

Human Rights *Brief*



Center for Human Rights and Humanitarian Law

A Legal Resource for the International Human Rights Community

Perspectives on Addressing War Crimes

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Letter from the Editors

THE BEGINNING OF THE TWENTY-FIRST CENTURY has seen groundbreaking developments in international criminal law. The International Criminal Court (ICC), the world's first permanent international tribunal charged with trying individuals for genocide, war crimes, and crimes against humanity, has detained its first suspects. The first war crimes trial of a sitting head of state, Slobodan Milošević, began in The Hague. Although that momentous trial ended perhaps a few months short of its conclusion by the death of the Accused, the second war crimes trial of a sitting head of state, Charles Taylor of Liberia, is underway at the Special Court for Sierra Leone, a hybrid tribunal created by the United Nations and the government of Sierra Leone. Another hybrid tribunal, the War Crimes Chamber of the State Court of Bosnia and Herzegovina, began trying suspects accused of crimes during the 1990s armed conflict in Bosnia. As these and other developments unfold, international practitioners face increasingly complex questions concerning how to effectively address war crimes. This special issue of the *Human Rights Brief* examines some of the complex issues that have arisen with the growth of international criminal tribunals.

One unique aspect of trials at the ICC is that victims may participate in court proceedings, not as witnesses but as actual parties. Fiona McKay of the Victims Participation and Reparations Section in the Registry of the ICC discusses the meaning of "victim" in this context and controversies and challenges regarding victim participation.

A highly important, very practical issue is the question of funding new mechanisms that try alleged war criminals. Having worked in defense at three hybrid tribunals — the Extraordinary Chambers in the Courts of Cambodia, the War Crimes Chamber in Bosnia, and the Special Court for Sierra Leone — Rupert Skilbeck brings an experienced perspective to this complex challenge in the context of examining the very different financial situations of these three courts.

The plight of child soldiers has drawn increasing international attention in recent years, in no small part because of the work of the Special Court for Sierra Leone. David Crane, former Chief Prosecutor of that court, provides an insider's view of its efforts to bring to justice those who recruit and use child soldiers. He also sheds light on the Special Court's critical decision not to prosecute child soldiers.

Another side of the West African conflict that embroiled Sierra Leone and Liberia in the 1990s is currently playing out in a U.S. federal court. Elise Keppler, senior counsel at Human Rights Watch's International Justice Program, and Shirley Jean and J. Paxton Marshall, associates from Weil, Gotshal & Manges LLP, discuss the case against Charles "Chuckie" Taylor, Jr., son of former Liberian President Charles Taylor, who is being tried for acts of torture he committed in Liberia while head of the pro-government Anti-Terrorist Unit. His case represents the first prosecution under a U.S. law that criminalizes torture committed abroad.

As the genocide in Rwanda demonstrated, it is often the failure of governments to protect civilians that allows a genocide to unfold. Drawing on diverse inspirations, Chad J. Hazlett, Director of Protection at the Genocide Intervention Network, explores the innovative question of whether and when private actors are justified in breaking laws to protect civilians from mass atrocities.

In the final article in this issue, Hadar Harris, Executive Director of the Center for Human Rights and Humanitarian Law at American University, Washington College of Law (WCL), and Solomon Shinerock, a J.D. candidate at WCL, discuss the recent joint efforts of WCL and the International Committee for the Red Cross to increase and improve U.S. law school instruction on international humanitarian law, a topic vital to the prosecution of war crimes.

The Editors-in-Chief would first like to express our gratitude to Juan E. Méndez, President of the International Center for Transitional Justice, who is the subject of the featured extended alumni profile in this issue of the *Human Rights Brief*. We also wish to thank the writers and their institutions for their important contributions to this issue. Our thanks also go to Rebecca Hamilton for her expertise on genocide. Finally, we would like to extend a special thank you to Richard Dicker for his invaluable assistance in helping us shape this issue. **HRB**

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Victim Participation in Proceedings before the International Criminal Court

by Fiona McKay*

ONE OF THE UNIQUE ASPECTS of the International Criminal Court (ICC) compared to other international criminal tribunals is the element of victim participation. Victims may present their views and concerns to the ICC, where their interests are affected, potentially at any stage of the proceedings, from investigations to appeal. If an accused is convicted, the ICC may award reparations.

Such a role for victims in criminal proceedings is normal in some legal systems of the world, where victims can join criminal proceedings as civil parties. It is largely unfamiliar, however, to common law countries, like the United States, where victims may be called to testify as witnesses but play no further role in the proceedings and must bring a separate civil action if they wish to claim damages or another remedy for harm related to the crime. The closest process in the United States may be the notion of victim impact statements, whereby victims may address a court regarding the impact a crime had on them while the court considers sentencing. Before the ICC, victims may present their views to the ICC from a much earlier stage.

This innovation was introduced in order to give victims a voice in the proceedings and to address one of the deficiencies for which the *ad hoc* international criminal tribunals, such as those for Former Yugoslavia and Rwanda, were criticized, namely the sense of alienation that many victims felt as a result of being left out of the proceedings. It was also intended to reflect developments in international standards that recognize greater rights for victims of crimes, including the right to reparation.¹

Many of the details of how this participation will work are currently being shaped. The participation of victims has been the subject of a considerable amount of the ICC's early jurisprudence, and a number of appeals are currently pending on key elements that will have a significant impact in determining what the role of victims before the ICC will be.

Aside from the legal issues, there are also very real, practical challenges involved in making the ICC's scheme for victims' participation work. The Victims Participation and Reparations Section (VPRS) is one of several units in the ICC concerned with victims. The VPRS was established within the Registry of the ICC to assist victims and facilitate their access to the ICC, as well as to serve as the entry point for applications to participate in proceedings and to process such applications. Another unit of the ICC is responsible for protection and support (the Victims and Witnesses Unit), and two independent bodies have been established — an Office of Public Counsel for Victims to provide legal assistance and representation, and a Trust Fund



International Criminal Court/Gabriela Gonzalez-Rivas

Amputation survivors meet with André Laperrière, Director of the ICC Trust Fund for Victims, an independent organization created by the Rome Statute to aid the victims of crimes the ICC prosecutes.

for Victims of crimes within the ICC's jurisdiction and their families.

WHAT DOES "PARTICIPATION" MEAN?

According to Article 68(3) of the Rome Statute of the ICC (the Rome Statute):

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented, and considered, at stages of the proceedings determined to be appropriate by the Court, and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.²

Participating in proceedings should be distinguished from being called to testify as a witness. Some victims may be called as witnesses by one of the parties to give evidence that goes to the culpability or innocence of the accused, whereas appearing as a victim participant is entirely voluntary. Further, in participating, victims are pursuing their own interests, independent from the parties. Indeed, in the first major decision on victims' participation, dating from January 2006, the Pre-Trial

* Fiona McKay is Chief of the Victims Participation and Reparations Section in the Registry of the International Criminal Court. The views expressed in this article are those of the author alone and do not represent the views of the ICC.

“Indeed, . . . the first major decision on victims’ participation . . . noted that the Rome Statute grants victims an independent voice and role in the proceedings and that it should not be assumed that victims would be an ally of the Prosecutor.”

Chamber dealing with the situation in the Democratic Republic of the Congo (DRC) noted that the Rome Statute grants victims an independent voice and role in the proceedings and that it should not be assumed that victims would be an ally of the Prosecutor.³

On the other hand, victims’ participation before the ICC does not go as far as the role of victims in legal systems based on the civil law tradition, where their role can be likened to that of a third party in the proceedings. Before the ICC they are not treated as full parties: for instance, to date their lawyers have not been permitted full access to the documents in the record of the proceedings.

Further, the judges sitting in relation to any particular phase of proceedings have a duty to manage the participation of victims during that phase and to ensure that it does not prejudice the rights of the accused or impede the efficiency of the proceedings.⁴ The ICC’s Rules envisage that a legal representative of a victim might question a witness, or even the accused, but only after seeking specific authorization from the Chamber. The Rules also provide that where there are a number of victims, a Chamber may order them to join together and choose a common legal representative, in the interests of ensuring the efficiency of the proceedings.

While the parties sought leave to appeal some of the early decisions on victims, the pre-trial chambers rejected such applications. More recently, several issues have come before the Appeals Chamber in the run up to the ICC’s first trial, in the case of the *Prosecutor v. Thomas Lubanga Dyilo* (the *Lubanga* case). Following the transmission of the *Lubanga* case to the Trial Chamber for preparation for trial, a landmark decision on victims’ participation of January 2008 gave rise to several appeals from both the defence and the prosecution, which are currently pending before the Appeals Chamber. The principal main issues at stake are noted below.

AT WHICH STAGES MAY VICTIMS PARTICIPATE?

The question of what should be the role of victims during the preliminary stages of proceedings has been a contentious one. The ICC’s Statute and Rules provide some guidance on the matter, specifying, for instance, that victims may present their views and concerns in relation to decisions whether to proceed with an investigation or prosecution, in the context of challenges to jurisdiction or admissibility, and during a hearing to consider whether to confirm the charges against a person.⁵

In an early decision from January 2006, the Pre-Trial Chamber dealing with the situation in the DRC decided that victims may participate even as early as the investigations phase, when the Prosecutor is still conducting investigations into which crimes might have been committed and who might be responsible, and before a case has been opened against any individual. According to Pre-Trial Chamber I, the personal interests of the victims are affected at this stage in a general manner, in that participation enables them to clarify facts, punish those responsible for crimes and seek reparation for harm suffered. The Chamber went on to distinguish between victims of a *situation* and of a specific *case*, an approach subsequently adopted by Pre-Trial Chamber II in relation to the Uganda situation. The Prosecutor challenged this approach, arguing that victim participation during an investigation could jeopardize the integrity and objectivity of the investigation as well as impact its efficiency and security. It was not until early 2008, however, that the issue came before the Appeals Chamber, which is currently considering whether Article 68(3) of the Statute can be interpreted as providing for a procedural status of victim at the investigation stage of a situation and the pre-trial stage of a case.⁶

WHICH VICTIMS MAY PARTICIPATE?

Identifying which victims may participate is currently the subject of appeal before the ICC Appeals Chamber. The Rules of Procedure and Evidence give only a very general definition of who will be considered a victim before the ICC — a natural person who has suffered harm as a result of the commission of a crime within the jurisdiction the ICC. An organization or institution that suffered harm to its property dedicated to religion, education or similar purposes, or to monuments, hospitals or other places used for humanitarian purposes may also be considered a victim. While this is less detailed than the definition contained in international instruments, both the Pre-Trial Chamber and the Trial Chamber in the DRC situation have held that the notion of “harm” should be interpreted in the light of internationally recognized standards, and have referred to international instruments that contain a more detailed definition.⁷

The question of which victims should be allowed to participate in relation to a specific *case* — as opposed to the broader *situation* that is before the ICC — is the subject of a pending appeal. At the pre-trial stage of the *Lubanga* case, the judges of the Pre-Trial Chamber decided that only those victims able to demonstrate a direct causal link between the harm they allege

“A major challenge is how to inform victims about the ICC in general as well as about their own possible role as participants, when many victims are in inaccessible or insecure locations, cannot access regular media channels, and have high levels of illiteracy and little or no experience with criminal justice systems.”

to have suffered and the crimes in the arrest warrant would be entitled to participate in proceedings in relation to the case at that stage. When the case moved to the Trial Chamber, that Chamber departed from this approach, finding that indirect as well as direct victims of a crime may be accepted, and that the range of victims who might be authorized to participate in the trial would not be limited to those linked to the crimes contained in the charges; rather that whether the interests of a victim are affected by the trial will be determined instead by reference to whether the victim can establish a link with evidence the ICC will be considering during the trial, or is affected by an issue arising during the trial because his or her personal interests are “in a real sense engaged by it.”⁸ The Trial Chamber also noted that victims may have very general and wide-ranging interests, such as in being allowed to express their views and concerns, verifying particular facts, protecting their dignity and ensuring their safety, and being recognized as victims, and that their interests were not limited to receiving reparations.

As a result of applications from both the prosecution and the defence, the Appeals Chamber is currently considering the question of whether the harm alleged and the concept of “personal interests” must be linked with the charges against the accused.⁹

WHAT WILL VICTIMS PARTICIPATING IN PROCEEDINGS BE PERMITTED TO DO?

The ICC’s rules relating to victim participation envisage that victims may give opening and closing statements at trial, and may request authorization to make interventions, including questioning witnesses. During the confirmation of charges hearing in the *Lubanga* case, a legal representative of a victim was permitted to put a question to a witness.

Another issue currently on appeal is whether victims participating in proceedings will be able to introduce evidence during trial. The Trial Chamber, in its decision on victims’ participation of January 2008, held that victims participating in proceedings may be allowed to introduce and examine evidence if the Chamber finds it will assist in the determination of the truth.¹⁰

REPARATIONS

According to Article 75 of the Rome Statute, the ICC *shall* develop principles in relation to reparation, and in a particular

case *may* proceed to make an assessment of the harm done to victims, and *may* make specific awards of reparation directly against a person it has found guilty of crimes within the ICC’s jurisdiction. The Rome Statute sets out only a broad framework in relation to reparations. The framework is designed to enable an appropriate approach to be taken in each case. For instance, in line with international standards, reparation may take various forms, including compensation, restitution, and rehabilitation (as well as other forms such as non-material or symbolic measures), and it may be awarded on a collective or an individual basis.

To date, the ICC has not developed principles in abstract, and there have been very few pronouncements on the part of any of the Chambers. During preparation for the *Lubanga* trial, one question has been whether or not to consider evidence relating to reparations during the course of the trial itself, or only at a separate reparations stage if the accused is found guilty. The Prosecution suggested a wholly “blended approach” according to which reparations would be dealt with during the trial itself. The Chamber did not go that far, but decided to apply a regulation that allows the ICC to hear and examine witnesses relating to reparation during trial, where this is expedient in the interests of efficiency, for instance to avoid the need to call the same witness twice.¹¹

CHALLENGES FOR THE ICC IN ENABLING VICTIMS TO PARTICIPATE IN PROCEEDINGS

Some of the greatest challenges to victims’ participation before the ICC are not legal but rather relate to how to enable victims to effectively participate in proceedings. Many practical and logistical considerations exist in a context where the victims of the situations currently before the ICC are located in places that suffer from a state of insecurity.

A major challenge is how to inform victims about the ICC in general as well as about their own possible role as participants; when many victims are in inaccessible or insecure locations, cannot access regular media channels, and have high levels of illiteracy and little or no experience with criminal justice systems. The ICC’s Outreach Unit and the VPRS seek to develop strategies and tools aimed at reaching those populations as effectively as possible despite these difficulties.

Victims need to be not only informed, but also assisted and supported to go through the application procedure. The ICC

works with local non-governmental organizations (NGOs) and other intermediaries to try to ensure that victims have effective means of exercising their rights before the ICC, including the ability to choose a legal representative. Many local NGOs, however, experience difficulties in raising the necessary resources to carry out this work.

Another challenge for the Registry is how to process potentially large numbers of applications from victims. The ICC's Rules and Regulations provide that to participate in proceedings, victims must make a written application providing specific information designed to enable the relevant chambers to decide on their application. The VPRS has been assigned the task of receiving, following up on, and processing applications, and providing reports to the relevant chambers that will assist them when considering their decisions. The VPRS has worked to establish systems to enable the VPRS to handle large numbers of applications. Whilst it is difficult to predict the volume that may be received, and applications currently number in the hundreds rather than thousands, potentially large numbers of victims could seek to participate in proceedings.

For the judges, an important question is whether to permit withholding identities of victims from the public and the parties to protect victims from possible reprisals. The precise duties of the ICC to protect victims participating in proceedings, and those who have applied but whose applications have not yet been decided upon, remain to be resolved. A recent decision of the *Lubanga* Trial Chamber, ruling that the Victims and Witnesses Unit has a duty to protect victims from the moment they approach the ICC, has significant implications for that unit of the Registry, particularly given the challenges it faces in operating in some areas.

The judges have also had to deal directly with practical realities. Several chambers of the ICC have tackled the question of what documents to require applicants wishing to participate in proceedings to produce in order to prove their identity. Faced with the reality that most people in affected communities do not



USAID/Leah Werchick

Rape victims from the armed conflict in the DRC assemble in South Kivu, DRC.

have official proof of identity such as a passport or identity card, the judges have decided to accept alternative and less formal identity documents.

CONCLUSION

THE AMBITIOUS GOAL to give a meaningful role to victims in ICC proceedings has started to be tested and used, and as the first trial before the ICC approaches, it can be expected that further aspects will be clarified. Whilst the legal and practical challenges should not be underestimated, the ICC itself, as well as many committed partners, is seeking to give effect to this innovative mandate.

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ENDNOTES: Victim Participation in Proceedings before the International Criminal Court

¹ See generally, G.A. Res. 40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, U.N. Doc. A/RES/40/34 (Nov. 29, 1985); G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of international humanitarian law*, U.N. Doc. A/RES/60/147 (16 December 2005).

² Rome Statute of the International Criminal Court art. 68(3), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002), available at <http://untreaty.un.org/cod/icc/statute/romefra.htm> (last visited June 28, 2008) [hereinafter Rome Statute].

³ *Situation in the Democratic Republic of the Congo*, Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6, ICC-01/04-101-tEN-Corr, ¶ 51 (Pre-Trial Chamber I, 17 January 2006) [hereinafter Decision on Applications for Participation].

⁴ Rome Statute, *supra* note 2, art. 68(3); Rules of Procedure and Evidence of the International Criminal Court Rule R. 90, Doc. ICC-APS/1-3 (2002) available at www.icc-cpi.int/library/about/

[officialjournal/Rules_of_Proc_and_Evid_070704-EN.pdf](http://www.icc-cpi.int/library/about/Official_Journal.html) (last visited June 28, 2008) [hereinafter Rules of Procedure and Evidence].

⁵ See, e.g., Rome Statute, *supra* note 2, arts. 15(3) and 19(3); Rules of Procedure and Evidence, *supra* note 4, R. 92.

⁶ Leave to appeal was granted to the Office of Public Counsel for the Defence by Pre-Trial I on January 23, 2008.

⁷ Decision on the Applications for Participation, ¶ 81; *Situation in the Democratic Republic of the Congo*, Decision on Victims' Participation, ICC-01/04-01/06-1119, ¶ 92 (Trial Chamber I, Jan. 18, 2008) [hereinafter Decision on Victims' Participation] (referring to the instruments cited in note 2).

⁸ Decision on Victims' Participation, *supra* note 7, ¶¶ 93–98.

⁹ Leave to appeal the Decision on Victims' Participation of January 18, 2008 was granted on February 26, 2008.

¹⁰ Decision on Victims' Participation, *supra* note 7, ¶¶ 108–109. Leave to appeal was granted on February 26, 2008.

¹¹ Regulations of the Court, reg. 56, May 26, 2004, ICC-BD/01-01-04, available at http://www.icc-cpi.int/about/Official_Journal.html (last visited June 28, 2008).

Funding Justice: The Price of War Crimes Trials

*by Rupert Skilbeck**

IN THE SECOND HALF OF 2008, the trial of Thomas Dyilo Lubanga was originally expected to commence at the International Criminal Court (ICC),¹ five years after the Court commenced operations. The ICC's 2007 budget was \$146 million (93 million euros), leaving it still some way behind the \$1.2 billion (762 million euros) and \$1 billion (635 million euros) spent by the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) respectively in their ten years of operation, a cost of between \$10–15 million (6.4–9.5 million euros) per accused.

At the same time, two hybrid tribunals are moving forward. In late 2008, the trial of Kaing Guek Eav is due to commence at the Extraordinary Chambers in the Courts of Cambodia (ECCC), more than two years after the Court commenced operations. In March 2008 the ECCC presented a budget to donors requesting an additional \$115 million (73 million euros) on top of the \$56 million (35.5 million euros) originally budgeted for three years. With only five accused, a budget of \$180 million (114 million euros) would allocate \$36 million (23 million euros) per accused. Meanwhile, the Court of Bosnia and Herzegovina (BiH) in Sarajevo is running a large number of internationalized trials at \$709,000 (450,000 euros) per trial, which is predicted to reduce to \$236,000 (150,000 euros) over the next two years.

It is not clear why there are such vast differences in the cost of different tribunals, all of which officially meet international standards of fairness. Excessive costs and delays limit the ability of courts to try a broad range of people, leading to an element of arbitrariness where an individual will only be tried if it is probable that the budget of the court permits it. The delays also create a conflict between the positive obligation of the State to investigate violations of the right to life and the right of the accused to trial in a reasonable time.

THE COST OF JUSTICE

War crimes trials are expensive. In a well-developed national criminal justice system, a murder trial often takes hundreds of police hours to investigate, leading to a trial that may take months. Terrorist cases, organized crime, and white-collar crime cases are more complex and may cost millions of dollars.

Crimes against humanity are by definition widespread or systematic, so the investigative authorities must find evidence for

thousands of individual incidents, often with far less resources than would be dedicated to a simple murder in a rich country, often trying to undertake investigations in remote areas, years after the events, and probably in a foreign language.

This is not a new problem. Over 15,000 war crimes trials took place in Europe and Asia following the Second World War. The scale and speed of those investigations is remarkable, producing thousands of statements and tons of evidence within a few months, followed by trials that took a week or so. The relatively high acquittal rates indicate that the tribunals focused strongly on the legal and factual issues before them.

The trials undertaken by the military authorities of the United Kingdom (UK) in Asia took place in Singapore, Kuala Lumpur, Hong Kong, Shanghai, Burma, and North Borneo. The legal basis and political structures for the war crimes trials were negotiated in October 1944, with the Regulations for the Trial of War Criminals of June 1945, outlining the legal basis for the trials within the military justice system.²

The targets set were daunting to say the least. In October 1945, UK Attorney General Hartley Shawcross stated that 500 trials should be concluded by July 1946, i.e. within nine months. By December a total of 17 investigative teams were created, mainly utilizing agents of the Special Operations Executive. They collected 35,963 statements from ex-prisoners of war, together with civilian statements, placing advertisements in newspapers to appeal for information.

Trials started in Singapore in January 1946, and by May 8,900 suspects were in custody. However, delays started, and a lack of translators and Japanese defense counsel made it impossible to meet the targets. The estimates were revised, and the completion deadline was extended by 12 months to July 1947. A total of 919 individuals were tried for war crimes before the UK authorities.

FIFTY YEARS ON: THE SPECIAL PANELS FOR SERIOUS CRIMES IN EAST TIMOR

The United Nations (UN) Security Council created the Special Panels for Serious Crimes in East Timor — with the creation of the UN Transitional Authority for East Timor (UNTAET) — by Resolution 1272 of October 1999. UNTAET gave the Dili District Court exclusive jurisdiction for trials involving genocide, crimes against humanity, and war crimes. By June 2000 50 individuals were in custody. In contrast to the annual budgets of about \$100 million (63.5 million euros) then allocated to the ICTY and ICTR, the Special Panels 2001 budget was \$6.3 million (4 million euros), \$6 million (3.8 million euros) of which was allocated to the prosecution, with only \$300,000 (190,000 euros) for the rest of the court.³ The 2003–2005 budget was \$14,358,600 (9,116,340 euros), even less when divided annually.⁴

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Krešo Lučić, accused of crimes against humanity of torture, imprisonment and other inhumane acts, stands trial at the War Crimes Chamber in Bosnia.

Substantial organizational issues arose regarding staffing, translation, court management and the provision of defense lawyers. One highly informed commentator concluded:

“...the performance of the UN in East Timor represents a virtual text-book case of how not to create, manage, and administer a ‘hybrid’ tribunal. Handicapped from the beginning by a debilitating lack of resources, an unclear mandate, inadequate recruitment, ineffective management by a peacekeeping mission that had other priorities, and above all a lack of political will both at UN headquarters and at the mission level, the Special Panels struggled to meet the many challenges they faced.”⁵

During the tribunal’s creation, problems arose due to hiring personnel with little experience in court management, and not hiring a chief administrative officer. Simultaneous translation equipment arrived late in the process, and even then the interpreters were not trained to a standard sufficient to use them. The lack of transcriptions of court proceedings led to problems for appeals. Case and file management systems did not arrive until the very end of the process. Witnesses and accused were often transported in the same buses to get to court. Critically, initial attempts to use local defense lawyers against international prosecutors failed, leading to concerns as to the fairness of some convictions.⁶ Many concluded that the process was ‘deeply flawed’ and that trying to achieve justice on the cheap “does an injustice to those individuals convicted without a fair trial and undermines the very standards of the justice and the rule of law that the tribunals are supposed to advance.”⁷

THE EXTRAORDINARY CHAMBERS

At the same time, negotiations continued for the creation of another hybrid tribunal. In June 1997, the then Co-Prime Ministers of Cambodia, Prince Norodom Ranariddh and Hun Sen, wrote to UN Secretary-General Kofi Annan requesting UN

assistance to create a court to try the Khmer Rouge. Seven years of tortuous negotiations followed, with the UN withdrawing from the process but then being forced back to the negotiation table by the UN General Assembly.⁸

The Group of Experts Report issued by the UN in 1999 identified a number of concerns regarding trial operations. In particular, it warned of the weakness of the Cambodian legal system, concluding that “domestic trials organized under Cambodian law are not feasible and should not be supported financially by the United Nations.”⁹ The experts commented that any tribunal for the Khmer Rouge would “involve a significant commitment of resources”¹⁰ and warned that:

“any UN tribunal . . . will be established somewhat slowly and then only trudge through its caseload. The Group thus recommends that the UN, building upon its experience with the prior tribunals, undertake all necessary measures to expedite the establishment of the court. These should certainly include exemptions from competitive bidding and, most important, from limitations on secondment to take effect immediately upon the court’s legal establishment. The budgetary approval process also needs to be streamlined.”¹¹

The original budget for the ECCC was \$56 million (35.5 million euros), with \$13 million (8.25 million euros) provided by the Government of Cambodia and \$43 million (27.3 million euros) provided by the international community through voluntary donations. The entire process was supposed to take three years, commencing in June 2006 and finishing in June 2009. Whilst the donor community made pledges covering the UN portion, the Cambodian government was not able to produce the money it pledged and sought donor assistance, which still left a shortfall of over \$4 million (€2.5 million).¹²

During 2007 it became clear that the ECCC had no hope of completing the trials within the original timescale and budget. In March 2008 a new request for funding was presented to donors, extending the lifespan of the Court until March 2011 and requesting an additional \$115 million (73 million euros), taking the total budget to almost \$170 million (108 million euros). With only five accused, this created a cost per trial of \$36 million (23 million euros).

THE WAR CRIMES CHAMBER OF THE COURT OF BOSNIA AND HERZEGOVINA

Whilst the negotiations for Cambodia continued, another hybrid court came into being in Sarajevo. UN Security Council in Resolution 1503 of August 2003 called for the completion strategies of the ICTY and ICTR to be facilitated by the transfer of lower level cases to be tried in domestic courts. This became known as the “Rule 11bis” process. Consultations were undertaken in 2003 between the ICTY and the Office of the High Representative¹³ in BiH on the best way to ensure fair trials, and new national criminal and criminal procedure codes were subsequently enacted that reflected European legal standards. A new state court was created, and within that the War Crimes Chamber came into being to try genocide, war crimes, and crimes against humanity, together with a law regulating the use of evidence obtained by the ICTY and transferred to Sarajevo.¹⁴

The Court of BiH is a permanent institution within the domestic legal order, subject to Bosnia's international obligations, including an appeal to the European Court of Human Rights (ECHR), making it the first war crimes court subject to the ECHR's jurisdiction.

For an initial transitional period there are international legal, judicial, and administrative staff. Within five years, however, the international staff will leave and hand the process over to their domestic counterparts. In September 2006 a Transition Council was created consisting of representatives from the government and the international community to ensure an effective transition.

The Court of BiH had to work quickly. The Registry was established in early 2005, and on September 1, 2005 the ICTY Appeals Chamber approved the first '11bis' transfer in the case of Radovan Stanković. In the intervening period, a vast amount of administrative work was undertaken to prepare for the first trials. This included recruitment of administrative and legal staff, prosecutors, and judges. Architects organized the renovation of a government building to provide office space and eight court rooms, one of which is suitable for high security cases. A new detention facility was built to house those under pre-trial detention.¹⁵

The Court of BiH and the Prosecutor's Office is partially funded by the Ministry of Justice's regular budget, and partially by voluntary contributions from individual donor countries. The government provided \$4.7 million (3 million euros) in 2005 and plans to provide approximately \$15.8 million (10 million euros) annually by 2010. A separate donor-funded budget funds the international staff, which amounted to \$15.8 million (10 million euros) in 2006, reducing to \$7.9 million (5 million euros) in 2009. National staff will increase from 125 in 2006 to 380 in 2010, whilst over the same period international staff will decrease from 65 to 14. The real difference from all other tribunals is that with eight courtrooms and 53 judges, the Court of BiH is able to process several hundred cases per year. This creates a pre-trial cost of approximately \$708,000 (450,000 euros) in 2006 reducing to \$236,000 (150,000 euros) in 2010.¹⁶

BUILDING A COURT

Hybrid tribunals are complex to create. Even where the proposed court is constructed within the existing legal system it normally requires a new legal structure, new buildings, a new budget and new staff. Once the tribunal is created, the trials will almost certainly be the most complicated trials that have ever occurred in that country, using techniques and concepts unknown to domestic judges, prosecutors, and lawyers.

The long period of preparatory work requires assessing whether there is political will for war crimes trials and persuading those who may be suspicious of such trials. If new legislation is required, it must be passed through the national assembly in a form that is acceptable to the international community. Diplomats who will later be invited to pay for the court must be kept involved. Widespread consultations must take place throughout different parts of the community to ensure full involvement of all key players. Large-scale reforms in other key areas may be necessary. For example, BiH instituted a large-scale re-appointment process for the judiciary that improved confidence in their independence and impartiality. In Cambodia

this never happened, leading to concerns that judges are still influenced by the government.¹⁷

Managing a new court requires unique individuals who understand the final "product" that is being created, and who have experience with criminal justice. Many trial lawyers and judges with years of courtroom experience never acquired the management skills required for such a multi-million dollar project, whereas some excellent administrators may not have necessary legal skills for negotiating with foreign judiciaries.

It may be necessary to build and equip new courtrooms. Internationally acceptable detention facilities may not exist, so one will have to be built. In BiH a fully-equipped building with six courtrooms equipped for simultaneous interpretation was built in less than a year. In Phnom Penh the ECCC has failed to convert the one room it has into a courtroom after more than two years in possession of the buildings, and interpretation equipment still has to be rented.

“Many experienced individuals now work at the ICTY and ICTR, but there is a risk that those who have only experienced the luxuries of a billion dollar budget may not understand how the job can be done for a fraction of the price.”

STAFFING THE COURT

Staff must be recruited, not only for legal positions but also for a broad range of administrative tasks. Systems for security, computers, interpretation and broadcasts of the proceedings must all be budgeted, purchased and managed. Court management systems must be created that can deal with large paper-based trials with hundreds of thousands of pages of evidence. These key positions require previous experience working in a criminal court system. Whilst UN staffers have a broad range of experience in peacekeeping missions, East Timor has demonstrated that those skills cannot easily transfer to running a war crimes court. Many experienced individuals now work at the ICTY and ICTR, but there is a risk that those who have only experienced the luxuries of a billion dollar budget may not understand how the job can be done for a fraction of the price.



Former Democratic Kampuchea foreign minister Ieng Sary stands for the first time in the Pre-trial Chamber.

Staff recruitment raises a crucial question as to the extent to which it is possible to build the capacity of under-skilled staff whilst at the same time ensuring that the trials meet international standards and are completed within a reasonable time. Many observers concluded the East Timor trials were unfair. BiH trials are required to meet the more exacting standards of the European Convention of Human Rights, and a challenge can be made to that Strasbourg-based court if they do not.

As a secondary benefit, hybrid tribunals can raise the quality of justice in a country, and leave a lasting legacy. In a court such as the ECCC it is not clear how such laudable processes can be effective given the limited timescale and the small number of trials that will take place. The Cambodian judges, prosecutors, and defense lawyers will learn new skills that they can take with them back to their ordinary practice, but there will be little direct effect on the other courts in Cambodia. In BiH, the permanent nature of the Court and the detailed transition may make the skills-transfer more deeply embedded, making Court of BiH a genuine example to other national courts.

One of the most controversial aspects of setting up a tribunal is deciding on the different pay rates that will apply to “international” staff and those recruited locally. Some argue that all staff should be paid the same amount for doing the same job, as at the ICTY and the ICTR where all staff is “international.” However, one of the advantages of a hybrid tribunal is the lower staff cost, allowing the court to get more for its dollars. UN missions set salary levels for local staff, as opposed to those who were selected from a global competition for the position. In BiH, local salary levels were close to government salaries, with local staff being paid approximately 20 to 30 percent of a full international salary. In Cambodia, local salaries have been set at 50 percent of the gross UN salary, meaning that local judges, prosecutors and lawyers are paid approximately three to four times the salary of their counterparts in BiH. Hence the ECCC has lost many of the financial advantages of being based in a developing country.

There is also a phenomenon of “Rolls Royce” staffing levels. In a domestic trial involving multiple defendants, the prosecution is normally represented in court by one or two advocates and supported by a small team of lawyers who help prepare the case. The defense may have two advocates, which often means the prosecution will be outnumbered in the courtroom. This is perfectly normal and fair. By contrast, in international criminal trials, multiple advocates often appear for the prosecution during the course of the trial, with only one or two advocates for each defendant. Whilst such staffing levels may make the prosecutors’ job easier, it is a luxury that is not affordable in most domestic jurisdictions and certainly not for hybrid tribunals on a tight budget.

BUDGETARY AMNESTY

Where there have been violations of the right to life, human rights law guarantees a proper investigation into the killings. There are also significant soft law standards that support and enhance this “right to the truth.” Human rights law, however, specifically guarantees the right of the accused to be tried within a reasonable time, and where the trials deal with widespread allegations of criminal violations, it is often impossible to reconcile the two conflicting positions. There is also a danger that judges and prosecutors, keen to write history, bite off more than they can chew, leading to unwieldy trials with excessive charges that the accused may not survive. In domestic jurisdictions, prosecutors are accustomed to utilizing “sample counts” to prove a course of conduct without necessarily having to prove each act of the accused.

Prosecutors or investigating judges do not like to accept constraints on their discretion. As state agents, however, they have a duty to organise themselves in such a way as to ensure the human rights of the accused are protected. The ECHR has frequently stated that the state is obligated to organise its criminal justice system to ensure the rights of the accused, and that it must show “special diligence” in its attempts to move the process forward. The Court has explicitly stated that delays occasioned by a shortage of equipment or personnel might be taken into consideration as displaying a lack of due diligence.¹⁸ Similarly, the Court has held that legal systems of member states should be able to cope with such requirements.¹⁹

Detaining someone if there was little possibility of a trial due to lack of funding would be an arbitrary and unlawful act. If the budget only permits nine trials, is it acceptable under human rights standards to arrest a tenth on the basis that money will be found at some time in the future? Whilst with national budgets the government may divert funds from another area, the same does not apply to tribunals funded by voluntary contributions from the international community. If the money is not in the bank account in New York, no one can spend it.

Where the court will only have a limited mandate it essentially means that there is *de facto* impunity by way of budgetary amnesty for all other offenders. In BiH there are approximately 13,000 police files for offenses during the war. The Court of BiH will be able to try perhaps 5,000 people in the next ten to 15 years, with the rest being sent to lower courts. In Cambodia, perhaps only five people will face trial. All other perpetrators will have effective immunity.

CONCLUSION

COURTS MUST ACT within their financial limits. Domestic courts are permanent institutions, allowing some flexibility in case management and timing of trials. Hybrid tribunals may be working towards a date when they have to shut down, making the financial controls more blunt.

Complex criminal trials require highly experienced staff, whether they be administrators, court managers, prosecutors, or defense lawyers. National criminal systems have constant pressures to cut costs, and discretion is exercised to ensure that the appropriate cases are taken to court and tried within a reasonable time. The huge budgets of the ICTY and ICTR have produced unsustainable and un-repeatable models, and hybrid tribunals may wish to look to national models to obtain the most efficient staff.

Whilst the Office of the High Commissioner for Human Rights is the UN authority for transitional justice, the Office of Legal Affairs in New York takes precedence regarding tribunals. When a court is created within the domestic legal order of a country, it is not entirely clear who would be responsible.

The two latest hybrid courts are very different. The ECCC in Cambodia is a joint project between the UN and Cambodia, utilizing an investigative judge system with a very fixed life span, at a cost of approximately \$35 million (22.2 million euros) per year to run one trial court. The Court of BiH has been created without UN involvement, as a permanent institution designed to try many hundreds if not thousands of people, at a cost of \$16 million (10 million euros) per year to run eight trial courts.

The two courts should be closely watched to establish which model should be repeated in the future if international justice requires domestic trials to complement the trials at the International Criminal Court. **HRB**

ENDNOTES: FUNDING JUSTICE

¹ See *Updates from the International Criminal Courts* in this issue on page 44 for a further discussion of recent developments in the *Lubanga* case.

² For information on UK war crimes trials in Singapore and elsewhere, see Hayashi Hirofumi, *British War Crimes Trials of Japanese*, 31 *Nature–People–Society: Science and the Humanities* (Kanto Gakuin Univ., Yokohama, Japan) (July 2001), available at <http://www32.ocn.ne.jp/~modernh/eng08.htm> (last visited June 29, 2008).

³ David Cohen, *Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future*, 80 *Asia Pacific Issues* 5 (Aug. 2002), available at http://www.eastwestcenter.org/publications/search-for-publications/browse-alphabetic-list-of-titles/?class_call=view&pub_ID=2004&mode=view (last visited June 29, 2008).

⁴ Caitlin Reiger & Marieke Wierda, International Center for Transitional Justice, *The Serious Crimes Process in Timor Leste: In Retrospect* 30 (Prosecutions Case Studies Series, March 2006), available at <http://www.ictj.org/en/news/pubs/index.html> (last visited June 29, 2008).

⁵ Cohen, *supra* note 3, at 3.

⁶ *Id.*

⁷ *Id.* at 7.

⁸ For an analysis of the negotiation process see Craig Etcheson, Open Society Justice Initiative, *A 'Fair and Public Trial': A Political History of the Extraordinary Chambers*, (Justice Initiatives: Spring 2006), available at http://www.justiceinitiative.org/db/resource2?res_id=103182 (last visited June 29, 2008).

⁹ The Group of Experts for Cambodia, the Secretary-General and the President of the Security Council, *Report of the Group of Experts for Cambodia pursuant to G.A. Res. 52/135*, within *Identical Letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, ¶ 132, U.N. Doc. A/53/850, S/1999/231 (Mar 16, 1999).

¹⁰ *Id.*, ¶ 177.

¹¹ *Id.*, ¶ 213.

¹² The Secretary-General, *Report of Secretary General on the Khmer Rouge Trials*, U.N. Doc. A/59/432 (Oct. 12, 2004).

¹³ The 1995 Dayton Peace Accords that ended the 1992–1995 armed conflict in Bosnia created the Office of the High Representative to oversee implementation of civilian aspects of the Accords in Bosnia.

¹⁴ The laws required for the establishment of the War Crimes Chamber and transfer of cases from ICTY to BiH came into force on January 6, 2005. Collectively, they are: BiH OG 61/04 (Law on Amendments to the Law on the Court of BiH; Law on Amendments to the Law of the Prosecutor's Office of BiH; Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Admissibility of Evidence Collected by ICTY in Proceedings before the Courts in BiH; Law on Amendments to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses; and Law on Amendments to the BiH Criminal Code).

¹⁵ For an excellent factual summary and analysis of the set up, structure and operations of the Court of BiH, see Human Rights Watch, *Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina* (vol. 18, no. 1(D) 5–6: Feb. 2006), available at <http://www.hrw.org/reports/2006/ij0206/> (last visited June 22, 2008).

¹⁶ *The General Budgets for the Judicial Institutions of Bosnia and Herzegovina*, June 2006 update, available at http://www.registrarbih.gov.ba/files/docs/budget_eng.pdf (last visited June 27, 2008).

¹⁷ The UN Special Rapporteur for Human Rights in Cambodia in the form of three different people has consistently reported for the past 14 years that the judiciary in Cambodia is neither independent nor impartial.

¹⁸ *W. v. Switzerland*, 254-A Eur. Ct. H.R. (ser. A) ¶ 30 (1993).

¹⁹ *Bezicheri v. Italy*, 164 Eur. Ct. H.R. (ser. A) ¶ 25 (1989).

Prosecuting Children in Times of Conflict: The West African Experience

by David M. Crane*

It was a clear hot day. The school meeting hall rippled with the heat of over five hundred persons. I had been speaking to the students, faculty, and others in one of my many town hall meetings I conducted throughout Sierra Leone. The purpose of the meetings was to provide a vehicle for the people to talk about the war, the crimes, their pain, and other issues related to our work. As I finished answering a question, a shy, small arm was raised in the middle of the hall. I walked back to the student. He meekly stood up, head bowed, and mumbled, loud enough for those around him to hear, "I killed people, I am sorry, I did not mean it." I went over to him, tears in my eyes, hugged him and said, "Of course you didn't mean it. I forgive you."¹

INTRODUCTION

FOR THE FIRST TIME IN HISTORY, those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law that took place during the conflict in Sierra Leone have been charged with the use of child soldiers.² The use of children in armed conflict is an age-old issue.³ Modern international norms, however, have identified and outlawed their use and have largely excused them for their actions. The Special Court for Sierra Leone (the Court) is on the cutting edge of international criminal law in holding accountable warlords, commanders, and politicians who turned to children as young as six to carry out orders that sometimes resulted in war crimes and crimes against humanity. The cynical recruitment of children, forced to fight under great duress for ill-gotten gains, is no longer ever an excusable act.

Only in the past ten years has the international community begun to grapple with the scourge of child soldiers.⁴ A 1996 report to the Secretary General laid out a comprehensive program to protect children during armed conflict.⁵ The report dramatically declared:

[M]ore and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.⁶

This article highlights the Court's groundbreaking efforts to bring to justice those who destroyed a generation of children, and discusses the decision *not* to prosecute child soldiers on both legal and moral grounds. The article will outline the conflict's history, explaining the role children played in Sierra Leone's civil war in the 1990s and the current state of the law related to children in conflicts. It then addresses why children are not



Photo courtesy of Adrián E. Alvarez

All sides of the conflict in Sierra Leone enlisted and used children in hostilities.

liable for crimes committed on the battlefield, concluding with a useful analogy to Omar Khadr,⁷ a child involved in the conflict in Afghanistan who should be immediately released from detention because the military commission trying him lacks personal jurisdiction. Khadr has a protected status under international humanitarian law and is not liable for his alleged actions.

THE CONFLICT

Sierra Leone sits along the West African coast, a small state in a string of nations linked together by a colonial past, with a history of poor governance, conflict, and disease. West Africa generally, and Sierra Leone in particular, possess vast natural resources, including diamonds, rutile, bauxite, and other minerals. These commodities, however, are Sierra Leone's curse. Corruption and diamonds were the catalysts that ignited a conflict that resulted in the murder, maiming, mutilation, and rape of over a half-million people in West Africa.

Prostrate before Libyan head of state Muammar al-Gaddafi, these struggling former colonies of France and Great Britain were vulnerable to unrest, conflict, and coup d'états. In the early 1990s, young ruthless leaders, fresh from Libyan training

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Many children were dragged into the bush and forced to serve as soldiers. Some were made to murder their parents.

facilities, descended upon West Africa to begin a decade-long campaign to conquer the region politically, by force if necessary. Charles Taylor, who had escaped from prison in the United States, slipped quietly into Liberia and began a long civil war. Taylor looked west over the border with Sierra Leone to that country's alluvial diamond fields and partnered with Foday Sankoh, another graduate of the Libyan training camps and corporal in the Sierra Leonean Army. Diamonds would help keep Taylor's revolution and bank account well financed.⁸

With backing and planning assistance from Gadaffi and Burkina Faso's President Blaise Campaoré, Taylor assisted Sankoh in launching two strikes into eastern Sierra Leone in March 1991.⁹ Sankoh was admonished by Taylor to vigorously recruit civilians to the cause, *by terror and force*, if necessary.¹⁰ What followed was a death struggle between various warring factions, each brutalizing civilians, particularly women and children. The civil war, under Taylor and Sankoh's Revolutionary United Front (RUF) leadership, evolved into a terror campaign seeking to control the diamond fields and subscribe the entire nation into a joint criminal enterprise. Pain, suffering, and agony reached new dimensions. The atrocities committed almost defied description. "Believe the unbelievable," is what I told the chamber responsible for trying the Civil Defense Force (CDF) leadership in the opening statement that began their prosecution.

All sides of the conflict in Sierra Leone used children. A favorite rebel tactic to induce children to join a force was to move in and surround a village. Children were made to kill their parents and then driven into the bush and forced to serve as soldiers, often for many years. Thousands of children, ranging from six to 18 years of age, under the influence of cocaine and marijuana distributed by commanders, roamed battlefields and destroyed their own country. Over time, the warring factions became their homes and families. A vast majority of children had no choice but to fight, murder, rape, and mutilate, or they would be killed themselves.

When the conflict staggered to its bloody conclusion in 2002, an entire nation lay in ruins. Child soldiers found themselves

with no families, little to no education, and a society unable to assist them in rebuilding their lives. Many were physically and psychologically damaged. The lost generation of Sierra Leone now sits by pock-marked roads with little hope but for someone to return them to the only life they had ever known — fighting, raping, pillaging, and murdering.¹¹

THE SPECIAL COURT FOR SIERRA LEONE

The Special Court was an innovative step in the evolution of international war crimes tribunals. Even with the establishment of the International Criminal Court (ICC), the Special Court is a model that can work in the future to combat impunity in troubled areas of the world.

The Court is a hybrid tribunal, independent of the United Nations (UN) and any state.¹² Established through an agreement between the UN and the Government of Sierra Leone in January 2002, the Court is both international and national.¹³ The signing of this treaty was the culmination of a year and a half of discussions following a UN Security Council resolution directing the Secretary-General to enter negotiations to create the Court. Sierra Leone's national parliament implemented the treaty by passing a law in March 2002.¹⁴

The Court's mandate is to try those who "bear the greatest responsibility" for serious violations of international humanitarian law, including the laws of war, crimes against humanity, and certain crimes under Sierra Leonean law.¹⁵ Crimes against humanity encompass widespread or systematic murder, rape, enslavement, sexual slavery, and other forms of sexual violence, torture, and other inhumane acts, including unlawfully recruiting and using children. Cases can be brought against anyone who committed crimes or was responsible for crimes committed in Sierra Leone since November 30, 1996.¹⁶ This very specific mandate is key to the Court's success.

Importantly, the Court sits in the country where the violations occurred. This is the right place for the Court to directly deliver justice to the people who suffered during the civil war. The courtroom is open to the public. An ambitious outreach and public information program is in place to keep Sierra Leoneans informed and engaged in the Court's work, for the Court belongs, first and foremost, to them.

The Court hopes to make a lasting contribution to promoting accountability and the rule of law. Capacity-building and legacy activities constitute an important part of its work. Courtroom facilities will be turned over to the people of Sierra Leone at the conclusion of the trials. In addition, the Court hired a high percentage of Sierra Leonean professionals and reached out to the local legal community to design initiatives to bolster legal reform. These include facilitating scholarship opportunities and training programs in international humanitarian law, as well as establishing a partnership with the local law school. Trials may end, but the Court's legacy will remain.

THE INDICTMENTS AND THE CHARGES

Criminal investigations began two weeks after the Prosecutor arrived in Sierra Leone in August 2002. On March 3, 2003, the Prosecutor signed eight indictments and a trial chamber judge confirmed the indictments in London on March 7. On March 10, just seven months after the Prosecutor's arrival, members of the investigations team, along with the Sierra Leone Police,

launched “Operation Justice,” simultaneously arresting all indictees in Sierra Leone at the time, including the Minister of Interior, Samuel Hinga Norman. A total of 13 indictments have been issued to date. The six indictees arrested in March 2003, plus three more arrested over a period of several months, are detained at the Court compound in Freetown. Two of the three joint trials are completed with a third expected to be complete in 2008, including the trial against former Liberian President Charles Taylor.¹⁷

The Court has been encouraged by the public response to the indictments and trials. Peace has held, and many have spoken out to support the Court’s work. According to polls, over two-thirds of the population believe the Court is necessary, with another two-thirds believing it will deter future conflict.¹⁸

Sankoh in Liberia in February 1991, children were rounded up to bulk up Sierra Leonean forces. The CDF, particularly the Kamajors — a traditional ethnic warrior group — subsequently initiated children into their ranks. Children served on all sides throughout the ten-year conflict.

The charges in the indictments stem from crimes enumerated in the Statute. The specific crime of the use of child soldiers is found in Article 4, “other serious violations of international humanitarian law.” This provision allows the Prosecutor to indict a person for three international crimes — intentionally attacking civilians (Article 4a); crimes against peacekeepers or humanitarian assistance workers (Article 4b); and the recruitment and use of child soldiers (Article 4c). The Prosecutor used all three in the various joint criminal indictments.

“The Trial Chamber sent a clear message to the world that a person who recruits child soldiers into a conflict is a war criminal, but the children recruited and forced to commit unspeakable acts are not.”

Each indictee has been jointly and severally charged, and, thus far, largely convicted, for using child soldiers, among other international crimes. The extent of their involvement was widespread and systematic. Each indictee had command responsibility of the combatants that he led, including child soldiers. The various combatants had small boy units (SBUs). Some of these SBUs had specific duties. For example, in the January 1999 burning of Freetown, children were part of squads ordered to mutilate, burn, and pillage. Child soldiers were seen throughout the three week occupation carrying burlap bags full of body parts, trailing blood along the way. They were required to bring the bags to their commanders. If they refused, they were usually killed.

In their amended indictment, the RUF leadership is charged with recruiting and using child soldiers, specifically conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate actively in hostilities.¹⁹ Similarly, the leadership of the Armed Forces Revolutionary Council (AFRC) was charged and convicted for these crimes.²⁰ The dreaded leadership of the CDF was charged and convicted for the unlawful recruitment of child soldiers.²¹ Taylor is also charged with recruiting and using child soldiers, as is fugitive indictee Johnny Paul Koroma. The Prosecutor likewise charged deceased indictees Foday Sankoh and Samuel Bockerie.

It is alleged that all indictees are individually criminally liable for using children in armed conflict, either under the aiding and abetting theory in Article 6.1 of the Statute of the Special Court for Sierra Leone (the Statute) or, alternatively, under the command responsibility theory of Article 6.3 of the Statute. Each indictee is charged with recruiting and using children during all times relevant to the indictment. As Taylor directed

On June 20, 2007, Trial Chamber II entered a finding of guilty against the leadership of the AFRC on 11 of the 14 counts against them. One count on which they were found guilty was the unlawful recruitment of child soldiers under the age of 15 into an armed force. This marked the first time in history where commanders and political leaders were held liable for this recently defined crime against humanity.²² The Trial Chamber sent a clear message to the world that a person who recruits child soldiers into a conflict is a war criminal, but the children recruited and forced to commit unspeakable acts are not. The Appellate Chamber upheld these finding on February 22, 2008.

THE CHALLENGES

During the pre-trial phase, several indictees made jurisdictional challenges to the charges and to the Court itself. On June 26, 2003, Hinga Norman specifically challenged the charge against him relating to the use of child soldiers as not being a crime at the time of its alleged commission. Another indictee intervened as well. This preliminary motion was referred to the Appeals Chamber pursuant to Rule 72(E) of the Court’s Rules of Procedure and Evidence after the Prosecutor’s July 7, 2003 response. Various amicus briefs were filed by the University of Toronto, International Human Rights Clinic, while the Court, also, invited UNICEF to submit an amicus brief.²³ An oral hearing occurred on November 6, 2003, with a follow on post-hearing submission by the Prosecutor on November 24, 2003.

On May 31, 2004, the Appeals Chamber issued the decision on the preliminary motion based on lack of jurisdiction (child recruitment) dismissing the motion. The Appeals Chamber held that child recruitment was criminalized under customary international law at the time frames relevant to the indictment,

thus protecting the legality and specificity principles Norman questioned. This was another first in legal history: a high court ruled that the recruitment of child soldiers was a crime under international law.²⁴

THE STATE OF THE LAW

The Appeals Chamber's decision correctly reflects the state of the law.²⁵ The use of children in warfare is not a new phenomenon. Children have followed armies for centuries as support personnel — as pages, water carriers, and musicians, particularly drummers. In navies throughout Europe, nobility seconded children to warships to learn a trade. Others were pressed into seamanship.

With the advent of The Hague rules governing weapons in war in the late nineteenth and early twentieth centuries, the rules of warfare took on a universal status. Coupled with the Red Cross movement, the role of the combatant became a legal term of art. The status of the non-combatant also began to take shape.²⁶ Yet specifics regarding combatants' ages were not well-defined early in the regulation process. The international community focused more on regulating weapons that would cause unnecessary suffering and the types of targets combatants could engage.

“Legally, morally, and politically the international community . . . has separated out children from the horrors of combat, to protect and nurture, to rehabilitate and support, not to punish.”

After World War I and into World War II, the shift away from universal rules relating to weapons and targets began. By the end of the two wars, the focus was rightfully on non-combatants. The founding of the UN in 1945 created a permanent body that could be a voice for non-combatants, particularly for children.

The universal rules began to narrow and define the special status of non-combatants. The Geneva Conventions of 1949 are the cornerstone of these rules, which by their nature, protect persons who are “out of the combat” — prisoners of war, the shipwrecked, and civilians.²⁷ It is here that children became specially protected under international law. Around this time the international community laid out international human rights

principles in the Universal Declaration of Human Rights, which echoes fundamental principles of human dignity found in the Geneva Conventions.²⁸ The world had a new standard for protecting non-combatants' rights and status in wartime.

One of the tragedies of the ensuing Cold War was the conflicts ignited in developing country “flashpoints.” Children were once again the victims. In the 1970s, the world paused long enough to reconsider the Geneva Conventions of 1949, shaping them through two new protocols to reflect the realities of modern armed conflict.²⁹ Once again the bar had been identified and raised. Most of the nations of the world, including many newly independent states, agreed to the new standards.³⁰

The Protocols specifically prohibit the use of children in armed conflict. The criminality of the act of using children in conflict, however, is not specifically laid out. The implication is that violating the Geneva Conventions' provisions related to civilians as non-combatants implies a grave breach when using children in combat.³¹ Such breaches impose a duty to investigate and prosecute upon all signatories.³²

The subsequent adoption of the Convention on the Rights of the Child (CRC) highlights the prohibition against the use of children in armed conflict.³³ It is my judgment that the CRC criminalizes the concept of child recruitment. One can argue that child recruitment as a crime is reflective of customary international law.³⁴ The CRC requires national jurisdictions to establish a minimum age at which criminal responsibility may be assigned.³⁵ Article 1 of the CRC defines children as “*all human beings below the age of 18.*”³⁶ Additionally, the CRC Optional Protocol II admonishes armed groups that are distinct from armed forces of a state not to recruit or use in hostilities, under any circumstances, persons under 18.³⁷ The applicable international agreements also cover the detention of delinquents and the issues related to this stage of the juvenile justice process.³⁸

Despite states' political and legal recognition that child recruitment was a universal crime and that children had a special status in conflict, child recruitment continued unabated. Millions of children died in the 1980s and 1990s, mainly in Africa where children played a significant role in armed conflicts. The 1996 Secretary-General's report on this issue stunned the UN by highlighting the extent of the problem throughout the world. There were calls for action and an evolving plan emerged to monitor recruitment of child soldiers.

In the late 1990s, the international community began to develop a mechanism to prosecute war crimes and crimes against humanity. The Rome Statute created the ICC, which is now the world's attempt to stamp out impunity. The Rome Statute specifically states that the recruitment of children under the age of 15 is a “serious violation of international humanitarian law.”³⁹

THE DECISION NOT TO PROSECUTE THE CHILD SOLDIERS OF WEST AFRICA

The Statute of the Special Court gives the Prosecutor authority to indict children for crimes they committed between the ages of 15 and 18. The basis for including this controversial provision was to give the Prosecutor legal authority to prosecute any child soldier he might consider as having borne the greatest responsibility for war crimes and crimes against humanity committed during Sierra Leone's civil war.

The Prosecution decided early in developing a prosecutorial plan that no child between 15 and 18 had the sufficiently blameworthy state of mind to commit war crimes in a conflict setting. Aware of the clear legal standard highlighted in international humanitarian law, the intent in choosing not to prosecute was to rehabilitate and reintegrate this lost generation back into society. It would have been impractical to prosecute even particularly violent children because there were so many. Further, it was imperative that the prosecution seriously consider the clear intent of the UN Security Council and the drafters of the Statute creating the Court to prosecute those and *only* those who bore the greatest responsibility — those who aided and abetted; created and sustained the conflict; and planned, ordered, or directed the atrocities. No child did this in Sierra Leone.

In November 2002, the Prosecution announced that child soldiers would not be prosecuted, as they were not legally liable for acts committed during the conflict. There was universal praise for this decision. It took prosecuting child soldiers themselves for the tragedy they have experienced off the legal table, instead placing children on the rehabilitation track, as is the appropriate norm under international law.

CONCLUSION: THE FUTURE

DESPITE ASSERTIONS THAT THE RECRUITMENT of child soldiers is an international crime, the tragedy continues worldwide. Between 1986 and 1996, over two million children were killed in armed conflict.⁴⁰ Countless more have been killed since, many in places such as Sierra Leone. A February 2005 UN report specifically singled out 42 armed groups in 11 countries. The UN Secretary-General's Special Envoy for Children in Armed Conflict, Olara Otunnu, stated that these armed groups should be punished for war crimes or crimes against humanity for what they have done to children.⁴¹

Certainly, there is an increasing awareness of the scourge of child soldiers and a shift towards action. The UN must be at the forefront of this effort, backed by a unified Security Council that takes swift and decisive action when confronted with the issue. International courts will have to aggressively charge this crime in future indictments to help prevent the practice of using child soldiers.

The Court's *Norman* appellate decision and its subsequent conviction of the leadership of the AFRC, as well as the conviction of Norman's co-defendants in the CDF case, both in 2007, will certainly help advance the jurisprudence on child recruitment. The ICC's statute contains a provision identical

to the Special Court's Statute related to recruitment of children under the age of 15. The ICC will, thus, be able to look to the groundbreaking work of the Special Court in charging warlords, politicians, and governments who continue to ignore the clear prohibition for this criminal conduct.⁴² Only when the rule of law is enforced will abusers of children be held accountable at the international level, and only then will this crime begin to diminish.

And the children truly are the victims in this scenario. Just as we could not hold these Sierra Leonean children responsible for the horrific violence they were forced to carry out, we also cannot hold similar children involved in other conflicts accountable for their acts, no matter our level of interest in the region or that our forces were the targets of the violence.

Omar Khadr, a young Canadian, could have been a child in Sierra Leone. But he was in Afghanistan, in similar circumstances, not of his making or under his control, in an environment from which, as a child, there was no escape. Legally, morally, and politically the international community, including the United States, has separated out children from the horrors of combat, to protect and nurture, to rehabilitate and support, not to punish. No children found in combat should be held liable for their acts. The jurisprudence of the Special Court for Sierra Leone demonstrates that this is the legal standard of the world community and of the United States.

I will close with another tragedy in this ten-year long tale of horror:

*[A child] lived in a village in the Kono district. [His family was] told that the rebels were going to attack . . . [H]e fled into the bush with his parents and brother, but [they] were caught by the RUF. The rebels took his younger brother and himself to Kaiama along with thirteen other boys. The rebels lined the fifteen children up and offered them a choice: Join one line if they wanted to be a rebel, another line if they wanted to be freed and allowed to go home. All fifteen of these boys . . . joined the line for freedom. It was the wrong choice. They were accused of sabotage to the revolution. To keep them from escaping each was held down, screaming, and one-by-one had AFRC and/or RUF carved into their chests with the blade of a sword. The [child] was now just marked property. . . . [H]is scarred chest . . . to this very day bears the letters: A-F-R-C R-U-F.*⁴³

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ENDNOTES: Prosecuting Children in Times of Conflict

¹ The event took place in March 2004 in Makeni, Sierra Leone.

² Statute of the Special Court for Sierra Leone art. 4(c), (2002), available at <http://www.sc-sl.org/Documents/scsl-statute.html> (last visited May 5, 2008).

³ Convention on the Rights of the Child art. 1, Sept. 2, 1990, 1577 U.N.T.S. 3, available at <http://www2.ohchr.org/english/law/crc.htm> (accessed Apr. 7, 2008). It does not, therefore, only refer to a child

who is carrying or has carried arms. See generally, Graça Machel, *The Impact of War on Children: A Review of Progress*, 7 (2001); United Nations Children's Fund (UNICEF), *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa* (1997) available at [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) (last visited May 5, 2008).

ENDNOTES continued on page 16

⁴ Conscripting or enlisting children under the age of 15, or using them to participate actively in hostilities, is a war crime within the jurisdiction of the International Criminal Court. Rome Statute of the International Criminal Court art. 8(2)(b)(xxvi) and (e)(vii), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute], available at <http://untreaty.un.org/cod/icc/statute/rome.htm> (last visited May 5, 2008).

⁵ Graça Machel, *Promotion and Protection of the Rights of Children, Impact of Armed Conflict on Children*, submitted pursuant to G.A. Res. 48/157, (1996) [hereinafter Machel, *Impact of Armed Conflict on Children*], available at http://www.unicef.org/emerg/files/report_machel.pdf (last visited May 5, 2008).

⁶ *Id.* at ¶ 3.

⁷ Omar Khadr, a Canadian citizen, has been in U.S. military custody since the summer of 2002 both at Guantanamo Bay, Cuba and Bagram Air Base in Afghanistan. Khadr was 15 years old at the time of his capture and detention. A survey of the legal and historical precedent shows that no child ever has been prosecuted for a war crime at this level.

⁸ See No Peace Without Justice, *Conflict Mapping in Sierra Leone, Violations of International Humanitarian Law from 1991 to 2002*, 72 (2004), available at <http://www.specialcourt.org/Outreach/ConflictMapping/NPWJCMReport10MAR04.pdf> (last visited May 5, 2008).

⁹ Prosecutor v. Sesay, et al., SCSL, Case No. SCSL-2004-15, Pre-trial Proceedings (Trial Chamber), (May 13, 2004), testimony from a confidential witness.

¹⁰ *Id.*

¹¹ See Human Rights Watch, *Youth, Poverty and Blood: The Lethal Legacy of West Africa's Regional Warriors*, sec. III (Mar. 2005) available at <http://www.hrw.org/reports/2005/westafrica0405/> (last visited May 5, 2008) (noting that porous borders between Liberia, Sierra Leone, Guinea and Cote d'Ivoire facilitated migration of young fighters who found economic incentives in the regional conflicts).

¹² S. C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2000), available at [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1315\(2000\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1315(2000)) (last visited May 5, 2008). See generally, the Secretary-General, *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. Doc. S/2000/915 (Oct. 4, 2000), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf?OpenElement> (last visited May 5, 2008).

¹³ Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, available at <http://www.sc-sl.org/Documents/scsl-agreement.html> (last visited May 5, 2008); see also Special Court Agreement, 2002 (Ratification) Act, 2002, Apr. 25, 2002, available at <http://www.sc-sl.org/Documents/SCSL-ratificationact.pdf> (accessed May 5, 2008). The Court's Registrar Robin Vincent from the United Kingdom, and the Prosecutor were appointed by the UN Secretary-General in April 2002. The Deputy Prosecutor Desmond DeSilva was appointed by the Government of Sierra Leone in the fall of 2002. The Court's Chambers are a combination of five international and national justices in the Appellate Chamber and three international and national justices each in the two Trial Chambers. The first eight justices (five in the Appeals Chamber and

three for the first Trial Chamber) were sworn into office in early-December 2002. The second Trial Chamber was sworn in January 2005.

¹⁴ *Id.*

¹⁵ Statute of the Special Court for Sierra Leone, *supra* note 3, art. 1.

¹⁶ *Id.*

¹⁷ The joint criminal trial against the RUF leadership is in its final stages with the defense team presenting evidence. The trial against Charles Taylor has begun in The Hague and will last approximately one year.

¹⁸ Informal poll, No Peace Without Justice (June 2003). No Peace Without Justice's website can be accessed at <http://www.npwj.org>.

¹⁹ Prosecutor v. Sesay, et al., SCSL, Case No. SCSL-04-15, Amended Consolidated Indictment (Trial Chamber), May 13, 2004.

²⁰ Prosecutor v. Brima, et al., SCSL, Case No. SCSL-04-16, Further Amended Consolidated Indictment (Trial Chamber), Feb. 18, 2005; Prosecutor v. Brima et al., SCSL, Case No. SCSL-04-16, Judgment (Trial Chamber), June 20, 2007.

²¹ Prosecutor v. Norman, et al., SCSL Case No. SCSL-03-14, Indictment (Trial Chamber), Mar. 3, 2003. In the case against the CDF, of the remaining two indictees, one was convicted on the unlawful recruitment of children charge in July 2007. See Prosecutor v. Fofana and Kondewa, SCSL, Case No. SCSL-04-14, Judgment (Trial Chamber), Aug. 2, 2007.

²² *Brima et al.*, Case No. SCSL-04-16, Judgment (Trial Chamber), June 20, 2007. The accused were acquitted on the ill treatment of civilians in Kenema District count, and no convictions on counts related to sexual slavery and forced marriage, which constitute "other inhumane acts" under crimes against humanity.

²³ See Amicus Curiae Brief of University of Toronto International Human Rights Clinic and interested International Human Rights Organizations (Nov. 3, 2003); see also, Amicus Curiae Brief of UNICEF (Jan. 21, 2004) (noting that state practice demonstrates a firm commitment to hold those who recruit child soldiers liable under criminal law).

²⁴ See Prosecutor v. Norman, SCSL, Case No. SCSL-2004-14, Decision on Preliminary Motion Based on Lack of Jurisdiction (Trial Chamber), May 31, 2004; see also Alison Smith, *Child Recruitment and the Special Court for Sierra Leone*, 2 J. INT'L CRIM. JUST. 1141, 1141, 1152 (2004) (noting that this marked the first time the crime was charged in an international court and hailing the correctness of the Court's decision).

²⁵ See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 77, June 8, 1977, 1125 U.N.T.S. 3, [hereinafter Protocol I Additional to the Geneva Convention], available at <http://www.unhcr.ch/html/menu3/b/93.htm> (accessed May 5, 2008); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 4(3) June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II Additional to the Geneva Convention], available at <http://www.unhcr.ch/html/menu3/b/94.htm> (accessed May 5, 2008); Convention on the Rights of the Child, *supra* note 4, art. 38; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict arts. 1-7 May 25, 2000, 2173 U.N.T.S. 236, available at <http://www2.ohchr.org/english/law/crc-conflict>.

htm (accessed May 5, 2008); Rome Statute, *supra* note 5, art. 8(2)(b)(xxvi), 8(2)(e)(vii); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182) art. 3, Nov. 19, 2000, 2133 U.N.T.S. 161, available at <http://www1.umn.edu/humanrts/instree/ilo182.html> (accessed May 5, 2008). See generally Smith *supra* note 25.

²⁶ See The Hague Convention Relative to the Opening of Hostilities (Hague Convention III), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/190?OpenDocument> (last visited May 5, 2008); The Hague Convention Respecting the Law and Customs of War on Land and its Annex: Regulations Respecting the Laws and Customs of War on Land (Hague Convention IV), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument> (last visited May 5, 2008); The Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague Convention V), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/200?OpenDocument> (last visited May 5, 2008).

²⁷ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), Aug. 12, 1949, 75 U.N.T.S. 31 available at <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument> (last visited May 5, 2008); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II), Aug. 12, 1949, 75 U.N.T.S. 85, available at <http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument> (accessed Apr. 8, 2008); Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III), Aug. 12, 1949, 75 U.N.T.S. 135, available at <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument> (accessed Apr. 8, 2008); Geneva Conventions Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), Aug. 12, 1949, 75 U.N.T.S. 287, available at <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> (accessed Apr. 8, 2008).

²⁸ See Universal Declaration of Human Rights, G. A. Res. 217 A (III) U.N. Doc. A/810 at 71 (Dec. 10, 1948) available at <http://www.un.org/Overview/rights.html> (accessed May 5, 2008).

²⁹ See Protocol I Additional to the Geneva Conventions, *supra* note 26; Protocol II Additional to the Geneva Conventions, *supra* note 26.

³⁰ The United States has not ratified either of the protocols.

³¹ See Geneva Convention IV, *supra* note 26 (providing, throughout, for special protections for children under 15 during times of armed conflict). Using children in combat is a grave breach because one cannot force non-combatants to fight. As children are especially protected, the breach is even more pronounced, even aggravated. Coupled with Geneva Convention IV, the CRC's implication is that a child soldier recruited under duress cannot commit a war crime.

³² See Geneva Convention II, *supra* note 28, arts. 49–50; Geneva Convention III, *supra* note 26, art. 129; Geneva Convention IV, *supra* note 28, art. 146. Universal jurisdiction over those committing grave breaches of the customary principles of the laws of armed conflict has been around even prior to 1949. See generally William B. Cowles, *Universality of Jurisdiction over War Crimes*, 33 CAL. L. REV. 177 (1945).

³³ Convention on the Rights of the Child, *supra* note 4; Optional Protocol to the Convention on the Rights of the Child on the

Involvement of Children in Armed Conflict, May 25, 2000, available at <http://www2.ohchr.org/english/law/crc-conflict.htm> (accessed Apr. 8, 2008).

³⁴ UN Declaration of the Rights of the Child, preamble and principle 2, G.A. res. 1386(XIV) (1959), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/142/09/IMG/NR014209.pdf?OpenElement> (last visited May 5, 2008) (noting that children need special safeguards, including appropriate and special legal protection).

³⁵ Convention of the Rights of the Child, *supra* note 4 art. 40(3)(a).

³⁶ *Id.*, art. 1. See also United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985), available at http://www.unhcr.ch/html/menu3/b/h_comp48.htm (accessed May 5, 2008) (requiring jurisdictions not to establish an age of juvenile criminal culpability that fails to consider issues pertaining to the child's emotional, mental and intellectual maturity).

³⁷ The CRC Optional Protocol II was signed on 25 May 2000 and came into force on 12 February 2002. It has 115 signatories and has been ratified by 70 states.

³⁸ Juveniles offenders, like adult offenders, are to be awarded prompt due process. The rights of a child in conflict state that detention of a juvenile offender may not be unlawful or arbitrary; a child has the right to timely access to legal counsel, and the right to timely review of their detention. Furthermore, the child has the right to appeal the decision that ordered their detention. Unnecessary detention of juvenile offenders should be prevented at all costs, and the detention should only be used as a last resort, in exceptional circumstances, and for the shortest possible duration. Additionally, alternatives to detention, including rehabilitation and education programs, should be used as early as possible if it is reasonable under the circumstances. During the detention phase, separation of juveniles from confined adults is required by the applicable international agreements. Juveniles should not only be separated from adults in a detention facility, but pre-adjudication detainees should also be isolated from adjudicated juveniles. See Convention on the Rights of the Child, *supra* note 4, arts. 37–40.

³⁹ See Rome Statute, *supra* note 5, art. 8(2)(e)(vii). At the time the Rome Statute was drafted, the President of Sierra Leone reached out to the UN for help in punishing those who committed atrocities in the conflict that had ravaged his country in the 1990s. Children were recruited or conscripted under great duress to fight as soldiers or act as support personnel. As stated earlier, Article 4 of the Statute for the Special Court of Sierra Leone universally recognizes the crime of child recruitment. It mirrors the Rome Statute. All of the indictees currently undergoing trials are charged with this crime.

⁴⁰ See Machel, *Impact of Armed Conflict on Children*, *supra* note 6.

⁴¹ Otunnu's office was set up after the release of the UN Secretary-General's 1996 Report, drafted by Graça Machel. See Machel, *Impact of Armed Conflict on Children*, *supra* note 6, ¶ 2.

⁴² See Amicus Curiae Brief of UNICEF, *supra* note 24, at 8.

⁴³ David M. Crane, *Opening Statement against the Leadership of the Revolutionary United Front in an Amended Joint Indictment*, Prosecutor v. Sesay et al., SCSL, Case No. SCSL—2004-15, Pre-trial Proceedings (Trial Chamber), July 5, 2004.

First Prosecution in the United States for Torture Committed Abroad: The Trial of Charles ‘Chuckie’ Taylor, Jr.

*by Elise Keppler, Shirley Jean, and J. Paxton Marshall**

INTRODUCTION

ON DECEMBER 6, 2006, the United States Department of Justice indicted Charles “Chuckie” Taylor, Jr., son of former Liberian President Charles Taylor, for committing torture in Liberia. The case, which is scheduled to go to trial in September 2008, is significant on a number of levels. First, it stands in contrast to what has been widespread impunity for human rights violations in Liberia. Second, the charges are brought under a U.S. federal law that has been unique in its criminalization of human rights violations committed outside U.S. territory. Third, although torture committed abroad has been a crime in the United States for more than a decade, the case against Chuckie Taylor is the first prosecution for the crime.

Human rights advocates hope that this case will be the first of many in the United States. All too often, national courts in countries where torture and other serious human rights violations have been committed have little or no capacity to prosecute such crimes. International and hybrid international-national criminal tribunals play a crucial role in closing the “impunity gap” in such situations, but their jurisdiction and resources remain limited. U.S. federal prosecutions of serious crimes committed abroad, along with similar prosecutions by other countries, can thus make a vital contribution to ensuring that perpetrators of atrocities face justice.

This article will discuss 1) the U.S. federal law that makes it a crime to commit torture abroad; 2) the case against Chuckie Taylor for alleged torture committed in Liberia; 3) important developments to date in the case against Taylor, Jr.; and 4) ensuring more prosecutions of this kind in the future.

THE EXTRATERRITORIAL TORTURE LAW

ELEMENTS OF THE LAW

The law criminalizing torture abroad is codified at 18 U.S.C. §§ 2340 and 2340A (the “Extraterritorial Torture Statute”). 18 U.S.C. § 2340A(a) states:

Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death, or imprisoned for any term of years or for life.

Torture is defined under the statute as:

[A]n act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

Notably, the statute prohibits torture committed not only by US citizens, but by non-citizens present in the United States. 18 U.S.C. § 2340A(b) states:

There is jurisdiction over the activity prohibited in subsection (a) if (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

As such, the Extraterritorial Torture Statute operates on the basis of universal jurisdiction, whereby certain crimes, due to their gravity, may be prosecuted in any state. Universal jurisdiction laws exist, and are increasingly applied, in a number of countries, especially in Europe.¹

The Extraterritorial Torture Statute has nevertheless been exceptional in its jurisdictional reach among U.S. federal laws relating to human rights violations. For example, until last year, genocide was only punishable if committed within the United States or by a U.S. national. War crimes remain punishable only if the victim or alleged perpetrator is a U.S. national or member of the U.S. armed forces.²

LEGISLATIVE HISTORY OF THE EXTRATERRITORIAL TORTURE STATUTE

The Extraterritorial Torture Statute was passed in order to implement U.S. obligations as a state party to the Convention

* *Elise Keppler is senior counsel at Human Rights Watch’s International Justice Program (IJP). Shirley Jean and J. Paxton Marshall are associates at Weil, Gotshal & Manges, LLP. Human Rights Watch has for years documented human rights violations committed in Liberia. After Chuckie Taylor was taken into custody and indicted for a passport violation in the United States in 2006, Human Rights Watch pressed for an investigation with a view to his prosecution for torture and war crimes committed in Liberia. Following Chuckie Taylor’s indictment for torture in December 2006, Weil, Gotshal & Manges LLP has provided ongoing, invaluable pro bono assistance to the IJP in monitoring and analyzing developments in the case.*



Sierra Leonean rebels from the Revolutionary United Front and Armed Forces Revolutionary Council in Monrovia, Liberia.

Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). Article 5 of the CAT requires that State's Parties prosecute torture regardless of where it is committed when alleged perpetrators are in their territory.

The CAT was adopted by the United Nations (UN) General Assembly in 1984 and entered into force in 1987. On April 18, 1988, U.S. President Ronald Reagan signed the CAT, and on October 27, 1990 the US Senate gave its advice and consent to ratify the treaty with several reservations, understandings, and declarations.

In March 1992, President George H.W. Bush called on Congress to enact legislation implementing the CAT when signing the Torture Victim Protection Act of 1991, and on September 24, 1992, Representative Dante B. Fascell introduced a bill, H.R. 6017, to do just that. The House of Representatives passed the bill and referred it to the Senate. Recognizing Congress's delay in implementing the CAT following the Senate's advice and consent to ratification, one of the bill's co-sponsors, Representative Gus Yatron, urged Congress to ratify the CAT before the 1993 World Conference on Human Rights.

On October 7, 1992, Senator Joseph R. Biden introduced an amendment to a larger crime bill in the Senate, S.3349, that incorporated the language from the House bill, but this

bill and a subsequent one were not adopted. The following year, another bill to implement the CAT, H.R. 933, was re-introduced in the House of Representatives. Nevertheless, it was not until April 30, 1994 that the House and the Senate passed the Extraterritorial Torture Statute as section 506 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995. Pursuant to the legislation and Article 27 of the CAT, the Extraterritorial Torture Statute went into effect on November 20, 1994, thirty days after the United States ratified CAT.

Following its enactment, not a single indictment under the Extraterritorial Torture Statute was issued until the case against Chuckie Taylor twelve years later. During this period, the UN Committee Against Torture expressed disappointment that no prosecutions had been initiated and urged the United States to take effective measures to prosecute torturers under the law.

THE CASE AGAINST CHUCKIE TAYLOR FOR TORTURE

BACKGROUND

Chuckie Taylor is the Boston-born son of former Liberian president Charles Taylor. Taylor became president in 1997 following an eight-year conflict in which there was an implicit threat that the rebel force Taylor headed would resume fighting unless Taylor were elected. Soon after his father was inaugurated, Chuckie Taylor went to Liberia to head a newly established elite pro-government military unit, the Anti-Terrorist Unit (ATU).

The ATU was initially used to protect government buildings, the international airport, and foreign embassies. In 1999, the ATU's responsibilities were expanded, however, to include combat and other war-related duties after rebels began operating in Liberia.

During Chuckie Taylor's tenure as head of the ATU, the unit was notorious for human rights abuses. According to reporting by Human Rights Watch and Amnesty International, the unit committed torture, including violent assaults, beating people to death, rape, and burning civilians alive. The unit also committed war crimes, including extrajudicial killing of civilians and prisoners, rape and other torture, abduction, and child soldier recruitment during Liberia's armed conflict from 1999 to 2003.

THE CHARGES AGAINST CHUCKIE TAYLOR: FROM PASSPORT FRAUD TO TORTURE

Chuckie Taylor was taken into U.S. custody in March 2006 after attempting to enter the United States at Miami International Airport. He was charged a month later with using a U.S. passport which he had obtained through false statements in violation of 18 U.S.C. § 1542.³ Specifically, he allegedly lied about the identity of his father on his passport application. Notably, Charles Taylor had been surrendered the previous day to the Special Court for Sierra Leone to face charges of war crimes and crimes against humanity committed during Sierra Leone's decade-long conflict that ended in 2002.

With Chuckie Taylor in U.S. custody, human rights organizations, including Human Rights Watch, publicly called for an investigation with a view to his prosecution for torture and war crimes committed in Liberia. This request was made because an investigation was believed to be not only crucial for victims in Liberia, but also necessary to demonstrate U.S. commitment to apply laws prohibiting human rights violations committed

abroad. Human Rights Watch also submitted a memorandum to the Department of Justice regarding serious abuses in which Chuckie Taylor is implicated.

In September 2006, Chuckie Taylor pleaded guilty to the passport violation. He was scheduled to be sentenced on December 7, 2006, which could have led to his release soon thereafter.⁴ One day prior to the sentencing, however, a federal grand jury indicted him for torture in Liberia.⁵ The indictment charged Taylor with one count of torture, one count of conspiracy to torture, and one count of using a firearm during the commission of a violent crime in violation of 18 U.S.C. §§ 2340-2340A. The initial indictment alleged that in conducting an interrogation in 2002, Chuckie Taylor and his co-conspirators repeatedly burned a victim at gun-point, with scalding water and a hot iron; shocked various parts of the victim's body; and rubbed salt into the victim's wounds.

**“For the United States
to play its role in ensuring
justice for the victims of
atrocities, . . . it is vital that
such prosecutions become
a much more regular
occurrence.”**

While the original indictment was based on the alleged torture of a single victim, six more victims and one new count, conspiracy to use a firearm during a crime of violence, have been added to the charges in two superseding indictments. The superseding indictments also include allegations that between 1999 and 2003, Taylor summarily shot three victims selected at random from a group of rebels; locked a group of individuals in a hole in the ground covered with iron bars and barbed wire; ordered the execution of numerous individuals; ordered cutting the genitals of prisoners; and committed numerous acts of burning and shocking body parts of prisoners.

IMPORTANT DEVELOPMENTS IN THE CASE AGAINST CHUCKIE TAYLOR FOR TORTURE

Whether before international or national courts, it is vital that trials of serious crimes under international law be fair and effective consistent with international standards. As the first-ever prosecution for torture committed abroad, not surprisingly, the case against Chuckie Taylor has been characterized by extensive pre-trial motion practice. Some of the filings raise issues that have important implications for this prosecution and future cases

of this kind in the United States. Several of the most notable of the filings are discussed below. They relate to the constitutionality of the federal torture statute; ensuring respect for the rights of the accused, including the right to adequate time to prepare; and the protection of victims and witnesses.

CONSTITUTIONALITY OF THE EXTRATERRITORIAL TORTURE STATUTE

Adequate laws are central to prosecution of human rights violations. Chuckie Taylor's defense has filed many motions arguing that the case should be dismissed because the Extraterritorial Torture Statute is unconstitutional. In these motions, the defense challenges the U.S. government's authority to enact a statute that seeks to oversee "the internal and wholly domestic actions of a foreign government."⁶

The court has rejected the defense's claims, holding that the Extraterritorial Torture Statute is a proper exercise of Congressional authority to implement binding treaty obligations and to define offenses against the law of nations. In upholding the constitutionality of the statute, the court makes the following noteworthy observations:

The prohibition against official torture has attained the status of a *jus cogens* norm, not merely the status of customary international law It is beyond peradventure that torture and acts that constitute cruel, inhuman or degrading punishment, acts prohibited by *jus cogens*, are similarly abhorred by the law of nations.⁷

In rejecting the defense's arguments, the court nevertheless based some of its reasoning on the fact that the defendant is a U.S. citizen. Accordingly, a future constitutional challenge to the statute may yet raise issues of first impression if a non-citizen is facing prosecution. The constitutionality of the statute also may be raised in any appeal in the Chuckie Taylor case.

A secondary argument raised in these motions is that international law does not recognize conspiracy as a criminal offense and that the CAT does not provide a basis to prosecute conspiracy to torture, which was added to 18 U.S.C. § 2340A by the USA Patriot Act of 2001. The court rejected this argument, finding that the conspiracy provision of the statute is proper given its consistency with the CAT.⁸

VICTIM WITNESS PROTECTION AND ENSURING RIGHTS OF THE ACCUSED

In prosecutions of serious crimes, witnesses, some of whom may be victims, can face serious security, psychological, and physical challenges related to their appearance in court. Measures must therefore be taken to protect the physical and mental well-being of these individuals. Such measures must not, however, compromise the fundamental rights of the accused, including the right to prepare his or her defense. At international and hybrid international-national criminal tribunals, protection measures have included restricting the disclosure of identities through the use of pseudonyms and holding certain proceedings in closed session.

Disclosure of the identities of the victims and witnesses has been a major issue in the Chuckie Taylor case. The U.S. government did not name the alleged victims or co-conspirators in



Fighters with the National Patriotic Front of Liberia, led by Charles Taylor, in Monrovia, Liberia.

the indictments and resisted requests by the defense to disclose their identities without restrictions. The defense argued that the U.S. government was impeding its ability to prepare by failing to allege sufficient facts in the indictment, while the government argued that the indictment alleged sufficient facts by describing the alleged acts of torture and providing the locations where they occurred.⁹ The U.S. government also raised concerns that disclosing identities of the victims and witnesses early in the case could create the risk of retaliatory attacks and jeopardize the safety of witnesses in Liberia.¹⁰

The court held that an indictment need not include victim and co-conspirator identities to give the defendant adequate notice of the charges against him.¹¹ In a separate ruling, however, the court held that the defendant is entitled to know the victims' identities.¹² The court then ordered the government to reveal the identities of victim witnesses and their attorneys, along with the names of any co-conspirators known to the government, subject to limited protections, including non-disclosure to the public.¹³ Notably, despite arguments over disclosure of victim identities, the identity of the victim in the original indictment was unintentionally publicly disclosed by the victim's own attorney in a court filing in June 2007.¹⁴

Disclosure of the identities of witnesses the government intends to call who are not described in the indictment are subject to different limitations. Specifically, such disclosure must be made to the defense only three calendar weeks before trial.¹⁵

ADEQUATE TIME TO PREPARE A DEFENSE

Adequate time to prepare a defense is a fundamental right under international fair trial standards, as enshrined in Article 14 of the International Covenant on Civil and Political Rights. Cases involving serious crimes are complex, and requests for additional time to prepare have arisen before international and hybrid criminal tribunals. What constitutes adequate time in a specific case depends on a variety of factors, including the difficulty of the case and the amount of material to be reviewed.

Chuckie Taylor's defense has made several requests to postpone the start of his trial to allow additional time to prepare.

The defense initially based its requests on the need to address novel and unique legal issues in the case and new allegations following the issuance of the superseding indictments. Later, the defense focused on the difficulties of conducting investigations in Liberia. These difficulties include the remote location of potential witnesses; the poor condition of roads; limitations on movement due to safety; and overall lack of infrastructure such as electricity, running water, and telecommunication services. The court has granted each of the

requests for postponement on the basis that the "interests of justice . . . outweigh any interest of the public or the [d]efendant in a speedy trial." The court has indicated, however, that no further postponements will be granted. The trial is now scheduled to start on September 15, 2008, approximately 19 months after the initially scheduled start date.¹⁶

ENSURING FUTURE U.S. PROSECUTIONS OF ALLEGED HUMAN RIGHTS VIOLATIONS COMMITTED ABROAD

THE SIGNIFICANCE OF THE PROSECUTION of Chuckie Taylor for torture committed abroad has not been lost on U.S. officials. On the issuance of the indictment, Assistant Attorney General Alice Fisher of the Department of Justice said, "This marks the first time the Justice Department has charged a defendant with the crime of torture . . . Crimes such as these will not go unanswered." Julie L. Myers, Department of Homeland Security Assistant Secretary for Immigration and Customs Enforcement, said, "This is a clear message that the United States will not be a safe haven for human rights violators."¹⁷

This September's trial will be an important moment. For the United States to play its role in ensuring justice for the victims of atrocities, however, it is vital that such prosecutions become a much more regular occurrence.

Whether the case against Chuckie Taylor will be the first of many in the United States remains an open question. In recent years, the Departments of Justice and Homeland Security have taken important steps to enhance efforts to prosecute human rights violations committed abroad. Such steps include the creation of an ad hoc interagency working group to increase coordination among the many agencies involved in avoiding allowing safe haven for human rights violators in the United States. The Department of Justice also has a subdivision, the Domestic Security Section, which focuses on investigating and prosecuting human rights violations committed abroad. Designating primary responsibility for such cases within one section is important. Western European practice suggests that concentration of relevant expertise in specialized units is one of the most important elements in the successful prosecution of these types of cases.¹⁸

Given such efforts, it is in some respects surprising that there has been only a single U.S. prosecution for torture committed

“According to U.S. authorities, a number of investigations [into torture committed abroad] have been initiated and ‘although criminal charges have not been brought, [] immigration charges have resulted.’ ”

abroad. According to U.S. authorities, a number of investigations have been initiated and “although criminal charges have not been brought, [] immigration charges have resulted.”¹⁹

The dearth of cases is due at least in part to the significant challenges of investigation and prosecution of serious crimes committed abroad. Analysis of similar cases in Western Europe suggests that such cases involve major difficulties caused by any mix of several factors, including language barriers; complex and unfamiliar political and historical contexts; the need for evidence that is tough to track down and obtain access to; the importance of conducting extraterritorial investigations to identify evidence and witnesses; and having to prove crimes that may never have been previously adjudicated.

Another challenge relates to the need for witnesses who may face serious threats if they become involved in a prosecution. Even though the power to protect witnesses remains with the authorities in the state where the witness is located, at-risk witnesses must be monitored by the prosecuting authorities to ensure they do not face harm. A related issue is that witnesses brought to testify in the forum state may seek asylum. Witness testimony can be taken abroad through various measures, including video link. However, if the witness’s evidence is significant, and the witness has a well-founded fear of persecution, due consideration should be given to asylum claims or to ensuring witness relocation.

Inadequate laws and theories of criminal liability can create further obstacles. Recent efforts to criminalize genocide and child recruitment when committed abroad by persons found in the United States, regardless of nationality, should be applauded.²⁰ The full range of serious crimes under international law should be punishable on this basis.

Prosecutions should also be brought on all relevant bases of criminal liability, including the crucial theory of command responsibility. The theory of command responsibility is often integral to cases against perpetrators who are leaders far removed from the scenes of crimes. This basis of liability has been expressly recognized in the U.S. military code, upheld by the U.S. Supreme Court, and recognized in several civil cases in federal courts involving human rights violations. Nevertheless, the Department of Justice has hedged on whether this theory will be applied in torture cases.²¹ The charges against Chuckie Taylor notably involve only his alleged direct involvement in torture, even though charges based on command responsibility would seem to have been an obvious option given available information concerning the ATU, which he headed.

A number of the challenges to prosecuting human rights violations committed abroad have been expressly acknowledged by U.S. officials.²² How best to overcome them needs increased attention.

Interest by the recently established Senate Judiciary Committee’s Subcommittee on Human Rights and the Law is welcome in this regard. On November 14, 2007, that subcommittee held a first-ever hearing on ensuring that the United States is not a safe haven for human rights violators. Subcommittee members expressed an interest in better understanding the difficulties involved in cases against alleged perpetrators so that Congress can help ensure that the necessary tools are available to guarantee their successful prosecution. At the same time, members raised questions as to the extent of the Department of Justice’s commitment to prosecutions of human rights violations committed abroad, given that there are only about seven attorneys working for the Domestic Security Section on such cases.²³

One obvious critical element in prosecuting human rights violations is political will which would include ensuring the passage and application of appropriate laws and the procurement of adequate resources to conduct effective investigations where the complexities that are described earlier in this section exist. Support also is needed to facilitate exchange of information and best practices with practitioners in other countries. The European Union has established a network of persons who work on prosecuting serious crimes, and Interpol also has a working group on such cases.

Congress and the Departments of Justice and Homeland Security are well placed to intensify scrutiny of the challenges and to strengthen law and practice to surmount them. This is essential if perpetrators of heinous abuses are to be held to account and if the case against Chuckie Taylor is to be more than an anomaly in US practice.

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ENDNOTES: First Prosecution in the United States for Torture Committed Abroad

¹ See Human Rights Watch, *Universal Jurisdiction in Europe: The State of the Art*, available at <http://www.hrw.org/reports/2006/ij0606/> (last visited May 15, 2008).

² See 18 U.S.C. § 1091 (2007); 18 U.S.C. § 2441 (2006).

³ Indictment, United States v. Charles McArthur Emmanuel (a.k.a. “Chuckie Taylor”), No. 06-20263 (S.D. Fla., Apr. 28, 2006).

⁴ See Testimony of the United States Dept. of Justice on Passport Fraud before the Sentencing Commission (Mar. 17, 2004), available at http://www.usc.gov/hearings/03_17_04/Zuckerman-Col-DOJ.pdf (last visited May 15, 2008); Curt Anderson, *Taylor Son Pleads Not-Guilty to Torture, Gets 11 Months on Fraud*, ASSOCIATED PRESS (Dec. 7, 2006), available at <http://www.jacksonville.com/apnews/stories/120706/D8LS6EN81.shtml> (last visited May 15, 2008).

⁵ See Indictment, United States v. Roy M. Belfast (a.k.a. “Chuckie Taylor”), No. 06-20758 (S.D. Fla., Dec. 6, 2006) (hereinafter “Torture Indictment”).

⁶ See, e.g., Defendant’s Motion to Dismiss The Indictment And Memorandum Of Law In Support Thereof, Based On The Unconstitutionality Of 18 U.S.C. 2340A, Both On Its Face And As Applied To The Allegations Of The Indictment, *Belfast* (S.D. Fla., filed Mar. 2, 2007) (No. 38-1), 1.

⁷ See Order On Defendant’s Motion To Dismiss The Indictment at 17, *Belfast* (S.D. Fla., filed July 5, 2007) (No. 148), 17.

⁸ Order at 6, *Belfast* (S.D. Fla., entered Mar. 16, 2007) (No. 328).

⁹ Motion To Dismiss Indictment Due to Factual Insufficiency at 8, *Belfast* (S.D. Fla., filed Jan. 11, 2007) (No. 21); Government’s Response in Opposition to Defendant’s Motion to Dismiss Indictment Due to Factual Insufficiency at 5–14, *Belfast* (S.D. Fla., filed Jan. 26, 2007) (No. 25).

¹⁰ Government’s Response in Opposition to Defendant’s Motion to Continue Trial and For Leave to File Ex Parte Pleading in Support at Exhibit 1, *Belfast* (S.D. Fla., filed Feb. 7, 2008) (No. 314-1).

¹¹ Magistrate Judge Report and Recommendation at 2, *Belfast* (S.D. Fla., entered Mar. 16, 2007) (No. 45). See also Order on Defendant’s Objections to Report and Recommendation at 1, *Belfast* (S.D. Fla., entered Feb. 12, 2007) (No. 30).

¹² Motion for Protective Order Regulating Disclosure of Victim’s Identity at 3, *Belfast* (S.D. Fla., filed Mar. 29, 2007) (No. 47-1); Defendant’s Response in Opposition to Government’s Motion For Protective Order at 5-6, *Belfast* (S.D. Fla., filed Apr. 13, 2007) (No. 53); Order Denying Motion For Protective Order Regulating Disclosure of Victim’s Identity at 1, *Belfast* (S.D. Fla., entered Apr. 13, 2007) (No. 55); Order Denying Reconsideration of Protective Order Regulating Disclosure of Victim’s Identity at 10, *Belfast* (S.D. Fla., entered Apr. 26, 2007) (No. 66).

¹³ Defendant’s Motion For Bill Of Particulars at 2, *Belfast* (S.D. Fla., filed Apr. 27, 2007) (No. 78); Omnibus Order, *Belfast* (S.D.

Fla., entered June 29 2007) (No. 138; United States’ Motion To Extend Magistrate Judge’s Order at 1, *Belfast* (S.D. Fla., filed June 19, 2007) (No. 219); Standing Discovery Order at 4 (S.D. Fla., entered Sept. 10, 2007) (No. 220). Efforts to obtain details on the specific protection measures currently in place were unsuccessful.

¹⁴ See Billy Shields and Julie Kay, *Public Records: Torture victim’s identity mistakenly revealed*, THE BLOG OF LEGAL TIMES, July 20, 2007.

¹⁵ Order, *Belfast* (S.D. Fla., entered Mar. 4, 2008) (No. 333).

¹⁶ See Defendant’s Motion To Continue Trial And For Leave To File Ex Parte Pleading In Support, *Belfast* (S.D. Fla., filed Jan. 29, 2008) (No. 333); Defendant’s Reply To Government’s Response To His Motion To Continue Trial For Six Months, *Belfast* (S.D. Fla., filed Nov. 12, 2007) (No. 259); Defendant’s Motion To Continue Trial For Six Months, *Belfast* (S.D. Fla., filed Nov. 7, 2007) (No. 254); Defendant’s Unopposed Motion To Continue Trial Until Late January 2008, *Belfast* (S.D. Fla., filed July 13, 2007) (No. 157); Order Continuing Trial, *Belfast* (S.D. Fla., filed Feb. 14, 2008) (No. 324); Order Continuing Trial, *Belfast* (S.D. Fla., filed Feb. 20, 2008) (No. 329).

¹⁷ *Torture Charges Announced Against Roy Belfast Jr.*, U.S. Dept. of Justice, Press Release (Dec. 6, 2006), available at <http://www.usdoj.gov/usao/fls/PressReleases/061206-01.html> (last visited May 15, 2008).

¹⁸ See Human Rights Watch, *Universal Jurisdiction in Europe: The State of the Art*, “Developing Expertise in Prosecuting International Crimes: Specialized Units,” available at http://www.hrw.org/reports/2006/ij0606/2.htm#_Toc137876499 (last visited May 15, 2008).

¹⁹ U.N. Committee Against Torture, *Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, Second Periodic Reports of States Parties Due in 1999*, Addendum, ¶ 50, U.N. Doc. CAT/C/48/Add.3/Rev.1 (Jan. 13, 2006). See also *No Safe Haven: Accountability for Human Rights Violators in the United States: Hearing Before the Senate Judiciary Committee’s Subcommittee on Human Rights and the Law* (Nov. 14, 2007), available at <http://judiciary.senate.gov/hearing.cfm?id=3028> (last visited May 15, 2008).

²⁰ See Genocide Accountability Act of 2007, Pub. L. No. 110-151, 112 Stat. 1821 (2007); Child Soldiers Accountability Act of 2007, S. 2135 (2007).

²¹ *Letter from Brian A. Benzko, Principal Deputy Asst. Att’y Gen. of the United States, to Richard Durbin, Chairman, and Tom Coburn, Ranking Minority Member of the Senate Subcommittee on Human Rights and the Law* (Jan. 24, 2008).

²² See *No Safe Haven*, *supra* note 19.

²³ *Id.*

Resistance to Genocidal Governments: Should Private Actors Break Laws to Protect Civilians from Mass Atrocity?

by Chad J. Hazlett*

ONE MONTH INTO the 1994 Rwandan genocide, U.S. President Bill Clinton's National Security Advisors considered options to jam, destroy, or counter Radio Télévision Libre des Mille Collines (RTLM), the radio station used by Hutu extremists to incite and direct machete-wielding mobs. The administration ultimately decided not to take any action against RTLM. The primary reason — doing so would violate international communications law.¹

Now suppose that where the U.S. government declined to act, a wealthy individual hired private contractors to jam RTLM's transmissions, in violation of communications law and other laws. Such an action may arguably be legal, perhaps on the grounds that the *jus cogens* norm prohibiting genocide supersedes international communications law.² It is possible that no legal action would have been taken against the actor involved.³ For private donors and contractors, however, taking this action in real time would have required a decision to willfully break laws and take aggressive, invasive action normally thought to be the sole right of states.

This article explores the conditions under which private actors — individuals or organizations acting without government authority — are justified in breaking the law to protect civilians from mass atrocity. Such actions could range from training civilians to evade danger to destroying or disabling equipment, to hiring “mercenaries” to use deadly force. The article posits that while states should remain the “protectors of choice,” there are cases where laws that would prevent private actors from protecting civilians are unjust and can be broken with caution. The article also proposes a set of “just-case criteria” drawn from civil disobedience theory and the Responsibility to Protect, offered as a starting point to determine when such actions are justified.

CIVIL DISOBEDIENCE AND A PRIVATE ROLE IN THE RESPONSIBILITY TO PROTECT

The Responsibility to Protect (R2P), Chapter VII of the United Nations Charter, and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) address the need for governments to take otherwise illegal measures to halt the worst crimes. Private actors, however, have no

such guidance for acting when governments fail to. According to the R2P doctrine, when sovereign governments fail to uphold their duty to protect civilians, that responsibility falls to other nations, preferably under authority of the United Nations (UN). Where the intervention must occur without consent of the host government, R2P suggests that states have the right (indeed, responsibility) to intervene so long as 1) the situation is dire enough; 2) non-military options have been exhausted; and 3) the intervener has the proper intent, uses proportional means, and has reasonable prospects of success.⁴

“Now suppose
that where the U.S.
government declined to
act [to end genocidal radio
broadcasts], a wealthy
individual hired private
contractors to jam . . .
transmissions, in violation
of communications laws.”

Presumably states have become the subject of international norms and laws regarding intervention against mass atrocities because they are most capable of marshalling the resources, engaging in diplomacy, levying sanctions or offering incentives, coordinating amongst each other, and acting as guarantors of settlements. But when the state-based chain of responsibility proposed by R2P or called for by other instrument fails to protect civilians from atrocities, what role should private actors have in taking up this responsibility?

Unfortunately, no parallel to R2P (or the Genocide Convention, or Chapter VII of the UN Charter) exists to guide the actions of private individuals who endeavor to protect civilians when states fail. The absence of regulations for such

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Children who fled the fighting in Rwanda rest in Ndosha camp in Goma.

actions is not a positive indication of international consensus that individuals *cannot* participate in such actions. Indeed, private actors have important attributes such as fewer political constraints, flexibility and agility in making decisions, and the ability to deny having national interests. Moreover, where states fail to take sufficient actions — as with the Rwanda RTLM case — private actors may be a victim’s only remaining source of protection.

In cases where private actors can help protect civilians without violating any laws, there is nothing to prohibit them from doing so. The question then is what to do in cases where a private actor would have to violate laws to protect civilians. The bodies of international law cited above discuss the permissibility of or the duty to violate such laws to protect civilians but only with respect to state actors; however, the cornerstones of these laws — the “right to life” and the prohibition of genocide — do not lose their significance when private actors uphold them rather than states.

Beyond international law, another useful framework in analyzing this problem is civil disobedience. Henry David Thoreau’s essay *Civil Disobedience* advocates breaking laws that are supportive of unjust policies.⁵ Is it also appropriate for private actors to selectively pose “resistance to *genocidal* governments” by taking actions to protect civilian targets, even when doing so requires breaking laws? This article does not attempt to prove that private citizens not party to a given atrocity have a moral duty to take any action, legal or illegal, to protect civilians abroad. Instead it attempts to prompt discussion and propose conditions under which private citizens who believe they do have that duty can justifiably claim the right to violate laws, particularly those regarding state sovereignty, to protect civilians from atrocities.

WHEN IS IT NECESSARY TO VIOLATE LAWS TO PROTECT CIVILIANS?

This section addresses a number of past cases where law-breaking was, or is, thought to be necessary to protect civilians from mass killing. Illegal protective actions are generally treated

as rare exceptions for which there is no legal framework.⁶ The existence of these precedents is not necessarily sufficient to argue that such actions are justified, but is helpful in framing the types of actions that have occasionally been employed.

Large-scale covert or non-consensual aid operations have been conducted in Afghanistan, El Salvador, South Africa, Ethiopia (for Tigray and Eritrea), Iraq, Kosovo, Burma, North Korea, and Sudan, as well as in Guatemala and Cambodia.⁷ While this is not “protection” aimed at halting atrocities, such actions do help to keep alive those affected by mass atrocities. For example, in Biafra, the Nigerian government used starvation as an indiscriminate weapon against a secessionist rebel movement and its civilian base. The International Committee of the Red Cross (ICRC), which normally operates only with consent, joined with non-governmental organizations and donors to fly 5,314 (illegal) missions in privately rented planes dropping food into the besieged area.⁸

Illegal activities have also been used to help people escape from imminent harm. Oftentimes, these have been conducted by individuals, using guile and trickery, sometimes acting with the support of private and government donors. For example, during the Holocaust, private actors frequently created false documents and bribed Nazi officials to secure the release of their victims.⁹ Raoul Wallenberg saved as many as 100,000 Jews from Nazi extermination by “deception, bribery, blackmail, bogus documents, false front safe houses, and more.”¹⁰ Chiune Sugihara, a Japanese diplomat in Shanghai, issued illegal transit visas that saved the lives of some 10,000 Jews.¹¹ Covert aid and protection activities continue today, in Burma where medical assistance is provided across the Thai border, and in North Korea where a large networks of organizations and individuals have helped thousands of civilians escape through an underground railroad that includes at least nine other countries.¹²

OPTIONS FOR PRIVATELY SUPPORTED PROTECTION AND THE LAWS THEY BREAK

Despite precedent, sizable opportunities for private funding in support of protection activities have gone untapped. There are no examples akin to private citizens jamming radio broadcasts, as could have been done to slow the slaughter in Rwanda in 1994. Little is done to use private resources and organizations to prepare vulnerable civilians for atrocities before they occur — e.g., through training and early warning networks. These activities may be prohibited by many governments, particularly when they plan on attacking those civilians.

Privately hiring unmanned aerial vehicles to “spy” on or deter perpetrators, or to warn civilians of incoming danger, has been considered quietly but never employed. Privately-employed intelligence contractors could obtain information on perpetrators, their plans, their weaknesses, and opportunities to counter them politically or otherwise. These options are moderate compared to the possibility of privately hiring security contractors to utilize electronic countermeasures (e.g., disrupting radio communications), or to destroy or disable transportation or communications equipment. At the extreme, security contractors willing to violate laws could be hired to use armed force to deter



Japanese Diplomat Sugihara Chiune (left) and Swedish Raoul Wallenberg (right) saved 110,000 Jews from Nazi extermination by creating and issuing false documents.

perpetrators from attacking civilians or even to actively pursue, kill, or scatter perpetrating forces. Whatever the current legal hurdles, might private support for some of these actions sometimes be justified when governments fail to protect civilians?

There are two general modalities by which private actors can support protective activities. In the ideal case, state actors are already trying to protect civilians through authorized missions and activities, for example through UN peacekeeping or peace enforcement missions. In this case, missions may need assistance with training and equipment, which private donors could help provide if appropriate mechanisms were put in place. This could be done legally. Where there is not an authorized mission or that mission is severely hampered — e.g., by the requirement of acting within the consent of the host government — private actors must instead consider the option of supporting these activities through non-governmental agencies, private contractors, and local groups as appropriate.

The types of laws that these actions would break generally fall into four categories that reflect different levels of potential harm associated with breaking the law. Thus, they may require differing levels of justification. Each of these categories is discussed below.

1. VIOLATIONS OF THE PERPETRATOR'S SOVEREIGN CONTROLS

By far the most common legal violations caused by protection activities relate to the sovereignty of the country in question. In some cases, laws that would be broken while protecting civilians fall under international conventions — for example, regarding communications or access to airspace. In the majority of cases, the laws in question are domestic, however, and are used by governments to prevent entry of people and supplies that would provide aid or security to civilians. Domestic measures falling in this category include strict regulation of visas and travel permits; licenses to operate as a business or non-profit entity; licenses to hire workers; licenses to import goods; access to land; and licenses to own or operate equipment such as vehicles, radios, and generators. Airspace can also be restricted, preventing the

use of manned or unmanned aircraft for observation, early warning, and delivery of aid. Restrictions on freedom of speech also apply: training individuals in tactics that will help them survive or providing information regarding violent threats to them may be viewed by the host government as prohibited discussion of security or political issues, or as libel against the government. Altogether, laws in this category are the most evidently “unjust” when they are clearly used to further a government’s efforts to kill large numbers of civilians and prevent outside intervention to protect or care for civilians.

2. VIOLATIONS OF SOVEREIGN CONTROLS IN OTHER COUNTRIES (NON-PERPETRATORS)

Restrictive laws may also be imposed by countries other than the one where violence is occurring. First, neighboring countries may prevent access to their borders. For example, technologies such as unmanned aerial vehicles may be deployed from or radio transmissions may originate in these countries. Equipment may also need to be transported through countries, requiring permission or licenses. Hence, borders may need to be crossed illegally.

Countries where equipment or finance for these projects originates may also have applicable laws. Protected technologies, such as night vision goggles, may require export licenses. Financial sanctions preventing operations in a country may be in place. Anti-terrorism laws may also apply. In the current form of the USA Patriot Act and Real I.D. Act, for example, any group in armed opposition to a government may be considered a terrorist organization, and support for those associated with these groups — even those who are clearly the victims of terror or have fought alongside U.S. forces — can be considered material support to a terrorist organization.¹³ Finally, “underground railroads” that issue false travel documents, bribing border guards, or other means of moving people illegally may violate laws of several countries. At first glance, these laws may not be deeply unjust as those employed directly by governments perpetrating atrocities with the intent of harming civilians. They may, however, be equally unjust in consequence.

“So long as private citizens have resources to offer for protection of civilians when states fail to protect them, we should consider how such citizens can act in a manner consistent with the supreme importance of the right to life and the prohibition of genocide, even when doing so requires breaking laws that otherwise ought to be respected.”

3. DESTRUCTION OF PROPERTY OR INTERFERENCE IN ITS USE

Destroying or disabling the property of perpetrators may aim to limit the capability of the perpetrator or impose a cost in hopes of altering the perpetrator’s actions. The case of Rwanda’s RTLM radio broadcasts falls in this category: the antenna could be permanently destroyed, or one could interfere in the equipment’s normal operation by jamming it electronically¹⁴ with the hope that doing so would hamper the Interahamwe’s ability to continue their genocide.

Beyond interfering with civilian radio broadcasts, this category involves numerous other possible efforts to protect civilians. Military equipment such as weapons, vehicles, or communications gear could be destroyed, sabotaged, jammed, or even temporarily disabled. Other examples where governments have used or considered these options include proposals to bomb railroad tracks leading to Nazi-run concentration camps during World War II, or the use of targeted financial sanctions against individuals responsible for planning or executing mass violence.

4. ACTUAL, THREATENED, OR RISKED PHYSICAL HARM TO INDIVIDUALS

The most contentious and worrisome, but also perhaps still justifiable, ways in which laws might be broken include cases where physical force or the threat of force is used to alter the capabilities of perpetrators. These may include defensive acts, such as providing armed deterrence to protect civilian groups and areas, or offensive attacks, such as intentionally destroying or scattering the perpetrating force. This category also includes any action which might unintentionally result in physical harm to individuals.

WHEN ARE PRIVATE ACTORS JUSTIFIED IN BREAKING LAWS?

Without the law as ultimate guidance, where can private actors look for authority and restraint? As a first approximation, I propose a set of criteria and conditions for illegal action by private citizens, somewhat similar to R2P’s criteria for military intervention by states:

1. **Conditions:** While there has been much debate over which conditions (conflicts) justify military intervention under R2P, a nascent consensus may be emerging that R2P applies to the “worst” cases, specifically, genocide, crimes against humanity, and war crimes.¹⁵ The same conditions could be considered requirements for justification of private actors’ breaking of laws in order to protect civilians.
2. **Precautionary principles:** R2P lists four precautionary principles to limit actions that violate sovereignty — right intention; last resort (i.e. peaceful methods have been reasonably exhausted); proportional means; and reasonable prospects of success.¹⁶ Similar principles could apply to action by private actors when they believe they must violate laws to protect civilians. The following may be a useful starting point for applying these concepts to private actors :
 - *Right intention:* As with military intervention by states, any illegal protection act undertaken by private citizens must be done for the right reasons, i.e. with a moral interest in protecting those civilians being targeted.
 - *Last resort (states first, legal options first):* Private actions violating laws are not yet justifiable when other realistic options exist, such as (1) waiting for governments to protect civilians or advocating for governments to do so more effectively; (2) changing the laws that must be broken or obtaining a waiver to do so; or (3) protecting civilians just as effectively without breaking any laws. If reasonable analysis suggests, however, that these options are unlikely to provide protection in time, then private actions that break laws may be justified. Applying this criterion requires considerable judgment, and thus it may not be sufficiently operationalized. Nevertheless, in cases where mass killing is occurring at a high rate, and states are showing reluctance to halt it immediately, there is a strong argument that states are failing to fulfill their responsibilities in time, and actions akin to the jamming of RTLM by private civilians may be justified.
 - *Least harmful, most beneficial option:* Four categories were presented for the types of laws that may need to be broken to protect civilians: those involving sovereign controls used by the perpetrator to further policies of

mass killing; those involving sovereign controls of non-perpetrating states; those that damage or interfere with property; and those that harm, threaten to harm, or kill individuals. These categories are ordered by increasing degree of harm caused or risked by the protective actions. Therefore, actions should be taken as near to the first category and as far from the last as possible.

Nevertheless, is not an absolute rule: if actions can be taken that are vastly more effective but come with a greater actual or potential harm, they may be more justified than a less harmful action with a lesser benefit in terms of civilians protected. This somewhat resembles both “proportional means” and “reasonable prospects of success” under the R2P model in that it turns on an estimate of the consequences.

The calculation is also similar to an assessment of whether the law being broken is consequentially “unjust.” If following a law allows mass killing, whereas violating that law causes little harm but protects civilians, the law is unjust in consequence. The “least harmful, most beneficial” criterion further specifies that “more unjust” laws — those causing the greatest harm for the least benefit — should be broken rather than “less unjust” ones, which cause less harm or have greater benefits if kept in place.

3. **Authority:** The options examined here are those that remain when the legal system produces an unjust outcome. One means of retaining legitimacy while taking these actions would be to attempt to change these laws. While this may be wise in the long-run, it is not a reliable strategy because governments using domestic laws as a shield against interventions do not want to change, and because changing laws

can take too long. The Rwandan genocide lasted only 100 days. It is unlikely that a group of private citizens could have changed international communications law in time to jam RTLM transmissions and have a meaningful impact.

Legitimacy in taking these actions rests then on the integrity with which the above principles (or other principles for this purpose) are employed, and the consensus of voices standing behind them. When possible, illegal protective activities and the determination of how and why they are justified should be conducted in a fully transparent manner. Most importantly, the mandate to take on these activities should come from the populations in harm’s way, through focus groups, surveys, conferences with civil society, public statements by civilians in harm’s way, or other means of obtaining a fair assessment of their wishes and protection needs. We must, however, acknowledge that obtaining such a mandate in a meaningful way is difficult both due to the challenges of getting quality information in conflict areas and the possibility of being misled by vocal minorities, including those with their own agendas (such as resistance movements).

CONCLUSION

JUSTIFYING OR ADVOCATING actions that break some laws is difficult, and should remain difficult. But the importance of protecting civilians from mass atrocities requires exploring every option. So long as private citizens have resources to offer for protection of civilians when states fail to protect them, we should consider how such citizens can act in a manner consistent with the supreme importance of the right to life and the prohibition of genocide, even when doing so requires breaking laws that otherwise ought to be respected.

HRB

ENDNOTES: Resistance to Genocidal Governments

¹ Based on private interview with a former White House official. See also SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* 371–72 (2002).

² See Meghna Rajadhyaksha, *Genocide on the Airwaves: An Analysis of the International Law Concerning Radio Jamming* 5 JOURNAL OF HATE STUDIES 99 (2006).

³ See Ruth Abril Stoffels, *International Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps*, *International Review of the Red Cross* No. 86, Sept. 2004, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/66DCUX/\\$File/irrc_855_Stoffels.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/66DCUX/$File/irrc_855_Stoffels.pdf) (last visited June 13, 2008).

⁴ Gareth Evans & Mohamed Sahnoun, *The Responsibility to Protect*, FOREIGN AFFAIRS, NOV. 2002, at 99–110.

⁵ HENRY DAVID THOREAU, *CIVIL DISOBEDIENCE* (1849).

⁶ See Casey A. Barrs, the Cuny Center, *Locally-Led Advance Mobile Aid* JOURNAL OF HUMANITARIAN ASSISTANCE, NOV. 2004 (unpublished manuscript on file with author) (discussing precedent for clandestine humanitarian aid activities, many of which are illegal).

⁷ *Id.*

⁸ Hugh McCullum, *Biafra Was the Beginning* at 1, cited in *id.*

⁹ RESISTERS, RESCUERS AND REFUGEES: HISTORICAL AND ETHICAL ISSUES (John J. Michalcyzk ed. 1997), cited in *Locally Led Advance Mobile Aid*, The Cuny Center.

¹⁰ John Bierman, *RIGHTEOUS GENTILE: THE STORY OF RAOUL WALLENBERG, MISSING HERO OF THE HOLOCAUST* (1981), cited in *id.*

¹¹ Diane Paul, *Protection in Practice: Field-Level Strategies for Protecting Civilians from Deliberate Harm, Relief and Rehabilitation Network (RRN) Paper No. 30*, Overseas Development Institute, 1999, cited in *id.*

¹² George Wehrfritz & Hideko Takayam, *Riding the Seoul Train*, NEWSWEEK INTERNATIONAL, March 5, 2001.

¹³ Testimony of Michael J. Horowitz before the Subcommittee on Immigration, Border Security, and Citizenship of the Senate Judiciary Committee (Sept. 27, 2006).

¹⁴ See POWER, *supra* note 1, at 371–72.

¹⁵ G.A. Res 60/1, *World Summit Outcome*, ¶ 138, U.N. Doc. A/Res/60/1 (Sept. 16, 2005).

¹⁶ Evans & Sahnoun, *supra* note 4.

Project Reveals Challenges and Recommendations for Teaching International Humanitarian Law in U.S. Law Schools

by Hadar Harris* and Solomon Shinerock**

THE LEVEL OF POPULAR AND ACADEMIC INTEREST in the law governing armed conflict has spiked in the wake of events of the past eight years. Events over the past eight years have brought international humanitarian law (IHL) into clear focus in the United States. Whether sparked by the events of September 11, the subsequent wars in Afghanistan and Iraq, the high profile abuses at Abu Ghraib and detentions at Guantanamo, or the less reported abuses of military contractors, the definition, application and implementation of IHL has become a burning issue in the United States.

Yet despite the rising profile of IHL and its increasing importance in the international legal sector, a recent study conducted by the American University Washington College of Law Center for Human Rights and Humanitarian Law (WCL) and the International Committee for the Red Cross (ICRC) found that IHL is greatly underrepresented in U.S. law school curricula and that law professors interested in teaching the subject need more training and support. The study, entitled, “Teaching International Humanitarian Law in U.S. Law Schools” surveyed over 73 law schools around the United States about whether and how IHL is taught at the school and how it could be improved.¹ The general goals of the study were to gauge the level of student and faculty interest in the subject and to identify specific ways to enhance and support the teaching of IHL in U.S. law schools.

STUDY METHODOLOGY

The ICRC and WCL developed an informal survey that was mailed to over 1,000 professors and deans at accredited U.S. law schools and disseminated online through the interest groups of the American Society of International Law. One hundred one responses were received from over 73 law schools.

The survey focused on five main areas:

- Whether and how IHL is taught in the law school curriculum;
- The level of student exposure to IHL;
- IHL-related extracurricular offerings;
- Perceived student interest in IHL; and
- Whether and how IHL should be covered more thoroughly.

Following the compilation of the written data, twenty respondents who had indicated willingness to discuss the survey further were interviewed by telephone to elicit qualitative feedback and responses. During these phone conversations, respondents were asked to provide detailed information about the form IHL classes take when IHL is taught as a dedicated stand-alone course and what facets of IHL are covered when the subject is taught as a component of a broader course, such as public international law.



Photo courtesy of WCL Center for Human Rights and Humanitarian Law

Participants at joint International Committee of the Red Cross/ Washington College of Law conference discuss teaching the law of war in U.S. law schools.

Respondents were also asked about possible institutional considerations that may encourage or inhibit the teaching of IHL, and what kind of resources would be helpful to expand or improve the teaching of IHL in that school. The survey was used not only to capture what schools with minimal or non-existent IHL curricula wanted to improve, but also how schools with thriving IHL programs supported and encouraged coverage of the subject.²

CHALLENGES TO TEACHING IHL AND RECOMMENDATIONS FOR IMPROVEMENT

The operational understanding of IHL used for this study and for the entire Teaching IHL initiative is that IHL is a set of rules which seek, for humanitarian reasons, *to limit the effects of armed conflict*. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. IHL is also known as the law of war or the law of armed conflict. Yet one of the first striking conclusions of the study was the extent to which there are misunderstandings about the definition, scope and application of IHL, as well as discrepancies in the terminology used to describe course offerings.

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Some respondents conflated human rights and humanitarian law. Some confused the law of armed conflict with principles of humanitarian relief. One academic dean, when asked about the coverage of “international humanitarian law” at his school, responded that there is a human rights professor on staff that addresses all student interest and teaches a course dedicated to the subject. When subsequently asked about whether a course is offered on the law of war or the Geneva Conventions, the same dean responded that such a course is not offered at the school.

The survey also showed that the administration may approve or deny a course based on its perception of student interest in relation to the title — for example, whether the course is titled “International Humanitarian Law,” or “Law of War,” or “Law of Armed Conflict.” The course title may also affect students’ decision to enroll in a particular course.

Despite the confusion in definitions, the survey indicated that students and faculty in U.S. law schools have a strong interest in IHL. Of 101 respondents, only five reported that IHL is not taught in any form at their school. Respondents reported that 92 percent of students are “interested” or “very interested” in legal issues related to the “global war on terror” and that 96 percent are “interested” or “very interested” in legal issues related to armed conflict. A majority of students (60 percent) are “interested” or “very interested” in relief assistance and humanitarian action.

In most law schools surveyed, IHL is not taught as a stand-alone, dedicated course. While 95 percent of respondents reported that IHL is taught in some form at their school, only 37 percent of those schools have stand-alone IHL courses. Three quarters of those dedicated courses reach fewer than 40 students each year. The topics covered are diverse: courses may focus only on war theory or on the application of law to particular instances of armed conflict. Other courses focus on U.S. practice, or take a global approach based on the United Nations Charter. Most courses, however, reflect themes of history, ethics, military practice, criminality, and prosecution. Most courses also cover interdisciplinary aspects of IHL, such as the intersection with human rights, criminal law, and or national security. Where IHL is taught as a module within other courses, it is overwhelmingly framed as an aspect of public

international law. Courses most frequently containing an IHL module include international human rights (44 respondents), international criminal law (22 respondents), national security/terrorism (17 respondents), clinics (4 respondents), and international prosecution (3 respondents). The depth and scope of coverage varies, but a typical IHL module comprises one to two class sessions. Most textbooks do not include discussions of IHL as an interdisciplinary subject, and consequently professors wishing to expose students to IHL often must seek supplementary materials elsewhere.

While student interest is high, a professor with an interest in IHL is generally the driving force behind relevant course offerings. Every school that reported having an IHL “expert” on its faculty offered IHL, and half of such schools offered IHL as a stand-alone course. By contrast, of 27 schools reporting no IHL “expert” on staff, only two offered dedicated IHL courses.

Many dedicated IHL courses rise and fall with the availability of a professor for whom IHL is a “pet” class. Where schools offer multiple dedicated IHL courses, the programming is driven by a community of professors who are able to effectively attract and focus student interest and negotiate administrative barriers. At the same time, respondents reported multiple situations in which persistent students lobbied successfully for IHL-related offerings or created student groups to engage related interests. One professor noted that for an IHL course to succeed in the long run, it must “develop a positive reputation among the students.”

Professors struggle with administrative constraints and a lack of IHL-related resources. While 78 percent of respondents stated that IHL should be covered more thor-

oughly at their school, a number of factors impede institutional support for increased coverage. First, many administrations are simply unaware of the need for a course — a problem that may be related to confusion over terminology (IHL, law of war, law of armed conflict, etc.) or to the lack of a standard, comprehensive textbook and curriculum.

SUMMARY OF KEY FINDINGS FROM THE SURVEY

There is a lack of consensus among academics over terminologies and definitions to describe IHL.

Students are very interested in legal issues related to the global war on terror and armed conflict.

Law journals and student activity groups provide an opportunity to explore or include IHL in public fora or activities, but inclusion of IHL is not ensured.

Few schools dedicate a course to IHL: professors often teach IHL as a component in the framework of a variety of courses on different subject matter — war theory, the application of law to particular instances of armed conflict, U.S. practice, or the UN Charter.

Individual professors’ interest is the driving force for the teaching of IHL. Schools with multiple dedicated IHL offerings are driven by a community of professors who are able to channel student interest and negotiate administrative barriers.

Professors need more and better resources to foster the teaching of IHL. There is a dearth of issue-specific resources on IHL.

Despite strong student and faculty interest, many institutions are unaware of the need to cover IHL. Even within a school, faculty, students, and the administration may have radically divergent perceptions of the need for IHL offerings.

Misunderstanding over what IHL entails and the lack of consensus as to what should be included in an IHL course makes it difficult for professors to successfully promote IHL courses to their administrations.

Those who teach express strong interest in training opportunities, networks of others interested in the teaching of IHL, and greater institutional support.

In addition, human resource constraints adversely affect increased coverage of IHL. Even among schools with strong faculty and institutional support, professors can only teach a limited number of classes per semester. Standard bar courses take precedence over specialized courses with small enrollment. Some IHL classes, however, are over-enrolled, but schools lack sufficient faculty to address the demand. While smaller schools are disproportionately constrained by traditional offerings and limited faculty, even larger institutions face hurdles locating and funding qualified adjunct professors who can teach IHL.

Another impediment to increased IHL coverage is the lack of teaching materials. Respondents cited the lack of recognized, “concise basic materials”; the difficulty of wading through an abundance of material, cases, rules, and scholarship to compile an “ad-hoc syllabus”; and the absence of a good IHL textbook. Respondents also emphasized that the absence of a standard textbook also makes it difficult to promote an IHL course to school administrations.

In addition to teaching materials, professors desire greater training, networking, opportunities, and institutional support. Respondents suggested that an IHL syllabus pool, online and in-person networking opportunities to discuss best practices in teaching IHL, and training opportunities to increase familiarity with the subject would all be useful steps towards increasing IHL coverage in U.S. law schools.

CONCLUSIONS

IN TERMS OF PRACTICAL STEPS to promote and enhance IHL instruction in U.S. law schools, three central conclusions can be drawn from the results of the survey. First, there is a need to make more IHL teaching resources available. Suggestions for needed resources include a standard IHL textbook with a teacher’s guide, a compilation of modules for courses that concisely relate IHL to the diverse fields in the context of which IHL may be taught, and a syllabus bank that will enable faculty to draw on the structure and content of established, successful IHL courses when designing their own.

Second, there is a need for IHL-specific training opportunities. This includes comprehensive training for faculty who are teaching IHL for the first time, as well as advanced opportunities for experienced IHL faculty who wish to further their specialization in the field or increase their exposure to current developments in the law that established courses should reflect.

Third, there is a need to cultivate IHL-faculty networks. Whether online or through regularly scheduled meetings, building a community of IHL teachers would promote the exchange of resources and ideas, including substantive material to cover in courses, successful teaching methods to use, and strategies to gain institutional support from law school administrations to expand IHL coverage. It would also provide support for interested faculty members to deepen their knowledge and interest in IHL, thus expanding the pool of experts available to teach in schools wishing to extend their IHL course offerings.

In response to the study, WCL and the ICRC are working with a group of expert IHL teachers to develop strategies to address the needs identified and to create programming and materials. WCL and the ICRC are working with the American Society of International Law (ASIL) to create a Teaching IHL resource booklet and online syllabus bank. Recently, a pilot two-day Institute for teaching IHL took place. Professors Gary Solis, Douglass Cassel, Burrus Carnahan, and Jordan Paust, and the ICRC’s Katie Sams and Phillip Sundel served as resource faculty. Participants came from eight law schools in the United States and also included teachers from Nigeria, Pakistan, and Canada. Veteran IHL professors shared successful strategies for developing curricula, responding to current events, integrating IHL as a module into broader courses, and gaining support from school administrations for expanding the teaching of IHL. Further activities are also planned.³

Both the ICRC and WCL are hopeful that these initiatives will catalyze further efforts to address the needs revealed by the survey, and that ultimately, the improved and expanded teaching of IHL will enhance the application and integration of international humanitarian law in the U.S. and beyond. **HRB**

ENDNOTES: Project Reveals Challenges and Recommendations for Teaching International Humanitarian Law in U.S. Law Schools

¹ A copy of the survey is available for download at <http://www.wclcenterforhr.org>.

² It should be noted that the participants in the survey are a self-selected group. Consequently, some of the results are perception-driven. While the survey was sent out to all law professors self-identified as teaching international law, international humanitarian

law, military law, human rights law, as well as to all law school deans, the responses came from a subset of those surveyed, most of whom already have some interest in IHL.

³ Further information can be found at <http://www.wclcenterforhr.org>.

INTERNATIONAL LEGAL UPDATES

UNITED STATES

UNITED STATES LINKED TO RENDITION PRACTICE IN EAST AFRICA

The U.S. government faces increasing criticism for engaging in extraordinary rendition — the practice of removing individuals in the custody of one country to another, where they are interrogated and often tortured on behalf of another nation. This tactic has been used by the United States in its War on Terror and has raised a number of instances in which U.S. officials have sanctioned, and arguably participated in, heinous human rights violations. What little is known of the U.S. practice implies involvement in the secret and illegal detainment of men, women, and children. Recent discoveries about activities acknowledged by U.S. and Ethiopian officials in East Africa shed light on a partnership with the governments of Kenya, Somalia, and Ethiopia that has led to the disappearance of at least 140 individuals fleeing violence in Somalia.

In September 2006, the United States launched several bombing raids in Mogadishu, Somalia, targeting Fazul Abdullah Mohammed, the alleged al-Qa'ida member and mastermind of the 1998 bombings of the U.S. Embassies in Kenya and Tanzania. Thousands of individuals fled for the Kenyan border. The Kenyan anti-terror police, who were created with U.S. funding, captured at least 150 individuals without acknowledgment of their detention or disclosure of their whereabouts, and placed the prisoners on secret flights departing from Kenya. Flight manifests documenting all passengers on board name 85 people, including at least 11 children and 13 women, including at least two pregnant women who gave birth while in custody, as well as Fazul Abdullah's wife. The prisoners were taken to Addis Ababa, Ethiopia and harshly interrogated by U.S. officials. Some prisoners were released and only one was charged by Ethiopian officials. The whereabouts of over 40 prisoners remains unknown.

In an interview aired on the U.S. television program Frontline, former U.S. Federal Bureau of Investigation (FBI) special agent Jack Cloonan stated that he believes the FBI and Central Intelligence Agency (CIA) not only knew about these events but were likely crucial in orchestrating them.

The Muslim Human Rights Forum filed for an injunction in Kenyan court in September 2007, challenging the legality of the detentions. Family members of the prisoners who spoke out publicly have disappeared. Meanwhile, in March 2008, President Bush vetoed legislation that would ban the CIA from using interrogation techniques more coercive than those approved by the U.S. military.

While the United States and the international community have debated the legality of U.S. interrogation techniques and detention of alleged terror suspects, the U.S. partnership in East Africa reveals U.S. complacency in the taking of women and children as hostages in the course of these secret investigations. Little is known about the treatment of the detained women and children, though the potential for additional human rights violations is chillingly present. Amnesty International denounced the actions of the United States and its East African partners and claimed that the detention of these individuals “violates the right to liberty and security of the person and the right not to be subjected to arbitrary arrest or detention.”

SUPREME COURT UPHOLDS EXECUTION BY LETHAL INJECTION BUT IMPOSES MORATORIUM ON DEATH PENALTY WHILE DECIDING CASE

On September 25, 2007 the Supreme Court (Court) granted *certiorari* to hear *Baze v. Rees*. In *Baze*, the Court addressed the constitutionality of a particular method of execution for the first time since 1878. The case did not address the constitutionality of capital punishment generally. Although the Court ultimately upheld the contested method of execution by lethal

injection, in granting *certiorari*, it enacted a *de facto* moratorium on executions until it issued its decision.

At question in *Baze* was whether lethal injection as method of execution violates the Eighth Amendment of the Constitution, which bans cruel and unusual punishment. The Petitioners in *Baze* were each convicted for murders in the state of Kentucky and sentenced to death. After exhausting all levels of appeal in state and federal courts, Petitioners filed a civil action in the Supreme Court, claiming that the method of lethal injection used by Kentucky “create[s] an unnecessary risk of pain and suffering.”

The execution protocol used in Kentucky involves the administration of a three-drug formula, intended to administer deadly potassium nitrate only after a prisoner is unconscious. The executioner first administers Thiopental, a short-acting anesthetic that is not widely used in medical practice today. Second, the executioner delivers pancuronium, which paralyzes the prisoner's voluntary muscles without numbing potential pain and suffering. If the prisoner wakes after the brief effects of the Thiopental wear off, he or she is fully conscious and capable of feeling pain, yet remains paralyzed and unable to communicate. Finally, the executioner injects the prisoner with potassium chloride, causing cardiac arrest. A doctor and coroner then verify the cause of death. Used alone or in combination with pancuronium, potassium chloride would cause a human to scream in pain before ultimately undergoing cardiac arrest.

The Petitioners argued that the Court should add an “unnecessary risk of excruciating pain” test, while the State of Kentucky argued that standard is too broad, and instead, a “substantial risk” of unnecessary pain test should apply.

In *amicus* briefs submitted to the Court, the American Society of Anesthesiologists stated that physicians are ethically prevented from participating in executions. The nonprofit Anesthesia Awareness Cam-

paigned requested that the Court consider the significant risk of “anesthesia awareness” — a condition in which the patient regains consciousness after anesthesia is administered but is unable to communicate.

On April 16, 2008, the Court announced its ruling in *Baze*. In the seven-to-two decision, the Court upheld the constitutionality of Kentucky’s lethal injection practice. To qualify as cruel and unusual punishment, the Court wrote, the practice must present a “substantial” or “objectively intolerable risk of harm.” According to the Court, the Petitioners failed to prove this standard. Since the Court issued its ruling in *Baze*, ending the seven-month moratorium on the death penalty, at least five states have conducted a total of seven executions.

Despite the ruling, an Ohio judge recently ordered that state to stop using a lethal injection practice similar to that contested in *Baze*, noting that although the practice was constitutional, it still would violate an Ohio statute requiring that execution by lethal injection “quickly and painlessly cause death.” Instead, the judge ordered the state to use a large dose of barbiturates in conducting executions.

A 2007 Gallup poll shows that 69 percent of U.S. citizens favor of the death penalty, up two percent from 2006. Currently, 37 states use lethal injection as the primary means of execution. Yet the number of executions has dropped in several states prior to the Court’s decision to hear *Baze* due to concerns about the methods employed.

In December 2007, New Jersey Governor John Corzine signed the first legislative repeal of the death penalty in the United States since 1965. According to the American Civil Liberties Union, this reflects a larger shift in national sentiment towards the death penalty. The international community shows a significant trend away from the death penalty: on December 11, 2007, the United Nations General Assembly called for immediate moratorium or abolition of the capital punishment. One hundred four nations voted in favor of the resolution, and only 54 voted against it.

INTERNATIONAL VIOLENCE AGAINST WOMEN ACT PROPOSED ON THE SENATE FLOOR

On October 31, 2007, U.S. Democratic Senator Joseph Biden of Delaware introduced the International Violence Against Women Act (IVAWA) to the Senate. The bill proposes creating an Office of Women’s Global Initiatives (Office), mandates that the President of the United States “develop and commence implementation of a comprehensive, five-year international strategy to prevent and respond to violence against women and girls internationally,” and requires special reporting mechanisms on the status of female refugees and other vulnerable populations. The Senate recommended IVAWA to the Senate Foreign Relations Committee, where it awaits debate. IVAWA is currently sponsored by 13 Senators and was drafted in collaboration with over 100 non-governmental organizations, including Human Rights Watch and the Global AIDS Alliance.

The Office would be located within the Department of State. It would coordinate all international women’s issues and direct and implement a comprehensive national strategy to prevent violence against women worldwide. From 2008 to 2012, the Office would receive \$10 million annually to administer such programs. It would be established within the U.S. Agency for International Development (USAID), where it would receive \$15 million annually from 2008 to 2012 to carry out USAID activities to improve the status of women.

The IVAWA would identify between ten and 20 ethnically different countries that face particularly high levels of violence against women; determine how this violence negatively impacts the growth of each country; assess each government’s efforts to control such violence; and develop programs to run in coordination with those governments. The goals are to improve women’s status with regards to the law, health, education, economic advancement, public awareness, and social norms.

When presenting IVAWA, Senator Biden stated that violence against women could no longer be viewed as simply a familial or cultural issue, but rather must be seen as a pervasive and deleterious human rights violation. Senator Biden hopes that

IVAWA will confront the crises of HIV/AIDS, human trafficking, female genital mutilation, rape, and the use of violence against women as a weapon during periods of conflict.

Perhaps acknowledging that serious issues of violence against women exist within the United States, Senator Biden conceded that no single country has the answer to this problem, nor does IVAWA propose to fix it. IVAWA represents a concerted effort to reduce the occurrence of violence against women in regions of the world where it prevents respect and dignity for human rights and hinders growth and development.

LATIN AMERICA

CUBA: FOREIGN MINISTER SIGNS HUMAN RIGHTS TREATIES

On February 28, 2008, Cuban Foreign Minister Felipe Pérez Roque signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), two major international human rights treaties that former Cuban President Fidel Castro opposed for over three decades. Among countless other rights, the two treaties include the rights to freedom of expression, association, and movement. Specifically, the ICCPR includes the right to freedom of association in trade unions or political parties and the right to vote in elections, but it excludes the right to live in a multi-party democracy. The ICESCR, includes the right to employment, fair wages, social security, education, the freedom to form and join trade unions, and the highest standard of physical and mental healthcare.

In his long standing opposition to these treaties, Fidel Castro argued that the ICCPR could be a tool of “imperialism” against Cuba. He also specifically opposed articles on education, arguing that they could lead to privatization, and on independent unions because he believed these types of unions only suited to capitalist countries. Despite Fidel Castro’s opposition, on December 10, 2007 — while Fidel Castro was still President — Pérez Roque announced Cuba’s intention to sign the covenants and open its doors to international scrutiny by the United Nations Human Rights Council’s Universal Periodic Review in 2009.

Through this process, the Council will review Cuba's fulfillment of its human rights obligations and commitments. Soon after Pérez Roque's announcement, Fidel Castro reminded Cubans of the reasons for his fervent opposition to the covenants. In February, four days after Raul Castro succeeded his brother as President, however, Cuba signed the covenants. After signing the covenants, Pérez Roque stressed that the government would register "reservations or interpretative declarations it considers relevant."

Amnesty International strongly supports the treaties and argues that, having signed them, Cuba should release the 58 individuals currently held as prisoners of conscience. Among those detained are Alfredo Pulido López and Normando Hernández González. Pulido López is a human rights defender and dentist who was ousted from his clinic and detained in March 2003 on charges of being a "counter-revolutionary." While in detention, Pulido López has developed more than seventeen different chronic illnesses, including osteoporosis, hypoglycemia, and chronic bronchitis. Likewise, Hernández González was arrested under Article 91 of the Cuban Penal Code, which condemns "acts against the independence or territorial integrity of the state" for criticizing state-run entities and services. He was sentenced to 25 years' imprisonment in March 2003. While in prison he has not only been denied proper medical attention, leading him to develop a serious gastrointestinal condition, but was also denied the right to go to Costa Rica after Costa Rican legislators obtained a humanitarian visa for him. Cuban activist groups, among them the Cuban Commission on Human Rights and National Reconciliation, say that the signing of ICCPR and ICESCR is positive news and that they hope that it marks a turning point for human rights in that country.

GUATEMALA: ÁLVARO COLOM OPPOSES THE DEATH PENALTY

The Guatemalan Congress passed the Law Regulating the Application of the Death Penalty to those Sentenced to Death in February. This bill gives the Head of State the right to decide whether to grant clemency to individuals on death row.

In 2002, Guatemala's Constitutional Court suspended the death penalty because the existing law was not explicit as to which body of government had the power to grant clemency. Guatemala has not applied the death penalty since June 2000 when it executed two members of a kidnapping ring. The Court ordered Congress to amend the law to specify which body has the authority to grant last-minute pardons to prisoners facing the death penalty. Six years later, Congress passed a bill giving the President that power. The law's passage also removed the obstacle to reintroducing the death penalty in light of recent public outcry over the murder of 11 public transportation drivers and assistants by youth gang members.

Advocates for the law, including former Presidential candidate Otto Pérez Molina, argue that the death penalty is necessary to deter violence. According to the United Nations, Guatemala is the third most violent country in Latin America, with violence responsible for at least 16 deaths daily. Once Congress passed the bill, international organizations, including Amnesty International, sent letters to President Álvaro Colom, urging him not to reinstate the death penalty but to seek better solutions to deter violence.

The law gave the President 30 days to decide whether to commute a prisoner's death sentence to the maximum 50-year prison sentence. If the President did not make a pronouncement in that time, the execution would go forward. After the law came into effect, 34 prisoners on death row would receive 30 days to ask for the President's pardon.

On March 14, however, President Colom vetoed the bill, stating that it violated principles established in Articles 2, 3, 15, 18, 19, and 46 of the Guatemalan constitution. In addition, the President acknowledged that Guatemala is party to the American Convention on Human Rights, which contains specific provisions relating to the use and extension of the death penalty and proposes that states that have abolished the death penalty do not reinstate it. He argued that this bill was unconstitutional because Article 46 of the constitution establishes that "in matters relating to human rights, the treaties and conventions ratified by Guatemala take precedence over domestic law." The President suggested that

the death penalty does not necessarily reduce violence, highlighting instances of increased violence immediately following the use of the death penalty in the United States. He concluded that to reduce violence, the criminal justice system must be more effective and criminal enforcement more pervasive.

Despite his fervent opposition, Colom's veto may be easily overturned. To overturn it, Congress would need a two-thirds majority — 105 of 158 votes. When Congress passed it in February, 140 members supported it.

SOLDIERS FOUND GUILTY OF KILLING COUNTER-NARCOTICS AGENTS IN COLOMBIA

On February 18, 2008, a Colombian judge found Colonel Byron Carvajal Osorio and 14 other members of the military guilty of aggravated homicide for a massacre in Jamundí, Colombia. This massacre occurred on May 22, 2006, when a unit of the Colombian army killed an informant and ten elite counter-narcotic agents to prevent the discovery of between 220 to 440 pounds of cocaine hidden in a psychiatric home belonging to the mafia. The informant led the ten counter-narcotics agents, who belonged to a U.S.-trained counter-narcotics commission, to the psychiatric center to find cocaine. A few months before this massacre, the Director of the judicial police praised the counter-narcotics commission for breaking up multiple drug rings, seizing over 4.4 tons of cocaine, and capturing over 200 traffickers, including many wanted for extradition to the United States.

Initially, the head of the Colombian army announced that the massacre had been a tragic case of "friendly fire" because the soldiers had confused the police unit for leftist rebels. Evidence collected immediately following the massacre, however, revealed that the informant and agents were unable to defend themselves from the illegal attack. Minutes after the massacre, the soldiers sent incriminating text messages later recovered by investigators. In response to the discovery of this evidence, Colombia's Chief Criminal Investigator Mario Iguarán, said that the deaths were not the result of a mistake but rather "a deliberate criminal decision," and that the army was "doing the bidding of drug traf-

fickers.” In addition, government officials collected 150 bullets and seven grenades. After examining the bodies, investigators declared that the men had not been killed while in combat but in an unexpected attack. Shortly after the massacre, Colonel Carvajal Osorio, two other officers, and twelve soldiers were accused of aggravated homicide.

Soon after this episode, human rights organizations demanded that those guilty of the killings, in particular high-ranking officers, be held accountable for their crimes. Human Rights Watch (HRW) and others charged that Colombia’s sentencing practices convey “the message that abuses are rarely, if ever, going to be punished.” In a letter to Colombia’s President Alvaro Uribe, HRW charged that in Colombia “low-ranking officers sometimes get punished, but hardly ever is a commanding officer prosecuted.” Based on international pressure for a prompt and honest trial, the judiciary held that a military tribunal was not competent to try these soldiers. Despite the judiciary’s efforts to promote efficiency, the trial lasted approximately twenty months, involved no less than 100 testimonies, and cost millions of dollars. During this time, President Uribe admitted before the Inter-American Commission on Human Rights in Costa Rica that “in Jamundí, the army had murdered some policemen.”

Two years after the massacre, Judge Edmundo López delivered his official verdict, finding that Colonel Carvajal ordered an ambush on the counter-narcotics agents and that the other 14 participants were responsible as co-conspirators. During the trial, the Prosecutor brought 33 witnesses and 417 photos demonstrating that the massacre’s aim was to protect cocaine from discovery. In early May, Judge López handed down a 54-year sentence for Carvajal, a 52-year sentence for his second-in-command, and 13 50-year sentences for the remaining participants. The maximum murder sentence in Colombia is 60 years. Equipo Nizkor, a regional human rights NGO, proposes that this massacre suggests a strong link between Colombian drug dealers and the military.

AFRICA

LIBERIA CREATES SPECIAL COURT FOR SEXUAL VIOLENCE

Liberia’s 14-year civil war displaced approximately 850,000 people and caused the deaths of about 270,000 more. During this conflict, rape and violence against young girls and women ran rampant; and despite Liberia’s peace deal signed in 2003, the violence against women has continued, and the perpetrators commit these crimes with impunity. A government survey conducted between 2005 and 2006 in ten of Liberia’s 15 counties reported that out of the 1,600 women interviewed, 92 percent reported having been victims of sexual violence.

In response to the escalating violence against women, Liberia’s Information Minister, Laurence Bropleh, told the Integrated Regional Information Network (IRIN) that the Liberian government has created a special court to deal with the rising rape cases, as well as other forms of violence against women.

In December 2005, the Liberian government enacted a new law criminalizing rape and providing sentences ranging from seven years to life imprisonment. Since then, according to government statistics, instances of rape have continued to increase, with about half of the reported cases being committed against girls between the ages of ten and 15. A December 2006 IRIN article reported that rapes against young girls and women occurred on a daily basis, with most cases going unreported in the news.

Regular courts currently do not address sexual violence because state prosecutors are busy with other cases. This has resulted in a slow progression of rape cases through the court system. In other instances, the victims of sexual violence are either deterred by the stigma associated with rape or are too scared to file complaints.

Advocacy groups, including the Association of Female Lawyers of Liberia (AFELL), have been advocating for the special court for two years. In November 2007, the United Nations Mission in Liberia (UNMIL) issued a report saying, “[t]he failure of the state to prosecute impacted negatively on the rights of women and girls to equal protection afforded by the

law.” The establishment of the new court, however, serves as a promising step for women’s rights.

Charlotte Abaka, UNMIL Independent Human Rights Expert, said that she is “encouraged” by the steps taken to create the special court and that “[t]he undue delay in prosecuting such cases will now be a thing of the past.”

CHILD SEX WORKERS IN GHANA

In response to the rising number of child sex workers in Ghana, the government has decided to crack down on the child prostitution epidemic. The Women and Children’s Affairs Ministry reports that while actual figures are unavailable, the number of child sex workers in Ghana is in the thousands. An estimated 20,000 children live on the streets in the nation’s capital, Accra. Dr. Obiri Yeboah, a sociologist at the Accra-Polytechnic Institute, believes that Ghana’s increasing urbanization and the collapse of the traditional extended family system has led to a rise in the sex trade.

Another factor contributing to the increasing number of child sex workers has been an increasing demand for such services. In February 2008, Ghanaian police raided the Soldier Bar brothel and arrested all of the 160 girls and women working there. The specific targets of the raid were 60 girls who were under the age of 16, who had been recruited by the brothel’s manager to service teenage clientele. Initially, the manager did not admit teenage boys into the brothel, but as the manager told reporters, “... after a while we realized we could make more money if we can meet their demands by supplying them with younger prostitutes of the same age, so we started recruiting child sex workers as well.”

The increased number of child prostitutes has also led to an increase in the number of young girls becoming infected with HIV/AIDS. The Ghana AIDS Commission estimates that around 25,000 children have HIV/AIDS. According to the Commission, with no protection and no say in whether their male clients use protection, the young girls “contract HIV/AIDS and often die in silence.” The Commission states that the rising number of children becoming infected with HIV/AIDS reflects the social

structure and poverty of the country, which has in turn laid “a fertile foundation for such brothels to thrive.”

In response to the crisis, the Ministry of Women and Children’s Affairs established programs designed to rescue, rehabilitate and reintegrate the young sex workers by placing them in centers where they can receive help. In conjunction with these efforts, the Ghanaian police launched a “war on child prostitution.” While such programs are a step in the right direction, they are not perfect. They are significantly underfunded, and the lack of personnel and accommodations for the young girls often makes it difficult to keep track of them. Consequently, many girls return to the streets to work in the sex trade.

The government plans to involve non-governmental organizations (NGOs) in its efforts, and to teach the girls vocational skills so they do not have to resort to the sex trade. A committee has also been formed to provide further funding to the NGOs. As Dr. Yeboah told IRIN, “[t]he solution starts with economic empowerment and an intensive educational campaign to get families to be more conscious of their responsibilities to these children.”

MIDDLE EAST

PALESTINIANS CHALLENGE HIGHWAY SEGREGATION IN THE WEST BANK

Highway 443, a major access road connecting Tel-Aviv to Jerusalem, has emerged as a contentious battleground in the Israeli-Palestinian conflict. Until recently, the road primarily served Palestinians, largely because it runs through the West Bank. In recent years as violence has escalated, Israel has restricted Palestinian access to Highway 443.

In March 2008, the Israeli Supreme Court issued an interim decision, accepting the idea of separate roads for Palestinians in the occupied areas. The Association for Civil Rights in Israel, one of the petitioners in the case, asserted that establishing separate highways for Israelis and Palestinians could be the beginning of legal apartheid in the West Bank. Palestinian petitioners argued that in accordance with the Fourth Geneva Convention, Israel, as an occupier, has a responsibility to safeguard the needs

of the Palestinians, who are protected persons. Since highway restrictions burden Palestinians in the Palestinian territories, for whom Highway 443 was originally built, petitioners argued that the segregated road system violated the Geneva Convention.

The Supreme Court’s one-paragraph decision calls on the army to give a progress report within six months on its effort to build separate roads and to compensate Palestinians because of the road restriction. But the court’s acceptance of separate roads for Israelis and Palestinians has stimulated controversy. In an op-ed in the Jerusalem newspaper *Haaretz*, David Kretzmer, an Emeritus Professor of International Law at Hebrew University in Jerusalem, criticized the “judicial hypocrisy” of Israel’s subjugation of the Palestinians. Kretzmer noted that while heightened security concerns may have forced a change in the road’s mixed use, Israelis should not be allowed to travel on a road that was primarily built for Palestinian use.

Highway 443 was first challenged in the Supreme Court in the early 1980s as an illegal expropriation of private Palestinian land. In a landmark ruling, Israeli Supreme Court Justices ruled that the road was permissible because it mainly served local Palestinians rather than Israeli commuters. Recently, however, the Israeli government has restricted Palestinians from using the roadway. In defense of implementing a two-tiered road system, the Israeli government argued that terrorism threats justified the exclusion of Palestinians from Highway 443. In particular, recent suicide bombings on the highway were cited as evidence of social harm. Some legal commentators within Israel have argued that the restriction serves not to reduce terrorism, but to reduce traffic to make the commute for Israelis more convenient. As an alternative to Highway 443, Israel is planning to build a new road within the West Bank that links the Palestinian villages with Ramallah. This road will be used to accommodate Palestinian travel.

Lack of access to Highway 443 has severely burdened the 30,000 Palestinians who live in surrounding villages. Because the highway connects these villages to Ramallah, a main city within the West Bank, the exclusionary policy greatly inconveniences many people. In one vil-

lage, A Tira, only 14 taxis have permits to travel the road, and only during daylight. Aside from the general inconvenience of not being able to use a main artery, by barring Palestinians from Highway 443, the Israeli government is impairing West Bank Palestinians access to necessary medical care. Instead of using the main highway, Palestinians now have to travel longer distances to reach services in Ramallah. While security interests are critical, the Israeli Supreme Court’s decision regarding the permissibility of segregated roads poses serious implications for the human rights of the Palestinian people.

ARBITRARY ARRESTS AND TORTURE IN LIBYA

At least 14 Libyans were arrested in February 2007 for planning to hold a peaceful demonstration in Tripoli. On February 1, 2007, political activists advertised the demonstration on news websites based outside Libya. The activists were arrested two weeks later, on February 16, 2007. Idriss Boufayed, one of the activists arrested, is an outspoken critic of the Libyan government’s extensive human rights violations. The members of the group who have been charged are accused of offenses including “attempting to overthrow the political system,” “possession of weapons and explosives with the intention of carrying out subversive activities,” and “communication with enemy powers.”

According to Amnesty International, 12 of the 14 Libyans arrested may face unfair trials before a newly-created State Security Court, and could be given the death penalty if found guilty. Although Libyan law provides for the presumption of innocence and the right to legal counsel, in practice, defendants often have little contact, if any, with their lawyers. The two remaining accused have disappeared since their arrests last year. The Libyan government has not provided any information regarding their whereabouts. Reports indicate that all of the men were held in solitary confinement for prolonged periods and that at least two of them have been tortured. During one interrogation session, these two men were allegedly punched and beaten with sticks, subjected to *falaga* (beating on the soles of the feet) and put in coffins to intimidate them. The men also lack access to necessary medical care.

As a signatory to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Libya must comply with international prohibitions against arbitrary detention, torture, and cruel, inhuman, or degrading treatment. The Libyan government is in violation of Article 5 of the UDHR; Articles 7, 9, and 10 of the ICCPR; and the CAT, for arbitrarily arresting these men and for torturing two of them. Under Article 5 of the UDHR, Article 7 of the ICCPR and the CAT, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Subjecting prisoners to physical abuse constitutes either torture or cruel, inhuman, or degrading treatment. Moreover, confining individuals in coffins is unquestionably a cruel punishment that violates international law.

Article 9 of the ICCPR stipulates that “[n]o one shall be subjected to arbitrary arrest or detention.” Although the detainees have been charged with crimes, the offenses reported are arbitrary and have not been supported by any credible evidence. The charges merely mask the true purpose for the arrests: to suppress criticism of the government. Additionally, Article 10 of the ICCPR states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Prolonged arbitrary detention and torture indisputably violate this provision.

Amnesty International asserts that the men were exercising their right to freedom of expression and calls for their immediate and unconditional release. The organization has also urged the Libyan government to ensure that the men are receiving access to medical care and that the authorities conduct a thorough, impartial investigation into this matter.

SYRIAN SECURITY FORCES’ KILLING OF KURDS RAISES CONCERN OF UNNECESSARY LETHAL FORCE

On March 20, 2008, Syrian security forces shot and killed three Kurds and wounded at least five others at a New Year’s celebration. Human Rights Watch (HRW) asserts that the circumstances of the

shootings raise concerns that state security forces used unnecessary lethal force in violation of international law. About 200 people gathered on a road in the Western part of Qamishli and lit candles and a bonfire, around which some participants performed a traditional Kurdish dance. Firefighters extinguished the bonfire while police and intelligence officers fired tear gas canisters and live ammunition in the air to disperse the crowd. According to witnesses, security forces indiscriminately opened fire when the crowd failed to disperse.

Because none of the Kurds were armed or behaving violently, it is unclear what provoked the security forces to use deadly force. This, however, is not the first time that Syrian forces have used force to disrupt a Kurdish celebration. In March 2006, security officers arrested dozens of Kurds and used tear gas and batons to break up New Year’s festivities. In addition, in March 2004, 25 people were killed and more than 100 wounded when riots broke out between Syrian Kurds and Arabs during a soccer match in Qamishli. Nearly 2,000 Kurds were arrested by the Syrian security forces following the riots. Despite calls for Syrian officials to justify the use of lethal force, these authorities have thus far not issued an official statement on the most recent incident.

HRW maintains that Syrian security forces should comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles mandate that law enforcement officials exercise non-violent means before resorting to the use of force. Furthermore, force should only be exerted in proportion to the gravity of the offense, and lethal force only when necessary to protect life. Reports strongly suggest that the use of lethal force does not withstand the proportionality and necessity requirements. Specifically, the fact that the participants were unarmed and were not engaging in violent activity raises serious suspicion of an illegitimate state response. HRW has called on Syrian authorities to conduct an independent, transparent investigation into the shootings and hold accountable those individuals responsible.

EUROPE

TURKEY LIFTS HEADSCARF BAN IN PUBLIC UNIVERSITIES

In February 2008 the Turkish parliament passed two constitutional amendments, lifting the ban on headscarves in public universities. Although Turkey is over 99 percent Muslim, it has remained a secular state in line with the policies of its revered secular founder Kemal Ataturk. In keeping with its commitment to secularism, Turkey banned women from wearing headscarves while attending public universities and working in the public sector for two decades. Although this ban is based on a 1989 Constitutional Court ruling, it has only been strictly enforced since the 1997 military-led expulsion from power of Turkey’s first Islamist Prime Minister Necmettin Erbakan.

The ban is widely seen as unjust and unequally enforced. University rectors often tacitly allow some students to wear their headscarves, while prohibiting others, who for example, evade the rule by wearing wigs or wigs over their headscarves, from attending school. As a result of the ban, many women, including the daughters of Turkish Prime Minister Recep Tayyip Erdogan, choose to go abroad to pursue their higher educations. Since its rise to power in 2002, the governing Justice and Development Party (AKP) has been under pressure from its conservative base to lift the ban.

The change, which was proposed by the Islamic-rooted AKP, alters two articles of the Constitution, amending it to read that no one can be barred from education for reasons not clearly laid out by law and that everyone has the right to equal treatment from state institutions, including universities. President Abdullah Gul, who had his daughter wear a wig over her headscarf during the ban, ratified the bill. The legislation was prompted when the Prime Minister commented to the press in Madrid that “Even if wearing a headscarf is a political symbol, can you ban a political symbol?” Since this statement, the Nationalist Action Party (MHP), a hard-line group that has resisted reforms that would bring Turkey closer to EU membership, has continued to push the cause. The AKP formed an alliance with the MHP to pass the new legislation. The two groups, who control more than the two-thirds of the parliamentary

votes necessary to pass the amendment, struck a deal in late January.

The Turkish parliament began debating the amendments on February 6. The amendment passed an initial parliamentary vote that same day and was passed by a final vote on February 9. Parliament must now draft legislation, which will provide for the shape and type of the permitted headscarves. Nearly 100 of Turkey's 116 universities are still observing the ban.

President Gul, whose wife considered challenging Turkey's headscarf ban in the European Court of Human Rights, expressed his support for the amendment, stating that "beliefs should be practiced freely." The AKP claims that this is an issue of women's rights. Additionally, opinion polls indicate that two-thirds of the Turkish public support lifting the ban.

However, there has also been vehement opposition to the new amendment from groups including the judiciary, business organizations and academics, who claim that it is a step towards turning Turkey into a religious state. The military, which has overturned four civilian governments and has acted as a guardian of the country's secular system, has thus far only voiced its opposition to the amendments. In March, a prosecutor filed a case against the AKP for its anti-secularism, largely based on its support of the headscarf. A case has also been filed against the constitutional amendments as well. Public opposition has been most apparent at public protests, which have involved tens of thousands of people. The first took place outside the mausoleum of Ataturk, and the second occurred on February 9, when people gathered in Ankara to voice their dissent. Critics fear that lifting the ban threatens Turkey's existence as a secular state and compromises its chances at becoming a member of the European Union (EU).

Even supporters of the constitutional amendment have voiced concerns about its specificity. The amendment only allows women to wear one traditional kind of headscarf, which ties under the throat, while still banning other styles. This apparent mandate on fashion has drawn criticism spanning from women's groups to experts on the constitution. Further, lifting the ban will only affect public universities; the ban will still apply to women working in the public sector. Many view the narrow scope

of this change as indicative of the patriarchy of Turkish society and the place that women hold in it.

Although Ali Babacan, Turkey's foreign minister, claimed that this change is part of the movement towards fulfilling EU membership requirements, EU officials have said that this is a Turkish domestic matter. They have also expressed concern that in its haste to resolve the headscarf issue, the AKP has stalled on other reforms that are related to EU membership, including the passage of its new "civilianized constitution" and the amendment of Article 301 of the penal code, which outlaws insulting "Turkishness" and has marred Turkey's record on freedom of expression. Most importantly, the AKP has suspended parliamentary debate over a bill that would return state-confiscated property of religious minority groups as a result of its reluctance to upset the nationalist National Action Party (MHP), the third largest party in the Turkish parliament, which opposes such legislation.

Critics of the amendments charge that the AKP must prove its commitment to democracy. The bill now faces a legal challenge brought by The Republican People's Party (CHP) to the Constitutional Court in an effort to block this amendment.

POSSIBLE CHANGE TO ROMANIA'S FAMILY CODE THREATENS GAY RIGHTS

As one of the last European countries to decriminalize homosexuality, Romania has made great strides in promoting equality over the past decade. As a result of ten years of advocacy by human rights groups, the country repealed its law against "manifestations of homosexuality" in 2001. Since then, Romania has passed legislation prohibiting discrimination based on sexual orientation in employment and public services. Romania also allows individuals who have undergone gender reassignment to change their identity. Upon entry into the EU, Romania was required to recognize same-sex couples that were registered in other member states. A December 2006 poll by the EU, however, revealed that only 11 percent of Romanians approve of same-sex marriages.

Currently, Article 1(3) of Romania's family code, which dates back to 1953,

defines family in gender-neutral terms, stating that it is based on "marriage between spouses." A proposed amendment to this code would narrow the definition of marriage as exclusively between a man and a woman. The Romanian Senate's Judiciary Committee debated and adopted this amendment, which expressly bans marriage between same-sex partners. Romanian senators approved the amendment on February 13, 2008, and it will now be considered by the Chamber of Deputies.

The amendment has garnered support from many groups. Its largest supporter is the Greater Romanian Party, a nationalist, right-wing party led by former presidential candidate Corneliu Vadim Tudor. The party justifies the amendment as "defending the institution of marriage." Additionally, some religious groups have been instrumental in supporting the legislation. The Alliance of Romania's Families, formed last year, collected more than 650,000 signatures in support of the amendment. The amendment also gained international support from the World Congress of Families. Social Democratic Party Senator Serban Nicolae, who proposed the amendment, claims that the amendment would not infringe on European norms.

The legislation, however, has also encountered significant opposition. Human Rights Watch is one of its most outspoken critics. The organization's Lesbian, Gay, Bisexual and Transgender Rights Program stated that "these proposals not only deliberately discriminate against same-sex couples but threaten their families, including children." It characterized the legislation as "an insult to Romania's achievements elsewhere in overcoming discrimination." The organization sent a letter to government officials, urging them to reject the amendment. Sexual orientation-related-advocacy groups have followed suit by beginning their own letter-writing campaigns.

If the changes to the family code are implemented, the impact of this legislation is likely to be far-reaching. Human Rights Watch predicts that introducing inequality into the law will deprive many Romanian families of basic civil rights. Senator Gyorgy Frunda of the Democratic Union of Magyars (UDMR), a party that represents ethnic Hungarians in Romania, has voiced concerns that the amendment could result in Romania being brought before the European Court of Human Rights.

SOUTH AND CENTRAL ASIA

TAJIKISTAN: EFFORTS TO MODERNIZE CRIMINAL CODE MAY FALL SHORT OF INTERNATIONAL HUMAN RIGHTS LAW

In March Tajikistan modernized its criminal code to comply with international human rights laws by adopting an exclusionary rule. Now, evidence obtained through unlawful means, including torture or coercion, can no longer be used against the accused and will be excluded from trial. In 2007, the International Helsinki Federation Annual Report on Human Rights Violations and the United Nations Committee Against Torture (the Committee) reported frequent human rights violations in connection with arrest and detention procedures in Tajikistan. The Committee was particularly concerned that evidence gathered through torture by law enforcement officials was used in legal proceedings against the accused. The Committee reported that this was partially due to a lack of legislation prohibiting the use of illegally acquired evidence. The Government of Tajikistan responded by updating the criminal code. The updating process has been ongoing since Tajikistan independence in 1991.

Despite efforts to bring the law into compliance with the Convention against Torture (CAT), there are still deficiencies in the criminal code and within law enforcement methods that will make the application of the exclusionary rule difficult. First, the provision excluding illegally obtained evidence does not specify whether all evidence stemming from a substantial violation of the criminal code would be excluded or only the evidence directly acquired through illegal means such as torture and coercion. Furthermore, courts have not given any criteria to decide whether evidence is excludable or not. For these reasons, the exclusionary rule may not, in practice, protect the rights of Tajikistan's citizens.

Second, the definition of torture in Tajikistan's criminal code does not comply with the definition of torture under the CAT. Tajikistan's definition does not include the CAT's definition, "the infliction of pain and suffering by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity." Furthermore,

law enforcement officials are not trained on legal methods of obtaining evidence without the use of torture. While non-governmental organizations received, and reported to the Committee, a number of complaints of police torture, very few resulted in legal proceedings against law enforcement officials. These deficiencies point to the fact that there is no liability or penalty against law enforcement officials for illegal conduct. It is yet to be seen how Tajikistan's exclusionary rule will be applied and whether it will adequately protect the rights of those accused.

If there is no repercussion for using illegal means to obtain evidence, then there is no disincentive to law enforcement for using torture or threats to obtain evidence. Although pressure by the International Helsinki Federation Annual Report on Human Rights Violations and the Committee were successful in amending Tajikistan's Criminal Code, significant measures have not been taken by Tajikistan's Parliament to ensure that evidence obtained through torture and threats will not be used in legal proceedings against the accused.

BANGLADESH: HIGH COURTS EFFORTS TO UPHOLD CONSTITUTION QUASHED

On March 17, 2008, the Chief Justice of the Supreme Court of Bangladesh took away jurisdictional authority of two High Court judges after the judges challenged the Emergency Power Rules (EPR), which have been in effect since January 12, 2007. Officials have explained the judges' loss of some authority as a "routine reallocation of power." There is skepticism, however, as to the real reasons behind the Supreme Court's mandate removing jurisdiction from the High Court judges.

The mandate came just two days before the High Court was scheduled to hear a petition challenging the validity of military rule. The military government promised to hold national elections but has failed to do so since the emergency was promulgated last year. The High Court has also recently declared illegal the extortion case against former Prime Minister Sheik Hasina under the EPR and quashed the trial proceedings. The High Court held that since the EPR is unconstitutional, hearings on her extortion case cannot be held until the constitution is restored and emergency rule has ended.

The former Prime Minister was arrested on July 24, 2007, six months after emergency rule was declared. She is accused of extorting money from the Managing Director of Eastcoast Trading Pvt. Ltd., Azam Chowdhury, in exchange for granting Eastcoast a contract to set up a power plant in Bangladesh. On July 30, 2007 the High Court held that the EPR cannot be retroactively applied because the circumstances of Hasina's extortion case occurred before the EPR was promulgated. Moreover, the High Court held that it would be a violation of the Constitution if a crime committed before the promulgation of the EPR is tried under the EPR: only a crime committed after the EPR's promulgation could be tried under the EPR. The High Court further reiterated its power and authority to adjudicate cases relating to bail despite the EPR. In light of the Constitution of Bangladesh, the High Court held that the Emergency Rules limiting the right to bail are unenforceable against Hasina. On review, the Supreme Court overruled the High Court's decision in the extortion case and bail order. The Supreme Court held that the High Courts did not have jurisdiction to grant bail under the EPR.

Under Bangladesh's Constitution, a state of emergency authorizes the suspension of fundamental rights of citizens and bans all political activity. While the state of emergency might have been necessary last year, recently the High Courts, through judicial decisions, have been putting pressure on the military government to lift the state of emergency. In these decisions, the High Courts have held that the procedures and processes of the military under the EPR are illegal and void. The High Court judges, along with many other Bengalis, believe there is no longer a need for military rule. They are calling for a return to civilian rule and a restoration of the Constitution of Bangladesh. The Supreme Court, however, is upholding the EPR and showing no independence from the military government.

The emergency government, led by Fakhruddin Ahmed, took power on January 12, 2008 — one day after elections were cancelled. Bangladesh has a history of military rule. There have been 19 coup attempts in Bangladesh since it gained independence in 1971. In this latest promulgation of emergency rule, the High Courts have attempted to show judicial

independence from the military government. The High Court's efforts to hold the EPR unconstitutional and show their independence, however, have been frustrated by the Supreme Court's backing of the military government.

THE MALDIVES: NEW CONSTITUTION COULD MEAN END TO PRESIDENT'S 30 YEAR TERM

After 30 years of what many consider to be a dictatorship by President Maumoon Abdul Gayoom, the Maldives is in the process of promulgating a new constitution with democratic separation of powers between the executive, parliamentary, and judicial branches of government. Under the current constitution, there is no independent judiciary. The President holds the position as the highest judicial authority. Parliament is eager to draft a new constitution before November 8, 2008, the date President Gayoom's term expires. Constitutional reform will dramatically change the government in the Maldives and allow for free and fair elections for the first time in the country's history.

The Maldives is known for corruption and lack of democracy. Political parties were only legalized in 2005 after demonstrations calling for government reforms. The President appoints 29 members of Parliament from his party, the Dhivehi Raiyyithunge Party (DRP), and for this reason, the DRP holds a built-in majority in Parliament. The DRP drafted a proposal allowing President Gayoom to continue for another term after the expiration of his term on November 11, 2008. The opposition party, the Maldivian Democratic Party (MDP), however, argues that since Gayoom has held the Presidential office for 30 years, he should not be allowed to run for another term. This dispute cumulated on April 3, 2008, when the DRP walked out of the Parliament building just as Parliament was about to vote on the term-extending amendment. The DRP and MDP are now in the process of continuing negotiations over proposals in the constitution and are in a rush to employ a new constitution before President Gayoom's term expires.

The Constitution of the Maldives was last amended in 1997; however, it is believed that these amendments were made without fair consultation with Parliament.

This is the first time in 30 years that members of Parliament are consulting on every proposal presented by the parties.

It is widely believed that President Gayoom won the 2003 elections illegally. Opposition political parties are reluctant to approve a proposal that would allow him to run for another term. They believe if he is able to run, then there will be no chance for fair elections. The MDP instead demands that an interim government be put in place before elections to guarantee that the process is more fair and free.

EAST AND SOUTHEAST ASIA AND THE PACIFIC MINORITY RIGHTS ISSUES RESHAPE POLITICAL LANDSCAPE IN MALAYSIAN ELECTION

Malaysia's March 8, 2008 elections may be seen as a rebuff of its anti-minority policies and restrictions on political expression. Despite controlling all major print and broadcast media and limiting opposition parties' access to the political process, the ruling National Front coalition led by the United Malays National Organization (UMNO) lost its two-thirds majority in parliament and ceded control of five states. For the first time since 1969, the National Front will not have the supermajority in parliament necessary to amend the constitution at will.

The National Front's political setback was fueled in part by minority rights groups, such as the Hindu Rights Action Force (Hindraf), who assert that the government denies ethnic Indians their political, economic, and religious freedoms. Malaysia is comprised of three main ethnic groups: over half of the population is Malay, 23 percent is Chinese, and seven percent is Indian. Many Indians are upset by unequal funding provided to Tamil-speaking public schools and by the New Economic Policy (NEP), an affirmative action program that favors the Malay majority. The NEP was originally instituted in 1971 to combat social and economic disparities between Malays and ethnic Chinese. Today, minorities such as ethnic Indians feel discriminated against by policies that guarantee Malays discounts on new housing and place 30 percent quotas on government jobs.

The National Front has controlled the Parliament since Malaysia gained independence from the British in 1957. Emergency rule was declared in the wake of race riots in 1969 and civil and political liberties are limited to this day. The National Front continues to suppress political expression to maintain electoral dominance. The police restrict opposition groups from assembling freely by denying them permits to hold public gatherings of four or more people, while National Front leaders routinely organize public rallies. Prime Minister Abdullah Ahmad Badawi freely spoke in front of 20,000 supporters a week before the election, and opposition groups face excessive force from police. Police used tear gas and water cannons to break up a peaceful Hindraf march on February 16, 2008.

The National Front denies media access to those with opposing viewpoints. The Sedition Act and Printing Press Publications Act are used to stifle public criticism of government officials. All private television stations are owned by UMNO, and the government wields heavy influence over all major newspapers. Prime Minister Badawi, who serves as the Minister of Internal Security, can effectively shut down any publication by revoking its permit to operate.

PHILIPPINE SUPREME COURT UPHOLDS EXECUTIVE PRIVILEGE

The Supreme Court of the Philippines may have further enabled the Administration, led by President Gloria Macapagal Arroyo, to resist litigation filed against it for committing hundreds of extrajudicial killings and enforced disappearances, by upholding a claim of executive privilege on March 25, 2008. In *Neri v. Senate*, the court overturned a contempt citation and arrest order compelling former National Economic Development Authority Director General Romulo Neri to testify before the Philippine Senate. Neri refused to talk about conversations he had with President Arroyo regarding alleged bribery in a controversial deal, which awarded a Chinese telecommunications company a contract to construct the government-managed National Broadband Network. The Court held that as a member of the Cabinet, Neri's conversations with the President were privileged, and the Senate would

have to show “compelling need” and “the unavailability of the information elsewhere by an appropriate investigation authority.”

Human rights organizations in the Philippines, such as the Free Legal Assistance Group (FLAG), are concerned that the Arroyo Administration will use the ruling to claim executive privilege when confronted with allegations of rampant extrajudicial killings and kidnappings by the military. In 2006 President Arroyo vowed to eradicate the New People’s Army (NPA), a communist insurgent group, and a dramatic spike in extrajudicial killings followed. Military and paramilitary forces have not only targeted leftists, but also continue to attack groups or individuals who criticize the government. In 2007, the United Nations Special Rapporteur on Extrajudicial Killings reported that at least 100 journalists, labor leaders, land reform advocates, and church members had been kidnapped or killed by the military since 2005. Although the Arroyo Administration set up a taskforce to investigate these incidents, no member of the military has been convicted of extrajudicial killing or enforced disappearance.

In response to international criticism, the Supreme Court, in July 2007, created new rules establishing the *writ of amparo*, designed to prevent the government from stalling enforced disappearance cases. Usually, when a family member of a missing person files a *habeas corpus* petition, government officials simply deny that the person is in its custody. Now when a *writ of amparo* is filed, the government must produce evidence proving that the person is not in its custody. The government must also look for the person, and if the court finds the search effort insufficient, the government could be held liable.

Philippine courts have yet to enforce a *writ of amparo* case, and jurisprudence on the subject is still up in the air. Critics of *Neri v. Senate*, such as FLAG, fear that the expansion of the executive privilege doctrine may enable the government to resist *writ of amparo* claims, making the new human rights legal tool ineffective.

CHINA AVOIDS CONDEMNATION FROM UNITED NATIONS HUMAN RIGHTS COUNCIL ON TIBET

The United Nations Human Rights Council (HRC) failed to pass a resolution addressing the abuse of protesters in Tibet. In the HRC’s four-week session that concluded on March 28, 2008, China repeatedly blocked discussion of its recent crackdown on demonstrations.

Violence erupted in Tibet on March 14 after the Chinese government arrested Buddhist Monks, who staged a peaceful march outside the capital city of Lhasa on March 10 to commemorate the failed uprising of 1959. The Seven Point Agreement of 1951 officially incorporated Tibet into the People’s Republic of China but established an autonomous government headed by the Dalai Lama. Chinese land redistribution programs disrupted the delicate relationship with Tibet when noblemen and feudal lords stripped of their land organized a revolt.

After the March 10 arrests, protests spread to other cities in Tibet, western Chinese provinces, and Tibetan communities in Nepal and India. Riots broke out in Lhasa and other cities in the western Chinese provinces of Gansu, Sichuan, and Qinghai. Rioters flipped cars and torched shops belonging to ethnic Hans, who make up the majority in China. Chinese military police violently broke up the protests and opened fire into the crowds. The Chinese government claims that 18 civilians, mostly Hans, died in the violence, and that another 625 were injured, but Tibetan rights groups report more than 140 Tibetan civilian deaths. Independent news agencies have been unable to make an accurate casualty count because the Chinese government expelled foreign journalists from the region shortly after the demonstrations began.

Although delegations from the United States, Australia, and the European Union made declarations about the violence in Tibet at the HRC meeting, China cut off discussion by making procedural objections. HRC President Doru Costea upheld the objections by ruling that discussion of country-specific human rights situations was only allowed in special sessions dealing with individual countries. Although the HRC held special sessions addressing

specific human rights issues in Burma and Israel, China avoided such scrutiny.

China’s economic power is influential with many Asian and African countries, which make up more than half of the HRC’s 47 members. China provides political cover for other countries with poor human rights records, such as Sudan and Burma, by maintaining strong diplomatic and trade ties when the rest of the international community is levying sanctions. China continues to trade arms for oil with Sudan, debilitating other states’ embargo efforts and fueling the conflict in the Darfur region that has killed more than 200,000 people.

China remains the closest ally to the military junta that governs Burma, supplying the majority of its arms and military training. After the Burmese junta violently quashed large scale protests in late 2007, China blocked a resolution at an emergency session of United Nations Security Council calling for global economic sanctions. While the HRC passed a resolution condemning the junta’s actions in Burma, it remained silent on China’s actions in Tibet. **HRB**

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UPDATES FROM THE INTERNATIONAL CRIMINAL COURTS

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

TRIAL OF ANTE GOTOVINA

The trial of former Croatian General Ante Gotovina began on March 11, 2008. Following his secret indictment in 2001, Gotovina was on the run for four years before his apprehension at a luxury hotel in the Canary Islands. His trial is regarded as one of the most important prosecutions to date at the Tribunal because it will effectively try and pass judgment on approaches taken by the Croatian leadership during the conflict. The trial is certain to be followed closely in the former Yugoslavia because Gotovina is still considered by many Croats to be a national hero.

Gotovina has been indicted, along with two other Croatian Generals, Ivan Čermak and Mladen Markač, for crimes against humanity and war crimes as participants in a joint criminal enterprise with four deceased co-perpetrators — former President of Croatia Franjo Tuđman, Croatian Minister of Defense Gojko Šušak, and Chiefs of the Main Staff of the Croatian Army Janko Bobetko and Zvonimir Červenko. Gotovina was the overall operational commander of the major Croat offensive Operation Storm that was carried out over three days in August 1995. Operation Storm was designed to expel the Croatian Serb population from the Krajina region of Croatia. In September 1990, Croatian Serbs declared that the Krajina would henceforth be a Serbian Autonomous Region. Croatian leaders implemented several plans designed to retake the claimed territory but had little success until Operation Storm.

In anticipation of the strike, a campaign of fear and propaganda was mounted throughout the Krajina in an effort to evacuate the region. The campaign was largely successful, so much so that by the time Croatian forces arrived many Croatian Serbs had fled. During the offensive and its aftermath, Croat forces under Gotovina's command committed numerous atrocities in the region. The Croatian troops shelled civilian areas and conducted aerial attacks

on fleeing civilians. Some individuals were shot execution style and others murdered in front of their families. The troops opened fire on groups of civilians and burned others alive. The attack was not limited to physical violence; advancing forces mounted an organized campaign of ethnic cleansing, systematically torching or otherwise destroying and plundering Serb villages, including those in the municipalities of Benkovac, Donji Lapac, Drniš, Ervenik, Gračac, Kistanje, Knin, Lišane Ostrovičke, Lovinac, Nadvoda, Obrovac, Oklaj, Orlić, Polaca, Titova Korenica, and Udbina.

Gotovina, Čermak, and Markač are charged with participation in a joint criminal enterprise, the common purpose of which was the permanent removal of the Serb population from the Krajina by force, fear, or threat of force, persecution, forced displacement, transfer and deportation, appropriation and destruction of property, or other means. Gotovina was indicted for his direct and indirect acts. He allegedly participated in the planning and preparation for the campaign and exercised command and control over all units, elements, and members of the Croatian armed forces who participated in Operation Storm. He also allegedly permitted the aforementioned criminal activity to occur and failed to establish law and order among his subordinates.

ACQUITTAL OF FORMER KOSOVAR PRIME MINISTER RAMUSH HARADINAJ

On April 3, 2008 the Tribunal acquitted Ramush Haradinaj of all charges of crimes against humanity and war crimes. Haradinaj and two other high-ranking members of the Kosovo Liberation Army (KLA), Idriz Balaj and Lahi Brahimaj, were indicted for participation in a joint criminal enterprise with the aim of consolidating control over the Dukagjin area in northwest Kosovo by unlawful removal, mistreatment, and murder of Serbian and Kosovar Roma civilians as well as Kosovar Albanians considered sympathetic to their cause. The three were charged with 19 counts of violations of the laws and customs of war including mur-

der, torture, rape, and cruel treatment. At the time the crimes allegedly took place, between March and September 1998, Haradinaj was commander of the KLA troops in the Dukagjin area. Haradinaj and Balaj — commanders of the Black Eagles, a KLA unit operating in Dukagjin — were both acquitted of all charges, but Brahimaj — Haradinaj's uncle and member of the KLA general staff stationed at the headquarters in Jablanica — was found guilty of cruel treatment and torture of two persons and sentenced to six years' imprisonment.

All three indictees were acquitted of crimes against humanity charges. The Trial Chamber was not convinced beyond a reasonable doubt that there existed a joint criminal enterprise with the objective of targeting civilians. The judges found that some evidence presented by the Prosecutor suggested some victims were targeted for individual reasons rather than as members of a specific civilian population. They also found that the scale of ill-treatment, forcible transfer, and killing of civilians not significant enough to conclude there had been an attack against a civilian population.

The trial of Haradinaj was notorious for witness intimidation. Throughout the trial, the Chamber had to deal with witnesses refusing to testify. The Chamber granted 34 witnesses protective measures to induce them to testify. Eighteen subpoenas were issued to witnesses who refused to testify. Two of those subpoenaed still refused, were indicted for contempt of court, and arrested and transferred to The Hague. The Chamber repeatedly heard from witnesses that they feared for their safety, perhaps for good reason. In early January, following testimony before the ICTY, leading prosecution witness Tahir Zemaj, as well as his son and his nephew, were shot and killed in Zemaj's car in Peja, Kosovo. Another prosecution witness, Kujtim Berisha, was hit by a car and killed in Montenegro two weeks before the trial began.

TRIAL OF SERBIAN SECRET SERVICE MEMBERS: STANIŠIĆ AND SIMATOVIĆ

The trial against two high level officials of the Serbian Secret Service began in April. Jovica Stanišić and Franko Simatović were indicted for crimes against humanity and war crimes for their participation as part of a joint criminal enterprise whose objective was the forcible and permanent removal of the majority of non-Serbs —principally Croats, Bosnian Muslims, and Bosnian Croats — from large areas of Croatia and Bosnia-Herzegovina, through the crimes of persecutions, murder, deportation, and other inhumane acts.

In the spring of 1991, the Serbian Secret Service established secret units to undertake special military action in Croatia and Bosnia-Herzegovina. Amongst these secret units were the notoriously brutal Arkan's Tigers and Martić's Police. Under the direction of Stanišić, Simatović set up training camps in the Krajina for the armed units. From 1991 to 1995, Stanišić and Simatović allegedly directed, organized, equipped, trained, armed, and financed the secret units as they murdered, persecuted, and forcibly transferred non-Serbs. The October 1991 massacre at Hrvatska Kostajnica in Croatia is just one example of atrocities committed by a secret unit under their direction. Members of Martić's Police and other Serb forces were in control of the area, and most people in the region had fled during attacks the previous month. When secret units arrived, the remaining population was predominately women, elderly, and the infirm. Martić's Police and other Serb forces rounded up 56 of the 120 people still in their villages, transported them to the village of Baćin, and executed them.

ADDITIONAL FOČA JUDGMENTS

Judgment in the cases of Mitar Rašević and Savo Todović were handed down by the War Crimes Chamber of the Court of Bosnia and Herzegovina (WCC) on February 28. The ICTY referred these cases to the Court under the Rule 98*bis* procedure in 2003 and 2005 respectively. The two defendants are named in a larger indictment of individuals involved in war crimes committed in the Bosnian town of Foča. The WCC found Rašević and Todović guilty of crimes against humanity committed against non-Serbs in the Foča Correctional Facility between April 1992

and October 1994. Rašević, the guards' commander, used the facility as a detention centre for non-Serb civilians. Todović, the deputy warden, participated in the creation and maintenance of a system of punishment and mistreatment of detainees. Both also helped establish a forced labor system.

The ICTY referred two other cases involving suspects indicted for crimes in Foča to the WCC. Gojko Janković and Radovan Stanković were tried separately and found guilty of war crimes by that court. Janković was sentenced to 34 years' imprisonment, and Stanković to 20 years' imprisonment. In May 2007, however, Stanković escaped from a prison in Bosnia's Republika Srpska where he was serving his sentence.

COMPLETION STRATEGY AND INSTABILITY IN SERBIA

Because the Tribunal is set to end its work in 2010, the United Nations Security Council authorized an increase of *ad litem* judges to sit in cases before the Tribunal to enable greater efficiency and the commencement of additional trials. The number of *ad litem* judges may be increased from 16 to 18 for 2008. Since its first hearing in November 1994, the Tribunal has indicted 161 persons for serious violations of humanitarian law committed in the former Yugoslavia between 1991 and 2001. Proceedings against 111 of these 161 have been completed.

Recent developments in Serbia have the international community concerned about the progress of the Tribunal with regards to Serbian cooperation. While Serbia had been moving towards greater integration with Europe, increasing pressure on the state to hand over the four remaining fugitives, Kosovo's declaration of independence delivered a heavy blow to these goals. Following Serbian Prime Minister Vojislav Kostunica's resignation in the wake of Kosovo's independence, President Boris Tadić dissolved the parliament and called for elections. Kostunica and other Serbian nationalists have vowed to halt Serbian integration into the European Union (EU) until the EU rejects Kosovo's split from Serbia. The ICTY's recent acquittal of Ramush Haradinaj — who was indicted for war crimes and crimes against humanity directed primarily at Serbians

in Kosovo — has caused fury in Serbia. New ICTY Prosecutor Serge Brammertz's efforts in conjunction with persuasion by the international community, might help coax Serbia back into a relationship with the west. This might also rekindle Serbian cooperation in the apprehension of remaining fugitives, particularly former Bosnian-Serb President Radovan Karadzic and former Bosnian-Serb General Ratko Mladić respectively.

SPECIAL COURT FOR SIERRA LEONE

PROSECUTOR V. BRIMA, KAMARA & KANU, CASE NO. SCSL-04-16-A

On March 3, 2008, the Appeals Chamber of the Special Court for Sierra Leone (SCSL) affirmed the Trial Chamber's conviction of Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, senior members of the armed rebel group the Armed Forces Revolutionary Council (AFRC). Each was convicted in June 2007 on six counts of war crimes (terrorism, collective punishments, outrages upon personal dignity, pillage, murder, and mutilation); four counts of crimes against humanity (rape, extermination, murder, and enslavement); and one count of other serious violations of international humanitarian law (recruitment and use of child soldiers). Although both the Prosecution and the Defense submitted several grounds of appeal, this summary will focus on three of the more notable rulings of the Appeals Chamber.

First, the Appeals Chamber partially granted the Prosecutor's appeal against the Trial Chamber's dismissal of Count 7 of the Indictment — which charged the accused with the commission of "sexual slavery and any other form of sexual violence" as crimes against humanity — on the ground that the count violated the rule against duplicity. The Appeals Chamber began by reiterating that the rule against duplicity "applies to international criminal tribunals such that the charging of two separate offences in a single count renders the count defective." Applying this standard, the Appeals Chamber agreed with the lower court that Count 7 violated the rule, as "sexual slavery" requires "the exercise of rights of ownership over the victim," whereas "any other form of sexual violence" does not. The Appeals

Chamber, however, found that the Trial Chamber erred in quashing Count 7 in its entirety. Rather, based on the “evidence accepted by the Trial Chamber and the findings it had made,” the lower court should have returned a verdict on the count of sexual slavery as a crime against humanity and struck out the charge of “any other form of sexual violence.” Nevertheless, the Appeals Chamber held that it was not necessary to “substitute a conviction for sexual slavery as the Trial Chamber relied upon the evidence of sexual slavery to enter convictions for Count 9,” which charged the offense of “outrages upon personal dignity” as a war crime.

The Prosecutor also challenged the Trial Chamber’s dismissal of Count 8 of the Indictment, which charged Brima, Kamara, and Kanu with “other inhumane acts” (forced marriage) as crimes against humanity. The Trial Chamber had dismissed this charge on the ground that it was “redundant,” saying that “other inhumane acts” as crimes against humanity should be read to *exclude* “crimes of a sexual nature” because such crimes were covered by the crime against humanity of “rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence.” Furthermore, the Trial Chamber held that the Prosecution had failed to adduce any evidence with respect to forced marriage that was not already completely subsumed in the crime against humanity of sexual slavery. The Appeals Chamber disagreed. As an initial matter, it held that the jurisprudence of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda demonstrated that the residual category of “other inhumane acts” has been “used to punish a series of violent acts that may vary depending on the context,” and that therefore “the determination of whether an alleged act qualifies as an ‘other inhumane act’ must be made on a case-by-case basis taking into account the nature of the alleged act or omission, the context in which it took place, the personal circumstances of the victims . . . and the physical, mental and moral effects of the perpetrator’s conduct upon the victims.” Thus, the Appeals Chamber concluded that the Trial Chamber erred in law by finding that “other inhumane acts” as crimes against humanity must be “restrictively interpreted,” noting that was no reason why the “‘exhaustive’ listing of sexual crimes under [the SCSL

Statute] should foreclose the possibility of charging as ‘other inhumane acts’ crimes which may among others have a sexual or gender component.”

The Appeals Chamber also took issue with the Trial Chamber’s finding that forced marriage was subsumed in the crime against humanity of sexual slavery. According to the Appeals Chamber, the trial record contains “ample evidence that the perpetrators of forced marriages intended to impose a forced conjugal association upon the victims rather than exercise an ownership interest” in the victims. Although the Appeals Chamber did not define the concept of “forced conjugal association,” it concluded that “forced marriage is not predominantly a sexual crime.” Furthermore, the Appeals Chamber held that, while “forced marriage shares certain elements with sexual slavery,” there “are also distinguishing factors.” Thus, the Appeals Chamber concluded that the Trial Chamber “erred in holding that the evidence of forced marriage is subsumed in the elements of sexual slavery.”

Lastly, the Appeals Chamber found that the evidence adduced at trial established that the three accused were criminally responsible for the crime against humanity of other inhumane acts (forced marriage). Yet the Appeals Chamber declined to enter new convictions against the three RUF members, finding that “society’s disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or systematic attack against the civilian population is adequately reflected by recognizing that such conduct is criminal.”

Finally, the Appeals Chamber granted the Prosecution’s appeal against the Trial Chamber’s ruling that the Prosecutor had failed to properly plead participation in a joint criminal enterprise (JCE) because the purpose of the enterprise was not itself criminal in nature. In the Indictment against the AFRC leaders, the Prosecution had alleged that each accused participated in a JCE, the purpose of which was to “take any actions to gain and exercise political power and control over the territory of Sierra Leone.” At trial, the defense had challenged these allegations on the ground that the purpose of the enterprise did not amount to a specific crime and thus was too broad to prove the existence of a JCE. The

Trial Chamber agreed, dismissing the Prosecution’s allegations regarding the JCE on the ground that they failed to “clarify what criminal purpose the parties agreed upon at the inception of the agreement.” Yet the Appeals Chamber overturned this holding, saying “the requirement that the common plan, design or purpose of a joint criminal enterprise is inherently criminal means that it must either have as its objective a crime within the Statute, or *contemplate crimes within the Statute as the means of achieving its objective.*” The Appeals Chamber, however, saw “no need to make further factual findings or to remit the case to the Trial Chamber,” having “regard to the interest of justice.”

INTERNATIONAL CRIMINAL COURT

THE CASES IN THE SITUATION OF THE DEMOCRATIC REPUBLIC OF CONGO

The trial of the first accused, Thomas Lubanga Dyilo, who is charged with recruiting child soldiers in the Democratic Republic of the Congo (DRC), was scheduled to begin in June 2008. On July 2, however, in a decision that ended one of the biggest controversies at the International Criminal Court (the ICC or the Court) yet, the Trial Chamber ordered the release of Lubanga. Two weeks earlier, the Trial Chamber halted the proceedings because the Prosecution did not make potentially exculpatory evidence available to the Defense, violating Article 67(2) of the Rome Statute, which requires the Prosecution to disclose any potentially exculpatory evidence.

The issue arose because of the Prosecutor’s alleged over-use of Article 54(3) (e), which permits the Prosecution, in very limited circumstances, to obtain confidential evidence that will not be used in trial but requires that it only use this evidence to obtain further evidence. The Prosecution used this provision to obtain over 200 pieces of evidence from the United Nations and other sources in the DRC, some of which contain possibly exculpatory evidence, which can demonstrate the innocence of the accused, mitigate the guilt of the accused, or affect the credibility of the Prosecution’s evidence. The sources will not give the Prosecutor permission to turn over the evidence to the Court, for

reasons that include the safety of sources and victims in the DRC. The Trial Chamber accused the Prosecution of abusing Article 54(3)(e) by using it beyond the intended limited circumstances and stated that because Lubanga does not have access to the evidence “a fair trial of the accused is impossible, and the entire justification for his detention has been removed.” The Prosecution will have five days to appeal the decision. The Accused will remain in the Court’s custody while the Appeals Chamber deliberates. At the time that the *Human Rights Brief* went to press, the Prosecution has appealed, and the Appeals Chamber has not yet released a decision.

Pre-Trial Chamber I of the ICC joined the two cases of *Prosecutor v. Germain Katanga* and *Prosecutor v. Mathieu Ngudjolo* Chui on March 10, 2008. A confirmation of charges hearing, originally scheduled for May 21, 2008, began on June 27, and is expected to last until July 16. During the hearing, the Pre-Trial Chamber will decide whether there is sufficient evidence for the Prosecutor to bring the case. Although cases are joined, the suspects shall be accorded the rights of individuals being tried separately. The Prosecution charges Katanga and Ngudjolo, members of Ituri Patriotic Resistance Force (FRPI) and the National Integrationist Front (FNI), respectively, with co-responsibility for crimes committed during and after a February 2003 joint attack on/ in the village of Bogoro in Ituri.

On April 28, 2008, the Pre-Trial Chamber unsealed the arrest warrant of Bosco Ntaganda, also known as “The Terminator,” who is also accused of enlisting and conscripting children and using them actively in hostilities in Ituri. Ntaganda was Deputy Chief of Staff for Military Operations of the Forces Patriotiques pour la Libération du Congo (FPLC) and was allegedly directly subordinate to Thomas Lubanga. The warrant had previously been sealed to prevent Ntaganda from fleeing after its release and to protect witnesses, but the Prosecution and Registry have confirmed that the situation on the ground has changed, making it safe to unseal the warrant at this time.

OUTREACH

The ICC’s field Outreach Unit (the Unit) is charged with reaching out to the areas most affected by crimes that the ICC is prosecuting or investigating. The Unit’s efforts are critical to overcoming one of the Court’s most significant hurdles — ensuring that the justice meted out by the ICC in The Hague remains meaningful to people living in affected regions. This task includes providing victims with a meaningful sense of justice and ending perpetrators’ expectations of impunity. In discharging its mission, the Unit convenes meetings and workshops for victims and civil society.

On February 15 and 18, 2008, the Unit, the ICC’s Victims’ Participation and Reparations Section, and local NGOs held two workshops in the Acholi sub-region of Uganda as part of the Unit’s continued efforts to reach out to the most conflict-affected communities in Northern Uganda. Ninety local participants attended the workshop, including women, local leaders, and government officials from 19 sub-counties of the Pader and Kitgum districts. The Unit described the Court’s role and work, including the main functions of its organs, the roles and rights of victims, and how affected individuals may receive information through the Unit. Leaders pledged continued commitment to assist disseminating accurate information about the ICC and urged the Unit to continue targeting communities at a grassroots level. Other participants noted that the workshops helped to dispel misconceptions about the court.

From February 18 to 20, 2008, the Outreach Unit held a civil-society workshop in Bangui, Central African Republic (CAR), where the Prosecutor’s office is investigating the 2002-2003 conflict. The goal of the meeting was to develop an outreach strategy tailored to the CAR context, a goal the Unit sets for each context where it is active. In the CAR, the Unit provided members of civil society, including human rights groups, religious leaders, trade unions, youth groups, journalists, and lawyers, an opportunity to help shape the Court’s future activity in the country.

In other outreach activities in the CAR, ICC Prosecutor Luis Moreno-Ocampo met with victims and members of civil soci-

ety in affected areas. In mid-February, the Prosecutor answered questions in a dialogue that was broadcast through the Interactive Radio for Justice. He concluded by discussing the role of the ICC and reiterating its commitment to ending impunity. The Prosecutor also met with the government and held a press conference with local media.

The Unit teamed with the Victims Participation and Reparations Section to conduct meetings in Bunia, Ituri District, Orientale Province, and Béni, North Kivu Province, in the DRC between February 25 and March 3, 2008. Three hundred sixty-seven people in total attended the meetings aimed to raise awareness and provide information for communities affected by ICC proceedings. Key civil society groups, including human rights organizations, women’s organizations, and former combatants, many of whom came from organizations based in other towns, attended the meeting in Bunia. The meetings provided information on recent developments in the cases of Thomas Lubanga Dyilo, Germain Katanga, and Mathieu Ngudjolo. The outreach mission also provided information on the process of victim participation.

The Béni outreach meeting followed the one in Bunia. While Béni suffered directly from fighting in the region, it has also been a place of refuge for thousands of people fleeing fighting in the bordering Ituri District. This was the first time that an ICC outreach mission traveled to Béni, and over the course of six meetings, ICC personnel met with representatives from human rights, development, and religious associations; legal practitioners, including the town’s public prosecutor; representatives of women’s associations; students; and journalists. Participants reported that the meetings dispelled misunderstandings about the ICC and reassured them about the court’s transparency policy with regards to Lubanga’s upcoming trial.

On March 24 and 25, 2008, the ICC organized outreach sessions for approximately 300 police officers from the Bunia garrison. Sessions dealt with general principles of individual criminal responsibility, emphasizing crimes falling within the court’s jurisdiction. It was the first time that these officers, many of whom fought in militias before joining the national police force, attended an ICC outreach ses-

sions. Participants manifested a clear interest in the ICC and requested more outreach activities specially targeting women and youths to discourage them from joining militias that are still active in the region. They also agreed to continue supporting the Unit, urging it to continue engaging in direct dialogue with local communities.

The ICC continued outreach activities on March 29, 2008, initiating the first exchange between the Court and inhabitants of the village of Bogoro, the alleged theater of violent clashes that gave rise to Katanga's and Ngudjolo's prosecutions.

UGANDA PEACE PROCESS

Relations between the ICC, the Government of Uganda and the Lord's Resistance Army (LRA) remain deadlocked with ICC warrants an apparent negotiating chip in the peace and disarmament deals between Uganda and the LRA rebels. The peace deals are slowly moving forward, however, creating subtle shifts in political tensions.

On February 19, 2008, the LRA and Government of Uganda signed an Annexure — an annex to the Agreement on Accountability and Reconciliation of June 29, 2007 as part of bilateral peace negotiations. Paragraph 7 of the Annexure provides that a special division of the High Court of Uganda shall be established to try individuals alleged to have committed serious crimes during the conflict. Paragraph 9 envisages enactment of legislation providing for the law applicable, rules of procedure and recognition of traditional and community justice processes in the proceedings.

Some Ugandans hope that such a court will provide the ICC a graceful mechanism for admitting that while Uganda did not have the capability to try suspected war criminals at the time the indictments were filled, the special division serves this function and now the ICC is no longer necessary. In any case, many seek to convince the ICC that the matter can be handled internally. Civil society groups are skeptical, however, of the special division's ability to provide justice. Even officials of the Ugandan judiciary recognize the significant challenges an internal court would pose. Kampala High Court Registrar Paul Gadenya, who worked for the ICC, said that Uganda "lacks the required laws to

set up a special court [to] prosecut[e] [the LRA leader and his indicted colleagues for] war crimes and crimes against humanity." Prosecution would require acts of Parliament and the adoption of war crimes statutes, statutes regarding a special court's functions, offences to be tried and the court's specific jurisdiction. While not dismissing the idea, Gadenya was pessimistic, noting that "It may not be possible for Uganda to immediately set up a local special court to try the LRA top commanders for war atrocities because we lack both the local and international laws governing the offence[s]."

A second possible resolution sought by the LRA is that the government of Uganda request that the Security Council defer proceedings on the warrants for twelve months pursuant to article 16 of the Rome Statute. Indeed LRA representatives said the LRA would only disarm if arrest warrants were deferred — a retreat from an earlier position that group would only disarm if the ICC lifted arrest warrants. This is a telling concession following months of consistent refusals by the prosecutor, and supported nearly unanimously by the international community, to lift the warrants. The Security Council has the power to defer prosecution for up to 12 months under article 16, which provides that:

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

The provision has its origins in Article 23(3) of the International Law Commission's (ILC) Draft Statute prohibiting prosecution arising from a "situation" already being dealt with by the Council "as a threat to or breach of the peace or an act of aggression" under Chapter VII of the UN Charter, unless the Council permitted otherwise. This was a highly controversial issue, with supporters emphasizing the need to prevent the Court from potentially interfering with the Council's duty to maintain international peace and security mandated under Article 23(1) of the UN Charter. On the other hand, many delegations opposing the text pointed out that leaving open the pos-

sibility for Security Council interference in judicial proceedings contaminated the ICC's independent character. The varying views were consolidated into three categories: the first favored the ILC Draft Statute's approach prohibiting proceedings; the second opposed giving the Council any role at all; and the third, a compromise position eventually adopted as Article 16, allowed investigations or prosecutions unless the Council adopted a resolution under Chapter VII of the UN Charter.

The drafting history of Article 16 is revealing, indicating that many delegations were concerned with maintaining the ICC's independence from Security Council interference. Moreover, even where Article 16 is used as a safety valve to maintain international peace and security, reference to the drafting history indicates that it should only be evoked where prosecution or investigations arise from a situation that the Council is already dealing with under Chapter VII and would, therefore, interfere with Council efforts. Therefore, drafting history suggests that an Article 16 deferral is inappropriate for the Uganda situation because proceedings would not conflict with Security Council initiatives in the area, and because allowing the Ugandan Government to impede prosecution through the Security Council would clearly compromise the Court's impartiality and independence — a move many consider fatal to the Court's integrity and very existence.

Despite continued hopes for an alternative to the ICC, the LRA's delegation in The Hague continues to familiarize itself with the Court. On March 10, 2008, ICC Registry Heads of the Legal Advisory Services Section and the Division of Victims and Counsels met with the delegation to provide an overview of the Court and its organs, as well as the requirements for including counsel on the Court's list of counsel and clarifications on procedures and time limits for filing documentation and materials with the Registry. In addition, the delegation was informed about the ICC's witness protection program. The delegation asked to be furnished with various documents including warrants of arrest, precedents for filing motions before the Court, and the format for power of attorney.

HYBRID AND INTERNATIONALIZED TRIBUNALS

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

In 2008 the Extraordinary Chambers in the Courts of Cambodia (ECCC) has slowly continued to take steps towards trying former leaders of the Khmer Rouge. In particular, the ECCC progressed in the pre-trial process of Nuon Chea, one of five accused in ECCC custody. Although the Court remains underfunded, it is making a push to obtain the funding needed to successfully complete the trial process.

In early February Nuon Chea, known as “Brother Number Two” since he served as Pol Pot’s second in command, appealed his detention before the Pre-Trial Chamber. Nuon Chea, now 81 years old, has been in ECCC custody since September 19, 2007. He argued that his previous interactions with the Court were illegal because he did not have a lawyer and did not waive his right to counsel. His current lawyer claimed that the investigating judges in the case violated criminal procedure rules by putting undue stress on the accused. On March 20 the Pre-Trial Chamber denied his appeal, concluding the detention was needed to prevent the accused from interfering with witnesses, tampering with evidence, and potentially fleeing the country. Moreover, the Court pointed out that if Nuon Chea were released, his safety could be at risk.

In the process of reaching its decision regarding Nuon Chea’s detention, the ECCC achieved a milestone when, for the first time, a victim took the stand to testify against a former Khmer Rouge leader. In charging Nuon Chea with war crimes and crimes against humanity, the Court’s investigating judges alleged that he participated in “murder, torture, imprisonment, persecution, extermination, deportation, forcible transfer, enslavement and other inhumane acts.” At Nuon Chea’s pretrial hearing, Theary Sent, a Cambodian-American human rights advocate, described in court how her parents were killed in the genocide perpetrated by the Khmer Rouge. Nuon Chea disclaimed responsibility and denied that genocide occurred in Cambodia.

The victim participating in Nuon Chea’s pretrial hearing also marked the first time that any international or hybrid tribunal investigating war crimes, crimes against humanity, or genocide granted full procedural rights to victims. The ECCC’s Internal Rules allow victims to participate in the proceedings as civil parties. Civil parties have rights similar to those of the accused, and are able to participate in the investigation, be represented by counsel, call witnesses to the stand, question the accused, and argue for reparations. The Court appointed four lawyers to represent such victims of the Khmer Rouge.

Along with the Court’s success in bringing detainees like Nuon Chea closer to trial, the Court has also run into problems, such as the old age and poor health of the accused. In early February former Khmer Rouge Foreign Minister Ieng Sary was hospitalized several times. Sary also has heart problems and appealed his detention in December 2007 due to poor health. Sary’s health problems are illustrative of issues affecting the five detainees in ECCC custody because of old age. If the accused are not brought to trial soon, some fear they may die before they can stand trial.

The Court has also experienced funding problems. A lack of proper funding prompted ECCC officials to formally request additional funds from the United Nations (UN) in March. Officials requested \$114 million, which, if donated, would increase the ECCC’s current budget of \$56.3 million to \$170 million. The Court needs additional funding to operate until March 2011, two years beyond the date the ECCC initially projected. The ECCC claims that disagreements with the Cambodian Bar Association regarding membership fees for foreign lawyers, as well as procedural problems and language difficulties, led to delays in reaching the trial stage. Major donors currently include Japan, France, Germany, Britain, and Australia. Despite the ECCC’s successes, it will have to work hard to convince other nations to contribute, due to corruption charges in hiring practices last year.

THE WAR CRIMES CHAMBER OF THE STATE COURT OF BOSNIA AND HERZEGOVINA

The War Crimes Chamber of the State Court of Bosnia and Herzegovina (WCC) has made recent strides in three trials involving indictees accused of genocide. The cases are particularly relevant because the WCC has not convicted anyone of genocide to date, and such a conviction would mark an important achievement. Article 171 of the Criminal Code of Bosnia and Herzegovina defines someone guilty of genocide as:

Whoever, with an aim to destroy, in whole or in part, a national, ethnical, racial or religious group, orders the perpetration or perpetrates any of the following acts: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of one group to another group.

If convicted of genocide, there is a mandatory minimum ten-year sentence. The three cases involve varying numbers of accused perpetrators carrying out different acts, but all working in conjunction with Serb authorities.

The first case — *Prosecutor v. Mitrović et. al.*, known as the Srebrenica 11 case or the Kravica case — implicates 11 men accused of genocide perpetrated between July 10 and 19, 1995, as part of a widespread and systematic attack on Bosniaks inside Srebrenica, which was a UN-protected area at the time. The attack took place in the villages of Kravica and Sandići and was allegedly part of a larger plan to partially destroy a group of Bosniaks. The accused were involved in different capacities, either as part of the Special Police Second Squad or as part of the Republika Srpska Army (VRS). Alleged perpetrators secured a road between the two villages to forcibly transfer approximately 25,000 women, children, and elderly Bosniaks from Srebrenica. In addition, the accused allegedly detained several thousand Bosniak men and subsequently handed over many to the VRS. The VRS then trans-

ferred the Bosniaks, who have not been heard from since. Finally, the accused allegedly took part in executing a group of over 1,000 Bosniak male prisoners detained at the Kravica Farming Cooperative warehouse.

The trial began in May and recently received new evidence from Richard Butler, a military analyst with the Prosecution at the International Criminal Tribunal for the Former Yugoslavia (ICTY). Butler testified that the Special Police Forces acted under VRS command, and claimed that the VRS attacked Srebrenica in response to attacks led by a division of the Army of Bosnia-Herzegovina. After the attack, the VRS proceeded to implement operations approved by Radovan Karadžić, then president of the Republika Srpska. The original goal of the operation was to ensure that the protected zone covered only Srebrenica and nothing more, but it allegedly led to the crimes for which the indictees stand accused. Butler also said documents he reviewed revealed that Miloš Stupar, one of the accused, commanded the Special Police Second Squad until August 24, 1995. Nine of the other indictees allegedly belonged to this police squad, and the eleventh indictee, Milovan Matic, was a member of the VRS. By providing information regarding the motivation for the VRS's attack, and the leadership of the Special Police Second Squad, Butler added valuable evidence to the record in a key WCC trial.

Another genocide case now being tried is the case of Milorad Trbić. Trbić, former assistant to the Chief of Security of the Zvornik Brigade of the VRS and manager of the Military Police Company of that brigade, is accused of genocide perpetrated from July 11 to November 1, 1995. The accused allegedly oversaw, controlled, and participated in the executions and subsequent burials of Bosniak men in different locations. Trbić is accused of perpetrating the execution of over 7,000 Bosniak men with the help of other VRS soldiers. Furthermore, Trbić allegedly organized, oversaw, and controlled the forced transfer of Bosniak men from Srebrenica.

Trbić's trial began November 8, 2007. Since February, various witnesses have presented eyewitness accounts of the situation in Srebrenica at the time of the

atrocities. Mirsada Malagić and protected witness A41, a former member of the Bratunac Brigade Military Police with the VRS, testified about civilian massacres taking place in the days following Srebrenica's fall. Milovan Djokić, a member of the Bratunac Brigade, described how he guarded buses transferring captives from Srebrenica to the town of Pilice. Zoran Radosavljević, a civilian from Pilice, testified that he saw buses outside a school in Pilice where Bosniaks transported from Srebrenica were subsequently executed. Finally, Richard Butler, who also testified in the Srebrenica 11 case, claimed Trbić was the officer in charge of the reburial of bodies in other graves. Butler testified that Trbić's "task was to help . . . perform the tasks related to the execution of prisoners, as well as the burial and transfer to new graves." Butler explained such tasks "could only be performed by someone who had detailed information on what was going on." The testimony of these different witnesses will play an important role in the outcome of Trbić's case.

The third pending genocide case involves Vinko Kondić, suspected of instigating the perpetration of genocide. A member of the Executive Committee of the Serbian Democratic Party (SDS) Municipal Organization in Ključ since June 1991, Kondić allegedly perpetrated crimes against Bosniak and Croatian civilians. The specific crimes include stopping a bus of Croatian refugees, who were subsequently tortured and transferred to a concentration camp, and assisting the round-up of Bosniaks in Ključ and surrounding areas, who also were later transferred to camps or summarily executed. Ironically, before being detained, Kondić served as additional defense counsel for Momčilo Gruban, a Bosnian Serb currently on trial before the WCC for war crimes. Kondić was one of several attorneys approved to serve as Court-appointed lawyers to defend suspected war criminals.

The WCC recently confirmed Kondić's indictment on March 4, 2008. The trial process is still in its early stages, and on March 24 a plea hearing was postponed because Kondić had not yet read the indictment. Kondić claims his failure to read the indictment was due to poor health and subpar conditions at the Correctional Facility in Doboj where he is detained. Although

it is early in the process, Kondić's case is worth following because it may yield a genocide conviction.

If the prosecution is successful in any of these three cases, it will be an important step forward for the WCC. Successful genocide convictions serve as a further form of accountability for those found guilty of accompanying crimes. Such convictions might also further reconciliation in Bosnia and help close a terrible period in Bosnia's recent past. **HRB**

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UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

EUROPEAN COURT OF HUMAN RIGHTS

In 1959, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) established the European Court of Human Rights (Court). The Court enforces the obligations entered into by the Council of Europe's Contracting States. Any Contracting State or individual may allege violations of the Convention by filing a complaint with the Court.

GOVERNMENTS HAVE NO JUSTIFICATION TO BALANCE RISK OF TORTURE AGAINST THREAT TO NATIONAL SECURITY

In *Saadi v. Italy*, decided on February 28, 2008, the Court ruled that a country may not deport a person who threatens national security to a country with a history of torture. This ruling, hailed as a landmark case by Amnesty International and other human rights organizations, contradicts the policies of countries, such as the United Kingdom, that send terror suspects to countries that abuse prisoners. Furthermore, the ruling affirms the absolute prohibition of torture and other inhuman or degrading treatment or punishment.

Tunisian national Nassim Saadi was arrested and accused of conspiracy to commit acts of violence in countries other than Italy, including attacks with explosive devices. On May 9, 2005, an Italian court changed the international terrorism charges to criminal conspiracy, and found Mr. Saadi guilty of conspiracy, forgery, and receiving stolen goods. Meanwhile, a military court in Tunisia sentenced Mr. Saadi, in his absence, to 20 years' imprisonment for membership in a terrorist organization.

After the Italian authorities released Mr. Saadi in August 2006, the Ministry of the Interior ordered his deportation to Tunisia, relying on a 2005 Italian law entitled "Urgent Measures to Combat International Terrorism." In response, Mr. Saadi applied for political asylum, but Italy denied his application in September 2006. In May 2007, Italy asked the Tunisian government

for assurances that Tunisian authorities would not subject Mr. Saadi to torture or other inhuman or degrading treatment or punishment. That June, Tunisia replied that Tunisian legislation guaranteed prisoners' rights, and that Tunisia had acceded to the relevant international treaties.

Mr. Saadi lodged a claim with the Court in September 2006, alleging that he would be subject to torture or inhuman and degrading treatment contrary to Article 3 of the Convention if Italy were to deport him to Tunisia. He also claimed that Tunisia violated the Article 6 right to a fair trial by using a military court to convict him in his absence. Because Mr. Saadi's partner and son lived in Italy, he also claimed that Italy would violate the Article 8 right to respect for private and family life by deporting him and thereby depriving his partner and son from his presence and support. Finally, Mr. Saadi alleged that his deportation violated Article 1 of Protocol 7 on procedural safeguards relating to the expulsion of aliens, and was not necessary to protect public order or maintain national security.

In its Grand Chamber judgment of February 28, 2008, the Court emphasized that concern for protecting a population against terrorism cannot compromise the absolute nature of Article 3's prohibition on torture and other inhuman or degrading treatment or punishment. As a third party intervener, the United Kingdom argued that the national security threat justified the risk of torture. The Court said, however, that "the concepts of risk and dangerousness do not lend themselves to balancing. [T]he prospect that he may pose a serious threat to the community . . . does not reduce in any way the degree of risk of ill-treatment that the person may be subject to on return."

Furthermore, the Court explained that for deportation to violate Article 3, Mr. Saadi only had to show substantial grounds for believing there was a risk of ill-treatment. Reports by Amnesty International, Human Rights Watch, and the U.S. State Department detailing numerous cases of torture against accused terrorists were sufficient.

In light of the probability that Mr. Saadi would suffer torture or inhuman treatment, and the fact that Tunisia did not explicitly assure Italy that Tunisian authorities would not subject Mr. Saadi to ill-treatment, the Court found that deporting Mr. Saadi to Tunisia would breach Article 3 of the Convention. While this decision was explicitly against Italy, it also negated the United Kingdom's argument that concern for national security could outweigh the risk of torture.

FRANCE CANNOT DISCRIMINATE AGAINST HOMOSEXUALS WHEN GRANTING SINGLE-PARENT ADOPTIONS

In January 2008, the Court held that France could not refuse to authorize a woman to adopt based on her sexual orientation. The woman, identified by the initials E.B., alleged that France discriminated against her because she is homosexual. She claimed that Article 14 of the Convention, regarding discriminatory treatment, when taken in conjunction with Article 8 on respect for private and family life, governed her case.

Despite evidence that members of the children's welfare service — including a psychologist, a technical officer, and the head of the department — recommended against E.B. receiving authorization to adopt because of the lack of a "paternal referent" and because she had an "unusual attitude towards men in that men are rejected," France argued that the refusal was not discriminatory because it was not based, either explicitly or implicitly, on E.B.'s sexual orientation. Instead, France refused authorization out of concern for the child's welfare because the child would not have a male role model and because E.B.'s partner was ambivalent about E.B.'s adoption plans.

The Court noted that there is no right to adopt in Article 8, other international agreements, or domestic law. The Court further noted, however, that France went beyond its Article 8 obligations by expressly granting single persons the right to apply for

authorization to adopt. Because it extended its Article 8 obligations, France cannot, in the application of those extended obligations, take discriminatory measures within the meaning of Article 14.

In refusing E.B.'s application, authorities consistently referred to her homosexuality. When they did not refer to her sexual orientation, they mentioned E.B.'s status as a single person, although French law makes express provisions for the right of single persons to apply for authorization to adopt. Therefore, E.B. experienced different treatment from both couples and other single persons seeking to adopt. Although Article 14 says different treatment is not discriminatory if the difference has an objective and reasonable justification, in this case France could not present the convincing and weighty reasons necessary to justify different treatment based on sexual orientation. The Court found for E.B., awarding her 10,000 Euros (US\$15,550) in just satisfaction and 14,528 Euros (US\$22,590) for costs and expenses.

The Court's decision, however, was not unanimous. Only ten of 17 judges found a violation of Article 14 taken in conjunction with Article 8. The dissenters emphasized that the Convention does not provide for a right to adopt. While the refusal to grant authorization based exclusively on sexual orientation is contrary to both the French Civil Code and the Convention, the dissenting judges asserted that in this case France had legitimate reasons for refusing to grant authorization — because the child would have no paternal role model, and because E.B.'s partner was ambivalent about the adoption plans.

Although the decision was not unanimous, the Court did affirm that states may not discriminate based on sexual orientation. Also, the majority stressed that if a country expands its obligations, it must grant those expanded rights to all persons in an equal manner.

TURKEY RESPONSIBLE FOR HUMAN RIGHTS VIOLATIONS IN CASE OF MISSING GREEK CYPRIOTS

On January 10, 2008, the Court found that Turkey violated the human rights of missing Greek Cypriots in *Varnava and Others v. Turkey*. The decision reemphasized that state authorities cannot ignore

complaints regarding missing persons, and must conduct legitimate investigations. Furthermore, the Court determined that the complainants would not receive monetary damages because the judgment against Turkey alone should be sufficient compensation. The case involved the disappearance of nine individuals as a result of Turkish military operations in July and August 1974 and the continuing division of Cyprus.

The Court found, by votes of six to one, that Turkey violated Articles 2, 3, and 5 of the Convention on the right to life, the prohibition against torture or inhuman or degrading treatment or punishment, and the right to liberty and security of person, respectively. The one dissenting vote came from the Turkish Cypriot judge, who argued that the Court should have found the application inadmissible.

The Court found a continuing violation of Article 2 protecting the right to life because Turkish authorities failed to conduct an effective investigation into the whereabouts and fates of the nine missing individuals. Turkey alleged that there was no continuing violation because the applicants based the claims on "imaginary suppositions concerning continuing captivity for which there was no concrete proof and in respect of which the applicants' accounts were flagrantly contradictory." The Court however emphasized that the fate of the missing was unknown, and that the Court had a procedural obligation to find a violation because there was proof of an arguable claim that an individual last seen in the custody of the state disappeared in a life-threatening context.

The Court also found a continuing violation of Article 3 because the failure to determine the fates of the missing constitutes continuous inhuman treatment of the relatives of the nine missing men. Finally, the Court found a continuing violation of Article 5 on the right to liberty and security of person because there was an arguable claim that the missing had been deprived of their liberty at the time of their disappearance, and Turkish authorities failed to conduct an effective investigation into that disappearance.

Although Turkey was in clear violation of the Convention, the applicants did not receive monetary damages. The

Court ruled that the finding of a violation was enough just satisfaction for the non-pecuniary damage sustained by the applicants, thereby recognizing the importance of judgments over than monetary damages in bringing closure to victims' families. The applicants recovered 4,000 Euros (US\$6,220) each for costs. In ruling against Turkey, the Court reaffirmed the responsibility of governments to conduct effective investigations into missing persons cases.

Displeased with the decision, Turkey filed an appeal with the Grand Chamber, the Court's appeals body, in hopes that it will order the Court to presume the nine missing men dead, rather than "missing." Turkey did embrace the Court's refusal to order compensation, as court-ordered compensation would constitute an unwelcome precedent. In contrast, the Cypriot government welcomed the ruling, hailing it as a positive development in the midst of a "sensitive and tragic" humanitarian issue.

INTER-AMERICAN SYSTEM

The Inter-American Human Rights System was created with the Adoption of the American Declaration of the Rights and Duties of Man in 1948. In 1959, the Inter-American Commission on Human Rights was established as an independent organ of the Organization of American States. In the 1969, the American Convention on Human Rights (the Convention) was adopted. This Convention further defined the role of the Commission and created the Inter-American Court of Human Rights (the Court). The Commission may recommend cases to the Court, which determines liability under relevant regional treaties and agreements, including the Convention.

HEARINGS AT THE COMMISSION: CASE OF LYSIAS FLEURY (PETITION 12.459) WILL PROCEED WITHIN THE COMMISSION

On March 7, 2008 the Inter-American Commission on Human Rights (Commission) heard a report in the Case of Lysias Fleury, a Haitian human rights advocate. Mr. Fleury alleges that on June 24, 2002, Haitian police arrested him at his home, and pistol-whipped, beat, kicked and forced him to clean excrement from his cell with

his hands. He claims that he received this treatment because of his human rights work for the Commission Episcopale Nationale Justice et Paix (Justice and Peace Commission of the Bishops Conference, hereinafter Justice and Peace Commission).

The Commission admitted the case on February 26, 2004 under Articles 46 and 47 of the American Convention on Human Rights (Convention). For the Commission to grant admissibility and proceed to the merits, the petitioner must have exhausted domestic remedies under Article 26(1) (a) of the Convention. The petition must also be submitted within six months of the alleged abuse or exhaustion of domestic remedies and claim a violation of one or more of the rights protected by the Convention. States cannot claim non-exhaustion of domestic remedies as a defense if remedies are not exhausted due to inaction on the part of the state.

On June 27, 2002, the director of the Justice and Peace Commission presented a criminal complaint to the Inspector General of the National Police, and on August 1, 2002 Mr. Fleury requested that the Public Ministry initiate criminal proceedings against the police officers. Because neither agency took action, the Commission considered domestic remedies exhausted. In addition, the Commission determined that because Haiti did not invoke the failure to exhaust domestic remedies as a defense in the first stages of the proceedings, Haiti waived this defense. At the hearing, however, the state argued that because Haiti was politically unstable between 2003 and 2006, the government should not be held responsible for not following through on Mr. Fleury's claim, arguing that domestic remedies are now available. The Commission recognizes the well-established international law principle of the Doctrine of Continuity of State, which provides that changes in government do not generally relieve a current government from responsibility for past abuses.

The Commission found Mr. Fleury's allegations of violations of Articles 5 (providing a right to humane treatment), 7 (protecting personal liberty), 8 (guaranteeing fair trial rights), 11 (protecting privacy) and 25 (providing a right to judicial protection) sufficiently plausible to warrant proceeding to the merits. On March 7, 2008 the Haitian government and Mr. Fleury,

who is represented by Washington College of Law's International Human Rights Law Clinic, presented their positions to the Commission. During the hearing, Haiti recognized that the alleged abuses took place, that it knows the identity of the police officers, and that no action has been taken to bring them to justice — in fact, one officer has been promoted. The Haitian constitution and other national legislation provide for domestic remedies, but the government has so far failed to make them available to Mr. Fleury.

The Commission will accept additional memos from the parties and will then issue a ruling on the merits. The state will then have two months to respond. The Commission can then decide to issue another report giving the state a further two months to respond. If the Commission is not satisfied with Haiti's response it can submit the case to the Inter-American Court of Human Rights.

DECISIONS OF THE COURT: ECUADOR DEEMED NOT COMPLYING WITH JUDGMENT IN *ALBAN CORNEJO Y OTROS VS. ECUADOR*

The Inter-American Court of Human Rights (Court) ruled on the case of *Alban Cornejo y otros vs. Ecuador* on November 22, 2007. The Commission submitted this case to the Court on July 5, 2006 after determining that Ecuador had not satisfactorily complied with its decision of February 28, 2006.

On December 17, 1987 Laura Susana Alban Cornejo, while in a private hospital for meningitis, experienced great pain and was given ten milligrams of morphine, whereupon she died. The Commission and Alban Cornejo's parents alleged violations of Articles 8 (protecting fair trial rights), and 25 (providing a right to judicial protection) of the Convention. The Court has previously held that states are responsible for acts or omissions committed by any of their agencies that violate the protected rights of persons within their jurisdiction. Ecuador accepted partial responsibility for violations of the rights protected by Articles 8.1 and 25.1, arising from various acts and omissions of state agents who, by not ensuring that the medical attention provided was of sufficiently good quality, did not exercise adequate control over the hospital. The Court held these rights were

violated in relation to Articles 4 (protecting the right to life), 5.1 (providing a right to humane treatment) and 1.1 (providing an obligation to respect rights).

The Court also held that the state violated Article 5.1 on independent grounds due to the lack of judicial response in clarifying the circumstances of Alban Cornejo's death. The Court found that her death affected the physical, mental, and moral integrity of her parents because they witnessed the medical personnel's malpractice and subsequent state inaction and because Alban Cornejo's mother was forced to give up her profession as psychologist to dedicate herself to the search for justice.

The remedies ordered include the publication of parts of the sentence, the diffusion of information on the rights of patients under national and international law, the execution of a training program for judges and health professionals on national standards, and the payment of reparations and costs.

CASE UPDATE: COMPLIANCE WITH JUDGMENT IN *CANTORAL HUAMANÍ GARCÍA SANTA CRUZ VS. PERU*

On January 28, 2008 the Court responded to Peru's request for an interpretation of the sentence in the case of *Cantoral Huamani y García Santa Cruz*. The Court's July 10, 2007 decision (see 15 No. 1 HUM. RTS. BRIEF, 52) held that Peru had violated Articles 4 (protecting the right to life), 5 (providing a right to humane treatment), 7 (protecting personal liberty), and 16 (guaranteeing freedom of association) of the Convention for the kidnapping, torture, and extrajudicial execution of Saúl Isaac Cantoral Huamani and Consuelo Trinidad García Santa Cruz. In addition, the Court held that the state violated Articles 5 and 8.1 (protecting fair trial rights), and 25 (providing a right to judicial protection) in relation to the victims' families.

The state asked three questions. First, it asked if the Peruvian judiciary arrives at a different conclusion from the Court's regarding the responsibility of state agents, will Peru be able to submit a petition for revision of the sentence? The Court held this question inadmissible because it was not intended to clarify the sentence but rather referred to sentence revision powers

not granted by the Convention, the Statute, or the Court Rules. Finally, the Court noted that the sentence in the case established state responsibility, not individual responsibility.

Second, the state asked if it should give the sum of \$7,500 to the victim's widow Pelagia Mélida Contreras Montoya de Cantoral or to the Mining Federation of which the victim was Secretary General. This sum was found in the hostel where Cantoral Huamaní was staying at the time of his death, taken by the state, and subsequently lost. Because the Court found that the question arose out of a doubt concerning the meaning of the sentence, it proceeded to rule on the question. The Court held that because the victim's widow was part of the suit, unlike the Mining Federation, she should receive the money.

Third, the state asked the Court to reexamine whether Cantoral Huamaní's mother Elisa Huamaní Infanzón indeed died on August 17, 1989, six months after her son was killed. The Court had found this to be true. The state claimed in its request for an interpretation of the sentence that she was still alive. The Court held that this request was not for clarification, but that it rather posed a factual question that had already

been considered at the procedural stage and to which the state had not objected. Thus, the Court declared this question inadmissible.

CASE UPDATE: COMPLIANCE WITH JUDGMENT IN *ESCUÉ ZAPATA VS. COLOMBIA*

On May 1, 2008 the Court examined the Colombian government's request for an interpretation of the decision in the case of *Escué Zapata vs. Colombia*. The Court handed down the decision in this case on July 4, 2007 (see 15 No. 1 HUM. RTS. BRIEF, 51). It held that Colombia had violated Articles 4 (protecting the right to life); 5.1 and 5.2 (providing a right to humane treatment); 7.1 and 7.2 (protecting personal liberty); 8.1 (protecting fair trial rights); 11.2 (protecting privacy rights); and 25 (providing a right to judicial protection) of the Convention. German Escué Zapata, a member of one of Colombia's 87 indigenous communities and a former mayor of the city of Jambaló, was taken from his home by the Colombian military, bound, beaten, and arbitrarily executed by gunfire. By asking questions on the decision, the state extends the period of time in which to comply with the Court's sentence.

Colombia has asked the Court four questions. First, it asked whether a fund established for the collective use of the Jambaló community need be a particular type, such as a fiduciary account or an inter-administrative agreement. Second, it inquired whether the state is responsible for costs associated with the victim's daughter's studies if she does not finish within the normal five years, what its responsibility is if she is not admitted, and whether the state can cover lodging, transportation, and material costs with a one-time payment. Third, it asked how the Court's holding should be published — for example, which parts need to be included? Fourth, it asked if litigation costs should be paid to the victim's representatives or the victim's mother. **HRB**

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UNITED NATIONS UPDATE

NEWLY FORMED UN GROUP WORKING TO ENSURE RIGHTS OF PERSONS WITH DISABILITIES

More than 20 UN departments, agencies, programs, and funds have combined to create the Inter-Agency Support Group for the Convention on the Rights of Persons with Disabilities (Convention) to support measures to ensure the rights of the world's 650,000,000 persons with disabilities. The Convention, adopted by the General Assembly at the end of 2006, is only three ratifications short of the 20 needed to become a binding international legal document. When it opened for signature, 40 countries initially indicated their desire to sign onto the Convention.

The Convention aims to ensure that persons with disabilities are guaranteed

equal human rights to non-disabled persons. It covers such rights as equality, non-discrimination, independent living, and cultural and political participation. The purpose of the Support Group is to raise awareness of the Convention in hopes of securing the remaining ratifications needed and to create an infrastructure capable of implementing its goals. To this end, the Support Group will focus on implementing policies, international cooperative programs, and capacity-building for Member States, civil society, and the UN, and the creating a Committee on the Rights of Persons with Disabilities.

The international community of people with disabilities, as well as disability advocates and experts, have embraced the Convention as a way to further the interests of disabled people worldwide. In some

countries, disabled people may be denied the right to open a bank account or to refuse medical treatment. Article 12 of the Convention guarantees disabled people the right to own property, manage their financial affairs, and to enjoy legal capacity on an equal basis with others. Some advocates stress that much work remains at a domestic level before many countries, even relatively progressive and developed ones, can fully implement the Convention. The European Union has been criticized as having high levels of unemployment for adults with disabilities and segregated school systems for disabled children. Critics warn that so long as disabled people remain disenfranchised, they will be difficult to represent politically as their voice will only be heard by proxy. While some believe that the Convention will help overcome such problems, others suggest that

change must be institutionalized at the Member State-level before the Convention will be able to take hold.

Critics of the Convention assert that other existing conventions, including the two International Covenants on human rights, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of the Child, already provide adequate protections for the disabled, and that the difficulty of implementing a new convention may relegate it to mere speech with very little enforcement capacity. Their opinion is that UN bodies should focus on ensuring compliance in monitoring the existing conventions instead of negotiating new definitions and terms. They point to problems surrounding the Migrant Workers Convention, which experienced difficulty obtaining state support because it imposed more obligations than many states were willing to accept. Furthermore, some stress the link between accommodation of the disabled and development, pointing out guaranteeing the right to vote means little if an individual does not have access to a wheelchair with which to reach the polls. Supporters of the Convention have responded by emphasizing that people with disabilities can be a resource for further development, so long as they are guaranteed access to work and political representation.

The creation of the Support Group suggests that the Convention will soon enter into force. Much work remains for advocates and the disabled to see that the aspirations in the Convention are realized.

HUMAN RIGHTS COUNCIL PROGRESS NOTED AS IT ENDS SEVENTH SESSION

The Human Rights Council's (Council) seventh session marks the inauguration of the first Universal Periodic Review, a mechanism that will examine 48 UN Member States per year to assess the extent to which they have or have not fulfilled their human rights obligations. The first report of the Universal Periodic Review working group will be examined by the Council in its eighth session, scheduled for June 2008, with each examined country being given approximately three hours for debate in the 47-member Council. The Review is expected to cover all 192 Member States by 2011 and is intended to prevent states

from using the Council to shield poor human rights records.

The Council replaced the Human Rights Commission in 2006 as part of a system of UN reform. Council President Doru Costea is optimistic about the changes, but acknowledges that their successes cannot be measured until they begin to be implemented. The Universal Periodic Review, for example, hopes to formalize a process by which Member States will regularly and objectively be reviewed.

In response to criticism claiming that its internal intelligence efforts were biased, the Council will rely on sources coming from outside the UN and the country being examined in order to legitimize the process. In the past, this reliance upon independent experts has not been consistent, and critics have decried certain country-specific procedures that placed too much attention on Israel and too little on Cuba and North Korea. The Council has also elected an 18-member Advisory Committee, set to hold its first session in August. The Advisory Committee is intended to further assist the Council in becoming a more transparent and fair body. This achievement rests largely on Council members' willingness and desire to confront States regardless of political and other non-human rights-related considerations, a potential complicating circumstance that may not have been reached by these reforms.

EXCESSIVE FORCE, POLITICAL VIOLENCE USED IN NEPAL SAYS UN REPORTS

The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) released a report concerning the February protests in Terai stating that police sometimes used excessive force when dealing with the demonstrations and protests. OHCHR-Nepal concluded that during the February crackdown, six people died as a result of unjustified lethal force, five of them due to police fire. While the report acknowledges the difficult position of the police, it notes that by not restricting their use of force to the minimum extent necessary to disperse the illegal but non-violent assemblies, the police fell short of international human rights standards.

The Security Council has recognized that Nepal's leaders have "successfully

managed many difficulties in the peace process" as the country prepared for its Constituent Assembly elections in April. These elections were already delayed for one year due to political disputes. OHCHR-Nepal was joined by the UN Mission in Nepal (UNMIN) in decrying the upsurge of violence in the Terai region, warning that it threatened to undermine the polls. OHCHR-Nepal corroborated reports that the Communist Party of Nepal-Maoists (CPN-M) engaged in pre-planned attacks on rival political parties, which called into question the likelihood of free and fair elections. Locals were threatened as a method of influencing the vote.

The election occurred on April 10, and the CPN-M won a simple majority. The election is particularly significant because the newly elected Assembly will draft a new constitution for the nation, which two years ago emerged from a decade-long civil war that killed an estimated 13,000 people.

Prior to the election, OHCHR and UNMIN warned that political parties' failure to follow the election code of conduct and respect the human rights of the Nepalese people could undermine the legitimacy of the election. Political violence continued in the days before the election, with a bombing at a mosque and continuing acts of violence against candidates, party supporters, and voters. UNMIN urged both the Maoist guerilla and Nepal armies to adhere to the peace agreement to prevent interference with the electoral process. The combined reports of the OHCHR and UNMIN also urged all political parties to refrain from violence while recommending that the government improve institutional accountability to ensure that the police operate within international human rights standards.

Despite concerns, international observers hailed the April election as free and fair. The Special Representative of the UN Secretary-General praised the process and continued to urge all parties to act peacefully and accept election results. As the *Human Rights Brief* went to press, political parties in the new Constituent Assembly were still working to form a coalition government. **HRB**

Brent D. Hessel, a J.D. candidate at the Washington College of Law, covers the United Nations for the Human Rights Brief.

Third Annual | **THE HAGUE, THE NETHERLANDS**
Summer Law Program



May - June 2009

The Washington College of Law Summer Law Program in The Hague offers J.D. and LL.M. students the opportunity to live and learn at the heart of the international justice community. In 1899 the world's first Peace Conference took place in The Hague; today this city on the North Sea is home to over 150 international legal organizations. What better way to become immersed in the rapidly changing field of international justice?

The program is the product of a unique collaboration between the War Crimes Research Office of American University's Washington College of Law, established in 1995 to provide specialized legal research assistance to international/ized criminal tribunals, and the T.M.C. Asser Institute, one of the most prominent research institutes of international law in Europe.

Students in the program examine critical issues in international law, focusing on international criminal law and international legal approaches to terrorism. Integral to the program are lectures by judges, lawyers, and practitioners of international law, as well as site visits to major courts and legal institutions located in The Hague, such as the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court.

The Summer Law Program in The Hague is ABA approved and offers six law school credits. Applications will be available in Fall 2008, and students are encouraged to apply early, as space is limited. For more information, please visit our website at

www.wcl.american.edu/hague

or e-mail us at hagueprogram@wcl.american.edu



NGO UPDATE

To foster communication among human rights organizations around the world, each issue of the Human Rights Brief features an “NGO Update.” This space was created to aid non-governmental organizations (NGOs) by informing others about their programs, successes, and challenges. The views of the organizations below do not necessarily reflect those of the Human Rights Brief. For information on how to submit updates for your organization, please see the instructions provided at the end of the column.

SUDAN ORGANIZATION AGAINST TORTURE (SOAT)

www.soatsudan.org

Established in 1993, the Sudan Organization Against Torture (SOAT) is an independent, non-governmental, human rights organization working to prevent torture and challenge the impunity of torture perpetrators. Operating in Sudan and the United Kingdom, SOAT offers assistance to Sudanese survivors of torture by providing medical treatment, rehabilitation services, and legal aid. SOAT also monitors and documents the human rights situation in Sudan and advocates change in policy and practice at the national and international level.

SOAT’s Medical Treatment and Rehabilitation program provides ongoing treatment to victims of torture until the recovery process is complete. Where adequate medical treatment is not available in Sudan, SOAT makes arrangements for its clients to travel to receive necessary care. The program also helps torture survivors rebuild relationships, reintegrate into society, and re-establish stable and independent lives. According to SOAT, survivors of torture often feel isolated and hopeless. Therefore, the aim of its rehabilitation services is to provide survivors with a sense of purpose, enabling them to lead dignified and independent lives.

SOAT’s Legal Aid program has represented hundreds of clients and has successfully overturned numerous cases in which

persons were sentenced to death, amputation, or cross amputation – a punishment in which the convicted person’s right hand and left foot are amputated. The legal aid program has also taken on several cases against human rights violators to send a clear signal to perpetrators of torture that they will no longer enjoy total impunity. SOAT is confident that this program has and will continue to have the effect of deterring others from committing violations in the future.

In 2003, SOAT established the Information, Research, and Freedom of Expression program to increase awareness of the human rights situation in Sudan at the local, national, and international levels. It does so through the Human Rights Education and Information Resource Center, which provides valuable information and documentation of human rights abuses to other NGOs, journalists, legal professionals, students, researchers, and human rights activists. By providing information on instances of torture and other human rights abuses to journalists for press releases and reports, SOAT has significantly increased media coverage of the human rights situation in Sudan and has been successful in lobbying for political reform.

SOAT believes that documenting and exposing torture is key to its prevention and forces perpetrators to face the consequences of their actions. SOAT’s efforts send a strong message to perpetrators that they are known, that they will be prosecuted and punished, and that Sudan is on a path towards change. SOAT seeks to ensure that survivors of torture will not only receive the services they need, but that they will receive justice and one day live in peace without fear.

TIBETAN CENTER FOR HUMAN RIGHTS AND DEMOCRACY (TCHRD)

www.tchrd.org

The Tibetan Center for Human Rights and Democracy (TCHRD) is the first Tibetan non-governmental human rights

organization to be established in exile in India. Founded in 1996 and based in Dharamsala, Himachal Pradesh, India, TCHRD’s purpose is to promote peaceful change to deepen and broaden the understanding of human rights principles and democratic concepts among Tibetans and non-Tibetans. The organization gathers information, produces and distributes publications, and documents the human rights violations in Tibet to raise public awareness. TCHRD’s logo features the image of a white dove rising out of flames. The dove is a universal emblem of peace, and the flames represent the suffering of the Tibetan people and the purifying force of truth.

The former Executive Director of TCHRD Lobsang Nyandak, stated in an interview that one of the main purposes of TCHRD is to effectively monitor all aspects of human rights abuses taking place in Tibet, and to document this information and disseminate it to a larger public including United Nations (UN) agencies, governments, and international NGOs. TCHRD conducts regular, systematic investigations of the human rights situation in Tibet and assesses the human rights policies of the People’s Republic of China. TCHRD publishes an annual report as well as thematic reports, profiles of former political prisoners, monthly newsletters, press releases and news briefs.

The numerous educational activities of TCHRD range from conducting workshops in the Tibetan settlements to briefing parliamentarians from various countries around the world. TCHRD also organizes talk series, public discussions, and campaigns to engender a culture of respect for human rights and democracy. The most recent workshop was jointly organized with the Asian Human Rights Commission based in Hong Kong, and over 32 prominent international and local participants from various backgrounds attended. Some of the more crucial discussions focused on the ways in which current laws affect the regional autonomy of China’s national minorities, especially Tibetans. Among the numerous lecture series given in Dharam-

sala by TCHRD were briefings to the European Union First Secretary in India and to an Italian Parliament delegation. Two weeks after the briefing, the Italian Parliament passed a Tibetan resolution which called for China to fully recognize and respect the fundamental political, social, and cultural rights of all minorities in China.

Engaging the global community, TCHRD regularly attends the UN Commission on Human Rights and regional, national, and international conferences. The purpose of participation is to highlight the human rights situation in Tibet at the international level and ultimately to increase international involvement in the promotion and protection of human rights in Tibet. TCHRD also conducts campaigns such as letter writing and signature appeals and submits memoranda to visiting delegations and the media.

TCHRD's promotion of peaceful change has reached beyond the Asian sub-continent. The organization's efforts have led to the remarkable distribution of information that has motivated peaceful protest on behalf of Tibet throughout the world.

ADVOCATES FOR ENVIRONMENTAL HUMAN RIGHTS (AEHR)

www.ehumanrights.org

Advocates for Environmental Human Rights (AEHR) is a nonprofit public interest law firm whose mission is to provide legal services, community support, public education, and public campaigns focused on defending and advancing the human right to a healthy environment. AEHR's efforts include advocacy for the human rights of internally-displaced U.S. Gulf Coast hurricane survivors.

The founders and co-directors of AEHR are two attorneys who have helped numerous communities achieve important environmental justice victories. The Board of Directors is comprised of skilled advocates with expertise in environmental health policymaking, human rights advocacy, and community organization.

AEHR advances the human right to a healthy environment by advocating for the right to life, health, racial equality, and a secure home environment. According to AEHR, African-American and poor communities have been subjected to toxic pollution and other hazards, and the complex environmental regulatory system of the United States facilitates and perpetuates environmental racism and injustice. AEHR charges that, by permitting toxic and hazardous facilities to operate in close proximity to these communities, the U.S. government prioritizes the economic interests of polluting industries over the protection of fundamental human rights. AEHR invokes international human rights laws to remedy government actions that subject communities to toxic environments.

In the Gulf Coast region, AEHR also works to protect the right to return home in the aftermath of hurricanes, particularly Hurricane Katrina. AEHR advocates for a just, sustainable, and anti-racist rebuilding of Gulf Coast communities that respects the right of all residents to voluntarily return to their communities with dignity and justice. In the aftermath of Hurricanes Katrina and Rita, reconstruction policies by the Bush Administration created a housing crisis that unjustly prolongs the displacement of predominantly African-American residents. It also denied local governmental requests for assistance to build a comprehensive and effective flood protection sys-

tem, public healthcare facilities, and other critical infrastructure.

Central to AEHR's advocacy is raising public awareness about the UN Guiding Principles on Internal Displacement in every aspect of Gulf Coast recovery efforts. A decision by the UN Committee on the Elimination of Racial Discrimination calls on the U.S. government "to increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes" as well as to "ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them." Monique Harden, Co-Director of AEHR, stated that the U.S. government has failed to protect these human rights of internally displaced individuals.

AEHR has an excellent reputation for working in collaboration with communities in New Orleans. These communities have largely been able to take charge of and create their own community initiatives. AEHR sees its role as providing support through litigation and public advocacy work, and its commitment to letting communities speak for themselves demonstrates the importance of promoting the public voice within the Gulf Coast communities. AEHR strives to build a broader consensus for lasting change and pledges to continue its efforts to advocate for justice and the protection of basic human rights in the Gulf Coast region. **HRB**

Julie Gryce, a J.D. candidate at the Washington College of Law, writes the NGO Update for the Human Rights Brief.

CENTER NEWS/FACULTY AND STAFF UPDATES

CENTER NEWS

The Center wound up this academic year with a robust set of programming, including conferences, study tours, expanded collaboration with NGO partners, and further investment in student activity. Among the 50 events sponsored by the Center were seven major and timely conferences, five film screenings, 15 lunchtime panel discussions, five visits to public high schools in the Washington, DC area as part of the Center's Genocide Teaching Project, and four site visits as part of the Homelessness Experiential Learning Project. Over 1,500 people participated in and attended Center programming and events during the 2007–2008 school year.

CONFERENCE ON ROLE OF LAW SCHOOLS IN PROMOTING/ PROTECTING HUMAN RIGHTS DRAWS 15 LAW SCHOOLS

On April 22, 2008, the Center, together with the Office of the Dean, hosted a conference exploring the Role of Law Schools in Promoting and Protecting Human Rights. The conference featured discussions of how law schools teach human rights in formal and informal contexts; international approaches to teaching human rights, and a panel on what law schools should be doing but are not. There was also time for facilitated discussions where participants shared their experiences of working on human rights issues in law schools. More than 15 different law schools were represented at the conference. Speakers included Professors **David Weissbrodt** (University of Minnesota); **Douglass Cassel** (Notre Dame); **Carrie Bettinger Lopez** (Columbia); **Ali Beydoun** (WCL); **Teng Hongguing** (SCUT, China); **Pierre Brunet** (University of Nanterre, France); **Nadeem Azam** (University of Peshawar, Pakistan); **Jorge Contesse** (Universidad Diego Portales, Chile); and **Rick Wilson** (WCL) as well as **Hadar Harris** (WCL); **Keneth Roth** (Human Rights Watch); Justice **Richard Goldstone** of South Africa; **Elizabeth Andersen** (American Society of International Law); and **Jessica Farb** (WCL 2008).

The previous night, the conference opened with an inspiring dinner honoring Professor **Michael Tigar** of WCL, at which he gave the keynote address, "Four Levels of Clinical Human Rights Teaching." The dinner was attended by over 100 people, including past, present, and future UNROW Impact Litigation Clinic students.

CENTER HOSTS NATIONAL STRATEGY DISCUSSION FOR RATIFICATION OF THE UN DISABILITY RIGHTS CONVENTION

On March 31, 2008, the Center hosted a meeting of over 100 disability rights activists from across the United States to discuss strategies for ratification of the new UN Convention on the Rights of People with Disabilities (CRPD), which will come into force in May 2008. The conference was a follow-up to the first convening of human rights, disability rights, and development activists to discuss the CRPD, which took place at WCL in April 2007, just days after the CRPD opened for signature. Humphrey Fellows **Abderkerim Tchouchou** and **Gehane El Sharkawy** and WCL Professor **Bob Dinerstein** spoke on an opening panel to discuss international perspectives on implementation of the new treaty. **Hadar Harris** also presented an overview of relevant international human rights law. The conference was co-hosted by the Center and Mental Disability Rights International. It was also co-sponsored by the U.S. International Council on Disability, Ratify Now, the American Association of Persons with Disabilities, the National Organization on Disability, the Disability Rights Education and Defense Fund, the Human Rights Strategic Working Group, the Landmine Survivors Network, Syracuse University's Burton Blatt Institute, and the World Institute on Disability.

TEACHING IHL REPORT PRESENTED AT ASIL ANNUAL MEETING; TEACHING IHL INSTITUTE PLANNED FOR JUNE

Center Executive Director **Hadar Harris** and **Mark Silverman** of the International Committee of the Red Cross (ICRC)

presented the joint Center-ICRC Study, *Teaching International Humanitarian Law at U.S. Law Schools*, to four different Interest Groups at the recent annual meeting of the American Society of International Law (ASIL). The report was presented to the Human Rights Interest Group, the Leiber Society (which focuses on International Humanitarian Law), the Teaching International Law Interest Group, and the Transitional Justice/Rule of Law Interest Group.

The Center and the ICRC conducted the first Teaching International Humanitarian Law Institute on June 4-5, 2008 at WCL. The Institute provided an opportunity for junior law professors who are embarking on the teaching of International Humanitarian Law (IHL) either as a stand-alone course or by incorporating IHL modules into other courses, to learn more about IHL and to discuss the complex nature of teaching IHL with noted IHL expert teachers from around the United States. The development of the Institute is a direct outcome of the *Teaching International Humanitarian Law* report and expert consultation which was held to discuss addressing the reports conclusions. Faculty at the Institute included Professors **Bob Goldman** (WCL); **Douglass Cassel** (Notre Dame); and **Gary Solis** (Georgetown University Law Center) as well as the legal advisor to the ICRC.

CENTER HOSTS ECUADORIAN WATER RIGHTS ACTIVISTS TO DISCUSS INNOVATIVE ADVOCACY AGAINST PRIVATIZATION

The Center, together with Food and Water Watch and the Center for International Environmental Law, hosted a discussion with human rights activists from Ecuador fighting privatization of water in Guayaquil, Ecuador. In 2001 the World Bank gave Bechtel, the largest engineering company in the United States, a guarantee for its investments in the water system in Guayaquil, Ecuador. After years of mismanagement, including water cut-offs; a Hepatitis-B outbreak; and ongoing flooding, an Ecuadorian-based civil rights group, *Observatorio Ciudadano de Servicios Públicos*, has initiated a World Bank investi-

gation into the water project. Bechtel has a prior history of involvement in oil and water sources overseas and has recently become the focus of criticism from growing environmental movements. Featured speakers included **Marcos Orellana** of the Center for International Environmental Law and **Cesar Cardenas Ramirez** and **Agosto Parada Campos** (both of Observatorio Ciudadano de Sercicos Publicos).

TIMELY DISCUSSION ON CRACKDOWN IN TIBET

On April 3, 2008, the Center hosted a timely — and sometimes raucous — discussion of the recent violence in Tibet. Speakers at the event were **T. Kumar** of Amnesty International and WCL alumnus **John Ackerly** of Campaign for a Free Tibet. The discussion focused on the current situation in Tibet and the recent Chinese crackdown. Chinese students organized to present an alternative view of the reality in Tibet, and an interesting discussion ensued.

GENOCIDE TEACHING PROJECT VISITS HOLOCAUST MUSEUM

Center Program Coordinator and Genocide Teaching Project (GTP) co-founder Amelia Parker has recruited a select group of 20 students to expand and refine the Genocide Teaching Project. The project continues to be well regarded by schools in which we teach and by other organizations. On January 11, 2008, the GTP set up an information table at the Youth Forum on Genocide, held by the World Affairs Council of the District of Columbia and the World Bank. In February, GTP participants went on a special tour of the Holocaust Museum and met with key people at the Committee on Conscience.

Webcasts and podcasts of most Center events are available for free download on the Center's website at <http://www.WCL.CenterforHR.org>.

FACULTY AND STAFF UPDATES

Claudio Grossman, Dean of WCL, was an invited panelist at the University of Virginia School of Law's *John Bassett Moore Society of International Law Symposium* entitled "Left Turn: The Rise of the Left in Latin America and Its Implications for International Law," where he commented

on "Independence of the Media: Censorship, Violence, and Freedom of Expression." Further, he delivered a keynote address to a delegation of visitors from the U.S. Department of State's International Visitor Leadership Program participating in a project entitled "Administration of Justice and the Rule of Law." He also served as a panelist on "From Scholarship and Teaching to Action and Change" as part of the Inauguration Celebration for AU President Neil Kerwin. At the end of February, Dean Grossman was a panelist on "Freedom of Thought and Expression in the Americas," at the *Committee on Juridical and Political Affairs* of the Organization of American States.

In March, Dean Grossman served as moderator for an expert panel held at WCL on "The Prohibition of Torture within the Context of Emergency Situations." He also organized and participated in meetings with the Inter-American Commission on Human Rights, the OPCAT Subcommittee, and the Association for the Prevention of Torture. Additionally, Dean Grossman presented "Looking at the 2008-2012 PAHO Strategic Plan from a Human Rights Perspective," at a meeting of the Pan American Health Organization. At the Universidad Carlos III in Madrid, Spain, he gave opening remarks on "Legal Education in the Twenty-first Century" and also moderated a panel on "Immigration: Current Problems and their Legal Regulation." At the end of March, he participated in a joint workshop in Chile on freedom of expression with the Impact Litigation Project and the Universidad Diego Portales.

In April, Dean Grossman participated as a member in the meetings of the Commission for the Control of Interpol's Files. He also served as a panelist at a joint conference with Universidad Torcuato Di Tella, Buenos Aires, Argentina on "Impact Litigation as a Means to Protect Human Rights." Dean Grossman served as a panelist on impact litigation during a day-long conference on *The Role of the Law School in Promoting and Protecting Human Rights*. In May, Dean Grossman participated in the 40th session of the UN Committee against Torture in Geneva, in his capacity as Vice Chair, and where he served as rapporteur for Algeria and Sweden and co-rapporteur for Indonesia.

Dean Grossman has recently authored articles in forthcoming publications. These include four contributions to the *Max Planck Encyclopedia on Public International Law* (Oxford University Press) on the topics of the *Inter-American Commission on Human Rights*, *The American Declaration*, *Disappearances under International Law*, and the *Awasi Tingni v. Nicaragua* case and an article on *Human Rights and Terrorism: Contradictory Logic*, in the Mexican magazine *Iberoamericana de Derechos Humanos* and *The Inter-American System of Human Rights: Challenges for the Future* in the *Indiana Law Review*.

Hadar Harris, Executive Director of WCL's Center for Human Rights and Humanitarian Law, gave the opening keynote address at the George Washington University Law School's Human Rights Week. She also spoke on a panel entitled "Race Across Boundaries" at Harvard Law School, where she focused on U.S. compliance with the Convention for the Elimination of all forms of Racial Discrimination. She has served as a member of the National Coordinating Task Force on U.S. Treaty Compliance of the U.S. Human Rights Network, where she is also a member of the Training Committee. She also recently presented to a group of visiting members of the Saudi Arabian National Human Rights Commission, discussing the training of human rights attorneys.

Prof. Diego Rodríguez-Pinzón, Professorial Lecturer in Residence and Co-Director of the Academy on Human Rights and Humanitarian Law at WCL, attended sessions of the Inter-American Court of Human Rights of the Organization of American States in San José, Costa Rica. He is currently *Ad Hoc Judge* in that international tribunal in the case *Salvador Chiriboga v. Ecuador*. The Court held its deliberations on the case on May 5 and 6, 2008.

Professor Rodríguez-Pinzón was invited to Geneva, Switzerland, by the World Organization Against Torture (OMCT) to lecture on "The Prohibition of Torture in the Inter-American System." This event is part of OMCT's ongoing training efforts to disseminate the international standards related with torture. OMCT recently published a book authored by Professor Rodríguez-Pinzón and Professor Claudia Martín, which serves as the text of the course.

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ALUMNI PROFILE

Courtesy of the International Center for Transitional Justice



Juan E. Méndez, a human rights advocate, lawyer, and former political prisoner, has dedicated his long and distinguished career to the defense of human rights. He is the current President of the International Center for Transitional Justice (ICTJ), and a member of the boards of directors of the Center for Justice and International Law, Global Rights, and the Open Society Justice Initiative. Mr. Méndez also serves on the Board of Advisors of the Social Science Research Council's Conflict Prevention and Peace Forum, as well as on the advisory council of the American Bar Association's Center for Human Rights. Mr. Méndez received his LL.M. from American University Washington College of Law.

A native of Lomas de Zamora, Argentina, Mr. Méndez began his legal career representing political prisoners during Argentina's military dictatorship in the 1970s. The military junta responded to his efforts by arresting, torturing, and holding Mr. Méndez in administrative custody for over a year and a half. During this time, in which Mr. Méndez was separated from his wife and family, Amnesty International adopted him as a "prisoner of conscience," a term coined by the organization in the 1960s to describe anyone imprisoned because of their race, religion, color, language, sexual orientation, belief, or lifestyle, so long as they have not used violence. It is also used to refer to those who have been imprisoned or persecuted for the nonviolent expression of their conscientiously held beliefs. Despite the serious dangers involved in representing political prisoners, Mr. Méndez viewed provision of legal assistance to those individuals not only as a contribution but also as a duty.

After his release from detention in the late 1970s, Mr. Méndez moved to the United States. In 1982, the newly founded Human Rights Watch, at the time known as Helsinki Watch, asked Mr. Méndez to launch its Americas Program and open its Washington, D.C. office. For over 15 years, Mr. Méndez worked with Human Rights Watch, concentrating much of his efforts on human rights abuses in the Western hemisphere. In 1994 Mr. Méndez was appointed General Counsel of Human Rights Watch and assumed international duties, which included responsibility for the organization's litigation and standard-setting activities.

From 1996 to 1999, Mr. Méndez served as Executive Director of the Inter-American Institute of Human Rights in Costa Rica, where he had the opportunity to combine activism, advocacy, and teaching. The Inter-American Institute of Human Rights is an independent, international academic institution created in 1980 under an agreement between the Inter-American Court of Human Rights and the Republic of Costa Rica. The Inter-American Institute of Human Rights is an important center for teaching and academic research on human rights. It utilizes a multidisciplinary approach with specific emphasis on human rights issues in the Americas. Mr. Méndez has taught international human rights law at various other academic institutions, including the Georgetown Law Center and the Johns Hopkins School of Advanced International Studies. He served as professor of law and director of the Center for Civil and Human Rights at the University of Notre Dame and teaches regularly at the Oxford Masters Program in International Human Rights Law.

From 2000 to 2003, Mr. Méndez was a member of the Inter-American Commission on Human Rights (IACHR) and in 2002 he served as president of the Commission. The IACHR is an autonomous entity of the Organization of American States, and along with the Inter-American Court of Human Rights, it is one of several bodies that comprise the Inter-American Human Rights System. The IACHR's main task is to promote the observance and defense of human rights in the Americas by receiving, analyzing, and investigating individual petitions that allege specific human rights violations. The IACHR refers cases to the Inter-American Court of Human Rights for adjudication, issues recommendations to member states, and requests that member states adopt specific precautionary measures. In urgent cases, the IACHR may also request that states adopt provisional measures, even where a case has not yet been submitted to the Court. According to Mr. Méndez, states' reactions to being investigated vary, yet they are often willing to adopt the IACHR's recommendations. Member States take affirmative steps to prevent human rights violations and also effectively elevate their legitimacy within the Inter-American system. As a result, the IACHR has been successful in addressing human rights issues in the Americas. Mr. Méndez commends the extent to which the Inter-American system has evolved and progressed in recent decades, highlighting its ability to promote human rights in the region.

On April 7, 2004, in a speech commemorating the tenth anniversary of the 1994 Rwandan genocide, United Nations (UN) Secretary-General Kofi Annan pledged to take actions to prevent such atrocities from reoccurring in the future. In July of that year, Mr. Méndez was appointed as the first UN Special Adviser on the Prevention of Genocide, a role that he filled until March 31, 2007, in addition to his full-time posi-

tion as the president of the ICTJ. According to Mr. Méndez, the position was created as an act of self-criticism by the UN for its inability or unwillingness to prevent the genocide in Rwanda. The position was created as part of a five-point action plan presented by the Secretary-General to address the potential for genocide. Mr. Méndez's role served as an early warning mechanism for the Secretary-General and the UN Security Council by monitoring any serious violations of human rights that had a racial or ethnic dimension and could lead to genocide. At Mr. Méndez's request, an advisory committee was established to help analyze various situations of human rights abuses and present recommendations for early action that might deter genocide. Although the ability to brief the members of the Security Council and achieve swift and decisive action proved difficult in practice, Mr. Méndez was pleased with the general level of support and approval he received from world leaders who endorsed and accepted the responsibility to protect populations from genocide.

As Special Adviser, Mr. Méndez focused his efforts on the human rights situation in Darfur, which required the support, cooperation, and advice of Member States, civil society, and UN institutions. States' cooperation and acceptance of his investigations were crucial to identifying situations that risked deteriorating into genocide. According to Mr. Méndez, spending too much time debating over whether to classify a conflict as genocide may have a paralyzing effect on the ability to act. A situation need not be classified before action can be taken. Instead, the international community must act before a situation deteriorates into genocide. The role of the

Special Adviser was not to make determinations as to whether genocide was occurring; rather, it was to identify situations of human rights violations that could, in fact, deteriorate to and reach that level.

As the current president of the ICTJ, Mr. Méndez oversees the organization's efforts to assist countries pursuing accountability for past human rights abuses. He advocates for a holistic approach to transitional justice and describes truth, justice, and reconciliation as very different, but equally important, steps in the transitional process. For countries to transition successfully from repressive regimes to functioning democracies and peaceful societies, Mr. Méndez emphasizes the notion of sequencing — examining each situation individually to determine which elements of transitional justice should be addressed in which order — as a means of achieving an appropriate balance between truth, justice, and reconciliation. The field of transitional justice has developed significantly over recent years, and Mr. Méndez is enthusiastic about its future.

Mr. Méndez's notable career demonstrates his steadfast dedication to the defense and protection of human rights throughout the world. He has held some of the most prestigious positions in international human rights, and the *Human Rights Brief* is extremely grateful to him for sharing his thoughts and experiences. **HRB**

Julie Gryce, a J.D. candidate at the Washington College of Law, covers the Alumni Profile for the Human Rights Brief.

FACULTY AND STAFF UPDATES *continued from page 58*

Professor Rodríguez-Pinzón published the book *Ten Years of the Inter-American Human Rights Moot Court Competition* (Brill Publishers, Kluwer International 2008), which he co-authored with Dean Claudio Grossman and Professor Claudia Martin. That book is a publication of the Raoul Wallenberg Institute on Human Rights and Humanitarian Law. He also published an article titled *Las Obligaciones Internacionales de los Estados de la Organización de los Estados Americanos en la Lucha contra el Terrorismo (The International Obligations of the American States in the Fights against Terrorism)* with the Universidad Iberoamericana, Mexico City, Mexico. He authored a book review *Reseña sobre el informe de la OEA "Acceso a la Justicia: Llave para la Gobernabilidad Democrática, por David Lobatón"* which discussed the *Report of the OAS Programa de Estudios de la Ciudad de la Facultad Latinoamericana de Ciencias Sociales*.

Professor Rodríguez-Pinzón continues to contribute to the British publication *Butterworths Human Rights Cases* (Lexis/Nexis) in his capacity as Correspondent for the Americas. This is a multi-volume series that reports on recent human rights

cases around the world. Finally, he also continues to contribute to the *Netherlands Quarterly of Human Rights* by reporting periodically on the news of the Inter-American Human Rights System.

Susana SáCouto, Director of the War Crimes Research Office (WCRO) and Professorial Lecturer in Residence at WCL, organized a training seminar on international criminal law and procedure for 20 judges of the Extraordinary Chambers in the Courts of Cambodia, in collaboration with the Hague Forum for Judicial Expertise. The training was held in The Hague in late May and early June. This summer, Ms. SáCouto also directed and served as faculty for the Second Annual Summer Law Program in The Hague, which offers courses in International Criminal Law and International Legal Approaches to Terrorism. Later this summer, Ms. SáCouto will publish an article, co-authored Katherine A. Cleary, on *The Gravity Threshold of the International Criminal Court in the American University International Law Review* (23 Am. U. Int'l L. Rev. 807 (2008)). **HRB**

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How is International Humanitarian Law Taught in U.S. Law Schools?

On June 30, 2007, the International Committee of the Red Cross (ICRC) Regional Delegation to the United States and Canada and the WCL Center for Human Rights and Humanitarian Law released the results of a study they conducted to assess the extent to which international humanitarian law (IHL), a.k.a. the law of armed conflict, is taught at law schools in the United States.

How is IHL being taught? How could it be covered more thoroughly? What are some of the impediments to its broader coverage? Are students, faculty, and administrators interested in IHL? What can be done to improve the teaching of IHL in U.S. law schools?

The findings will be used as a basis for developing programs, materials and communication vehicles for law schools which are interested in introducing more of the subject into their curricula.

To request an electronic or hard copy of the final report, please email either washington.was@icrc.org or humlaw@wcl.american.edu.



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