how vague or inconsistent language in the articles that connect through the procedural interactions between the two institutions work together to create loopholes for the Chilean military justice system to exploit. This thesis argues that ambiguous and contradictory language in the articles of the Chilean and IAHRS documents involved in the referral of human rights petitions to the Inter-American Court limits compliance by jeopardizing the legitimacy of petitions against Chile for its military justice system's inappropriate jurisdiction and by creating significant deterrents for those considering petitioning against Chile. Throughout the twentieth century, military dictatorships ruled several Latin American countries that have since ratified the Convention. This research could therefore illuminate tendencies central to understanding and rooting out dictatorial legacies in the region and inform more effective collaboration between the IAHRS and its Member States in addressing impunity for human rights abuse.

Introduction

"Chile returns to democracy, it returns without violence, without blood, without hate — it returns by the road of peace," said Patricio Aylwin to a crowd of Chilean citizens during his inaugural presidential address on March 11, 1990.[1] Aylwin won Chile's first presidential election since 1970, replacing Augusto Pinochet, the authoritarian leader of Chile's seventeen-year military junta.[2] Pinochet came to power in 1973 by staging a coup d'état to overthrow president Salvador Allende, a democratically elected socialist.[3] The military junta constituted a violent period in Chile's history during which the state arrested 28,459 people for political reasons and disappeared or killed 3,216 people.[4] Aylwin's election to the presidency marked the beginning of an era of optimism and change, catalyzing democratic reforms and the investigation of human rights abuses that took place under the military junta.

A pivotal step in Chile's democratic transition was its ratification of the Inter-American Convention on Human Rights (hereinafter "the Convention"), the primary human rights treaty of the Organization of American States (OAS) and foundational document of the OAS' Inter-American System for the protection of human rights (IAHRS).[5] The Convention outlines OAS Member States' human rights obligations and establishes the two essential organs of the IAHRS: the Inter-American Commission on Human Rights (hereinafter "the Commission") and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court").[6] By ratifying the Convention, Chile accepted the jurisdiction of the Inter-American Court as well as the mandate of the Commission as an investigative body.

In addition to visiting Member States, publishing reports, and implementing human rights initiatives, the Commission receives and processes petitions from individuals, groups, or organizations alleging that their state has violated the human rights established in treaties recognized by the IAHRS.[7] If the Commission decides to refer a petition to the Inter-American Court, the Court determines the responsibility of the state in question by interpreting the Convention according to the pro-homine principle, meaning that it prioritizes the human rights of individuals in the Member States that it serves. If the Inter-American Court decides that a state is responsible for violating human rights guaranteed by the Convention or other treaties recognized by the IAHRS, it issues a legally binding decision that may require the state's government to make reparations to victims.[8] The

reparations included in the Inter-American Court's decisions take into account victims' needs and the "structural or normative aspects that caused the violation and need to be modified by the State to avoid the repetition of the same type of violations."[9] The "structural or normative aspects that caused the violation" can pertain to the domestic laws of the state in question, meaning that the Inter-American Court can require the state government to change its laws.

The Inter-American Court also monitors the implementation of reparations through a variety of practices including "written process, hearings, visits and notes of the Secretariat of the Court."[10] Through its assessment of Member States' international responsibility for human rights violations, decisions on reparations, and monitoring of reparation implementation, the Inter-American Court is the principal accountability mechanism for compliance with the human rights standards of the Convention. Accepting the Inter-American Court's jurisdiction was therefore of particular importance to the development of Chile's human rights protections as it transitioned out of a dictatorship defined by human rights violations.

Chile's interaction with the Inter-American Court since ratifying the Convention involves four separate cases: Olmedo-Bustos et al. v. Chile (2001), Case Palamara-Iribarne v. Chile (2005), Claude-Reyes et al. v. Chile (2006), and Norín Catriman et al. (leaders, members, and activists of the Mapuche Indigenous People) v. Chile (2014).[11] The Chilean government fully complied with the Inter-American Court's decisions in all of these cases except Norín Catriman et al. v. Chile (2014), as it did not meet the required dollar amount in reparations to indigenous peoples and has failed to improve their access to consultation on land development and resource extraction (which were key issues in the case).[12] This relatively consistent compliance with the Inter-American Court's decisions has bolstered Chile's rise as a regional model for advancing human rights protections and suggests that it has a cooperative relationship with the IAHRS.

However, despite Chile's renewed commitment to human rights protection and compliance with the Inter-American Court's decisions, Pinochet's legacy of brutality and impunity lives on through the Chilean military justice system, which continues to preside over cases in which military personnel violated the human rights of civilians. According to the Inter-American Court, military jurisdiction must exclude civilians,[13] meaning that the Chilean military justice system violates the Convention's guarantee of the right to "a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention."[14] As the Chilean judiciary and the IAHRS are both central to addressing this ongoing violation, this thesis explores how flaws in the composition and procedures of each institution overlap and create loopholes for the military justice system's ongoing violation through the following question: how have the combined structural weaknesses of the Chilean judicial system and the IAHRS limited Chile's compliance with the Inter-American Convention on Human Rights, specifically its standards for military justice systems?

Both Chile and the IAHRS have attempted to address the military justice system's jurisdiction over civilian human rights cases. In 2005, the Inter-American Court pinpointed the problematic scope of the military jurisdiction through the Case of Palamara Iribarne v. Chile. Humberto Antonio Palamara Iribarne was a naval officer convicted by a Chilean military court for attempting to publish a book on "military intelligence issues and the need to be guided by ethical standards" as well as for making comments to the media that were critical of the Navy during the proceedings against him.[15] The Inter-American Court condemned this conviction, citing that the Naval Court had a vested interest in convicting Palamara Iribarne and therefore violated his access to an impartial and competent court, which Article 8 of the Convention guarantees.[16,17] To align Chile's judiciary with international law, the Inter-American Court required it "to set limits to the subject-matter and personal jurisdiction of military courts" in order to protect civilians from military jurisdiction.[18]

In order to meet the requirements of the Inter-American Court's Palamara v. Iribarne decision, the Chilean National Congress introduced Law 20.477 in December 2010,[19] which explicitly excludes civilians and minors from military jurisdiction.[20] This reform, while promising in its intended purpose of limiting the scope of military jurisdiction, has failed to prevent military courts from presiding over civilian human rights cases. Since the law's implementation in 2010, military courts have tried numerous Carabineros (national police) who violated the human rights of civilians, depriving victims of access to competent, impartial courts, and shielding members of the armed forces from justice for their flagrant abuse of citizens.[21]

Given the failures of the Chilean government and the IAHRS to address this Convention violation, it is crucial to consider the following: if Chile successfully created a law against subjecting civilians to military jurisdiction to align itself with IAHRS standards, why isn't it able to enforce it? Are there loopholes in domestic law that the military justice system is exploiting? And if Chile cannot enforce its own law, why hasn't the IAHRS intervened again or devoted resources to overseeing the Chilean judiciary's compliance with the Convention? What is preventing victims of this Convention violation from submitting a petition to the

IAHRS so that it can force Chile to reckon with the scope of military justice once again? While there is extensive research on Chile's complex relationship with the IAHRS, it lacks a holistic examination of how each of these factors coincides and hampers Convention compliance, which is what this thesis seeks to explore.

Literature Review

This work examines how flaws in the structures of the Chilean judiciary and IAHRS work together to enable the Chilean military justice system's ongoing Convention violation. As scholarship on this aspect of Chile's relationship with the IAHRS is limited, my research draws from analyses of Chile's political history, investigations of the Chilean military justice system's conduct, and critiques of the IAHRS' weak enforceability mechanisms. These historical analyses, investigative reports, and criticisms of the IAHRS as an institution tend to blame the flaws in either the domestic system or the IAHRS for the Chilean military justice system's ongoing violation of the Convention. By exclusively focusing on one system or the other, existing literature overlooks the way the two systems interact to produce this outcome. To holistically understand and address Chile's ongoing violation of international law, it is necessary to examine how the weaknesses of each system compound one another. My argument thus draws on existing analyses but synthesizes their elements to examine this phenomenon through a novel systems-thinking approach.

Historical Analysis

The enduring influence of Pinochet's dictatorial legacy is a central theme in Chile's relationship with the IAHRS, as many scholars have argued in the existing body of work on the historical context that shaped modern Chile. Numerous scholars approach this historical analysis with a focus on how the political circumstances of the 1990 transition impacted the strength of Chile's domestic human rights protection mechanisms and its compliance with the Convention. For example, Silvia Borzutzky argues that the enduring influence of the military dictatorship in the incoming democratic government played a key role in limiting the potential of the new government and reparations programs to facilitate lasting change through transitional justice.[22] While the 1990 transition from military dictatorship to democracy marked a seismic shift in Chile's approach to human rights, officials guilty of human rights abuse maintained substantial power in the early years of the transition, robbing the democratic government of the "institutional capacity and determination" necessary to prosecute abusers.[23]

Borzutsky also points out that the deliberate preservation of military power in the incoming democratic government was particularly evident in the judiciary. After Pinochet seized control of the government in 1973, he declared Chile to be in a "state of war," and the Supreme Court gave up its "rights and obligation to oversee the military tribunals and to demand from those tribunals an adequate interpretation of the laws."[24] The 1980 Constitution codified this lack of oversight into law, paving the way for members of the armed forces or law enforcement agencies to violate civilians' human rights with impunity.[25] The lack of accountability for military tribunals that survived the democratic transition is a crucial phenomenon to examine in assessing military courts' illegitimate jurisdiction over human rights cases. In recognizing the consequential role of these historical developments in shaping the Chilean judiciary, Borzutzky draws connections between the institutionalization of military power in the transition government, and the current judicial system's shortcomings in human rights protection. While this analysis illuminates Pinochet's influence on the judiciary before and after the transition, Borzutzky neglects to investigate the ties between the circumstances of the transition and Chile's non-compliance with the Convention since becoming a democracy. This thesis seeks to expand on Borzutsky's insight by exploring how the operation of the judiciary under enduring dictatorial legacy contributes to limited Convention compliance in combination with the structural flaws of the IAHRS.

The writings of Cath Collins exemplify another approach to historical analysis of political influence on human rights in Chile. Collins acknowledges the influence of Pinochet's legacy over judicial structures identified by Borzutzky, but focuses on international legal precedent as the principal hindrance to post-transition human rights reforms. In her discussion of prosecutions in the context of transitional justice efforts, she establishes that, with the unique circumstances of the Nuremberg Trials as an exception, domestic justice systems seldom permit the direct national prosecution of individuals for international crimes.[26] The 1990-91 Truth Commission in Chile fit this norm, meaning that international law was "used for its norm-establishing and reaffirming value" – but not for the actual prosecution of individuals – in the process of addressing the dictatorship-era human rights abuses in the transition to democracy.[27] In Collins' view, the international legal precedent of not prosecuting individuals for human rights abuse in the context of transitional justice efforts limited the extent to which the Chilean Truth Commission could facilitate the implementation of comprehensive domestic human rights protections. Her analysis provides insight into the role of international legal precedents in impeding comprehensive changes to the systems built during the dictatorship.

Borzutksy and Collins both offer important analyses, but each focuses on one side of this phenomenon. Borzutksy's approach emphasizes the role of internal structural factors, such as the Supreme Court's forfeiture of power to oversee military courts. Collins' approach focuses on external factors, such as the role of international legal precedent in weakening transitional justice efforts. While both analyses are helpful in understanding the historical context of the transition and its shortcomings in improving Chile's human rights protections, neither approach addresses how these forces combine to enable the ongoing violation of international law.

Investigative Reports

While the works discussed thus far concentrate on how the circumstances of the transition potentially impeded the development of comprehensive human rights protections in democratic Chile, independent human rights organizations have extensively documented instances of Chilean military jurisdiction over human rights cases and investigated its underlying causes. In 2018, Amnesty International published a report titled "Chile: 'I didn't know there were two kinds of justice': Military jurisdiction and police brutality in Chile." Chilean organic constitutional law recognizes the Carabineros de Chile (national police) as a military force,[28] and their abuse of civilians in the context of civil unrest has raised awareness of problematic military jurisdiction in recent years. Amnesty International investigated the scope of military jurisdiction in Chile by documenting cases of police brutality in "public demonstrations in support of various social demands throughout the country" and evaluating whether the Chilean judicial system held police officers to account.[29]

In its review of cases that went through the Santiago Second Military Court, Amnesty International found that of the cases submitted by civilians for unnecessary violence by national police officers in 2005, 2008, 2011 and 2014, only 14 out of 4,551 cases were resolved, and that almost all of the cases were closed without holding any of the officers who used excessive force against civilians accountable.[30] As a result of its findings, Amnesty International calls on Chile to ensure that military courts refer investigations and trials of Carabineros for abuse of civilians to ordinary courts and that civilians have access to "comprehensive reparation... including compensation, rehabilitation, satisfaction and guarantees of non-repetition."[31]

In addition to establishing the severity of this issue and demanding action from the Chilean government, the report explains the basic structure of the military justice system and identifies codes under Chilean organic constitutional law that inform its operation, such as the Organic Court Statutes Code (Código Orgánico de Tribunales, COT) and the Code of Military Justice (Código de Justicia Militar, CJM). The footnote citations included in the report's discussion of these codes frequently list Article 5 of the COT and Articles 5, 6, and 330 of the CJM as involved in determining the military courts' jurisdiction and officers' accountability for the use of excessive force.[32] Amnesty International's identification of these codes and specific articles provides a starting point for investigating the structural flaws of Chile's judiciary.

Human Rights Watch also published a report on Chilean military jurisdiction titled, "Undue Process," which investigates the Chilean government's handling of the Mapuche indigenous population's unrest over the land disputes. In its examination of police brutality during Mapuche protests, Human Rights Watch echoes the sentiments of the Amnesty International report in asserting that military jurisdiction over police abuses of the Mapuche people denies them due process.[33] This report also scrutinizes the Chilean judiciary's handling of civilian cases through the lens of its international human rights obligations. Citing the IAHRS' restrictions against military jurisdiction over human rights cases, Human Rights Watch recommends that the Chilean government implement legislative reforms to ensure that "human rights abuses by Carabineros, such as homicides, excessive or unjustified use of force, illegal arrest, and torture or ill-treatment of detainees, are investigated by ordinary prosecutors and judged in ordinary courts."[34] By providing concrete examples of the Chilean military justice system violating civilians' access to competent and impartial courts, these investigations reveal the profound impact of the dictatorial legacy identified by Borzutsky and Collins on the lives of people on the ground in Chile.

Critiques of the IAHRS

The historical analyses and reports by independent human rights organizations recognize Chile's failure to comply with the Convention, but do not fully engage with the longstanding criticism of international legal bodies (specifically the IAHRS) amongst academics, legal professionals, and politicians. In her work titled *The Practice and Procedure of the Inter-American Court of Human Rights*, Jo Pasqualucci addresses the stark reality of widespread noncompliance amongst states that have ratified the Convention and accepted jurisdiction of the Inter-American Court. She comments that in most Inter-American Court cases that result in calls for the investigation of a member state, "... the State power structure lacks the means or the will to bring the perpetrators of human rights violations to justice. Domestic statutes of limitations or laws on double jeopardy may bar investigations and trials."[35] Pasqualucci also posits that if Member States were incentivized to take their IAHRS obligations more seriously, the IAHRS could more substantially limit

impunity and act as a deterrent for human rights abuse.[36]

While Pasqualucci's take on the limits and potential of the IAHRS hints at the role of dictatorship-era power structures in member state judiciaries in limiting compliance with the IAHRS, it reveals that Member States do not view the IAHRS as an institution with real power to enforce compliance with the Convention. This analysis creates the basis for the argument that the Inter-American System is inconsequential in its capacity to improve human rights protection in Chile (and other Member States) because there is little that it can do to incentivize or enforce compliance. Pasqualucci's commentary addresses this regional dynamic and summarizes common concerns about the impact of the IAHRS, but does not specifically analyze the dynamics of the relationship between Chilean institutions and the IAHRS.

Building on Pasqualucci's observations of domestic systems' inability to implement the decisions of the Court, other researchers have analyzed the general effectiveness of the IAHRS as a human rights protection mechanism. As a part of the IAHRS Studies Project of the Asociación por los Derechos Civiles, Basch et al. conducted an investigation of historical levels of compliance with Inter-American Court decisions handed down from the Convention's petition-based system.[37] They concluded that the IAHRS must "strengthen the control, monitoring, and follow-up capabilities of the system's bodies" by implementing protocols like the OAS' political sanctioning of states that are reluctant to or fail to comply with rulings and recommendations of the Court and the Commission.[38]

Basch's recommendation aligns with Pasqualucci's commentary on Member States' lack of compliance enforcement mechanisms, but concentrates more on the absence of IAHRS enforcement as the underlying cause of non-compliance (instead of the weaknesses of the domestic system). This study pinpoints specific weaknesses of the IAHRS' enforcement tools and prescribes steps for improvement, but like Pasqualucci's contributions, fails to address how the characteristics of domestic judicial systems and the IAHRS overlap and affect Chile's compliance. This thesis will fill this gap by examining both the domestic and regional systems at play, keeping in mind the notion that enforceability and subsequent member-state cooperation is a two-way street.

Summary

Each of the above authors establishes several internal and external contributing factors to Chile's ongoing violation of the Convention, which are essential to a holistic understanding of Chile's complicated relationship with the IAHRS. However, it is crucial to fill the gaps in the existing body of work by investigating the potential synthesis between the weaknesses of both the Chilean judicial system and the IAHRS. Doing so could not only illuminate why this issue continues to affect Chile in particular, but also reveal how dictatorial legacy in Member States' judicial structures impedes the IAHRS' ability to fulfill its purpose of protecting human rights in the region. Executing this more comprehensive analysis requires examination of the procedures that inform domestic judicial operations and the IAHRS' assessment of petitions through direct engagement with the documents that shape them.

Methodology

I divided my research into three phases: analysis of the documents that shape the Chilean judiciary, analysis of the documents that shape the IAHRS, and comparative analysis of the documents from the Chilean judiciary and the Inter-American System (see Appendix).

Chilean Document Analysis

To provide a comprehensive analysis of the development and impact of the structures of the Chilean judiciary, I qualitatively analyzed the documents that inform its organization and procedures. I first analyzed Chile's 1980 Constitution with a specific focus on Chapter VI, titled 15 "Judicial Power."[39] Pinochet oversaw the writing of the 1980 Constitution with the intent of centralizing military power in the government for decades to come, and it has shaped the composition and operation of the Chilean judiciary ever since.[40] The 1980 Constitution delegates the operation of the judicial system to organic constitutional law, which includes the codes identified by the Amnesty International report:[41] the Organic Court Statutes Code (Código Orgánico de Tribunales, COT) and the Chilean Code of Military Justice (Código de Justicia Militar, CJM). The COT regulates the organization and jurisdiction of courts throughout Chile, and I concentrated my analysis on Articles 5, which focuses on the authority of specialized courts. The CJM is the basis for the organization and practices of Chilean military courts, containing 436 articles that dictate the military justice system's procedures, penalties, and special provisions. Guided by the Amnesty International report,[42] my qualitative analysis of the CJM focuses on Articles 5, 6, and 330, which pertain to the jurisdiction of the military justice system and punishment for military personnel guilty of using excessive force. Furthermore, I analyzed Articles 48 and 70-A of the CJM to examine the appeals process for cases in which military personnel harmed civilians.

IAHRS Document Analysis

As shown in the literature review, critics of the IAHRS argue that the Commission's inadequate monitoring

mechanisms are the key weaknesses to address. However, even if the Commission's monitoring capacity were increased, the Commission would still not be able to issue legally binding requirements.[43] That is to say, identifying weaknesses in the Commission's monitoring mechanisms would not be effective in improving its ability to address illegitimate military jurisdiction in Chile. The Inter-American Court, on the other hand, can issue legally binding decisions, and Chile has consistently complied with its requirements since ratifying the Convention.[44] The Inter-American Court's consequential role in improving human rights in Chile makes its accessibility to civilians subjected to military jurisdiction crucial. As the Commission is the gatekeeper to the Court, analyzing its process for admitting petitions is essential to understanding which weaknesses of the IAHRS factor into Chile's ability to keep violating the Convention without consequence. I therefore conducted a qualitative analysis of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "the Rules of Procedure"), which governs the Commission's process for referring human rights petitions against Member States to the Inter-American Court. I specifically focused on Article 31, which gives the criteria for referral to the Inter-American Court.

Comparative Analysis

My approach to analyzing the relationship between the structural weaknesses of the Chilean judiciary and the IAHRS culminated with a comparative analysis. In this portion of my analysis, I juxtapose the vague language and contradictory articles that I identified in my separate analyses of the two document groups (see Appendix). I specifically assess how ambiguous provisions and conflicting articles between the 1980 Constitution, COT, CJM, and Rules of Procedure intersect and impact Chile's ability to continue violating the Convention without consequence.

Document Analysis

This portion of the thesis engages directly with the documents that guide the military justice system's operations within the broader judiciary and the IAHRS' handling of petitions against Member States. Through a qualitative analysis of the Chilean documents, I illustrate the impact of Pinochet's enduring legacy in the judiciary by uncovering inconsistent provisions for determining military jurisdiction and the protection from oversight afforded to the military justice system by Pinochet-era judicial structures and procedures. My examination of the Rules of Procedure exposes vague language in the criteria for petition admissibility, which is problematic because it needlessly jeopardizes the referral of petitions against formerly dictatorial states to the Inter-American Court. By analyzing how these flaws overlap, my comparative analysis of the two document groups demonstrates how their respective weaknesses compound each other's effects, exacerbating the lack of accountability on the domestic front and hampering the IAHRS' ability to address Chile's ongoing Convention violation.

Part I: Chilean Judiciary Documents

The Convention violation constituted by Chilean military courts hearing human rights cases is, domestically, an issue of jurisdiction and liability for the abuse of civilians. With this in mind, this section serves to identify the articles of the 1980 Constitution, COT, and CJM that directly shape the authority and accountability of the military justice system and assess how they create opportunities for it to continue hearing human rights cases. Through this qualitative analysis of the documents that dictate the administration and conduct of the Chilean judiciary, I argue that the contradictory nature of the language in the articles of all three ultimately undermines provisions created to protect civilians from military jurisdiction.

The 1980 Constitution

At the apex of the documents that shape the Chilean judiciary is the 1980 Constitution. Article 19 of the 1980 Constitution guarantees Chilean citizens the right to competent judges, and Article 82 declares that the Supreme Court "holds the directive, correctional and economic superintendence of all the tribunals of the Nation."[45] While these provisions seem conducive to justice and accountability in the Chilean judiciary, their benefits are undermined by the significant leeway given to special tribunals (including military tribunals). Article 77, for example, leaves the organization and procedures of tribunals throughout the country up to constitutional organic law, emphasizing the role of documents such as the COT and the CJM in shaping the operation of the Chilean judiciary.[46]

Organic Court Statutes Code

The COT mimics the Constitution in that it delegates power to yet another document: the CJM. This delegation of authority is explicitly stated in Article 5, which declares that *specialized* courts, including "the family courts, the Labor Courts, the Labor and Social Security Collection Courts and the *Military Courts in times of peace*," shall be "governed in organization and attributions by the constitutional organic provisions contained in Law No. 19,968, the Labor Code, and the *Code of Military Justice and its complementary laws*" and that "the provisions of this Code shall apply to

them only when the aforementioned legal bodies expressly refer to it."[47] By leaving the operation of the military courts up to the CJM (aside from the settlement of jurisdictional disputes), the COT isolates the military justice system from the broader judiciary and other branches of government, leaving it with little accountability for presiding over civilian human rights cases.

While Article 5 effectively transfers responsibility for the administration of the military justice system to the CJM, it maintains the nation's appeals courts and Supreme Courts as authorities in oversight of the judiciary. This is addressed by Article 191, which states that when a special court and an ordinary court both believe themselves to be competent to hear a case, their shared appeals court must settle the matter. If the two courts have different appeals courts, the Supreme Court settles the dispute.[48] As will be seen in the following section, this provision's capacity to actually protect civilians whose rights were violated by military personnel from military jurisdiction is unreliable.

The Code of Military Justice

Like the 1980 Constitution's articles on access to competent courts, the CJM's articles on the military justice system's jurisdiction and accountability protocols appear to benefit civilian access to justice. For instance, Articles 5 and 6 provide what are, at first glance, clear definitions of what constitutes a military offense and who is considered to be military personnel. Article 5 declares that "military jurisdiction shall be responsible for hearing: cases for military offenses, which are understood to be those contemplated in this Code..."[49] It also clarifies that "common crimes committed by military personnel during the state of war, while on campaign, in the act of military service or on the occasion of military service" are to be tried in ordinary courts.[50] According to Article 6, the CJM applies only to "... officers belonging to the Armed Forces and the Carabineros de Chile, made up of regular personnel, personnel called to service and reserve personnel called to active service."[51]

In addition to defining military offenses and military personnel, the CJM provides certain protections for civilians and recognizes the use of excessive force as a violation of the law. With regard to the subjection of civilians to military jurisdiction, Article 5 is immediately followed by Nota 1, which states: "Art. 1° of Law 20477, published on 30.12.2010, provides that in no case shall civilians and minors be subject to the jurisdiction of military courts. This will always be rooted in the ordinary courts with jurisdiction in criminal matters."[52] Nota 1 is a direct manifestation of the Inter-American Court's requirements of Chile in the Case of Palamara Iribarne vs. Chile, meaning that in theory, civilians are protected by the Inter-American Court's legally-binding decision. To address accountability for excessive force, Article 330 provides a list of punishments:

> *Any soldier who, in order to carry out a superior order or in the exercise of military functions, uses or causes to be used, without rational motive, unnecessary violence for the execution of the acts he is to perform, shall be punished:*
>
> *1° With the penalty of major imprisonment in its minimum to medium degrees if it causes death of the offended party;*
>
> *2° With minor imprisonment in its medium degree to major imprisonment in its minimum degree if it causes serious injuries;*
>
> *3° To the minimum to medium term of imprisonment if it causes less serious injuries;*
>
> *4° With the maximum term of imprisonment to the minimum term of imprisonment if no or only minor injuries are caused.*[53]

If a civilian's case is heard by a military court despite the existence of Law 20477, they can appeal. To do so, they must go to one of the country's two Courts Martial, which are the military justice system's version of appeals courts.[54] According to Article 48 of the CJM, the Court Martial of the Army, Air Force, and Carabineros includes "two members of the Santiago Court of Appeals, the Auditors General of the Air Force and Carabineros, and a military judge of the rank of colonel on active service."[55] Should a civilian wish to appeal the decision of the Court Martial, they must go to the Supreme Court. Article 70-A of the CJM states that "The Supreme Court, composed of the Auditor General of the Army or whoever may subrogate him, is also responsible... to hear:

> *1° Of cassation appeals, both in form and substance, against the sentences of the Courts Martial;*
>
> *2° Of appeals for review against final judgments in matters of peacetime military jurisdiction;*
>
> *3° Of appeals against decisions of Courts Martial and, in the second instance, of appeals of complaint heard by the Courts Martial;*
>
> *4° Of the requests for implication or recusal against the ministers of the Courts Martial; 5° Of disputes of jurisdiction between a military court and another of the common jurisdiction;*
>
> *6° Of disputes of jurisdiction between Institutional Courts that depend on different*

Courts Martial and of those that arise between them;

7° Of active extradition in military jurisdiction proceedings.[56]

While the CJM includes measures to protect civilians from military jurisdiction and deter the use of excessive violence by military personnel, whether or not they actually fulfill their purpose is another story. For example, just by recognizing police brutality in Article 330, the CJM makes it possible for a Court Martial or the Supreme Court to affirm military jurisdiction over a case in which a military officer harms a civilian. Additionally, when an ordinary or military court is making a decision about its competence to hear this type of case, the civilian protection given by the CJM's recognition of Law 20477 in Nota 1 is threatened by the seemingly straightforward provisions of Articles 5 and 6. In other words, the decision about whether or not a case falls under military jurisdiction can come down to the involvement of a Carabinero, bypassing the CJM's stipulations on civilian exemption and the mandatory trial of common crimes in ordinary courts. Combined with the 1980 Constitution and COT's isolation of the military justice system and unreliability of their oversight mechanisms, the lack of continuity resulting from the above articles subverting each other is the key to answering the question posed in the introduction about Chile's failure to enforce Law 20477; it makes Law 20477 distinctly challenging to *enforce*.

As with the provisions of Nota 1 and Article 330, the process for civilians to seek justice by appealing decisions of military courts lacks public trust and institutional backing. Because military personnel still play a key decision-making role in the appeals process, the Courts Martial are partial and therefore incompetent to hear civilian human rights cases per the Inter-American Court's decision in Palamara Iribarne vs. Chile.[57] The same can be said of the Supreme Court. Because the Army Auditory General, a member of the armed forces, is a member of the Penal Chamber of the Supreme Court, the Supreme Court lacks the impartiality necessary to be competent to hear a civilian human rights case. This process is firmly rooted in Pinochet-era judicial practices, as the Auditor General was formerly one of Pinochet's army subordinates.[58]

The impact of the flaws in the procedures governing the military justice system can be seen in the case of Manuel Gutiérrez. In August 2011, 16-year-old Manuel Gutiérrez was watching violent clashes resulting from the United Workers' Confederation strike in the streets of Santiago and was fatally shot by a Carabinero. While authorities initially denied police responsibility for the shooting, the case was taken up by the local prosecutor and the Carabinero was eventually detained and charged with homicide.[59] The ordinary court that was set to try the Carabinero declared the case to be outside of its jurisdiction simply because it involved a Carabinero. The case file was then passed on to the Santiago Second Military Court, and the Carabinero "was conditionally released pending trial."[60] Almost three years later, the court sentenced him to three years and one day of imprisonment for the crime of "unnecessary violence resulting in death" along with 60 days for "unnecessary violence causing less serious injuries."[61]

The Inter-American Court established that military courts "must only try military men for the commission of crimes or offenses that due to their nature may affect military interests."[62] Despite the murder of a civilian constituting a common crime, which is to be tried in an ordinary court according to Article 5 of the CJM, the involvement of a police officer was the ordinary court's basis for sending the case to the military tribunal. According to the Inter-American Court, cases in which military personnel violate the human rights of civilians must be tried in an ordinary court because civilians have "the right to participate in the criminal proceedings not only for the effects of the corresponding reparation of the damage but also to exercise their rights to the truth and to justice,"[63] which is a right that military courts lack the impartiality and competence to protect.

Part II: Inter-American System Document Analysis

Rules of Procedure of the Inter-American Commission on Human Rights

When the Commission processes petitions and deliberates over their referral to the Inter-American Court, it relies primarily on Articles 28-31 of the Rules of Procedure. If a petition against a member state meets the basic requirements given in Article 28 and has been forwarded to the government of the state in question in accordance with Article 30,[64] the Commission examines the domestic legal mechanisms potentially involved in the alleged human rights violation. Article 31(1) states that in order to determine whether a petition is admissible, the Commission must assess whether or not "the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law."[65] Because Chile's domestic judicial system does not comply with the Convention in the first place, interpretation of Article 31(1) is complicated, making the exceptions to Article 31(1) crucial to determining the admissibility of a petition against Chile for its military justice system's ongoing Convention violation.

Article 31(1)(a) waives the requirement given in Article 31(1) if "the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated."[66] Civilians whose human rights cases are heard by a military court are denied due process because the military courts lack the impartiality to be considered competent according to international law.[67] While the application of the exception given in Article 31(1)(a) in the case of Chilean military courts hearing human rights cases seems to be straightforward, its recognition depends on Commission members' interpretation of Article 31(1)'s vague language about the petitioner needing to have pursued or exhausted domestic legal remedies "... in accordance with the generally recognized principles of international law."[68] As demonstrated in the "Comparative Document Analysis" section of this thesis, this ambiguous stipulation is open to subjective interpretation, which could jeopardize the recognition of the Article 31(1)(a) exception when the Commission decides whether to refer a petition against Chile to the Court.

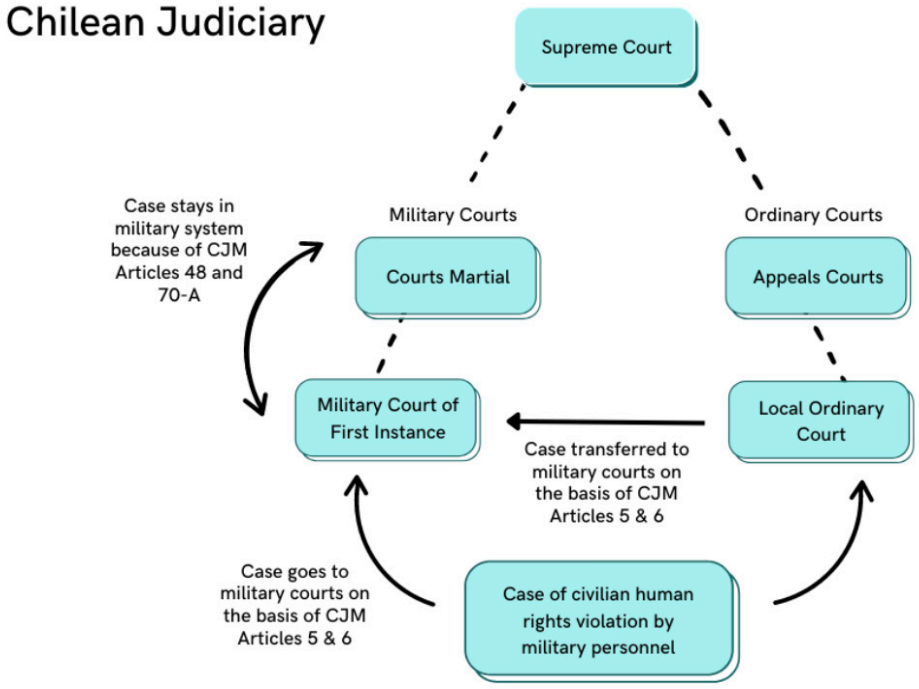
The requirement that petitioners pursue or exhaust domestic legal remedies is also waived by Article 31(1)(b) when "the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."[69] The application of Article 31(1)(b) is also vulnerable to the vague language in Article 31(1). Members of the commission could determine that the petitioner whose human rights case was heard by Chilean military courts has not been prevented from exhausting remedies under domestic law because they could take their case to Chile's higher courts.

The Court and the Inter-American System in theory are used as a last resort; they are to be engaged when a victim of human rights violation's only viable path to justice is to petition against their own state because there are no workable domestic procedures to modify existing systems. While Article 31(1) is designed to secure the Court's purpose as a last resort, it is too ambiguous for the Commission to be able to take the composition of the judiciary in the state in question into account when making decisions. This ultimately opens the Rules of Procedure up to interpretations that could allow violations by entities like the Chilean military justice system to fall through the cracks.

Comparative Document Analysis

To engage with the overlapping weaknesses of the foundational documents of the Chilean judiciary and the Inter-American System, it is necessary to reestablish the flaws within the legal frameworks of each system. As seen in the "Chilean Document Analysis" section, the legacy of Pinochet's military dictatorship endures in democratic Chile through the structure and procedures of its judiciary, despite its constructive relationship with the IAHRS in the years since the transition. In this previously dictatorial state, the provisions of the 1980 Constitution, COT, and CJM created with oversight and civilian protection in mind are, as seen in the Gutiérrez case, not enough to protect human rights according to the standards of the Convention.

FIGURE 1. A Visual Representation of the Chilean Judiciary's Structural Weaknesses.



As indicated in the "Inter-American System Document Analysis" section, the engagement of the IAHRS is, as a last resort, the best means of moving the needle forward on human rights protections when domestic remedies violate the Convention without consequence. Instances like the aforementioned Gutiérrez case, however, make it clear that the IAHRS is not always involved when it is most needed. The Chilean judiciary and the IAHRS share the following weakness: their articles pertaining to jurisdiction, accountability, and admissibility are in conflict with each other and are ambiguous enough that neither the Chilean judiciary nor the IAHRS can guarantee that their stipulations intended to ensure accountability and civilian protection will apply in any given case. The contradictory articles of the 1980 Constitution, COT, CJM combined with the vague language of Article 31 of the Rules of Procedure also increase the barriers to entry for petitions against Chile for its judiciary's non-compliance with the Convention.

At a more granular level, this common flaw of linguistic vagueness and ambivalence in the Chilean judiciary and IAHRS is reflected in the intersections of specific articles of each document analyzed in this thesis. For example, the structure and procedure of the Chilean judiciary as dictated by the 1980 Constitution and Articles 5, 6 and 330 of the CJM combined with the vagueness of Article 31 of the Rules of Procedure complicate the IAHRS' engagement with Chile's Convention violation through Article 31(1). As stated in the "Inter-American System Document Analysis" section, the language in Article 31(1) on exhausting domestic legal remedies "in accordance with the generally recognized principles of international law" is open to several interpretations. For example, international law allows for specialized courts (including those intended for military discipline) to exist, so long as they execute their constitutionally prescribed function, nothing more.[70]

According to Article 5 of the COT, Chile's military courts are specialized courts within the broader judiciary, meaning that the Chilean military justice system has the right to exist under international law. As Article 330 of the CJM includes the offense of "unnecessary violence," the Commission could use these two factors together to determine that a petitioner actually got due process and deny their petition because it does not meet the standards of the exemption given in Article 31(1)(a). If the Commission determines that the military court's jurisdiction over a petitioner's human rights case did get due process, it could also recommend that the petitioner take up their case with the Chilean Supreme Court. As demonstrated in the "Chilean Document Analysis" section, the Supreme Court's inclusion of military personnel in making decisions on jurisdictional disputes between military and ordinary courts make it partial and therefore incompetent in the eyes of international law.[71]

While this just an example of a potential interpretation of Article 31's language, the combined ambiguity of crucial articles of the Chilean and Inter-American documents ultimately makes one who petitions against Chile for the military justice system's Convention violation vulnerable to being tossed back into a system that cannot deliver justice

FIGURE 2. A Visual Representation of the IAHRS' Structural Weaknesses.

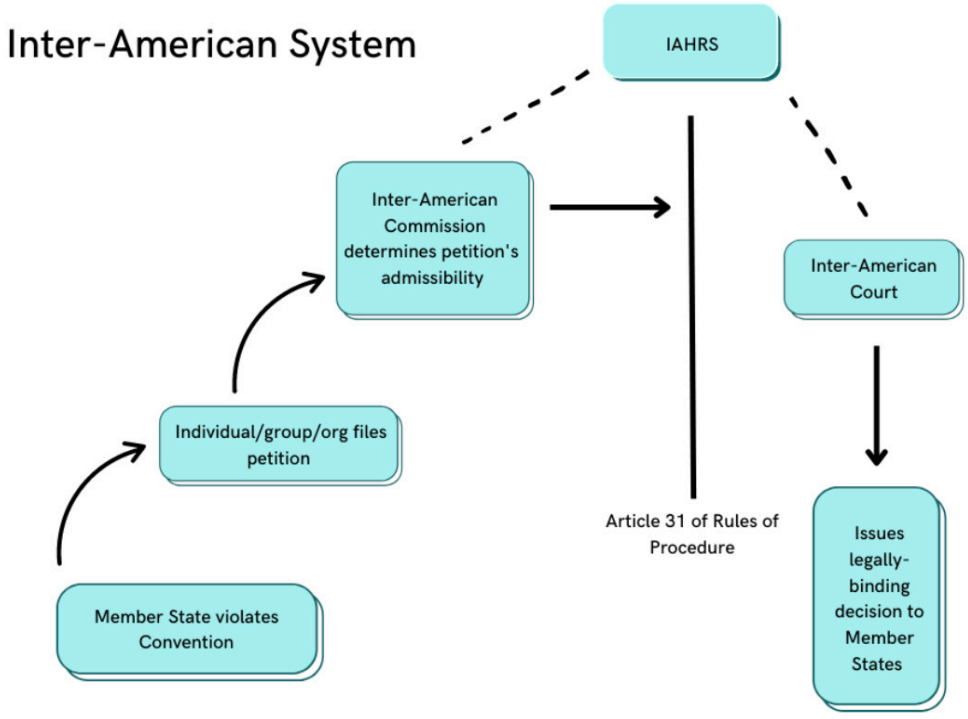
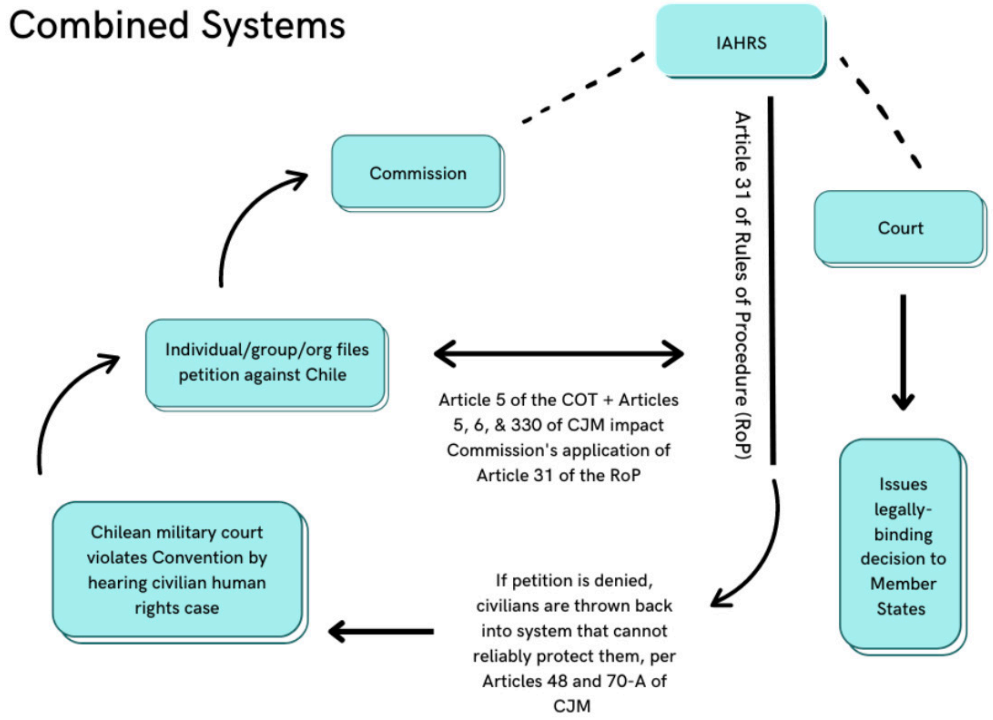


FIGURE 3. A Visual Representation of the Combined Effects of the Weaknesses of the Chilean Judiciary and the IAHRS.



as a result of the dictatorial legacy in its structures and the ambiguity of the laws themselves. It is also important to note that legal interpretation aside, the uncertainty of submitting a petition to the Commission against Chile creates a significant deterrent from pursuing the remedies of the IAHRS altogether.

The Gutiérrez case mentioned in the Chile docs section exemplifies these risks. A Carabinero murdered Gutiérrez, and the case went to the ordinary court (in accordance with Article 5 of the CJM), but the ordinary court kicked it back to the military courts because of the involvement of a Carabinero (in accordance with Articles 5-6 of the CJM). The military court heard the case, denying due process according to the constitution and international law. It would then seem logical for Gutiérrez to petition against the IAHRS because Chile is clearly violating the Convention, and the national judiciary was unable to right that wrong. However, the daunting and complicated process of submitting a petition against Chile for its military justice system's violation of the Convention (despite clear standards of international law) after a difficult, multi-year battle with the domestic legal system can make this choice seem all but illogical. Gutiérrez was just one of thousands of civilians denied justice by the military justice system,[72] demonstrating the urgent necessity of holding Chile accountable for its military justice system's blatant disregard for human rights and international law.

Conclusion

The Chilean military justice system's jurisdiction over civilian human rights cases is an enduring manifestation of Pinochet's legacy that obstructs the country's human rights progress. When it was created in 1948, the IAHRS was intended to be a tool for citizens of formerly dictatorial Member States like Chile to hold their governments accountable for human rights abuse according to international standards.[73] However, the IAHRS' ability to fulfill its purpose depends on whether its procedures take the structural weaknesses left by dictatorial legacies in Member States into account.

Pinochet's institutionalization of military power prior to his departure from office played a crucial role in protecting the military justice system from domestic accountability.[74] As demonstrated in the "Chilean Document Analysis" section, the jurisdictional ambiguity and lack of oversight created by the judicial frameworks from the Pinochet era allow for military courts to continue hearing human rights cases despite the 2010 law against it. The vague admissibility standards for due process in the Rules of Procedure of the Commission do not account for the effects of Pinochet's lasting influence on Chile's judicial system, threatening Chilean petitioners' access to the Inter-American Court as a Convention enforcement mechanism. Although it is subtle, the loophole for ongoing Convention violation that this relationship creates exposes the importance of dependable human rights protections in the structural frameworks of both domestic and international systems.

While the impunity created by the combined weaknesses of the Chilean judiciary and IAHRS is highly specific, its implications are profound when the regional history is considered. Between 1964 and 1990, military juntas also ruled Ecuador, Guatemala, Brazil, Bolivia, Argentina, Peru, Panama, Honduras, Uruguay, and El Salvador.[75] Like Chile, all of these countries have since transitioned to democracy, ratified the Convention, and joined the IAHRS.[76] Because the structural legacy of military rule permeates each country's relationship with the IAHRS, this exploration of Chile's relationship with the IAHRS creates a jumping-off point for understanding and eradicating the legacy of military rule in judiciaries throughout Latin America. The compounding effects of the ambivalent protocols central to interactions between the Chilean judiciary and IAHRS also highlight a specific area for improvement in the IAHRS and its Member States' capacity to eliminate impunity for human rights abuse. Without clear stipulations that reliably protect civilians from dictatorship-era judicial structures on the domestic and IAHRS sides of the equation, the IAHRS cannot fulfill its mission of supporting human rights progress in the Americas.

Appendix

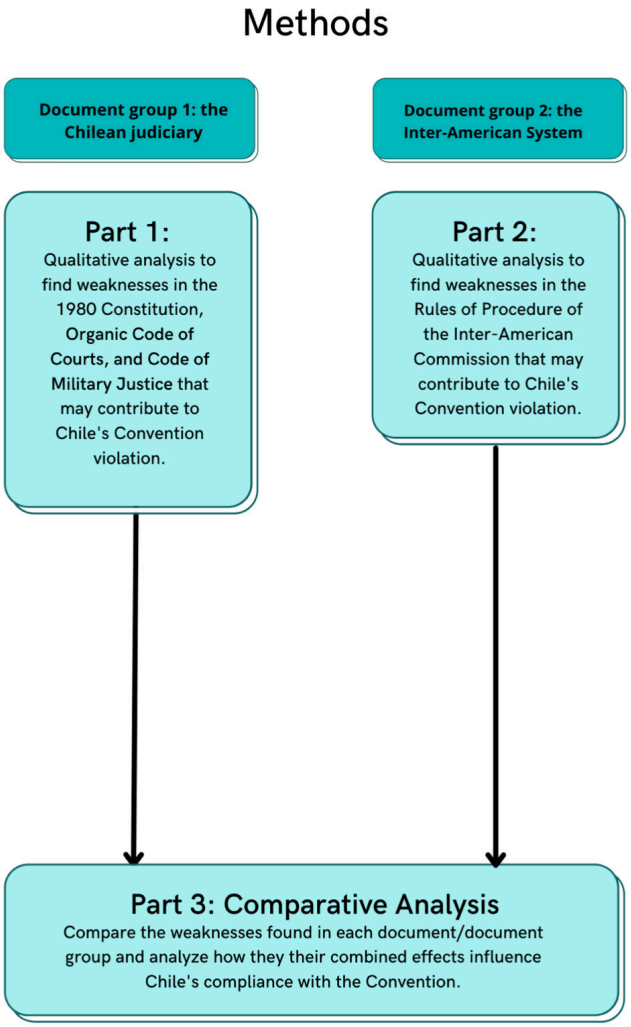


FIGURE A1. A Visual Representation of the Qualitative Analysis Process Described on Page 24 - 25.

Endnotes

1 Emilio Rojo, "Patricio Aylwin Sworn in as President of Chile," United Press International, May 11, 1990, https://www.upi.com/Archives/1990/03/11/Patricio-Aylwin-sworn-in-as-president-of-Chile/4697637131600/.

2 Elizabeth Lira, "The Reparations Policy for Human Rights Violations in Chile," in *The Handbook of Reparations*, (Oxford: Oxford University Press, 2008), 56.

3 Lira, "The Reparations Policy for Human Rights Violations in Chile," 56.

4 "Chile: 40 Years on from Pinochet's Coup, Impunity Must End," Amnesty International, September 10, 2013, https://www.amnesty.org/en/latest/news/2013/09/chile-years-pinochet-s-coup-impunity-must-end/.

5 Jo Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, (New York: Cambridge University Press, 2014), 13.

6 "What is the IACHR?," Organization of American States, 2022, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp.

7 "IACHR: Petition and Case System," Organization of American States, 2010, https://www.oas.org/en/iachr/docs/pdf/howto.pdf.

8 Pasqualucci, *The Practice and Procedure*, 25.

9 "What Is the I/A Court H.R.?," Inter-American Court of Human Rights, 2022, https://www.corteidh.or.cr/que_es_la_corte.cfm.

10 Inter-American Court of Human Rights, "What Is the I/A Court H.R.?"

11 "Decisions and Judgments of the Inter-American Court," Organization of American States, August 1, 2009, https://www.oas.org/en/iachr/expression/jurisprudence/si_decisions_court.asp.

12 "Norín Catrimán et Al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile | IACHR," Loyola Law School, 2014, https://iachr.lls.edu/cases/nor%C3%ADn-catrim%C3%A1n-et-al-leaders-members-and-activist-mapuche-indigenous -people-v-chile.

13 "Case of Durand and Ugarte v. Peru Judgment of August 16, 2000," Inter-American Court of Human Rights, August 16, 2000, https://www.corteidh.or.cr/corteidh/docs/casos/articulos/seriec_68_ing.pdf.

14 "Basic Documents - American Convention," Organization of American States, 2020, https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm.

15 "Palamara Iribarne v. Chile," Columbia Global Freedom of Expression, 2022, https://globalfreedomofexpression.columbia.edu/cases/palamara-iribarne-v-chile/.

16 "Case of Palamara-Iribarne v. Chile Judgment of November 22, 2005 (Merits, Reparations, and Costs)," Inter-American Court of Human Rights, November 22, 2005, https://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf.

17 Organization of American States, "American Convention."

18 Inter-American Court of Human Rights, "Case of Palamara-Iribarne v. Chile."

19 "Chile: 'I Didn't Know There Were Two Kinds of Justice': Military Jurisdiction and Police Brutality in Chile," Amnesty International, April 5, 2016, https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR2232092016ENGLISH.pdf.

20 Congreso Nacional de Chile, "Ley 20477 Modifica Competencia de Tribunales Militares," Ley Chile, December 30, 2010, https://www.bcn.cl/leychile/navegar?idNorma=1021613.

21 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

22 Silvia Borzutzky, *Human Rights Policies in Chile the Unfinished Struggle for Truth and Justice,* (New York: Springer International Publishing, 2018). 2.

23 Borzutzky, *Human Rights Policies in Chile*. 2.

24 Borzutzky, *Human Rights Policies in Chile*. 28.

25 Borzutzky, *Human Rights Policies in Chile*. 28.

26 Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park: The Pennsylvania State University Press, 2010). 17.

27 Collins, *Post-Transitional Justice*. 17.

28 Carabineros de Chile, "Manual de Doctrina de Carabineros de Chile," Red de Seguridad y Defensa de América Latina, 2010, https://www.resdal.org/caeef-resdal/assets/chile---manual-de--doctrina-de-carabineros-de-chile.pdf.

29 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

30 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

31 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

32 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

33 "Undue Process | Terrorism Trials, Military Courts and the Mapuche in Southern Chile," Human Rights Watch, April 29, 2015, https://www.hrw.org/report/2004/10/27/undue-process/terrorism-trials-military-courts-and-mapuche-southern-chile.

34 Human Rights Watch, "Undue Process."

35 Jo M Pasqualucci, *The Practice and Procedure*, 25.

36 Jo M Pasqualucci, *The Practice and Procedure*, 25.

37 Fernando Basch et al., "The Effectiveness of the Inter-American System of Human Rights Protection," *Sur International Journal on Human Rights* 7, no. 12 (2010): 10, https://sur.conectas.org/en/effectiveness -inter-american-system-human-rights-protection/.

38 Basch et al., "The Effectiveness of the Inter-American System," 32.

39 Constitute Project, "Chile's Constitution of 1980 with Amendments through 2012," 2012, https://www.constituteproject.org/constitution/Chile_2012.pdf.

40 Elin Skaar, "Human Rights Violations and the Paradox of Democratic Transition. A Study of Chile and Argentina," Chr. Michelsen Institute, December 1994, http://hdl.handle.net/11250/2435818.

41 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

42 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

43 "IACHR: Mandate and Functions," Organization of American States, 2022, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/functions.asp.

44 Organization of American States, "Decisions and Judgments of the Inter-American Court."

45 Constitute Project, "Chile's Constitution of 1980."

46 Constitute Project, "Chile's Constitution of 1980."

47 Ministerio de Justicia, "Código Orgánico de Tribunales Ley 7421," Ley Chile, February 26, 2022, https://www.bcn.cl/leychile/navegar?idNorma=25563.

48 Ministerio de Justicia, "Código Orgánico de Tribunales."

49 Ministerio de Justicia, "Decreto 2226 Código de Justicia Militar," Ley Chile, December 19, 1944, https://www.bcn.cl/leychile/navegar?idNorma=18914.

50 Ministerio de Justicia, "Código de Justicia Militar."

51 Ministerio de Justicia, "Código de Justicia Militar."

52 Ministerio de Justicia, "Código de Justicia Militar."

53 Ministerio de Justicia, "Código de Justicia Militar."

54 Ministerio de Justicia, "Código de Justicia Militar."

55 Ministerio de Justicia, "Código de Justicia Militar."

56 Ministerio de Justicia, "Código de Justicia Militar."

57 Inter-American Court of Human Rights, "Case of Palamara-Iribarne v. Chile."

58 "When Tyrants Tremble," Human Rights Watch, accessed April 28, 2022, https://www.hrw.org/reports/1999/chile/Patrick-01.htm.

59 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

60 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

61 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

62 Case of Radilla-Pacheco v. Mexico Judgment," Inter-American Court of Human Rights, November 23,

2009, https://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf.

63 Inter-American Court of Human Rights, "Case of Radilla-Pacheco v. Mexico."

64 "Rules of Procedure of the Inter-American Commission on Human Rights," Organization of American States, August 1, 2009, https://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp. Article 28 specifies the personal, contact, and case information necessary for a petition to be considered complete.

65 Organization of American States, "Rules of Procedure."

66 Organization of American States, "Rules of Procedure."

67 Inter-American Court of Human Rights, "Case of Durand and Ugarte v. Peru."

68 Organization of American States, "Rules of Procedure."

69 Organization of American States, "Rules of Procedure."

70 Inter-American Court of Human Rights, "Case of Durand and Ugarte v. Peru."

71 Inter-American Court of Human Rights, "Case of Palamara-Iribarne v. Chile."

72 Amnesty International, "Chile: 'I Didn't Know There Were Two Kinds of Justice.'"

73 Organization of American States, "What Is the IACHR?"

74 Silvia Borzutzky, *Human Rights Policies in Chile*. 28.

75 Oxford University Press, "Military Government in Latin America, 1959–1990," Oxford Bibliographies, September 20, 2019, https://www.oxfordbibliographies.com/view/document/obo-9780199766581/obo-9780199766581-0015.xml.

76 Organization of American States, "What Is the IACHR?"

References

Amnesty International. "Chile: 'I Didn't Know There Were Two Kinds of Justice': Military Jurisdiction and Police Brutality in Chile." April 5, 2016. https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR2232092016ENGLISH.pdf.

Amnesty International. "Chile: 40 Years on from Pinochet's Coup, Impunity Must End." September 10, 2013. https://www.amnesty.org/en/latest/news/2013/09/chile-years-pinochet-s-coup-impunity-m ust-end/.

Basch, Fernando, Leonardo Filippini, Ana Laya, Mariano Nino, Felicitas Rossi, and Bárbara Schreiber. "The Effectiveness of the Inter-American System of Human Rights Protection." *Sur International Journal on Human Rights* 7, no. 12 (June 2010). 10-32. https://sur.conectas.org/en/effectiveness-inter-american-system-human-rights-protection/.

Borzutzky, Silvia. Human Rights Policies in Chile: the Unfinished Struggle for Truth and Justice. New York: Springer International Publishing, 2018.

Carabineros de Chile. "Manual de Doctrina de Carabineros de Chile." Red de Seguridad y Defensa de América Latina. April 2010. https://www.resdal.org/caeef-resdal/assets/chile---manual-de--doctrina-de-carabineros-de-chile.pdf.

Collins, Cath. *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador.* University Park: The Pennsylvania State University Press, 2010.

Congreso Nacional de Chile. "Ley 20477 Modifica Competencia de Tribunales MILITARES." Ley Chile. December 30, 2010. https://www.bcn.cl/leychile/navegar?idNorma=1021613.

Constitute Project. "Chile's Constitution of 1980 with Amendments through 2012." 2012. https://www.constituteproject.org/constitution/Chile_2012.pdf.

Global Freedom of Expression. "Palamara Iribarne v. Chile." Columbia University. 2022. https://globalfreedomofexpression.columbia.edu/cases/palamara-iribarne-v-chile/.

Human Rights Watch. "Undue Process | Terrorism Trials, Military Courts and the Mapuche in Southern Chile." April 29, 2015. https://www.hrw.org/report/2004/10/27/undue-process/terrorism-trials-military-courts-and-mapuche-southern-chile.

Human Rights Watch. "When Tyrants Tremble." Human Rights Watch. Accessed April 28, 2022. https://www.hrw.org/reports/1999/chile/Patrick-01.htm.

Inter-American Court of Human Rights. "Case of Durand and Ugarte v. Peru Judgment of August 16, 2000." August 16, 2000. https://www.corteidh.or.cr/corteidh/docs/casos/articulos/seriec_68_ing.pdf.

Inter-American Court of Human Rights. "Case of Palamara-Iribarne v. Chile Judgment of November 22, 2005 (Merits, Reparations, and Costs)." November 22, 2005. https://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf.

Inter-American Court of Human Rights. "Case of Radilla-Pacheco v. Mexico Judgment." November 23, 2009. https://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf.

Inter-American Court of Human Rights. "What Is the I/a Court H.R.?" 2022. https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en#:~:text=It%20is%20an%20auto nomous%20legal,it%20can%20order%20provisional%20measures.

Lira, Elizabeth. "The Reparations Policy for Human Rights Violations in Chile." In *The Handbook of Reparations*, 56. Oxford: Oxford University Press, 2008.

Loyola Law School. "Norín Catrimán et Al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile | IACHR." 2014. https://iachr.lls.edu/cases/nor%C3%ADn-catrim%C3%A1n-et-al-leaders-members-and-a ctivist-mapuche-indigenous-people-v-chile.

Ministerio de Justicia. "Código Orgánico de Tribunales Ley 7421." Ley Chile. February 26, 2022. https://www.bcn.cl/leychile/navegar?idNorma=25563.

Ministerio de Justicia. "Decreto 2226 Código de Justicia Militar." Ley Chile. December 19, 1944. https://www.bcn.cl/leychile/navegar?idNorma=18914.

Organization of American States. "Basic Documents - American Convention." 2020. https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm.

Organization of American States. "Basic Documents in the Inter-American System." August 1, 2009.
https://www.oas.org/en/iachr/mandate/Basics/intro.asp#:~:-text=The%20Basic%20Docum ents%20include%20the.

Organization of American States. "Decisions and Judgments of the Inter-American Court." August 1, 2009. https://www.oas.org/en/iachr/expression/jurisprudence/si_decisions_court.asp.

Organization of American States. "IACHR: Mandate and Functions.", 2022. https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/functions.asp.

Organization of American States. "IACHR: Petition and Case System." 2010. https://www.oas.org/en/iachr/docs/pdf/howto.pdf.

Organization of American States. "Rules of Procedure of the Inter-American Commission on Human Rights." August 1, 2009. https://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp.

Organization of American States. "What Is the IACHR?" 2022. https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp.

Oxford University Press. "Military Government in Latin America, 1959–1990." Oxford Bibliographies, September 20, 2019. https://www.oxfordbibliographies.com/view/document/obo-9780199766581/obo-978019 9766581-0015.xml.

Pasqualucci, Jo. *The Practice and Procedure of the Inter-American Court of Human Rights*. New York: Cambridge University Press, 2014.

Rojo, Emilio. "Patricio Aylwin Sworn in as President of Chile." United Press International. May 11, 1990. https://www.upi.com/Archives/1990/03/11/Patricio-Aylwin-sworn-in-as-president-of-Chil e/4697637131600/.

Skaar, Elin. "Human Rights Violations and the Paradox of Democratic Transition: A Study of Chile and Argentina." Chr. Michelsen Institute. December 1994. http://hdl.handle.net/11250/2435818.S

Expert Insights

A Conversation with Ambassador Maire Yovanovitch on the Future of Ukraine and Great Power Competition

Phillip Meng and Casper Pei-Shen Suen
with questions by Jingyi Pan and Wendi Zhou

March 30, 2023

Ambassador (ret.) Marie Yovanovitch is a Senior Fellow at the Carnegie Endowment for International Peace and Nonresident Fellow at Georgetown University's Institute for the Study of Diplomacy. Previously, she served as the U.S. Ambassador to Ukraine (2016-2019), the Republic of Armenia (2008-2011) and the Kyrgyz Republic (2005-2008). This interview has been edited for clarity.

Jackson School Journal: Thank you so much for speaking with us. Our upcoming issue includes research papers on post- conflict reconciliation, military justice, and Russian kleptocracy: what we think to be relevant issues right now. For our conversation today, we wanted to start with your views on the Russian invasion of Ukraine. What does a just conclusion to the Russian invasion of Ukraine look like? And what does it take to get there?

Yovanovitch: Well, a just conclusion—which is different, obviously, from a conclusion—would have a sovereign, independent Ukraine that is in charge of not only its internal governance, but also its foreign policy decisions about partnerships and alliances. That would be within the international borders of Ukraine, which includes Crimea, and eastern parts of the Donbas that Russia took illegally in the 2014-2015 time period.

And then there's the question of security guarantees, which I think is something that the international community is going to have to grapple with because we don't want to be in the exact same place that we were in 10 years ago. We saw that in 2014-2015, Russia and Ukraine, with the help of Germany and France, signed the so-called Minsk accords—two agreements that allegedly brought a ceasefire, but which wasn't actually a ceasefire. Russia didn't implement any of its commitments. Ukraine implemented some of theirs, but neither side was really satisfied.

And here we are, in 2023, after a year of Russia's second brutal war against Ukraine. So I think a just peace, a just conclusion, would provide security guarantees to ensure that Ukraine and the international community is not in this position again. And the word just is what I'm thinking about, because justice is an important concept. I think there needs to be accountability for the war crimes that Russia has perpetrated against the Ukrainian people.

As towns and cities and villages have been liberated from Russian domain, the Ukrainian people and the international community have seen the crimes that have been perpetrated, whether it is torture, rape, or taking children—not just adults, but children as well–to be sent to Russia for adoption in Russia. Some of them are very, very young. These are children who, unless they are brought back fairly soon to Ukraine, are not going to remember that they're Ukrainian. They're not going to remember the Ukrainian language or culture, they're not going to remember their families. But there are people who are waiting in Ukraine for them who love them. It is a terrible thing. And I think there needs to be some justice brought to Ukraine and to the individual victims and their families, it is important for that country in order to move forward. I think it is important for Russia too, as Russians move forward in the post-conflict world, because the Russian people need to understand that what Russia has done in their name is wrong. It is against the international order, and you don't get away with it if you perpetrate those kinds of crimes. We all understand that.

There will be accountability, and the ICC, with its most recent decision to try to hold Vladimir Putin accountable, is sending a really strong message to the Russians and to the world. And so that actually gave me some hope that Putin and others will be held accountable. It's important for Russia's future development that Russian citizens say we don't want to be that kind of country, we want a different kind of country. And you know, maybe that's optimistic and naive. But if they're not held accountable, they're going to think, well, I guess it's okay.

And then the third part of this is sending it out as a signal to other dictators who are watching this, they're watching to see if Russia is successful. They're watching to see whether the West is pulling together and ready to defend democracy, ready to defend its values, ready to defend its interests and its allies. And if Russia is successful in its bid to take over

Ukraine, those countries are going to think "we can do this too," because the West is not ready to defend its own values.

Jackson School Journal: Ambassador, you mentioned the importance of international security guarantees for Ukraine—but that might run into a growing concern that a lot of publics in the West are becoming less supportive of Ukraine. There is recent Chicago Council survey data that nearly half of the American public now wants Ukraine to settle for peace. How do we build support for Ukraine in what looks to be a protracted conflict?

Yovanovitch: You framed it as a lot of publics, but I would note that in Europe there's a lot of support for Ukraine. First of all they are geographically closer. Secondly, the memory of World War Two is also fresher. There's a memory of what that sort of war entails that I think is stronger than it is here in the United States.

And so support in Europe is still quite strong. There are three reasons for that—one, because Ukraine is successful. Secondly, because of robust American leadership, which countries weren't necessarily expecting to see. And thirdly, because the war is bringing the far right and the far left together on the political spectrum and people like that there's more unity. And of course the further east you go—the Scandinavians, the Baltics—the stronger that support is.

But in the US, you're right that over time there has been less support. People wonder how long this is going to take. What is the price for Ukrainians, in terms of the heavy losses that they're taking and the destruction to their country, but also in the amount of resources we are providing? How much more, and how much longer? This is exactly what Vladimir Putin is counting on—that the West, and particularly the United States, is going to lose its focus and then he can move forward in Ukraine. I think it would be a strategic defeat for the West if that is allowed to happen. So one of the things that is going to be important is Ukraine's spring offensive. And hopefully Ukraine will be successful, because success breeds success. Americans like success, just like European countries do.

I think the Biden administration has done an amazing job of providing support to Ukraine. A year ago, I don't think I would have ever predicted the amount of military equipment that is being sent to Ukraine, the types of military equipment that are being sent, and how quickly it is being sent there. So across the board, I think that the Biden administration has performed not only a kind of a policy leap, but also a logistical miracle in getting all of this equipment into a war zone. That said, it's not enough, and it's not fast enough.

I think that slogan that gave me so much hope—"We're in it for as long as it takes"—now has to be adapted to: "We are with Ukraine, to provide as much as they need as quickly as they need it, so that Ukraine can win." The winning part is important. It's obviously important to Ukraine, because this is an existential struggle. Russia has made it clear that it does not consider them a real people, that they don't have a real language, they don't have a culture, they don't have a country. So if the Ukrainians stop fighting, they face two choices. Either they are Russified and start identifying as Russian or they are killed. Neither of those are options that the Ukrainian people want. So they have to continue to fight.

Jackson School Journal: Of course, American aid is intended to help Ukraine defend itself against Russia's invasion, and the U.S. has certainly led a robust international response. But for the U.S. and other countries, what is at stake here, beyond the security of Ukraine? What message does the U.S. response send?

Yovanovitch: This war is about Russia expanding its empire, about Putin personally sealing his legacy as the heir to Peter the Great. If Russia is successful in doing that in Ukraine, Russia will continue on. And how do we know that? We know that because you just need to look at what Russia has done over the last 20 years. It grabbed two parts of Georgia's territory in 2008, and the international community criticized but took no action, not a single sanction. Then in 2014 and 2015, when Crimea and parts of the Donbas were taken, we were stronger in terms of our reaction, both in terms of sanctions and providing assistance. But it was not enough, because Russia was able to withstand it. Russia kept a low volume war going on, shall we say. Although, three or four Ukrainians died every week—that's not a low volume to those families. It was soldiers being killed, but it was also civilians that were living along the front line and were just in the wrong place at the wrong time. And then Russia waited for a strategic window—apparently, that was February 2022—and they did it again. If you look at those actions, if you look at Putin's writings, if you look at what he has said, it is clear that he will keep on going if he's successful.

And it is also clear that other dictators will learn that same lesson, that if you can wait out the West, you can just do what you want. If you are big enough, if you are strong enough, you can take another country's territory. And that makes all of us, including the United States, less secure and less prosperous. Look at what happened with Ukraine and global grain exports. So we will be less prosperous and we will be less free because it's a three-legged stool, the economy, politics and liberties, and security. They all reinforce each other—or not. And so this is also about the future of the United States and the world that we live in.

And I know that sounds like a big statement, but I actually believe it to be true.

We have lived under the rules that were established after World War Two, when we said never again, we can't repeat that. And the Soviet Union came to the table too, helped to create the UN, all the principles that are laid out in the UN Charter of sovereignty, self-determination, respect for borders. I'm not saying that we have always lived up to those ideals, and I'm not saying that the international system is a perfect system—it clearly needs reform. And there are a lot of people thinking about how we can better adapt the international system, which is not just the UN, but institutions, regulations, agreements and treaties. And it's also our expectations—our values are the things that we have come to expect from sovereign nations. All of that together makes up the international order. We need to work on making that order one that is more representative of the world we have today, as opposed to the world we had in 1945. We also have new challenges that, to be better able to address them, [the international order] needs to be more flexible, more nimble, more effective. And so don't get me wrong, I'm not saying that the international order is perfect. But I am saying let's not throw it out completely until we have something that can replace it. Because that system has kept not just the US, but the world, more secure, more free, and more prosperous than at any other time in human history. So I think that if Russia, country-by-country, starts pulling the bricks out of that international system, all of us are affected. I would just go back to Volodomyr Zelensky, who often encapsulates a thought better than anybody else—he addressed Congress last December. And he said, American assistance is not charity. This is an investment in your security, in global security. And I think that's exactly right.

Jackson School Journal: Defending that international order has been a priority of the Biden Administration. What are your thoughts on their framing of American foreign policy as a contest between democracies and autocracies?

Yovanovitch: I happen to believe that that is true. And I think that it is very resonant with some countries, some peoples. In other parts of the world, maybe it isn't as effective an argument. But I do think that every country has an interest in the UN principles of self-determination, inviolability of borders, of sovereignty. Whether you are in Africa, in Asia, in South America, Latin America, or Europe, these are principles that are important to every country. And so what happens with Ukraine and Russia will have resonance and will have an effect all over the world.

Jackson School Journal: Our last question relates to great power competition. Some are worried that the war in Ukraine signals a new era of hostility between the great powers—a second Cold War, if you will. Certainly, tensions between the US and China in the Taiwan Strait have escalated since the beginning of Russia's invasion. What are the primary takeaways from the war in Ukraine in terms of deterring great power conflict?

Yovanovitch: The thing about diplomacy and foreign policy is that it's an art, not a science. We can learn a lot from the histories of countries, we can learn a lot by studying the cultures of China, Russia, and other countries around the world. But like I said, it's an art, it's not a science—we're not making widgets where you'll have the same outcome if you put in the same input. So I think one has to be very careful about calibrating policy.

But the bottom line is—I just talked about Georgia and Crimea—is that this administration, and the Obama administration before it, was very careful about not wanting to provoke Russia. And my view when I was in the Foreign Service, and now that I'm retired from the Foreign Service, is what could be more provocative than a country invading another sovereign country? I mean, who is the provocateur here? It's certainly not Ukraine, Ukraine was trying to defend itself. And if we are helping a country defend itself, how can that be provocative? The other country is attacking. So I think it is good that we have responsible leaders who are carefully weighing all of these decisions, because they are big decisions, and we don't want to get it wrong. But I think that it is important to realize that, in my opinion at least, part of the reason we are where we are with the second invasion of Ukraine is that Putin thought he could get away with it. He thought that the West was weak. Angela Merkel had left the scene, and it looked like there'd be a far-right president coming up in France. The US had just presided over a pretty disastrous withdrawal from Afghanistan. And I think Putin made an assessment that the Biden administration would not be able to rally, and rally Europe behind it. All of that turned out to be wrong. But I think that, as we've moved forward, the Biden administration has been very concerned about not crossing any of Putin's red lines, but we don't actually know what those red lines are. And frankly, I am of the view that maybe Putin himself doesn't know what the red lines are, because he has staked out red lines all along. And yet, we've managed to cross them and there has been very little response, if any. And so I think it's important that we not self-deter. I think it's important that we be strong in our response, so that we don't leave countries like Russia thinking, "well, they did nothing with Georgia, they did nothing with Crimea, I can invade."

And I think Putin was a little bit surprised by the robust

response, both from the Ukrainians as well as the international community. And so I think what we can learn from that is don't self-deter, because when we self-deter we're sort of negotiating with ourselves. Is this what Putin is thinking? We don't know what he's thinking. And we do need to be mindful, we need to be deliberate, we need to be careful in our communications. But I think it's important that we not self-deter. And it's clear to me that in some ways it is more dangerous for the US to take the self-deterring stance rather than the strong stance. Weaker responses engender their own responses. So it's better to be strong and upfront about what our response is going to be, and then follow it up with action. And I think that's what we're seeing in Ukraine. And I think that's the message that we need to take forward. But as President Biden has said numerous times, strong nations don't bluff. So if we say something, we'd better be ready to back it up.

Jackson School Journal: Thank you so much for your time. We deeply appreciate it.

Yovanovitch: Okay, great. Thank you very much.

Congressman Adam Smith on U.S. National Security and Arms Control After the Russian Invasion of Ukraine

Phillip Meng

April 20, 2022

Adam Smith is the U.S. Representative for Washington's 9th Congressional District. He has served as the Chair (2019-2023) and Ranking Member (2023-present) of the House Armed Services Committee. This interview has been edited for clarity.

Jackson School Journal: Thank you so much for joining us. I want to start with the Russian invasion of Ukraine. What does the invasion tell us about our strategic priorities and the emerging era of great power competition?

Smith: It tells us that we are living in a very dangerous world and that we have to be extraordinarily careful about how we proceed, because the costs are high and the risks are real. We have a strong disagreement with a nuclear-armed power. That drives home the importance of international diplomacy and the role the U.S. plays in the world. We have to be incredibly thoughtful about the threat from autocratic governments like Russia and China.

Jackson School Journal: You mention that we are in a diplomatic conflict with a nuclear power. Russia's rhetoric suggesting nuclear escalation is virtually unheard of since the Cold War. Do you think that's a credible risk? Does that advise some change in our own nuclear posture?

Smith: I think it is a credible risk, but I don't think it is that high. I don't think Putin is suicidal and I think he's using the threat as much for intimidation as an actual threat. But it suggests the incredible need to get back to an arms control discussion.

Under Presidents Nixon, Carter, and Reagan, when we were having arms control discussions with the then-Soviet Union, we at least understood the force structures. But right now, there's a lot of new weapons development. There are new missile, nuclear weapons, and missile defense technologies. The risk of misunderstanding–for one side to think that they are threatened and need to respond to the threat, or that they're powerful enough to conceivably win a nuclear war–is going up, and the only way to reduce that threat is transparency and dialogue. With Russia and China, we need to re-enter discussions to better understand the arsenals we face and to get back to a mutually deterrent posture.

Jackson School Journal: How do you view the future of arms control agreements? Do you see the United States pursuing the restoration of the Intermediate-Range Nuclear Forces (INF) Treaty or an extension of the New Strategic Arms Reduction Treaty (New START) past 2026?

Smith: New START is something that we could conceivably use as a starting point, but I think we're in a whole other realm right now. First, you have three parties, not two, because China is a rising nuclear power. It is not a one-for-one, zero-sum game.

Second, weapons development is going in a whole new direction. If you have a cyberattack capability that can shut down the other side's deterrent, do you think, can I shut them down and attack them? And we are talking about more than just nuclear delivery mechanisms. What type of nuclear weapon? What type of missile defense?

So, it is not enough to restart what we shut down. Whether you are talking about the INF, or New START, or going back to a ballistic missile treaty, you have to understand how warfare has modernized. What is going on with satellites, what is going to happen in space? How can we protect our space assets, and how can all sides involved feel that their space assets are protected? All those things have to be put on the table, and we have to have a transparent discussion because the risk of miscalculation is truly frightening.

Jackson School Journal: Surely these commitments cost money: I understand that the White House has proposed a 4% boost in defense expenditures this coming year. What do you think about the argument that we are better off investing in solving domestic challenges, rather than investing further in defense?

Smith: Well, first of all, negotiating arms control treaties does not cost much money. We could save money if we had them. But we also need an adequate deterrent—we have to be able to do both. I would also say that in terms of domestic expenditures, we just invested $6 trillion over and

above the regular budget, with the Coronavirus Aid, Relief, and Economic Security (CARES) package, the Recovery Act, and the bipartisan infrastructure deal. We've made significant domestic investments, so I think we can also have an adequate defense.

The last thing is that we have to spend wisely and effectively within the Pentagon. I worry a great deal that a lot of people have a simple approach on defense: that the more we spend, the better. I don't agree with that. I think we have to be a little more cautious about the money we spend.

Jackson School Journal: I want to speak especially to European deterrence, since that is the primary regional implication for Ukraine. In the past few years, many have criticized NATO partners, especially Germany, for underspending on defense and deterrence. As European readiness is tested, do you agree with that assessment?

Smith: This is all part of adapting to the post-"post-Cold War era". As I mentioned in my remarks, after World War II, Europe expected to demilitarize. They had been fighting each other for about a thousand years at that point, in one way or another, and they could now focus on their economies instead. The only reason that worked is because the U.S. military was strong enough to deter the Soviet Union at the time.

We are now entering a different world. Russia is a threat, but it is a different threat than the Soviet Union was. Because the European Union has been around for a while, there is more reason to believe that peace in Europe is resilient. So I think our strategy should shift to Europeans being able to defend themselves–not on their own, but the partnership needs to be more balanced. We are already seeing that happen in Eastern European countries, which are reacting to the Russia threat by growing their militaries. Germany also dramatically boosted their military above the 2% level. I think that is an appropriate part of the strategy.

Jackson School Journal: In relation to Eastern Europe, some academics like John Mearsheimer have argued that the Russian invasion of Ukraine is a response to the expansion of NATO after 1992. Do you believe there is merit to that argument?

Smith: I would say there is merit to the argument, but I ultimately don't agree. This conflict ultimately grew out of Russia's inability to emerge from the Soviet Union and build a stable economy and government, which opened the door for Putin to use Russia for his megalomaniacal, authoritarian ambitions. Would that have been different if NATO hadn't expanded? I find that hard to believe.

The other piece of the equation that ultimately brings me to this answer is what Eastern Europe wanted after the Soviet Union fell. They wanted to be integrated into the West and to be protected so they could get out under the thumb of the Soviet Union and grow their economy. Estonia, which I visited in February, is a great example. They were one of the poorest countries in the northern hemisphere under the Soviet Union and are now one of the most prosperous because of economic freedom and integration within the European Union. The defense alliance protected them and gave them the freedom to achieve that. You can't walk through Poland, Romania, Lithuania, or Estonia and not say, [expansion] has given more freedom and opportunity to more people.

Jackson School Journal: On the subject of travel and alliances, I understand that you've recently returned from India and Australia, so I want to turn to the Indo-Pacific and the Quadrilateral Security Dialogue. Leaders have insisted that the Quad is not a defense pact, but military-to-military collaboration is accelerating. Where do you see that partnership evolving?

Smith: I think the biggest area is supply chain issues. Starting in the mid-1990s, as China decided to pivot to a more capitalist approach to economics (if not in politics), they became a go-to place to do business. The corporate world wanted access to this fast-growing enormous market of 1.4 billion people, and they saw an opportunity in fewer regulations and cheaper labor.

So many aspects of the global economy became concentrated in China, that even if China wasn't as belligerent as it is now, they would have disproportionate power. There would be a need to better distribute that power, and the Quad is about how we build up the capability of countries like India and Australia. In pharmaceuticals, for example, India is second to China and growing. And for manufacturing, we can build broader partnerships to balance against China's growing power. It's not just India and Australia, but Vietnam, Thailand, South Korea certainly are robust powers where we want to expand our options. So, it really is as much about economics as it is about defense and deterrence, if not more so.

Jackson School Journal: The balance of power with respect to the Taiwan Strait has tilted significantly towards China. The War in Ukraine has also carried particular resonance in Taiwan. Do you think there are any steps the United States and Taiwan can take now to improve deterrence against armed conflict?

Smith: Absolutely, I think we learned a lot from Ukraine.

We learned that a smaller force can still have a devastating deterrent impact on a larger force. It comes down to missiles, drones, and information technology. So, we need to get more missiles, more drones, and make sure that their information technology is robust and secure.

We don't have to send Taiwan a bunch of tanks or a bunch of ships: missiles, drones and information technology are the key to presenting an adequate deterrent. I think this was understood before Ukraine, but certainly it has driven the point home.

Jackson School Journal: When it comes to advancing Indian capabilities, one of the implications of the Ukraine conflict is that it has made some differences in the United States and India's worldviews clear, especially with respect to Russia. Is this a roadblock in US-India collaboration toward a 'free and open Indo-Pacific'?

Smith: It's more of a speed bump than a roadblock in US-India relations. Whenever you're dealing with a partner, the key is to not ask them to do something they can't do. It's always a fine line—you want to pursue your interest, but if you're going to have a partnership, you must understand where your partner is coming from. 60% of Indian military equipment comes from Russia. They can't just cut that off: they won't have the spare parts for their military. We want to wean them off that.

And if India can't help us by directly confronting Russia, how can we help each other? That gets back to economics. When I visited Hyderabad, a massive and growing tech center, I was struck by their ability to develop, manufacture, and grow economically. In the defense industry, both Lockheed and Boeing have partnerships in Hyderabad where they make wings for the F-16 and tail sections for the C-130s. I visited a Boeing plant where they're making the fuselage for the F-18.

We can build and grow on these partnerships. But to tell India to break up with Russia entirely is not a reasonable thing to ask. We cannot build the partnership that way going forward.

Jackson School Journal: Some people believe that climate change is an area of collaboration with China. Do you believe that collaborating on addressing climate change is relevant to our military and security policies?

Smith: One hundred percent. China is going to be a major factor in the world, and you can't imagine a world where they're not. So, we have to find areas where we can work together even as we balance against their more aggressive behavior.

Climate change is an enormous opportunity. Protecting the globe is in everybody's best interest, and it is a huge market if we develop technologies on wind, solar, biofuels, hydrogen, perhaps even fusion and nuclear energy. Energy efficiency, transmission, the resiliency of energy grids: it's a massive opportunity to work together.

Jackson School Journal: My last question is personal to us as students: for young people who care about national security, how can we play a part?

Smith: Get involved and get engaged—certainly, the Jackson School is a huge player. As I said at the start of my remarks, the contribution that the Jackson School makes to our community is the knowledge base that they bring with professors, but also the students they educate. I mean, your questions are incredibly informed. There are a number of members of Congress who wouldn't understand half of what you just said. So, to have young people who are informed about the world and engaged in the world builds our future. A career in the diplomatic corps would be a cool way to go as well. So get engaged, get involved, and take advantage of what you've learned!

Jackson School Journal: Thank you so much for your time.

Smith: Thank you, I appreciate it, thanks for your questions.

Learn more about the Jackson School Journal of International Studies at
jsis.washington.edu/jsjournal

For questions and comments, please contact us at jsjis@uw.edu