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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 edition was drafted primarily by Grazia Careccia, a UJ Info intern, with assistance from Myrthe Wijnkoop, an intern with the Coalition for the International Criminal Court, and 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 a Universal Jurisdiction Website, for legislation, cases and other relevant information.

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.

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REGIONAL UPDATES ON UNIVERSAL JURISDICTION

UNITED NATIONS

UNMIK

September 2003

After an internal inquiry, the United Nations Interim Administration in Kosovo (UNMIK) requested the Zimbabwe government to withdraw Chief Inspector Henry Dowa and for the authorities in Zimbabwe to conduct 'a prompt and full investigation' into allegations that he committed torture while in Harare as part of the Zimbabwe Republic Police. Dowa was in Kosovo as part of the UNMIK civilian police force to, *inter alia*, train Kosovar police officers in 'best practice' police keeping.

In June 2003, REDRESS had asked the United Nations Interim Administration in Kosovo (UNMIK) to investigate, with a view to prosecution, allegations that Chief Inspector Dowa was responsible for electric shock torture and beatings on the soles of the feet. UNMIK withdrew Dowa from public duties and prevented him from leaving Kosovo pending further investigation. They ultimately decided that the Kosovo Department of Justice lacked the necessary human and financial resources to conduct a satisfactory investigation. Meanwhile, REDRESS questioned whether, in the circumstances, the UN has the right under the Torture Convention to facilitate Dowa's return to Zimbabwe, as Article 5(2) sets out the obligation to investigate and prosecute in the absence of an extradition request. Additionally, there are no reasonable prospects that the Zimbabwe government will investigate the allegations, as state-sponsored torture is widespread and growing.

THE AMERICAS

Chile

2003

A complaint, filed under the rubric of the case against "Augusto Pinochet Ugarte and others," was lodged in Chile against Roman Catholic priest Christian von Wernich, an alleged Argentinean torturer. Jurisdiction appears to be based on the universality principle.

Mexico

June 2003

On 12 June 2003, the Mexican Supreme Court approved Spain's request for the extradition of Argentine Navy Capt. Ricardo Miguel Cavallo, but only with respect to some of the crimes charged. While, the accused had been charged with genocide, terrorism, torture or other cruel, inhuman or degrading treatment, the Court authorized the extradition for genocide and terrorism only. This confirmed the judgment by Mexican Judge Jesus Guadalupe Luna on 12 January 2001, in which he ruled that Cavallo could not be extradited for torture on the grounds that, under Mexican law, the statute of limitation for a torture prosecution had expired. The extradition proceeded, with the accused landing in Spain on 29 June 2003.

Panama

May 2003

In May 2003, the Panamanian National Committee on the Implementation of International Humanitarian Law sent a draft implementation bill to the Ministry of Government and Justice. The draft includes a Penal Code amendment that would provide for universal jurisdiction even if the suspect is not present in Panama, among other significant provisions.

United States

All of the laws 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 perpetrators 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. More information about these cases, including names of *pro bono* attorneys involved, may 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, www.earthrights.org, and the International Labor Rights Fund, www.laborrights.org.

Cases against Foreign Officials, Organizations or Individuals

Cabello v. Fernandez Larios

October 2003

On 15 October 2003, a Florida jury awarded the family of Winston Cabello, an economist who had been killed by the Caravan of Death in October 1973, \$3 million in compensatory damages and \$1 million in punitive damages. The defendant was found liable for torture, crimes against humanity and extrajudicial killing.

Archbishop Oscar Romero

September 2003

On 12 September 2003, the Center for Justice & Accountability (CJA) filed a lawsuit against Alvaro Rafael Saravia, who is accused of having contributed significantly to the organization of the March 1980 assassination of Salvadoran Archbishop Oscar Romero. The Archbishop had been an outspoken critic of the Salvadoran military’s human rights abuses. In 1987, Salvadoran prosecutors had requested Saravia’s extradition for his role in the assassination, but the Salvadoran Supreme Court, in a dubious decision, later withdrew the request.

Jiang Zemin

September 2003

This suit, filed in October 2002 by a group of Falun Gong practitioners, accuses Chinese President Jiang Zemin and the Falun Gong Control Office with torture, genocide and arbitrary arrest and imprisonment, among other illegal acts. Shortly after the submission of the complaint, the US State Department filed a motion to vacate the lawsuit. In April 2003 the plaintiffs notified the Court of the defendant’s change of status – i.e. as of March 2003 he no longer holds the office of President. On 12 September 2003, the Northern District of Illinois dismissed all of the plaintiffs’ claims, ruling that that the former president was entitled to immunity and that there was no personal jurisdiction over the Falun Gong Control Office.

Abiola v. Abubakar

August 2003

Three Nigerian activists, including the daughter of the assassinated former president Chief Abiola, brought a claim against Nigerian president Abubakar for torture, wrongful death, arbitrary detention, inhuman and degrading treatment, false imprisonment, assault and battery and infliction of emotional distress. The defendant was ordered to appear for deposition, but failed to do so. The defendant subsequently filed a motion claiming that the US courts lack both personal and subject matter jurisdiction, and asserting head of state immunity and *forum non conveniens*. On 17 June 2003, a US court determined that there is indeed personal jurisdiction over the defendant and that he had not met his burden to establish that Nigeria would provide an adequate forum should the case be removed to it, but that Abubakar is entitled to immunity for the acts that occurred when he was Nigeria’s head of state. On 25 August 2003, Abiola’s daughter was directed to establish her ability to sue on behalf of her parents’ estate under Illinois law by 23 October 2003.

Romagoza v. Garcia and Casanova

July 2003

Oral argument was heard on 31 July 2003 in the defendants' appeal against the 23 July 2003 judgment, in which they were ordered to compensate the plaintiffs for torture suffered. \$270,000 has been recovered from one defendant and additional assets continue to be pursued. The money recovered is being held in an account pending the outcome of the appeal.

Hugo Chavez cases

July 2003

On 10 July 2003, survivors and family members of protestors killed in Venezuela in April 2002 or wounded while demonstrating in front of the presidential palace in Caracas filed a claim against President Hugo Chavez and more than two dozen government, military and paramilitary leaders of Venezuela.

Rodriguez Saludes v. Castro

May 2003

In May 2003, a case was brought against Fidel Castro and several other Cuban government officials on behalf of jailed dissident journalist Omar Rodriguez Saludes.

Marta Beatriz Roque et al v. Castro

April 2003

In April 2003, the US-based Judicial Watch brought a claim against Fidel Castro and other Cuban government officials on behalf of two jailed Cuban political dissidents.

Cases against Corporations

In Re: South African Apartheid Litigation

November 2003

A number of cases filed around the US against a variety of corporate defendants for their activities supporting apartheid in South Africa were consolidated in early 2003. Defendants include Citigroup, IBM, Barclays Bank and others. Claims against Daimler Chrysler AG were voluntarily dismissed, while a court ordered the dismissal without prejudice of the charges against Rio Tinto. In September 2003, the South African and US governments intervened to support the dismissal of the remaining claims. On 6 November 2003, oral argument was heard on the defendants' motion to dismiss.

Abdullahi v. Pfizer

October 2003

On 8 October 2003, the Second Circuit heard oral argument in a case in which thirty Nigerian families claimed against Pfizer for conducting an unethical clinical trial of an antibiotic (Trovan) on their children in 1996. In 2002, the district court had ruled in favor of Pfizer's motion to have the case removed to Nigeria under the doctrine of forum non conveniens. The case was remanded to the district court.

Sarei, et al v. Rio Tinto

September 2003

Oral argument was heard on 8 September 2003 in a class action case against Rio Tinto for displacement of villages and environmental damage during construction of a copper mine in Papua New Guinea. A court had dismissed the case in July 2002, but the plaintiffs are now appealing.

Flores v. Southern Peru Copper Corporation

August 2003

In this case concerning the environment, Peruvian residents accused the Southern Peru Copper Corporation of despoiling the air, land and water through copper mining and refining operations during the past forty years. In July 2002, the case was dismissed on the grounds that the plaintiffs failed to provide sufficient evidence to show an international consensus that high levels of environmental pollution within a single country did not violate certain human rights. The Court further explained that if it had not held that the ATCA claims were legally unfounded, it would

have dismissed the lawsuit on the basis of forum non conveniens. The plaintiffs appealed, but their appeal was denied on 29 August 2003.

Villeda v. Fresh Del Monte Produce

August 2003

Former leaders of a Guatemalan labor union charged Del Monte with organizing kidnapping and conspiracy to torture. Oral argument was heard on 13 August 2003 regarding the defendant's motion to dismiss.

Doe v. Unocal and Roe v. Unocal

July 2003

Further developments took place in July 2003 in the case against Unocal for the alleged role of its subsidiaries in permitting Burmese troops guarding one of its pipelines to rape, murder, enslave and forcibly relocate local inhabitants. On 31 July 2003, a California court denied Unocal's motion to apply the law of Bermuda, where the accused's subsidiaries are registered, or Burma, where the abuses are alleged to have taken place, rather than California. One of the most significant aspects of the decision was the Court's refusal to apply Burmese law to this case partly because "the application of foreign law would offend public policy." This is the first time that a US corporation stands trial in the US for alleged human rights violations committed by a joint-venture partner overseas. The case is scheduled to go to trial on 3 December 2003.

Burnett, Sr. v. Al Baraka Investment and Development, et al.

July 2003

Thousands of survivors and relatives of those killed in the 11 September attacks on the World Trade Center brought a claim against seven international banks, eight Islamic foundations and several individuals alleged to be terrorist financiers, including Osama bin Laden and members of the Saudi royal family, among others. The claim was brought pursuant to, inter alia, the Foreign Sovereign Immunities Act, the Torture Victim Protection Act and the Alien Tort Claims Act for a variety of torts, including wrongful death and conspiracy. On 25 July 2003, a US court granted in part and denied in part the defendants' motions to dismiss. On 14 November 2003, the court dismissed all claims against two Saudi government officials on the ground that they are entitled to immunity under the Foreign Sovereign Immunity Act.

Mujica v. Occidental Petroleum and AirScan, Inc.

April 2003

On 24 April 2003, Luis Alberto Galvis Mujica brought a claim against Occidental Petroleum and AirScan for a 1998 bombing of Santo Domingo in Colombia, which killed his mother, sister and cousin. He also brought suit on their behalf. He claimed that Occidental had directly funded the Columbian Air Force in exchange for protection of its pipeline, and that AirScan had provided the Air Force with the coordinates for the bombing. Mujica also claimed that Occidental and AirScan were involved in planning and organizing the bombing.

EUROPE

Belgium

Legislative Developments

Belgium's universal jurisdiction law was repealed in August 2003, and replaced, in a much more restricted form, with amendments to the Criminal Code. The law (*Loi relative à la répression des infractions graves aux Conventions de Genève du 12 août 1949 aux Protocoles I et II du 8 juin 1977*), enacted on 16 June 1993 and amended in 1999, enabled Belgian courts to exercise universal jurisdiction over war crimes, genocide and crimes against humanity. It presented a number of features that made it the broadest universal jurisdiction law in the world and, according to

many, a model in the fight against impunity for serious human rights violations. Indeed, the law covered all crimes included in the International Criminal Court (ICC) statute, did not require the presence of the suspect on Belgian territory for an investigation to be started and expressly excluded immunity for state officials. Moreover, victims benefited from the right to file a complaint directly before the investigating judge. Four Rwandans were tried for genocide under the law and convicted in June 2001. However, following this trial, a number of cases charging sitting leaders were filed, igniting a diplomatic backlash primarily from Israel and the United States. While it remained highly improbable that those leaders would ever face trial in Belgium, the mere filing of cases started to pose diplomatic problems for the Belgian government.

The first blow to the law came in February 2002, when the International Court of Justice ruled that Belgium could not issue a warrant for the arrest of the incumbent DRC foreign minister, because, in its view, under customary international law foreign ministers, as well as prime ministers and heads of state, were immune from arrest by foreign jurisdictions while in office.

Then, in decisions issued in June and July 2002, a Belgian court cited a provision of the Criminal Procedure Code to declare complaints under the universal jurisdiction law inadmissible because the suspects were not in the country. This restrictive interpretation would have dismissed most cases already filed in Belgium, had it not been reversed by a higher court.

In April 2003, Parliament restricted the scope of the law. This failed to stave off criticism, however. A number of cases were soon filed against U.S. officials for crimes allegedly committed in Iraq, prompting an immediate reaction from Washington. The U.S. Defense Secretary threatened Belgium that it risked losing its status as host to NATO's headquarters if it did not rescind the law entirely. In the face of the U.S. attack, with no apparent support from European partners and Belgian public support also seeming to evaporate with each high-profile political case, the Belgian government capitulated. On 12 July, it announced that Belgium would repeal the law altogether.

Under the amendments to the Belgian Criminal Code, adopted August 2003, Belgian courts will only have jurisdiction over international crimes if the accused is Belgian or has his primary residence in Belgium, if the victim is Belgian or has lived in Belgium for at least three years at the time the crimes were committed, or if Belgium is required by treaty to exercise jurisdiction over the case. The new law also considerably reduces victims' ability to obtain direct access to the courts – that is, unless the accused is Belgian or has his primary residence in Belgium, the decision to proceed with any complaint rests entirely with the state prosecutor. Belgium has thus restricted the reach of universal jurisdiction in its courts by adopting a law similar to or more restrictive than most European countries.

The law does, however, include a transitory provision allowing a limited category of advanced cases to continue, including those concerning the **Rwandan genocide** and the killing of two Belgian priests in **Guatemala**, as well as the complaints filed against ex-Chadian dictator **Hissène Habré**, for which a Belgian investigating judge had already gone to Chad in 2002.

Shabra and Shatila

September 2003

Numerous developments took place in the case concerning the massacre of Palestinians in the Sabra and Shatila refugee camps more than twenty years ago. On 6 March 2003, the Brussels Appeals Court rejected the request of Mr. Masset, counsel for the accused, to suspend the case until the International Court of Justice issues a decision in the case of the Republic of Congo v. France, or until the April amendments to Belgium's universal jurisdiction law enter into force. Subsequently, on 10 June 2003, the same Brussels Court rejected all the arguments invoked by the State of Israel and the accused, such as state sovereignty, double jeopardy and other legal obstacles, in seeking to invalidate or oppose the criminal investigation. Just prior to this latter decision, the defendants had declared their withdrawal from the judicial arena, retreating fully to the political and diplomatic arena, reportedly in the hope that the Belgian government would use the April 2003 amendments to the universal jurisdiction law to withdraw Belgian jurisdiction over the case so that Israeli courts could hear it. On 13 June 2003, following persistent pressure from

the Israeli Government, the Belgian justice ministry declared that it had started the procedure to transfer the Sabra and Shatila case to Israel. By the time the decision on such a transfer reached Belgium's Supreme Court (*Cour de Cassation*), the universal jurisdiction law had already been repealed and replaced by far more restrictive jurisdictional rules. On 24 September 2003, the Supreme Court ruled that the case could not proceed in Belgium since none of the plaintiffs had Belgian nationality at the start of the case.

George Bush Sr., et. al.

September 2003

On 24 September 2003, the Belgian Supreme Court ended the case brought against George Bush Sr., Dick Cheney, Colin Powell and Norman Schwarzkopf for alleged war crimes committed during the 1991 Gulf War. The Court, applying the August 2003 changes to universal jurisdiction legislation, ruled that the case could not be tried in Belgium since none of the plaintiffs had Belgium nationality when the case was initiated.

Gen. Tommy Franks

September 2003

On 15 May 2003, a group of Iraqis and Jordanians filed a complaint for violations of international humanitarian law against Gen. Tommy Franks in his capacity as commander of the U.S. and U.K. forces during the recent conflict in Iraq. The Belgian government ordered that jurisdiction over the case be ceded to U.S. courts, on the basis of an April 2003 amendment to the universal jurisdiction law. (The American judicial system has taken no action on the alleged offences since then.) Subsequently, the general prosecutor decided that it was no longer his role to rule on the admissibility of the complaint. However Jan Fermon, a lawyer for the plaintiffs, contested the prosecutor's decision at the Court of Appeal of Brussels, asserting that it violated the separation of executive, legislative and judicial powers. On 23 September 2003, the Court of Appeal of Brussels ruled that it does not have jurisdiction to hear the appeal, given that the newest legislation of 5 August 2003, which repeals the earlier universal jurisdiction legislation, does not provide for appeals against decisions of the general prosecutor. Mr. Fermon has not ruled out the possibility of appealing to the Supreme Court.

Jiang Zemin

August 2003

A group of Falun Gong practitioners, of Australian, Chinese and Belgian nationality, filed a criminal complaint against Jiang Zemin, former President of the People's Republic of China, Li Lanqing, ex-Vice Prime Minister, and Luo Gan, member of the Central Politbureau. The plaintiffs, represented by the attorney Georges-Henri Beauthier, allege that they were tortured because of their practice of Falun Gong. The complaint, filed on 20 August 2003 before the Federal Prosecutor of Brussels, includes charges of torture, genocide and crimes against humanity. This complaint is reportedly the eleventh lawsuit in eight countries to emerge in the past two years against high-ranking Chinese officials or government bodies for their roles in persecuting Falun Gong. Several complaints have been lodged against Luo Gan in particular during August and September of this year during his visit to Europe.

Hissène Habré

May 2003

On 8 May 2003, the plaintiffs filed a request to the Minister of Justice asking that he declare that the Habré case would survive the April 2003 amendments to the universal jurisdiction law. In particular, they noted that the case could not be referred to another jurisdiction, such as the ICC, Senegal or Chad. Their submission underscored the impossibility of receiving a fair trial in Chad, the unwillingness expressed by the Senegalese authorities to prosecute Habré, and the fact that the facts of the case do not fall within the ICC's jurisdiction. The submission also highlighted that three of the victims were of Belgian nationality. On 5 June, the Minister replied that as there were three Belgian plaintiffs, as Chad and Senegal had decided not to try Habré, and as Chad could not offer a fair trial, the case could continue in Belgium. Following the August 2003 law reform, the case is still expected to proceed (see Belgium – Legislative Developments section above).

Denmark**March 2003**

The former chief of staff of Iraq's armed forces, Nizar al-Khazraji, who had been under house arrest since November 2002, disappeared in March 2003. The Danish authorities subsequently issued both a national and international arrest warrant and expressed a willingness to request extradition in the event the accused is found abroad.

Finland**September 2003**

On 11 September 2003, a group of Falun Gong practitioners resident in Finland filed a criminal complaint against Luo Gan, a Standing Committee member of the Chinese Communist Party's Politburo. During his visit to Finland in early September, the accused was formally notified of the complaint alleging his responsibility for torture and genocide carried out against Falun Gong practitioners in China. Luo Gan has since returned to China.

France*Legislative Developments***May 2003**

On 15 May 2003, France's National Consultative Commission on Human Rights (*Commission Nationale Consultative des droits de l'homme*) released its opinion on the existing draft ICC implementing legislation. The comments included concern that the scope of universal jurisdiction in the draft has been limited with respect to non-States Parties.

*TotalFinaElf***October 2003**

Similar to the case against TotalFinaElf filed in Belgium in April 2002, two Burmese lodged a complaint in France in August 2002 against two of the company's directors for knowledge of the use of forced labor by the Burmese army in its assistance to TotalFinaElf. In September/October 2003, Hervé Madéo, Total's Burma director at the time of the alleged acts, was questioned by an investigating judge.

*ICJ***June 2003**

On 17 June 2003, in the Congo v. France case before the International Court of Justice, the ICJ rejected the Congo's application for the indication of a provisional measure. The Court based its decision on the fact that, inter alia, Congo's claim – that the unilateral assumption by a State of universal jurisdiction in criminal matters constitutes a violation of a principle of international law – does not in itself justify urgent action in the form of provisional measures.

Iceland**September 2003**

Adding to the criminal complaints filed against Luo Gan in other countries, on 8 September 2003 a group of Falun Gong practitioners with different nationalities filed a criminal complaint against him in Iceland. Luo Gan, a Standing Committee member of the Chinese Communist Party's Politburo, was on a two-day visit to Iceland. The plaintiffs alleged the responsibility of the accused in the commission of crimes of torture, genocide and crimes against humanity.

Lithuania**May 2003**

A new Criminal Code, Code of Criminal Procedure and the Code on Execution of Penalties entered into force on 1 May 2003, just prior to Lithuania's ratification of the Rome Statute of the International Criminal Court. Lithuania's report to the Council of Europe on implementation of the Rome Statute does not clearly indicate whether or not the new legislation includes universal jurisdiction provisions. (For further details, see <http://www.iccnw.org/countryinfo/europecis/lithuania.html>.)

Netherlands

Legislative developments

October 2003

The Netherlands' legislation implementing the Rome Statute entered into force on 1 October 2003. This legislation provides for universal jurisdiction over genocide, war crimes, crimes against humanity and torture, as long as the alleged perpetrator either is present in the territory of the Netherlands or has become a Dutch national subsequent to the commission of the crime. Civil claims can also be attached to criminal proceedings for any of these crimes.

Congolese Colonel

September 2003

On 30 September 2003, a former Colonel of the Zairian National Guard, known as "the King of Beasts," was charged with torture and rape committed in Zaire, now the Democratic Republic of the Congo, from 1995 to 1996. The defendant, reportedly a colonel of the civil guard under former Congolese dictator Mobutu Sese Seko, fled Congo in 1998 and sought political asylum in the Netherlands. His application was denied since the immigration authorities suspected his involvement in war crimes. Despite this denial of asylum, he was not forced to leave the country and resided there until his arrest on 26 September 2003. The Dutch investigators have taken statements from three witnesses who had filed complaints against the defendant, claiming they had been abused by him or had undergone torture under his supervision.

Spain

Legislative developments

June 2003

In June 2003, the Government made public its draft law on cooperation with the ICC and called for a special parliamentary session on 8 July, in order to have it approved. It contains a provision – Article 7(2) – that would appear to require Spanish authorities to refrain from taking any action on crimes committed abroad by foreign nationals except for encouraging them to be redirected to the International Criminal Court.

Bin Laden

September 2003

On 17 September 2003, Judge Baltasar Garzón charged Osama bin Laden, the leader of Al Qaeda, and nine people identified as members of the terrorist network, with committing the 11 September 2001 attacks in the United States and other acts of terrorism. He justified the order on the grounds that the terrorist acts were planned partially in Spain, which is known to have been used as a base for preparation, indoctrination, support, finance and organization for the Al Qaeda network. It is unclear as to whether the universality principle forms the jurisdictional basis of this case.

Jiang Zemin

September 2003

On 6 September 2003, a group of Falun Gong practitioners filed a criminal complaint in Madrid against Jiang Zemin. The former President of the People's Republic of China is charged with genocide, crimes against humanity and torture.

Fujimori

July 2003

On 27 July 2003, Spain's Supreme Court (*Tribunal Supremo*) determined that Spain would in principle have jurisdiction over genocide, torture, terrorism and unlawful detention allegedly committed by Alberto Fujimori and 18 other high-ranking officers of his government during operations against dissident groups. However, the Court ruled not to admit the criminal complaint "for the moment", since Peru has thus far shown a willingness to take forward the case.

Switzerland

Legislative Developments

At the time of this writing, the Swiss Parliament was considering amendments to Switzerland's Military Penal Code. Under some proposals, the universal jurisdiction provision(s) would require a strong link between the suspect and Switzerland. (For further information, see http://www.trial-ch.org/Fichiers/appel_ass_fed.pdf.)

Mofaz and Ben Eliezer, et. al.

November 2003

A Swiss lawyer filed a complaint against Israeli Defense Minister Shaul Mofaz and his predecessor Benjamin Ben Eliezer, as well as two other Israeli officials, concerning alleged acts of torture and the destruction of Palestinian homes in Gaza in early 2002. They have reportedly been charged with war crimes, crimes against humanity and torture.

Gen. Habib Ammar

September 2003

On 17 September 2003, the Swiss-NGO TRIAL and the World Organisation Against Torture (OMCT) lodged a criminal complaint against General Habib Ammar, formerly the Commander of the Tunisian National Guard and Minister of the Interior, who was visiting Geneva. They accused him of responsibility for the widespread use of torture under his command in the mid-1980s. However, the General left Switzerland soon after the complaint was filed, and the Prosecutor determined that the case could not be pursued due to the General's immunity under a 1971 agreement between the Swiss Confederation and the International Telecommunications Union, which is holding the summit for which Ammar was doing preparatory work in Geneva. TRIAL and OMCT contest the Prosecutor's interpretation of the agreement but have decided not to lodge an appeal since the General is no longer in Switzerland.

Bush and Blair

May 2003

On 1 May 2003 a private group called "Solidarity with Victims of the War Against Iraq" filed war crimes charges in Switzerland against US President George W. Bush and British Prime Minister Tony Blair. In a submission, the Geneva-based group, said it represented Iraqi nationals whose family members had been victims of acts of war. The prosecution office, however, reportedly said that Bush and Blair would be immune from prosecution while in office, even if they entered Swiss territory.

United Kingdom

Zardad Faryadi Sarwar, Mujahadeen Military Commander

July 2003

On 18 July 2003, Zardad Sarwar, a mujahadeen military commander in Afghanistan, was remanded in custody by a London court on sixteen counts, including charges of torture under section 134 of the Criminal Justice Act 1984 and hostage taking under 1982 Taking of Hostages Act. These charges relate to acts that were perpetrated between 1992 and 1996 during Afghan civil war. If the case goes to a full trial, it will be the first time a perpetrator of torture will be tried in the UK under section 134 of the Criminal Justice Act 1988.

Ron Jones v Interior Ministry of Saudi Arabia and another

July 2003

In the Ron Jones case, a master granted immunity to the Interior Ministry of Saudi Arabia and Lieutenant-Colonel Abdul Aziz under the UK's State Immunity Act 1978 on 30 July 2003. The master based his decision mainly on the European Court of Human Rights' findings in *Al-Adsani v UK*. Mr. Jones had been pursuing a personal injury claim for torture allegedly committed by Saudi authorities. In September 2003, Mr Jones lodged an appeal with the Court of Appeal and it is believed that the Court has accepted to hear the application. (For a full account of the legal arguments in the case, see page 8 of The Reparation Report vol 2, <http://www.redress.org/>)

publications/Redress02.pdf.) (Note: Even though the victim in the case is a UK national, the victim's nationality is not relevant to the competence of English courts. There is no requirement under English law for a person launching a claim for a civil wrong committed abroad to be resident in the UK or to be a British national. However, in claims where the injury occurred outside the UK, the claimant has to overcome a number of procedural hurdles that may be raised by the defendant such as forum non conveniens or, as in this case, state immunity. These procedural hurdles may prevent a case from proceeding to a full merits hearing.)

Narendra Modi, Chief Minister of State of Gujarat

August 2003

On 20 August 2003, an application was made for an arrest warrant for Narendra Modi, the current Chief Minister of State of Gujarat, India, while he was visiting the United Kingdom on personal business. The application, filed on behalf of three victims, accused Modi of responsibility for torture under Section 134 of the Criminal Justice Act 1988. The Judge accepted that the Attorney-General's consent was not needed to issue an arrest warrant but found that consent was required for the issue of a summons. Despite this, the Judge found that he could not issue a warrant based on background evidence without a deposition being submitted by a victim or witness. The Judge directed that the applicant may reapply when the required evidence was available. Modi left the UK the following day.

CORRECTIONS

Belgium

In the Legislative Developments summary of the April 2003 edition of the UJ Update, one sentence was incorrectly written. It should have stated: "One provision permits case, 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."

Spain

The Rios Montt summary in the April 2003 edition should have read: "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."

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

² Ibid.

NEWS ITEMS

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

NEW RESOURCES

In May 2003, TRIAL, a Swiss NGO working on impunity issues, launched a new newsletter. The newsletter contains a substantial amount of information on universal jurisdiction cases and legislative developments in Switzerland and elsewhere in Europe.

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