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UJ UPDATE

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The UJ Update

The *UJ Update* offers information on the latest developments in the law and practice of universal jurisdiction, as well as information about upcoming events.

The *Update's* editors apologize if we overlooked any cases or recent developments, and welcome corrections. The editors also regret that space does not permit acknowledgement of the pro bono lawyers who worked on the cases summarized here.

This first edition was drafted by Myrthe Wijnkoop, an intern with the Coalition for the International Criminal Court, with section contributions from others (see Acknowledgements), and edited by UJ Info.

What is UJ Info?

The Universal Jurisdiction Information Network (UJ Info) is a joint project of REDRESS (U.K.) and the Center for Justice & Accountability (U.S.). UJ Info works to provide access to information on universal jurisdiction, including international and national laws, cases, news, contacts, research and more.

UJ Info operates a Universal Jurisdiction Listserv for latest developments on the issue, and will soon launch a Universal Jurisdiction Website.

What is Universal Jurisdiction?

The principle of universal jurisdiction stems from the idea that certain crimes are so heinous that they offend the whole world and, as a result, every country has a right, if not an obligation, to hold the perpetrators accountable. Such crimes include torture, forced disappearances, certain war crimes, apartheid and slavery, among others. When these crimes occur, international law enables, and arguably requires, courts anywhere in the world to act, regardless of where the crime occurred, the nationality of the perpetrator or the victims, or whether or not state interests were harmed.

Universal Jurisdiction and the ICC

Complementarity and the UJ-ICC relationship

National courts using the universality principle and the International Criminal Court (ICC) can have jurisdiction over the same offenses. When both have jurisdiction over a case, which has the first right to hear it? This question is addressed – though not fully – by the ICC Statute. According to the Statute, the ICC, which has jurisdiction over genocide, crimes against humanity and war crimes committed on or after 1 July 2002, will be complementary to national criminal jurisdictions and generally will only act when national systems are unwilling or unable to genuinely try a case. However, the Statute does not specify which national systems the ICC should consider in this context. For instance, does the complementarity principle apply to the exercise of universal and other extraterritorial jurisdictions, or does it apply only to the exercise of jurisdiction by the State in whose territory the crime occurred (i.e. territorial jurisdiction)? The ICC itself is expected to answer this question once the issue is raised before it.

Rome Statute Implementation

The incorporation of the Rome Statute of the International Criminal Court into national law presents a unique opportunity to bring national legislation into line with the full range of international law obligations for bringing perpetrators to justice. While the Rome Statute sets forth certain minimum requirements for compliance by States Parties, States can opt to extend such law reform efforts beyond the ICC– by including universal jurisdiction provisions, for example. Several States Parties have done so, enacting national laws that both implement the Rome Statute and provide for the exercise of universal jurisdiction. Many others are considering this approach. Some national NGO coalitions on implementation of the Rome Statute and some international organizations have allocated resources to ensuring the inclusion of universal jurisdiction provisions in ICC implementing legislation. For more information about national ICC implementation coalitions, you may contact Isaac Flattau, Implementation Advisor of the Coalition for the ICC (CICC) at cicc12@iccnw.org.

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REGIONAL UPDATES ON UNIVERSAL JURISDICTION

AFRICA

October 2002

The Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences were adopted under the auspices of Africa Legal Aid (AFLA) and address universal jurisdiction from an African perspective. The principles and additional information can be found at <http://groups.yahoo.com/group/uj-info/message/234>. For more information, go to AFLA's website: <http://www.afla.unimaas.nl/>.

Senegal

March 2003

In March 2003, the Ministry of Justice (MoJ) adopted a bill to implement provisions of the Rome Statute of the International Criminal Court. The bill includes provisions that would enable Senegalese courts to exercise universal jurisdiction over genocide, war crimes, crimes against humanity, crimes against state security and counterfeiting, when the accused or the victims are found on Senegalese soil or when the Senegalese government obtains the accused's extradition from another state. After adoption by the MoJ, the bill then proceeds to the Council of Ministries, which decides whether or not to submit it to Parliament. Experts have indicated that the Council of Ministries usually approves MoJ bills.

THE AMERICAS

Argentina

A bill for implementation of the Rome Statute of the International Criminal Court is now under consideration by the Argentine Senate. The bill includes a provision that implies an ability to exercise universal jurisdiction over certain crimes. In particular, the provision recognizes any jurisdictional principle "established in international conventions to which the Argentine Republic is a party". The draft law also includes a provision that would obligate the Argentine State to try alleged perpetrators in Argentina whenever it has refused a request to extradite them – a limited form of *aut dedere aut judicare*.

Brazil

October 2002

The Brazilian Ministry of Justice's working group on implementation of the Rome Statute presented draft legislation on October 18, 2002. It includes provisions for the exercise of univer-

sal jurisdiction when the alleged perpetrator is present in Brazil. For further information in English, see: http://www.mj.gov.br/sal/tpi/eng_default.htm.

Canada

May 2002

The Canadian Superior Court of Justice ruled in the Bouzari case against Iran that the Canadian State Immunity Act prohibits civil actions for damages for torture committed abroad by a foreign state. It also noted that "Canada's State Immunity Act, with its limited exceptions, complies with both treaty obligations and customary international law as it now exists".

Ecuador

In Ecuador, draft ICC implementing legislation, prepared by the National Congress Woman's Committee and an NGO (the Instituto Regional de Asesoría de Derechos Humanos), includes the principle of universal jurisdiction, applicable even when the accused is not located in Ecuador. The principle of *aut dedere aut judicare* is also included. The draft will soon be available at www.derechos.org/inredh.

Panama

Panama's current draft ICC implementing legislation, developed by the National Permanent Commission for the Application of International Humanitarian Law, likewise includes a provision for universal jurisdiction that is not subject to the location of the accused. However, jurisdictional restrictions in the Panamanian penal code (requiring custody for the exercise of extraterritorial jurisdiction) could limit the application of the new provision.

United States

All of the lawsuits summarized below are based, at least in part, on one or both of the two US federal statutes - the 1789 Alien Tort Claims Act (ATCA) and the 1991 Torture Victim Protection Act (TVPA) - that allow US courts to assess damages against perpetrators of severe human rights violations committed outside the US, even where the perpetrator and victim are foreign residents and citizens. These laws implement the aims of the principle of universal jurisdiction, though US courts require that the perpetrator have sufficient "minimum contact" with the US in order to satisfy US due process requirements. This generally requires that the perpetrator, if an individual, must be personally served with the lawsuit in the US and, if a corporation, must do business in the US. US courts have recognized jurisdiction as justified by the universal jurisdiction principle. See, eg., the Talisman case, below. More information about these cases, including names of pro bono attorneys involved, many be found at <http://www.sdshh.com/ICLR> and on the websites of the Center for Justice & Accountability (CJA), www.cja.org, the Center for Constitutional Rights (CCR), www.ccr-ny.org, Earth Rights International (ERI), www.earthrights.org, and the International Labor Rights Fund, www.laborrights.org.

Cases against Foreign Officials, Organizations or Individuals

Doe v. Islamic Salvation Front (FIS) and Anwar Haddam

2002

In 1996, nine feminists, journalists, and human rights workers, represented by the International Women's Human Rights Clinic at the City University of New York, sued the Islamic Salvation Front (FIS) and its US representative, Anwar Haddam, charging them with war crimes and crimes against humanity, including assassination, rape and torture committed in Algeria. The plaintiffs are members of an opposition group that has stood up to oppressive policies of both the FIS and the Algerian government. Personal jurisdiction was based on the physical presence in the US of Haddam and an FIS office in the Washington DC area. Motions to dismiss were denied in

1998. After limited discovery, the case was dismissed on summary judgment against both Hadam and the FIS. A motion for reconsideration is pending.

Cabello v. Fernandez Larios

June 2003

Armando Fernández Larios entered the US in 1987 after pleading guilty in a criminal case before a US court to involvement in the assassination of Orlando Letelier, Chile's former Foreign Minister, and Ronni Moffitt, his assistant. Fernández Larios, a participant in "the Caravan of Death," a military death squad under Pinochet. CJA sued him in 1999 on behalf of the family of Winston Cabello, an economist who had been killed by the Caravan in October 1973. Two decisions were published by the court in 2001 and 2002. The first established that claims will not be barred by the 10-year statute of limitations if circumstances outside the plaintiffs' control, such as the government's failure to disclose the victim's burial location, prevent them from discovering essential facts concerning their claim. The second provides the first detailed discussion by a US court confirming that individuals who do not directly commit human rights abuses, but who assist or conspire with the perpetrators, may still be held responsible under the ATCA and TVPA. The case is set to go to trial in June 2003.

Zhou v. Li Peng

April 2003

In 2000, CCR filed suit against Li Peng, who had been Premier in 1989 when Chinese troops attacked peaceful protesters in Tiananmen Square, killing or wounding thousands. The suit was brought on behalf of student leader Lang Dan and four other survivors of the massacre. Li Peng was served, through his US security detail, at a New York hotel. Li Peng has not responded to the complaint, but the US government challenged whether service was proper. On August 8, 2002, the court rejected the government's challenge. In January 2003, the US government filed a motion to vacate the court's two previous orders, arguing that the orders interfered with US foreign policy and sovereign immunity. Oral argument was held in April and the motion is pending.

Doe v. Lumintang

February 2003

In September 2001, a court in Washington DC ordered General Johny Lumintang, the second highest ranking officer in Indonesia's army, to pay \$66 million to East Timorese victims of violence committed by Indonesian troops in 1999 in connection with East Timor's independence referendum. Lumintang moved to set aside the judgment. The most recent hearing was held on February 11, 2003 and a decision is pending.

Romagoza v. Garcia and Vides Casanova

January 2003

On July 23, 2002, a jury found two retired Salvadoran generals, living in Florida, liable for torture committed by forces under their command during 1979-83. They have been ordered to pay \$54.6 million to three Salvadoran torture survivors now living in the US. The case, brought by CJA, was the first fully contested US case in which defendants were held liable solely under the doctrine of command responsibility. The generals have appealed. CJA deposed the generals in January 2003 and expects to be able to seize some of their assets.

Jean v. Dorélien

January 2003

In January 2003, CJA filed a case against Col. Carl Dorélien, a former member of the Haitian military's High Command, for abuses committed by troops under his control during a massacre at Raboteau in 1993. He fled to the US when President Aristide was restored to power, and won \$3.2 million in the Florida lottery in 1997. Shortly after the case was filed, the US Immigration Service deported him to Haiti. He is being detained by Haitian authorities pending trial for the Raboteau massacre. The civil suit can proceed without him being present in the US. He is represented by an attorney.

Tachiona v. Mugabe, Mudenge and ZANU-PF

December 2002

In December 2002, a US District Court awarded five victims of gross human rights violations in Zimbabwe compensatory and punitive damages against Zanu-PF, the ruling political party,

for more than \$70 million. The Court held in an earlier decision that President Robert Mugabe and Foreign Minister Stan Mudenge, who were also defendants in the case, enjoyed head of state immunity and immunity under the UN Convention on Privileges and Immunities of the United Nations because they had been served while in New York to attend a UN conference. The claim against Mugabe was in his individual and personal capacity and as leader of Zanu-PF, not as head of state.

Falun Gong cases against Chinese officials

September 2002

Several cases have been filed against Chinese officials, including President Jiang Zemin, on behalf of Falun Gong practitioners. One case was filed by CJA against Beijing Mayor Liu Qi during a visit to the US in February 2002. The suit claims that the Beijing police engaged in systematic repression of Falun Gong practitioners and that Mayor Liu allowed such abuses to go unchecked. Among the crimes charged are torture, cruel, inhuman and degrading treatment, crimes against humanity, and violation of the right to freedom of religion and belief. Although Liu Qi has not entered an appearance, the US State Department filed a letter in September 2002 urging the court to dismiss the case on act of state grounds.

Reyes v. Grijalba

July 2002

On July 15, 2002, CJA filed a lawsuit against former Honduran military intelligence chief Lt. Col. Juan López Grijalba, believed to have controlled the notorious death squad Battalion 3-16. The plaintiffs are six Hondurans, five of whom now live in the US, who were tortured or whose family members were disappeared in the early 1980s. Lopez Grijalba, who has been living in Florida since 1998, was arrested by the US Immigration Service in April 2002 for immigration fraud – including that he had not persecuted others. He remains in detention while he fights deportation. CJA's civil suit is scheduled for trial in December 2003.

Mehinovic v. Vuckovic

April 2002

On April 29, 2002, a US court found Bosnian Serb Nikola Vuckovic, who was living near Atlanta, liable for torture and other atrocities at detention facilities in Bosnia-Herzegovina during the Serb campaign of "ethnic cleansing" in 1992. He has been ordered to pay \$140 million in compensation to four Bosnian muslims. This case, brought by CJA, was the first legal action against a Bosnian who resided in the United States.

Others

Several other foreign officials have been successfully sued after they took up residence in, or while visiting, the US. These include: Radovan Karadzic, the self-proclaimed leader of the break-away Bosnian Serb Republic, currently under indictment by the International Criminal Tribunal for the former Yugoslavia and at large; Ferdinand Marcos, the former Philippine dictator, and his daughter Imee Marcos-Manotoc; former Guatemalan Defense Minister Hector Gramajo; former Argentine general Carlos Suarez-Mason; former Haitian dictator Prosper Avril; former Indonesian General Sintong Panjaitan; Americo Pena-Irala, a Paraguayan police officer; Jean Bosco Barayagwiza, a Rwandan paramilitary leader; and Kelbessa Negewo, an Ethiopian police officer.

Cases against Corporations

At least 25 cases based on ATCA and additional grounds have been filed against corporations headquartered or doing business in the US since 1996. A few have been settled favorably to the plaintiffs, including several cases challenging Holocaust-era abuses and cases against several major US retailers that challenged sweatshop conditions in the garment industry in Saipan. In all, more than a dozen cases have been dismissed, although appeals are pending in several. These include: a case against Union Carbide for the Bhopal disaster in 1984 and subsequent contami-

nation; a case against Texaco for environmental violations in Ecuador on condition that Texaco waive jurisdictional challenges to suit in Ecuador; and a case against Rio Tinto for environmental damage in Papua New Guinea, on act of state and international comity grounds. Following are summaries of the main cases that had not been dismissed as of April 2003.

Doe v. Drummond

April 2003

In May 2002, the International Labor Rights Fund sued Drummond Company, Inc. and Drummond Ltd., a US corporation and its wholly-owned subsidiary, which operate a coal mining operation in Colombia. The complaint alleges that, while union contract negotiations were in process, paramilitary security forces hired and/or directed by the defendants murdered the president and vice president of the plaintiff union, and later the successor president of the union. The union and relatives of the three union leaders sued for extrajudicial killing, wrongful death and denial of the fundamental right to associate and organize. On April 14, 2003, the court denied defendants' motion to dismiss.

Sinaltrainal v. Coca-Cola

March 2003

In March 2003, a Miami federal court judge – a recent Bush appointee – ruled that a case brought against Coca Cola bottlers in Colombia could proceed against them for their use of paramilitaries that assassinated labor union leaders. However, the judge ruled that the case could not proceed against Coca Cola itself. The International Labor Rights Fund and the United Steelworkers of America, co-counsel in the case, will appeal that part of the decision.

Presbyterian Church v. Talisman Energy Co.

March 2003

In March 2003, a New York federal judge refused to dismiss claims that Talisman, the largest independent oil producer in Canada, abetted genocide by the government of Sudan against its own people. Plaintiffs alleged that the company was complicit in a campaign of kidnapping, rape, murder and land confiscation conducted by the government against non-Muslim residents who lived within a 50-mile radius of oil fields and transport systems. The judge found that corporations "are potentially liable for violations of the law of nations that ordinarily entail individual responsibility," including violations of *jus cogens* norms such as piracy, slave-trading and genocide. States may exercise universal jurisdiction over violations of these norms, he wrote, and "this universal jurisdiction extends not merely to criminal liability but may also extend to civil liability."

Doe v. Unocal and Roe v. Unocal

February 2003

For the first time, a US state judge has ordered a US corporation to stand trial for alleged human rights violations committed by a joint-venture partner overseas. The Los Angeles Superior Court ruled on June 10, 2002 that Unocal Corp. may be held liable for the conduct of the government of Burma, which was Unocal's partner in building a natural gas pipeline in Burma. Violations included forced labor and extrajudicial executions. The ruling was based on the California state law doctrine of "vicarious liability," under which joint-venture partners may be held responsible for each other's actions involving their common business. Motions for discovery in France for documents held by the joint venture partner, Total, are now pending. Trial has been delayed until at least August 2003. The plaintiffs had earlier filed two lawsuits in federal court. Those suits were dismissed in 2000. In September 2002, the Ninth Circuit Court of Appeals reversed the dismissal, ruling that plaintiffs could proceed on a theory of aiding and abetting, as elaborated by the international criminal tribunals as well as US courts. However, in February 2003, the Ninth Circuit sitting en banc vacated the panel's decision and is expected to rule later this year. The Doe case was brought by CCR and ERI, among others; the Roe case was brought by the International Labor Rights Fund.

Anti-Apartheid Cases

November 2002

In June 2002, a class action on behalf of more than 5,000 apartheid victims was filed against

dozens of multinational corporations, including Citigroup, IBM and Barclays National Bank. The companies are accused of rescuing the apartheid regime in the mid-1980s when it faced financial default because of international sanctions. Damages sought are \$50 billion. A second suit was filed in November 2002 against Swiss German, US, Dutch, French, and British banks and companies that had financial ties with the regime.

Doe v. ExxonMobil Corporation

July 2002

Residents of the Indonesian island of Aceh sued Exxon Mobil and its partners in the Arun Project, a natural gas facility in Aceh, for international law violations. The complaint alleges that Exxon hired Indonesian government security forces to protect its Aceh facility, and that the security forces committed gross human rights violations, including murder, torture, rape, and forcible displacement of local residents. A motion to dismiss was argued April 9, 2002. The court, at Exxon's request, solicited the State Department's opinion. In a letter dated July 29, 2002, the Legal Advisor set out detailed reasons in support of the State Department's view that the lawsuit would risk a "potentially serious adverse impact on significant interests of the United States." The letter noted that "increasing opportunities for U.S. business abroad is an important aspect of U.S. foreign policy." Indonesia's Ambassador to the U.S. also submitted a letter opposing the extraterritorial jurisdiction of the U.S. courts. In response, the plaintiffs filed an affidavit by Yale Law School Professor Harold Koh, former Assistant Secretary of State for Democracy, Human Rights and Labor. The motion to dismiss is still pending.

Wiwa v. Royal Dutch Petroleum, Wiwa v. Anderson, & Kiobel v. Royal Dutch Shell

2002

The first case, brought by CCR, charges Royal Dutch Petroleum and Shell with complicity in the November 1995 hanging of Ken Saro-Wiwa and John Kpuinen, two of nine Ogoni leaders, the torture and detention of Owens Wiwa, and the wounding of a woman who was peacefully protesting the bulldozing of her crops in preparation for a Shell pipeline, who was shot by Nigerian troops called in by Shell. The Second Circuit Court of Appeals ruled in 2000 that the case was not barred by forum non conveniens. In 2002, the district court ruled that the court had subject matter jurisdiction. The ruling contains an important analysis of forced exile as a form of cruel, inhuman degrading treatment. The case is scheduled for trial in May 2003. In March 2001, Nigerian plaintiffs, also represented by CCR, sued Brian Anderson, the former head of Shell's Nigerian subsidiary, while he was in New York. In February 2002, the district court denied Anderson's motion to dismiss on forum non conveniens grounds. The cases are now in discovery. In September 2002, 14 plaintiffs filed a class action charging Shell with complicity in human rights violations committed between 1990-99. This case is also in discovery, but a motion to dismiss is now pending.

Bowoto v. ChevronTexaco

2002

In May 1999, victims of gross human rights abuses associated with Chevron's oil production activities in the Niger Delta region filed suit against Chevron in San Francisco federal court. The case is based on two incidents: the shooting of peaceful protestors at Chevron's Parabe offshore platform and the destruction of two villages by soldiers in Chevron helicopters and boats. The plaintiffs allege that the abuses were committed with the complicity of and/or at the request or suggestion of Chevron. In 2000, plaintiffs defeated defendants' motions to dismiss on several grounds including lack of subject matter jurisdiction and forum non conveniens. During 2002, plaintiffs made significant progress in finding evidence of the parent company's knowledge of and acquiescence in the subsidiary's conduct. Defendant has filed a motion for summary judgment which has been fully briefed. ERI and CCR are co-counsel on the case.

Cases against US Officials for Violations Committed Outside the US

Schneider v. Kissinger

Plaintiffs are family members and the estate of General René Schneider, former head of the Chilean military. They allege that former National Security Adviser Henry Kissinger and former CIA director Richard Helms “designed, ordered, implemented, aided and abetted, and/or directed” activities aimed at, and resulting in, the kidnapping and killing of Gen. Schneider in 1970, shortly after Salvador Allende was elected president but before he took office. Evidence includes cables with Kissinger’s signature authorizing the transfer of special ammunition to the coup-plotters. The United States filed a motion to dismiss in 2001, which has yet to be decided. See www.icaonline.org.

EUROPE/CIS

Belgium

Legislative developments

April 2003

On April 5, 2003 the Belgian Senate passed amendments to Belgium’s 1993 universal jurisdiction law. The 1993 law (amended in 1999) permits prosecutions in Belgium on the basis of universal jurisdiction. It was perhaps the most progressive legislation on universal criminal jurisdiction anywhere in the world. The amendments were designed to establish rules of complementarity and cooperation with the ICC, to harmonize the 1993 law with international law on immunities and to identify the circumstances under which Belgian courts could hear cases even when the accused and victims are not present in Belgium. The final version of the amendments were more restrictive with respect to a presence requirement than originally anticipated. One provision permits cases, in which the victim is not Belgian, to be referred to the accused’s home state, as long as that state upholds the right to a fair trial. It is not yet known what impact this will have on each pending case. However, Human Rights Watch has noted that it does not expect this provision to hinder the case pending against former Chadian President Hissène Habré. The passed amendments also require that cases brought directly by victims in the future either have some link to Belgium or be approved by the State Prosecutor. Possible links to Belgium include: the suspect being present in Belgian territory; or the victim being a Belgian citizen or having lived in Belgium for at least three years. If the case is submitted to the State Prosecutor, s/he is obligated to bring the case unless it can be referred to the ICC, the territorial state or the suspect’s home state. The passing of these amendments follows a period during which the 1993 law had been curtailed by restrictive judicial decisions – i.e. the February 14, 2002 ruling by the International Court of Justice in a case brought by the Democratic Republic of the Congo against Belgium, and Belgian court decisions establishing that cases could only be opened against suspects who were present in Belgium. (Note: the latter had been reversed by the Court of Cassation in its February 12, 2003 decision.)

George Bush, Sr.

March 2003

On March 18, 2003, Iraqi victims and victims’ relatives filed a complaint in Belgium against George Bush Sr., Dick Cheney, Colin Powell and Norman Schwarzkopf for war crimes allegedly committed during the first Gulf War. In particular, the charges concern bombings carried out by American forces in February 1991 that hit a civilian shelter, killing 403 civilians. The U.S. government warned Belgian authorities about their universal jurisdiction legislation that allows for such cases.

Sabra and Shatila

February 2003

In June 2001, a group of 28 Palestinians and Lebanese filed a suit against Ariel Sharon and others for their roles in a massacre, carried out by Israeli-allied Christian militia, of hundreds of Palestinians in the Sabra and Shatila refugee camps. In June 2001, a Belgian court ruled that Belgium could not exercise jurisdiction over the case. However, on February 12, 2003, Belgium's Court of Cassation reversed the lower court decision. It determined that the Belgian courts can exercise universal jurisdiction under the 1993 law regardless of whether or not the accused is in Belgium, thereby removing the impediment imposed by the lower court. While the case against the other defendants can now proceed on this basis, the Court of Cassation ruled that Ariel Sharon enjoys immunity while in office and therefore can only be prosecuted once his term as prime minister of Israel ends. The Israeli government has taken a strong stance against this decision.

Palestinians

January 2003

Belgian authorities and the Palestinian envoy to Brussels reportedly advised Muhammad Dahlan, former head of the Palestinian Preventive Security Service in the Gaza Strip, not to enter Belgian territory given the possibility that he would face a legal suit. Dahlan affirmed that he was notified of an arrest warrant issued against him in Belgium based on a suit in which he is accused of terrorism and incitement to kill Israelis. Dahlan noted that the suit was also filed against President Yasir Arafat.

Hissène Habré

December 2002

Former Chadian President Hissène Habré, labelled an "African Pinochet," was indicted in Senegal in 2002 on charges of torture and crimes against humanity before the Senegalese courts ruled that he could not be tried there. Chadian victims then filed charges against him in Belgium. Hissène Habré ruled the former French colony of Chad from 1982 until he was deposed in 1990 by current President Idriss Déby and fled to Senegal. In December 2002, the Chadian government waived the immunity of Habré to allow his prosecution on atrocity charges in Belgium. The waiver opens the way for the indictment of the former dictator and his extradition from Senegal, where he lives in exile. The president of Senegal, Abdoulaye Wade, has said that he would extradite Habré to Belgium if a request were made. The Chadian government's waiver resolves the legal question of immunity. Even though the International Court of Justice ruled in February 2002 that sitting foreign ministers, and by inference sitting heads of state and government, hold immunity from prosecution in foreign countries, the Chadian waiver renders that point moot, since under international law immunity belongs to the state and not to the official. This marked the first time that a country had waived the immunity of a former president to permit criminal human rights charges in another country. Twice before, governments have waived the immunity of former presidents to face human rights charges abroad, but these were for civil suits in United States. One was the case of Ferdinand Marcos of the Philippines, the other Prosper Avril of Haiti.

Yerodia

November 2002

After Belgium issued an international arrest warrant against Yerodia Aboulaye Ndomabsi, at the time the foreign minister of the Democratic Republic of the Congo, in April 2002, the DRC took Belgium to the International Court of Justice. The ICJ subsequently found no exception to the general principle that serving foreign ministers are immune from prosecution, even when they are suspected of war crimes or crimes against humanity, and thus ordered Belgium to revoke the warrant. In April 2002, the Brussels Court of Appeal ruled the Yerodia case inadmissible and ordered an end to the investigation. The Court, however, did not rule that the April 2000 arrest warrant would need to be cancelled, as ordered by the ICJ. Rather that the basis of Belgium's 1993 law providing for universal jurisdiction even when the perpetrator is not on Belgian soil unlawfully derogates from a 1878 law that envisions prosecutions only when the accused is present in the country. The case was appealed to the Court of Cassation. In November 2002, the Court of Cassation quashed the decision of the Court of Appeal (Belgium's Indictment Chamber) for ruling (as it did in its decision in the Sabra and Shatila case on June 26, 2002) that universal jurisdiction can only be exercised when the suspect is present in Belgium.

TotalFinaElf

April 2002

On April 25, 2002 a case was filed by Burmese refugees against TotalFinaElf and the head of its Burma division during the 1990s. The complaint alleges crimes against humanity as a result of logistical and financial support given by the oil company to the Burmese military, which was responsible for crimes such as forced labour, murder, torture and extrajudicial executions. Investigating magistrate Damien Vandermeesch is reviewing their 78-page submission to determine its admissibility. The plaintiffs – former human rights activists in Burma (renamed Myanmar) now living as refugees in the United States, Britain, Germany and Belgium – alleged that TotalFinaElf was aware that Myanmar's military regime was "systematically" carrying out crimes against humanity. They also claimed that TotalFinaElf provided "overall moral and financial support" to the regime, and that the company had "excellent knowledge" of the use of forced labour by "partners" responsible for pipeline security.

Khmer Rouge

February 2002

A Belgium news agency reported on February 22, 2002 that a French group of Khmer Rouge victims has filed a lawsuit in a Belgian court accusing three former leaders of Cambodia's Khmer Rouge of genocide and crimes against humanity. The report said the French Committee for Victims of the Khmer Rouge had filed the lawsuit against former Khmer Rouge head of state Khieu Samphan, former ideological chief Nuon Chea and former foreign minister Ieng Sary. No former leader of the Khmer Rouge has stood trial, with the exception of one sham trial, for their 1975-1979 rule when an estimated 1.7 million people were executed or died from starvation, forced labour and disease. Negotiations are, however, underway between the Cambodian government and the U.N. to establish an ad hoc mixed national-international tribunal for this purpose.

Others

In addition to the above cases, several other officials continued to face complaints lodged against them under Belgium's 1993 law (amended in 1999), including the following, among others:

- Ali Akbar Hachémi-Rafsandjani, former Iranian President
- Augusto Pinochet, former Chilean President
- Driss Basri, former Moroccan Interior Minister
- Abdulaye Yerodia, former Foreign Minister of the Democratic Republic of the Congo
- Paul Kagame, President of Rwanda
- Denis Sassou Nguesso, President of Congo (Brazzaville)
- Saddam Hussein
- Fidel Castro, Cuban President
- Laurent Gbagbo, President of the Ivory Coast, his predecessor Robert Gueï and two ministers
- Ange-Felix Patassé, President of the Central African Republic
- Maaouya ould Sid'Amhed Taya, Mauritanian President

Denmark

November 2002

Danish police have charged Nizar al-Khazraji, former chief of staff of Iraq's armed forces, for his suspected involvement in war crimes perpetrated in Iraq against Kurdish civilians during the 1980-1988 Iran-Iraq war. Al-Khazraji, who has been living in Denmark as a refugee since 1999, appeared in court in the town of Soroe on November 19, 2002, and was charged with violating Articles 146 and 147 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The Court ruled that the evidence was sufficient to hold him and placed him under house arrest until the conclusion of the investigation. Al-Khazraji denied the charges and lodged an immediate appeal against the Court's decision.

Finland

Finland's current bill for implementation of the Rome Statute would provide for universal jurisdiction over certain crimes where: 1) the accused was a permanent Finnish resident either when the offense was committed or at the start of the trial, or 2) the offense is punishable under both Finnish law and the law of the country where it was committed (the territorial state) and courts of the territorial state could have issued a sentence for the offense.

France

ICJ

April 2003

The Republic of the Congo (Brazzaville) filed a claim against France at the International Court of Justice (ICJ) with regard to proceedings brought in France against Congo's President, Interior Minister and others for crimes against humanity and torture. The Republic of the Congo contends in its application that France violated "the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations exercise its authority on the territory of another State". It further states that France violated "the criminal immunity of a foreign Head of State, an international customary rule recognized by the jurisprudence of the Court". The Congo also argues that France cannot exercise universal jurisdiction against a Congolese citizen for crimes of torture since the Republic of Congo is not a State party to the 1984 Convention against Torture. On April 11, 2003 France informed the ICJ that it consents to the Court's jurisdiction. The Application of the Republic of the Congo was accompanied by a request for the indication of a provisional measure "seek[ing] an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux tribunal de grande instance".

Robert Mugabe

February 2003

A warrant for the arrest of Zimbabwean President Robert Mugabe was sought in a Paris magistrates court on Monday February 17, 2003, filed by human rights campaigner Peter Tatchell, under the French anti-torture law. Mugabe attended the Franco-African summit at the Palais des Congres in Paris from February 19th to 21st. A French court, however, ruled that Mugabe holds immunity from prosecution as a sitting head of state. For more information, see <http://www.petertatchell.net/international/mugabefrance.htm>.

Ely Ould Dah

October 2002

In late October 2002, the French Court of Cassation ruled that Captain Ely Ould Dah, a Mauritanian officer accused of torturing black Mauritians on the grounds of racial discrimination in 1990-91, would be tried before France's highest criminal court for crimes of torture (the *Cour d'Assises*) on the basis of universal jurisdiction. Article 222-1 of the French Penal Code stipulates that submitting a person to torture and other cruel and degrading treatment is a crime punishable by 15 years imprisonment. Pursuant to Article 689-1 of the Code of French Criminal Procedure and in application of the Convention Against Torture, the perpetrator of such acts can be prosecuted and judged under French jurisdiction if he/she is located in France, even if the acts were committed abroad. The lawsuit in question was filed in June 1999 on behalf of the victims. In April 2000, however, the accused fled France for Mauritania. Subsequently, in May 2001, an investigating magistrate indicted Ely Ould Dah. Among the interesting issues in the judgment was a determination that a Mauritanian amnesty law is not applicable outside of Mauritania and hence cannot be binding on French courts. Once the case comes to trial in the coming months, it will mark the first application ever by a French court of the universal jurisdiction provisions of the 1984 Torture Convention.

Khaled Nezzar

July 2002

On July 1, 2002, a second action was filed against the Algerian General Khaled Nezzar, accused of committing crimes of torture and cruel, inhuman and degrading treatment. This complaint follows an action filed by some of the victims on May 25, 2001. The general had fled France the fol-

lowing day. This new complaint was filed upon his return to France.

"Disappeared of the Beach"

June 2002

Survivors of the 1999 massacres at the Beach of Brazzaville lodged a complaint in December 2001 concerning torture, forced disappearances and crimes against humanity. In collaboration with Congo-based victims groups, the French NGOs FIDH, LDH and OCDH filed the complaint against Mr. Denis Sassou Nguesso, President of the Republic of Congo, Mr. Pierre Oba, General of the Ministry of the Interior, Public Security and Territorial Administration, Mr. Norbert Dabira, Inspector General of the army residing in France, and Mr. Blaise Adoua, General, Captain of the Republican guard (a.k.a. the presidential guard). A swift investigation followed, conducted by two judges of the *Tribunal de Grande Instance* of Meaux. In June 2002, a French judge summoned General Dabira to respond to a judicial interrogation. However, according to FIDH, he could not be heard, claiming that the recent events that shook Congo-Brazzaville rendered him unable to relocate. The hearing was rescheduled for July 8, 2002, at which time Dabira testified before the investigating judges. The judges ordered an additional hearing in September. On September 10, 2002 the Congolese authorities refused the hearing of General Dabira and claimed that they would trigger the jurisdiction of the International Court of Justice against France, based on the rationale that France cannot exercise universal jurisdiction against a Congolese citizen since the Republic of Congo is not a State party to the 1984 Convention against Torture.

Khaled Ben Said

February 2002

On May 9, 2001 a Tunisian national filed a complaint alleging that the newly-appointed vice-consul to the Tunisian Consulate in France, Khaled Ben Said, had committed torture in Tunisia in October 1996. On February 4, 2002, the International Federation of Human Rights (FIDH) and the French Human Rights League (LDH) declared themselves "civil parties" (*parties civiles*) to the proceedings in support of the plaintiff's case. Following the preliminary investigation, the Prosecutor decided on January 16, 2002 that there existed serious and consistent indications against the vice-consul in the acts charged. As a consequence, the Prosecutor commenced proceedings. The consul attempted to invoke immunity in connection with his diplomatic status after being identified and located by the French police. The accused, who was summonsed on several occasions by the Public Prosecutor in Strasbourg and the Investigating Magistrate, ultimately fled and has been the subject of an international arrest warrant since February 15, 2002. This is the first international arrest warrant to be issued on the basis of universal jurisdiction against a Tunisian torturer.

Rwandan Genocidaires

September 2001

On January 5, 2000, FIDH wrote to the State Prosecutor of the Tribunal de Grande Instance (County Court of Paris - court of first instance with general jurisdiction) to inform him of the possible presence in France of several Rwandans (Bucyibaruta, Serubuga, Neretse, Bizimungu, Renzano) allegedly involved in the 1994 genocide. On March 10, 2000, the Prosecutor of the Tribunal informed FIDH that the case has been passed on to the relevant local prosecutors. The Neretse file, however, was not acted upon because his presence on French territory could not be proven. Following a decision of the French Supreme Court (Cour de Cassation) on September 17, 2001, all procedures against the Rwandans were centralized in Paris. According to the FIDH, one of the major innovations of the January 2000 case is that the Prosecutor decided to open an investigation before establishing whether the alleged authors were on French territory, with the exception of the Neretse case. The cases are pending. Some new evidence has been sent by the International Criminal Tribunal for Rwanda to the French magistrates but has not yet been disclosed.

Germany

June 2002

On June 30, 2002, Germany's new law providing for universal jurisdiction (the Code of Crimes against International Law, or *Voelkerstrafgesetzbuch*) entered into force. It allows German public prosecutors to investigate war crimes, genocide and crimes against humanity, regardless of who, where, when or against whom these crimes were committed. Some limitations do exist,

however. To view the law in multiple languages, go to http://www.iuscrim.mpg.de/forsch/online_pub.html at the bottom of the page.

Netherlands

April 2002

In April 2002, the Dutch Justice Ministry announced the creation of a 32-member task force mandated, at least in part, to investigate the potential involvement of asylum seekers in war crimes in their home countries. The task force's activities began by investigating 36 suspected war criminals, mostly Yugoslavs and Afghans, who had been refused asylum in the Netherlands. The men are believed to have held positions of authority that gave them "chain of command responsibility" during conflicts in their home countries. Those individuals could face trial in the Netherlands for crimes committed abroad if sufficient evidence is mounted against them. However, as of April 2002, prosecutors had not yet gathered enough proof to justify their arrests. At the time, immigration officials had forwarded a total of 176 names to the task force and were reviewing an additional 1,330 suspect files.

Norway

In Norway, a complaint was filed by the Norwegian Labour Youth Party against members of Israeli military authorities for acts committed in the Gaza Strip and the West Bank.

Spain

Rios Montt

February 2003

On 25 February 2003, the *Tribunal Supremo*, Spain's highest court, ruled by 8 votes to 7 that Spanish courts have no competence to try those responsible for the genocide against the Mayan Indians in Guatemala, allegedly perpetrated by the Guatemalan military during the military dictatorship from 1962 to 1996. It did, however, determine that they could prosecute/investigate the assassination of Spanish nationals in Guatemala during that period. In its legal reasoning, despite the existence of legislation establishing the competence of Spanish courts to try cases that have no direct link to Spain, the Court determined that, due to limitations imposed by the principles of state sovereignty and non-intervention, Spanish courts can only exercise universal jurisdiction over genocide where there exists a 'point of connection'¹ with Spain. Furthermore, the Court explicitly rejected the notion that Article 6 of the Genocide Convention establishes a principle of subsidiarity. However, in seeming contradiction, the Supreme Court also assigned priority to the territorial jurisdiction when 'there is a real and effective concurrence of active jurisdictions'². The Court held that it had no proof that the Guatemalan justice system was not and would not address the offenses.

Brady

June 2002

On June 14, 2002, Spain's Supreme Court (*Tribunal Supremo*) issued a decision in which it affirmed the principle of universal jurisdiction for the crimes of terrorism, genocide and torture. Doubt had been thrown on the scope of the universal jurisdiction principle in Spanish law on May 31st, when the *Audiencia Nacional* in the Herman Brady case rejected the application of universal jurisdiction based on its interpretation of a previous *Tribunal Supremo* decision (Otegi case). However, on June 14 the *Tribunal Supremo* used an opportunity to revisit the Otegi case to explain that its decision affects only the Otegi case and that it has no impact at all on the principle of universal jurisdiction.

¹ Unofficial translation provided by Amnesty International, on file with UJ Info.

² Ibid.

Cavallo

March 2002

In March 2002, a Mexican District Court ruled that the extradition to Spain of Ricardo Miguel Cavallo, an Argentine accused of committing serious crimes during Argentina's 1976-1983 dictatorship, can proceed for the crimes of genocide and terrorism but not for torture. The Court held that Mexico's Ministry of Foreign Affairs should reissue an extradition letter that cites only those offences. In a press release dated April 12, 2002, the Ministry of Foreign Affairs of Mexico indicated that it was appealing the decision. Subsequently the Mexican Supreme Court (*la Suprema Corte de Justicia*) accepted to hear the extradition case. The Court will have to rule whether the extradition of Mr. Cavallo will be for the crimes of terrorism and genocide only, as a District Court ruled, or, as the Ministry of Foreign Affairs has argued, torture as well. The Supreme Court might also rule on the statute of limitations for the crime of torture.

Sweden

October 2002

In October 2002, Swedish prosecutors refused to take up a case against Ariel Sharon for war crimes committed by the Israeli army in the occupied Palestinian territories since September 2000. The case had been brought by the youth wing of the ruling Social Democrats (SSU). According to the prosecutor it is impossible in practice to conduct a preliminary inquiry into the allegations. The party said it would consider an appeal against the decision.

Switzerland

October 2002

Switzerland has effectively banned Barzan Al-Tikriti – half-brother of Iraqi leader Saddam Hussein and his reputed "banker in the West" – from re-entering the country. Barzan, a former intelligence chief who served as Iraq's ambassador to the United Nations in Geneva throughout the 1990s, was denied a fresh tourist visa at the end of October 2002. The move coincided with the Swiss federal prosecutor rejecting a complaint filed last year by the London-based human rights group Indict against Barzan for an alleged role in massacring Kurds in the 1980s. The prosecutor's office concluded that there were not sufficient grounds to open a criminal investigation. It also decided that a Swiss criminal law on genocide, adopted in December 2000, could not be applied retroactively. However, the complaint was forwarded to the Army Prosecuting authority (Auditeur en chef de l'armée), which is responsible for war crimes cases.

United Kingdom

Nayef bin Abdul-Aziz

February 2003

A London law firm called for British judicial authorities to take action against the Saudi Arabian government over the case of a dissident academic allegedly tortured and held without charge since 1995 in Saudi Arabia. The law firm, Salfiti & Co., said it had lodged an official request on February 28, 2003 for the British Attorney General's office to bring criminal proceedings against Saudi Interior Minister Prince Nayef bin Abdul-Aziz over jailed academic Said al-Zuair.

Mofaz

November 2002

While Shaul Mofaz, an Israeli citizen, was present in London, a London law firm, on behalf of a number of victims and their families, lodged a complaint with the Director of Public Prosecutions against Mr. Mofaz and others for alleged war crimes and crimes against humanity (including wilful killing of civilians, destruction of homes and agricultural crops and torture) during the period from 1998 to July 9, 2002 while Mr. Mofaz was Chief of Staff of the Israeli Defense Forces. The Director of Public Prosecutions, after considering the claim, referred the case on to the Metropolitan Police for investigation. Shortly after the UK investigation was made public, Shaul Mofaz was appointed as the new Defense Minister and cut short his stay in London.

April 2002

Kissinger

When Henry Kissinger, the former US secretary of state, travelled to London in April, two types of legal proceedings were launched. First, investigators from France and Spain attempted to question him about crimes orchestrated by certain Latin American dictators in the 1970s. The request formed part of the countries' continuing cases against former Chilean President Augusto Pinochet and others. The Spanish judge, Baltazar Garzon, asked British authorities for permission to question Dr. Kissinger during his London stay. A French lawyer, William Bourdon, said France had made a parallel request to Interpol. Mr. Kissinger was not a suspect in the case and would simply have been required to answer questions as a witness. These requests were, however, refused. In the second legal development, British human rights campaigner Peter Tatchell applied for a warrant for Kissinger's arrest. Tatchell alleged that Kissinger was responsible for war crimes, in violation of the UK's 1957 Geneva Conventions Act (as amended by the 1995 Act), committed in Indochina from 1969 to 1973, when he served as National Security Advisor to President Richard Nixon. On April 24, 2002, an English court refused the application. Judge Nicolas Evans, who had issued the first arrest warrant for Pinochet, asserted that the Court has the power to issue an arrest warrant, but, as the Director of Public Prosecutions (DPP) had indicated in a letter of 23rd April 2002 of his intention not to institute proceedings, Judge Evans noted that "it would seem quite pointless my issuing a warrant even if I were so minded". This remark undoubtedly was triggered by the statutory requirement to obtain the DPP's consent before any prosecution under the Geneva Conventions Act can proceed. In addition, the judge found that the evidence presented made only "generalised allegations and suggests possible sources of potentially admissible evidence" and that he had "serious misgivings concerning Mr. Tatchell's ability to actually obtain such admissible evidence". As a result Judge Evans noted that any summons or warrant should include "a suitably precise charge".

Others

At least six additional cases are currently under investigation in the UK. As a result of the sensitivity of publicizing these cases before the completion of the investigation and any decision taken by the Crown Prosecution Service or Attorney-General, details of these cases have not been provided.

MIDDLE EAST

Israel

The Israeli Foreign Ministry is weighing the possibility of hiring more legal staff at embassies in Europe to handle complaints of war crimes being filed against Israelis. Israeli Army Radio reported that the proposal arose in the aftermath of several complaints filed recently against Prime Minister Ariel Sharon in Europe.

NEWS ITEMS

To view an archive of news items on universal jurisdiction, go to:
<http://groups.yahoo.com/group/uj-info/>.

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Hugo Relva, Latin America Coordinator on the ICC for Amnesty International and Consultant for the Coalition for the ICC, contributed key information to other portions of the Americas section.

EUROPE

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Rosanna Mesquita, UK Legal Adviser at REDRESS, wrote portions of the UK section.