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Enforcement of International Criminal Law

DAVID STOELTING*

Nineteen ninety-nine was a year of singular anniversaries: one year after the Rome Diplomatic Conference on the International Criminal Court (ICC); fifty years after the four Geneva Conventions; and one hundred years after the Hague Convention on the Laws and Customs of War on Land. These historical markers illustrate international criminal law's origins, and the events of 1999 suggest international criminal law's future. Finally, it seems, the promises of 1899, 1949, and 1998 are being fulfilled. International criminal law has become a body of law with teeth, a universal law, recognized and applied by numerous governments in a variety of contexts, including many arenas other than the ad hoc tribunals and the ICC.¹ Thus, after 1999, whenever genocide, war crimes, and crimes against humanity occur, the question of enforcement—whether by national or international tribunals—will be immediately broached, and a growing cadre of international criminal law specialists stand ready to investigate, prosecute, and defend.

To illustrate the multiplicity of contexts in which international criminal law is applied, this article provides brief snapshots of national initiatives. The significant contributions of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda and the ICC are excluded, though, because the point is to underscore actions by governmental bodies as opposed to the internationally constituted entities, which, in any event, are covered elsewhere in this year-in-review issue.

I. Cambodia

After twenty years, the Cambodian government, in part due to significant international pressure, finally took initial steps in 1999 to prosecute former Khmer Rouge officials for one of the worst violations of international criminal law in history. A bill to try former Khmer Rouge leaders on genocide charges was introduced, and the Cambodian government entered into discussions with U.N. officials regarding an international presence at these

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1. A remarkable book, *CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW* (Roy Gutman & David Rieff eds., 1999), crystallized in easy-to-read fashion nearly every aspect of definition, detection, and prosecution of international crimes.

trials. By late 1999, several Khmer Rouge had been taken into custody by the government, and more arrests were expected in late 1999.²

II. Canada

Canada's leadership role in the ICC process is complemented by the seriousness with which it has approached its obligations to conform its internal laws with international criminal law. On December 10, 1999, Bill C-19, the Crimes Against Humanity Act, was introduced in the Canadian House of Commons and given First Reading. The two purposes of Bill C-19 are: (1) "to implement Canada's obligations under the Rome Statute of the International Criminal Court [the Rome Statute] to ensure its ability to cooperate fully with investigations and prosecutions by the [ICC]"; and (2) "to retain and enhance Canada's capacity to prosecute and punish persons accused of crimes against humanity and war crimes."³ Bill C-19 also criminalizes for the first time genocide, crimes against humanity, and war crimes if committed in Canada or if committed outside of Canada under certain circumstances. Canada's extradition laws were also changed in 1999 to permit extradition to international "entities" such as the ICC.⁴

III. Ethiopia

Ethiopia, still dealing with the aftermath of the totalitarian Mengistu regime, has opted for massive trials of approximately 2,000 former Mengistu government officials on charges of war crimes and genocide. These trials resulted in the convictions of a number of high-level officials of the former Mengistu government.⁵ Former dictator Mengistu also was tried in absentia after South Africa refused an extradition request when Mengistu was in Johannesburg for medical treatment in November 1999.⁶

IV. Guatemala

Like Ethiopia, Guatemala enforced international criminal law in 1999 as a means of redressing atrocities by a prior regime. An official report issued in March 1999 by the Guatemalan Commission for Historical Clarification (CEH) found that there were more than 23,000 victims of arbitrary execution and more than 6,000 forced disappearances during the period of military rule.⁷ This report concluded that the Guatemalan government committed acts of genocide in violation of the Genocide Convention, which had been ratified by Guatemala in November 1949. As a result of the CEH report, prosecutors were able to obtain a number of convictions for atrocities committed by government troops during the military rule.⁸

2. See *Cambodia Delays Decision on Genocide Trial to Jan. 6*, ASIAN POLITICAL NEWS, Dec. 27, 1999, available in LEXIS.

3. David Goetz, *Legislative History of Bill C-19* (Apr. 5, 2000), available at <<http://www.parl.gc.ca/36/2/parlbus/chambus/house/bills/summaries/c19-e.htm>>.

4. *Id.*

5. See *Court Convicts Former Police Officer of Ordering Killings*, AP WORLDSTREAM, Dec. 28, 1999, available in LEXIS.

6. See Dean Murphy, *Nation's Accommodation of Ethiopian Despot Stirs Furor*, L.A. TIMES, Dec. 10, 1999, at 5.

7. *Summary of Report on Guatemala's Civil War*, NAT'L CATH. REP., Mar. 12, 1999, at 16.

8. See *25 Soldiers Convicted in Civilian Killings*, L.A. TIMES, Aug. 14, 1999, at 13.

V. Haiti

In 1999, Haiti—a country with a feeble legal system, scant resources, and little tradition of judicial independence—made significant progress in its enforcement of international criminal law. Much of the labor has been undertaken by the Bureau des Avocats Internationaux (BAI), a group of lawyers financed by the Haitian government to prosecute human rights abuses that occurred during the years of military rule from 1991 to 1994 after the coup d'état that ousted the elected President Aristide.

The BAI's principal case concerned a military/paramilitary attack on unarmed pro-democracy activists that took place in April in the coastal village of Raboteau. After a lengthy pre-trial investigation, the "Ordonnance" charging the defendants was finally released in September 1999. The Ordonnance charges fifty-seven persons in connection with the Raboteau massacre, including all the members of the military high command and top level paramilitary leaders. Twenty-two of those charged are in prison, and most appealed the charges against them. An intermediate appeals court, as well as Haiti's highest court, heard the appeals in late 1999, and both affirmed the Ordonnance.⁹

The BAI also investigated several other cases, including a paramilitary arson attack in 1993 that occurred in Cite Soleil, a poor area of Port-au-Prince, and an attack in 1997 on the St. Jean Bosco church. The BAI is also actively seeking the return of the FRAPH/FADH documents from the U.S. government. These are more than 160,000 pages of documents that were removed from Haitian military and paramilitary facilities by U.S. troops in 1994 and never returned. In 1999, the BAI helped obtain and publicize the support of a bipartisan U.S. congressional delegation, the U.N. Human Rights Commission's Independent Expert on Haiti, Human Rights Watch, Amnesty International, and several other human rights organizations throughout the world. The BAI also began a program of intensive training in human rights work for Haitian law school graduates and hopes that the program will create a corps of well-trained lawyers able to handle human rights cases.¹⁰

VI. Rwanda

Rwandan courts have handled a far greater number of prosecutions relating to the 1994 genocide than the better known international criminal tribunal. In December 1999, for example, forty-two persons were tried for genocide and crimes against humanity; three were given death sentences, thirty were given life sentences, and nine were acquitted.¹¹ Although these prosecutions have been questioned on due process grounds, they nevertheless demonstrate the potential for dual enforcement of the same atrocities by national and international tribunals.

VII. United Kingdom

Probably the most significant development in 1999 was the March 24, 1999 decision of the House of Lords, the U.K.'s highest court, that former Chilean President Augusto Pin-

9. See John Donnelly, *Justice Delayed: Showdown Looms in Haiti*, THE BOSTON SUNDAY GLOBE, June 11, 2000, at A1.

10. Thanks to Brian Concannon Jr. of the BAI for providing some of this information.

11. See *Three Sentenced to Death; 30 others to Life Imprisonment for Genocide*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 11, 1999.

ochet could be extradited to Spain under the U.K.'s Extradition Act of 1989.¹² The Law Lords held that, since the U.K. was a signatory to the Torture Convention, which criminalizes torture wherever committed, the charges as to torture and conspiracy to commit torture satisfied the double criminality rule. (The hostage-taking charge did not survive the double criminality test.)

The Law Lords also held by a six-to-one vote that Pinochet was not entitled to head of state immunity. Four of the majority relied on the absence of any head of state immunity in the Torture Convention, while two relied on broader notions of international law. The dissents argued that head of state immunity was the rule and not the exception, and that this rule should be followed unless abrogated by a specific provision of the Torture Convention. In response to the subsequent challenges, U.K. Home Secretary Jack Straw ruled that the extradition could proceed and a U.K. Magistrate found, on October 8, 1999, that all conditions for extradition were satisfied (although the extradition proceedings were stopped in 2000 due to Pinochet's medical condition).

VIII. United States

The ambivalence of the U.S. government towards the ICC contrasts with governmental initiatives that recognize and advance the same international criminal law that the ICC eventually will apply. In October 1999, for example, the United States submitted its first report to the U.N. Committee Against Torture, which had been created pursuant to the Convention Against Torture.¹³

In *Ntakirutimana v. Reno*,¹⁴ the judicial branch grappled for the first time with the novel legal issue of whether the Constitution permits "surrender" of individuals indicted by international criminal tribunals in the absence of a bilateral extradition treaty. This case arose from a request from the International Criminal Tribunal for Rwanda that the U.S. government extradite a person indicted by the Tribunal who had been legally residing in Texas. Reversing a district court decision to the contrary, the Fifth Circuit held that it was constitutional for the U.S. government to surrender Ntakirutimana to the Tribunal pursuant to an executive agreement with the Tribunal and legislation permitting surrender.¹⁵

The executive branch, through the U.S. Ambassador at Large for War Crimes Issues, David J. Scheffer, continued its support for international criminal law enforcement. Ambassador Scheffer's office spearheaded numerous international criminal law enforcement initiatives, such as the identification of war crimes and crimes against humanity committed in Iraq during the reign of Saddam Hussein.¹⁶ The Justice Department's Office of Special Investigations also continued its longstanding investigations into Nazi-era atrocities. In late

12. *Regina v. Bow Street Metropolitan Stipendiary Magistrate*, [1999] 2 W.L.R. 835.

13. U.S. Dep't of State, *Initial Report of the United States of America to the U.N. Committee Against Torture* (Oct. 15, 1999), available at <<http://www.state.gov>>.

14. *Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999), cert. denied, 120 S. Ct. 977 (1999).

15. See also *Iwanowa v. Ford Motor Company*, 67 F. Supp. 2d 424 (D.N.J. 1999) (dismissing suit alleging Ford's German subsidiary coerced the plaintiff and others to perform forced labor under inhuman conditions during World War II, but finding that "use of unpaid, forced labor during World War II violated clearly established norms of customary international law").

16. See U.S. Dep't of State, Press Conference with David Scheffer, Ambassador at Large for War Crimes Issues (Oct. 27, 1999), available in LEXIS, Federal News Service file.

1999, the Senate voted to expand OSI's mandate to encompass more recent violators of international criminal law such as Rwandans and Serbs.¹⁷

IX. Conclusion

The cumulative effect of these initiatives is to facilitate future prosecutions for violations of international criminal law. After 1999, no torturer or genocidal head of state can assume that violations of international criminal law will go unpunished.¹⁸

From a legal perspective, each instance of enforcement serves to legitimize these norms of international criminal law, and these norms reflect a collective judgement by all countries that certain acts are by their very nature criminal. Of course, the enforcement of criminal law is innately tied to a nation's sovereignty. By enforcing international criminal law, though, governments are not ceding sovereignty but instead are exercising sovereignty. As more and more governments exercise their sovereignty by recognizing and enforcing international criminal law, a universal standard of international criminal law comes closer to being.

17. See J.J. Goldberg, *Chasing Bad Guys*, THE JEWISH WK., Dec. 10, 1999, at 16.

18. See Reed Brody, *One Year Later, The 'Pinchot Precedent' Puts Tyrants On Notice*, THE BOSTON GLOBE, Oct. 14, 1999, at A19.

