

2000

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### Recommended Citation

Mark E. Wojcik et al., *International Human Rights*, 34 INT'L L. 761 (2000)  
<https://scholar.smu.edu/til/vol34/iss2/30>

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# International Human Rights

MARK E. WOJCIK, CRIS REVAZ, AND LOIS A. GOCHNAUER\*

## I. Introduction

The end of the millennium saw significant progress in the development and enforcement of human rights. Politicians and senior governmental leaders were subject to extradition and criminal prosecution for human rights abuses past and present, and nations that could not control atrocities were subject to coordinated military intervention.<sup>1</sup> Highlights of the year included:

- (a) Rulings by British courts to allow the extradition of Augusto Pinochet, marking the first international prosecution since Nuremberg of a former head of state;
- (b) The first indictment by the International Criminal Tribunal for the Former Yugoslavia of a sitting head of state, and the arrest of other indicted war crimes suspects;
- (c) Continued arrests and prosecutions of those responsible for the 1994 genocide in Rwanda, but also the dismissal of one case for failure to prosecute in a timely fashion;
- (d) Continued prosecutions of those responsible for crimes against humanity committed during World War II;
- (e) Military intervention in Kosovo and East Timor, and the development of the "Annan Doctrine;" and
- (f) Momentum for establishing the International Criminal Court.<sup>2</sup>

Part II of this year's annual review concentrates on these major developments in improving the enforcement of human rights. Parts III, IV, and V address three of the many areas of concern for the American Bar Association Section of International Law and Practice

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1. See, e.g., HUMAN RIGHTS WATCH, WORLD REPORT 2000 xii (1999) [hereinafter HUMAN RIGHTS WATCH].

2. See, e.g., *id.* at xii, xv-xvi.

International Human Rights Committee.<sup>3</sup> Part III considers recent developments in women's rights; Part IV concentrates on children's rights; and Part V considers aspects of human rights, corporate responsibility, and economic sanctions. Part VI concludes with other developments in human rights law, including this year's Israeli Supreme Court decision outlawing torture, the determination that Special Rapporteurs are entitled to diplomatic immunity, and recent developments relating to sexual orientation and gender identity.

## II. Improving the Enforcement of Human Rights

### A. PINOCHET: "THE MOST IMPORTANT PRECEDENT FOR INTERNATIONAL JUSTICE SINCE THE NUREMBERG TRIALS"

Augusto Pinochet, the former Chilean dictator, arrived in the United Kingdom on September 22, 1998, for back surgery.<sup>4</sup> While recovering from the surgery, he was arrested based on Spanish warrants alleging various offenses, including the murder of Spanish citizens in Chile and responsibility for acts of torture, hostage taking, and other human rights violations.<sup>5</sup> The Queen's Bench Division quashed the arrest warrants, finding in part that Pinochet should be "entitled to immunity as a former sovereign from the criminal and civil process of the English courts."<sup>6</sup> The Crown Prosecution Service, acting on behalf of Spain, appealed the decision to the House of Lords. A first appeal, decided by a 3–2 majority in November 1998, found that sovereign immunity did not extend to acts of torture or hostage taking.<sup>7</sup> This first appeal was vacated for apparent bias when Lord Hoffman, whose vote determined the outcome,<sup>8</sup> did not disclose that he directed a fund-raising arm of Amnesty International, which had intervened in the case.<sup>9</sup> A second appeal was decided on March 24, 1999. The Law Lords found that torture was an international crime with universal jurisdiction, and that a former head of state had no immunity for those crimes, at least after Britain ratified the Torture Convention.<sup>10</sup> Based on that decision, the British Home Secretary Jack Straw decided to allow the extradition to continue.

3. Our focus on these areas does not diminish the importance that we attach to other developments in human rights law, including issues we have discussed in previous years, but is rather merely a concession to (1) unfortunate but necessary space limitations, and (2) our recognition that reviews of other developments will be available from various governmental and nongovernmental sources. See, e.g., *id.* (517-page book reviewing political and legal developments in 1999).

4. See, e.g., Curtis A. Bradley & Jack L. Goldsmith, *Pinochet and International Human Rights Litigation*, 97 MICH. L. REV. 2129, 2133 (1999).

5. For a more complete contextual and procedural history, see HUMAN RIGHTS WATCH, *supra* note 1, at 2132–40, and Nehal Bhuta, Note, *Justice Without Borders? Prosecuting General Pinochet*, 23 MELB. U. L. REV. 499, 511–13 (1999).

6. *In re Pinochet Ugarte*, 38 I.L.M. 68, 85 (Q.B. Div. Ct. 1998) (Lord Chief Justice Bingham of Cornhill).

7. *Ex parte Pinochet Ugarte*, [1998] 3 W.L.R. 1456, 1499–1502 (U.K.) (Lord Nicholls of Birkenhead) and 1504–07 (Lord Steyn). For the opinions that a former head of state should enjoy continuing immunity for acts performed as head of state, see *id.* at 1479 (Lord Slynn of Hadley) and 1492–93 (Lord Lloyd of Berwick).

8. *Id.* at 1508 (Lord Hoffman).

9. See *Ex parte Pinochet Ugarte*, [1999] 2 W.L.R. 272, 281–85 (Lord Browne-Wilkinson), 286–87 (Lord Goff of Chieveley), 288 (Lord Nolan), 288–91 (Lord Hope of Craighead), and 291–94 (Lord Hutton).

10. See [1999] 2 W.L.R. 827 (H.L.). A full analysis of each of the opinions goes beyond the scope of this article, but may be found in Bradley & Goldsmith, *supra* note 4, at 2136–39, and Jamison G. White, Note, *Nowhere to Run, Nowhere to Hide: Augusto Pinochet, Universal Jurisdiction, the ICC, and a Wake-up Call for Former Heads of State*, 50 CASE W. RES. L. REV. 127, 147–67 (1999). See also LOUIS HENKIN ET AL., HUMAN RIGHTS 658–64 (1999).

Pinochet applied for habeas corpus relief in October 1999, and Mr. Straw received “representations from the Chilean embassy, supported by medical reports, which suggested that there had been a recent and significant deterioration in Senator Pinochet’s health.”<sup>11</sup> Based on further medical examination, Straw determined in January 2000 that Pinochet was unfit to stand trial and that it was “simply no longer possible” to extradite Pinochet to Spain.<sup>12</sup> He stated: “The trial of an accused in the condition diagnosed in Senator Pinochet, on the charges which have been made against him in this case, could not be fair in any country, and would violate article 6 of the European Convention on Human Rights.”<sup>13</sup> Spain, France, Belgium, and Switzerland, which each had their own cases against Pinochet, did not pursue further appeals.<sup>14</sup> Pinochet returned to Chile on March 3, 2000.<sup>15</sup>

Despite the failure to extradite Pinochet, human rights nongovernmental organizations (NGO) declared that his case was “the most important precedent for international justice since the Nuremberg trials.”<sup>16</sup> The determination that a former head of state can and should be prosecuted anywhere in the world for acts of torture and other human rights violations had immediate reverberations not only in Chile,<sup>17</sup> but also in Africa, where Hissène Habré, the exiled former dictator of Chad, was arrested in Senegal in early 2000 for the alleged political assassinations of 40,000 persons and for 200,000 cases of torture.<sup>18</sup>

## B. FORMER YUGOSLAVIA: INDICTMENT OF A SITTING HEAD OF STATE

On May 27, the International Criminal Tribunal for the Former Yugoslavia (ICTY) announced that it had indicted Slobodan Milosevic, the president of the Federal Republic

11. See *Straw: Why Charges Were Not Possible*, THE GLOBAL GUARDIAN, Mar. 3, 2000, at 7 [hereinafter *Straw*].

12. *Id.*; see Warren Hoge, *Britain’s High Court Supports Move to Release Pinochet*, N.Y. TIMES, Feb. 1, 2000, at A8 (reporting on the dismissal of NGO and Belgian challenges to Straw’s determination). Following the dismissal of their challenges to Straw’s determination, Amnesty International and the government of Belgium sued for disclosure of the medical report, which was ordered by a court on February 15, 2000. See, e.g., Ray Moseley, *Pinochet Loses Bid in Court to Keep Lid on Medical Report*, CHI. TRIB., Feb. 16, 2000, § 1, at 4. Although the disclosure of the medical report was to have been made only in terms of strict confidence, its contents were quickly leaked to the press. See, e.g., Marlise Simons, *Spanish Newspapers Disclose Secret Pinochet Health Report*, N.Y. TIMES, Feb. 17, 2000, at A3.

13. *Straw*, *supra* note 11, at 7. At least one critic of the determination suggested that it was not up to the Home Secretary to determine whether Pinochet was fit to stand trial, but only whether he was fit to be extradited, after which the Spanish court should determine his fitness. See Luke Sorba, *Don’t Come as a Victim*, THE GLOBAL GUARDIAN, Mar. 3, 2000, at 15 (“if he can fly to Chile, he can fly to Spain”).

14. See, e.g., Cristina Frade, *Pinochet Vuelve a Chile Cargado de Oprobio y con 60 Causas Pendientes*, EL MUNDO [Madrid], Mar. 3, 2000, at 1; Von Stefan Klein & Friedrich Kassebeer, *Pinochet kehrt nach Chile Zureck nach 16 Monaten Hausarrest in Grossbritannien*, SÜDDEUTSCHE ZEITUNG [Munich], Mar. 3, 2000, at 1.

15. See Patrice Jones & Michael McGuire, *Confetti and Controversy Greet Pinochet in Chile*, CHI. TRIB., Mar. 4, 2000, § 1, at 3; Clifford Krauss, *Pinochet Receives Hero’s Welcome on Return to Chile*, N.Y. TIMES, Mar. 4, 2000, at A3.

16. Jamie Wilson, *Pinochet Flies Home a Free Man: Human Rights Groups Criticise Decision to Release Ex-Dictator But Hail Precedent That No One Is Above the Law*, THE GLOBAL GUARDIAN, Mar. 3, 2000, at 1.

17. See Clifford Krauss, *Chilean Military Faces Reckoning for Its Dark Past—Pinochet’s Arrest is Key*, N.Y. TIMES, Oct. 3, 1999, at A1, A6.

18. See Norimitsu Onishi, *An African Dictator Faces Trial in His Place of Refuge*, N.Y. TIMES, Mar. 1, 2000, at A3; *Ex-Chad Ruler Is Charged By Senegal With Torture*, N.Y. TIMES, Feb. 4, 2000, at A3.

of Yugoslavia, and four others.<sup>19</sup> This was believed to be the first international attempt to prosecute a sitting head of state for human rights violations.<sup>20</sup>

In addition to the new indictments, a number of previously indicted persons were arrested in 1999 and turned over for prosecution.<sup>21</sup> NATO's Stabilisation Force (SFOR) troops<sup>22</sup> arrested indicted individuals in July,<sup>23</sup> October,<sup>24</sup> and December.<sup>25</sup> Croatia turned over an indicted person for prosecution,<sup>26</sup> and an arrest in Austria confirmed that those accused of human rights violations could not travel freely.<sup>27</sup> By the end of 1999, the Tribunal had thirty-four persons in its custody, and thirty-one other indicted individuals remained provisionally at large.

On October 19, 1999, the first Trial Chamber (consisting of Judges Claude Jorda, Presiding, Fouad Riad, and Almiro Rodrigues) acquitted Goran Jelusic of the charge of genocide, finding that the prosecutor had failed to prove beyond a reasonable doubt that Jelusic acted with the required intent "to destroy in whole or in part a national, ethnic or religious group." The Chamber found Jelusic guilty of thirty-one other counts in the indictment, including crimes against humanity and violations of the laws or customs of war. On October 21, the prosecutor filed a notice of appeal from the acquittal on the charge of genocide.

In other developments related to the ICTY, Sweden in 1999 became the fourth state to sign an agreement with the United Nations to enforce sentences imposed by the ICTY.<sup>28</sup>

### C. RWANDAN GENOCIDE

Arrests of political leaders and senior government administrators continued to bring to justice those responsible for the genocide in Rwanda. In 1999, arrests were made in Cam-

19. See Stephen J. Hedges, *Milosevic Faces War Charges*, CHI. TRIB., May 27, 1999, § 1, at 1. The others were Milan Milutinovic (the president of Serbia), Nikola Sainovic (deputy prime minister of the Former Republic of Yugoslavia), Dragoljub Ojdanic (chief of staff of the Yugoslav Army), and Vljako Stojiljkovic (Serbian Minister of Internal Affairs).

20. See HUMAN RIGHTS WATCH, *supra* note 1, at xx. Although Milosevic has not been arrested and does not face immediate prosecution, Human Rights Watch noted "there is reason to believe that he will see his day in court." *Id.*

21. Further information about indictments and arrests can be found on the ICTY web site at <<http://www.un.org/icty>>.

22. Further information about NATO's SFOR troops can be found at <<http://www.nato.int/sfor/index.htm>>.

23. In July, SFOR troops arrested Radislav Brdanin, who had been charged with persecutions on political, racial, or religious grounds.

24. In October, SFOR arrested Damir Dosen, who had been charged on the basis of individual criminal responsibility and superior criminal responsibility for his alleged role as a shift commander at the Keraterm detention camp in northwestern Bosnia and Herzegovina between May and August 1992.

25. In December, SFOR arrested Stanislav Galic, who had been indicted in connection with the deliberate shelling and sniping of the civilian population of Sarajevo from 1992 to 1994 by forces under his command, and Zoran Vukovic, one of seven individuals indicted in 1996 for crimes allegedly committed during the attack of the Foca municipality (south-eastern Bosnia and Herzegovina) by the Bosnian Serb military and paramilitary forces in 1992.

26. The government of Croatia turned over Vinko Martinovic, who had been indicted for his alleged involvement in the "ethnic cleansing" of the Mostar municipality (Bosnia and Herzegovina).

27. In August, General Momir Talic, Chief of Staff of the Army of Republika Srpska, was arrested in Vienna where he had gone to attend a conference.

28. The other nations to sign such an agreement were Italy on February 6, 1997, Finland on May 7, 1997, and Norway on April 24, 1998.

eroon, Kenya, the Republic of South Africa, and Tanzania.<sup>29</sup> In earlier years, arrests had also been made in the nations of Belgium, Benin, Burkina Faso, Côte d'Ivoire, Kenya, Mali, Namibia, Switzerland, Togo, Zambia, and even the United States.

In Switzerland, a military court tried a local Rwandan official who had fled to Switzerland after being accused of participating in the genocide.<sup>30</sup> Although the court found that it could not convict him of genocide under Swiss law, it did convict him of war crimes in violation of the Geneva Conventions and sentenced him to life in prison.<sup>31</sup>

In the United States, the Court of Appeals for the Fifth Circuit refused to quash the extradition of Elizaphan Ntakirutimana, a Hutu who was the president of the Seventh Day Adventist Church in Rwanda.<sup>32</sup> He had been accused of encouraging large numbers of Tutsi to seek refuge in his church complex and then leading an armed mob of Hutus to slaughter those who had sought sanctuary; he was also accused of later leading soldiers to hunt down Tutsi who escaped from the massacre at the church complex.<sup>33</sup> One judge, specially concurring in the denial of the writ of habeas corpus, expressed doubts that a religious man could actually be guilty of this crime.<sup>34</sup> A dissenting judge would have granted the writ because the Executive Agreement with the Tribunal that was the basis of the extradition was not a "treaty" under Article II of the U.S. Constitution.<sup>35</sup> The majority, however, found that extradition did not require an Article II treaty, and the Supreme Court denied further review.<sup>36</sup>

Other developments continued at the trial and appellate levels of the International Criminal Tribunal for Rwanda. In 1999, the Tribunal found three suspects guilty of genocide; it also added a third panel of judges and permitted the consolidation of cases to expedite other trials.<sup>37</sup> In November, the Appeals Chamber concluded that pre-trial delays in the case against Jean Bosco Barayagwiza required dismissal of the charges against him.

#### D. WORLD WAR II

Genocide and other crimes against humanity have no statute of limitations, as illustrated by the conviction of Dinko Sakic in Croatia on October 4, 1999. Sakic had commanded a concentration camp where an estimated 85,000 Jews, Serbs, and Gypsies had been killed during World War II.<sup>38</sup> Following a six-month trial, Sakic was sentenced to twenty years imprisonment.<sup>39</sup>

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29. Eliezer Niyitegeka (the former Minister of Information) was arrested in Kenya on February 9. Ignace Bagilishema (the former Bourgmestre of Mabanza Commune) was arrested in the Republic of South Africa on February 20. Jérôme Bicomumpaka (the former Minister of Foreign Affairs), Justin Mugenzi (the former Minister of Commerce), and Prosper Mugiraneza (the former Minister of Civil Service) were each arrested in Cameroon on April 6. Mikaeli Muhimana (a former Counciller in Gishyita) was arrested in Tanzania on November 8.

30. See HUMAN RIGHTS WATCH, *supra* note 1, at xxi.

31. *Id.*

32. *Ntakirutimana v. Reno*, 184 F.3d 419, 422 (5th Cir. 1999), *cert. denied*, 120 S. Ct. 977 (2000).

33. *See id.* at 422–23.

34. *Id.* at 430–31 (Parker, J., specially concurring).

35. *Id.* at 431–38 (DeMoss, C.J., dissenting).

36. *See* Barbara Crossette, *Way Clear for U.S. to Deliver Rwanda War Crimes Suspect*, N.Y. TIMES, Jan. 25, 2000, at A3.

37. *See* HUMAN RIGHTS WATCH, *supra* note 1, at xxi.

38. *See* *Croat Convicted of Crimes at World War II Camp*, N.Y. TIMES, Oct. 5, 1999, at A3.

39. *See id.*

E. KOSOVO AND EAST TIMOR: MILITARY INTERVENTION AND DEVELOPMENT OF THE  
"ANNAN DOCTRINE"

Unlike past years when the world stood by in the face of mass atrocities, 1999 twice saw the extraordinary use of military force to halt crimes against humanity.

The first use of international military force was by NATO in the former Yugoslavia. From March until June, Serbian and Yugoslav forces conducted a brutal campaign of "ethnic cleansing," a euphemism for acts of genocide.<sup>40</sup> More than 800,000 ethnic Albanians were forced out of the province of Kosovo, many groups of Kosovar Albanian men were systematically executed by Serbian special police or paramilitaries, and many women were raped.<sup>41</sup> After repeated threats of military intervention, NATO began bombing Yugoslavia on March 24, 1999, despite lack of approval from the U.N. Security Council.<sup>42</sup> As NATO's attacks actually increased the atrocities committed by Yugoslav forces, some political leaders announced that by increasing the repression of its own citizens in Kosovo, the government of Yugoslavia had effectively "forfeited" some measure of its sovereignty over the area.<sup>43</sup> Furthermore, in the midst of the bombing campaign, the International Criminal Tribunal announced that it had indicted Slobodan Milosevic. The bombing campaign gradually intensified and eventually led to the acceptance of an international civilian administration in Kosovo, which the U.N. Security Council had authorized in Resolution 1244, adopted on June 10, 1999.<sup>44</sup>

The second significant use of international military force to protect human rights was in East Timor, where an independence referendum led to a rampage of murder, arson, and destruction by Indonesian-backed militia.<sup>45</sup> On September 20, in a widely reported speech to the General Assembly, U.N. Secretary-General Kofi Annan announced that considerations of sovereignty were not as important as the protection of human rights, and that nothing in the U.N. Charter precluded "a recognition that there are rights beyond borders."<sup>46</sup> Earlier, on September 10, Annan had warned Indonesian government officials that if they could not stop atrocities in East Timor, they would risk prosecution for crimes against humanity if they did not allow Australia to lead a multinational force to stop the killings and other human rights violations.<sup>47</sup> Human Rights Watch wrote that this was "such an important pronouncement that it merits being called the 'Annan doctrine.'"<sup>48</sup> Human Rights Watch wrote further that

[i]f the Annan doctrine prevails, a government that claims to be unable to stop mass killing would have a criminally enforceable duty to invite a ready international force to lend a hand,

40. See John Quigley, *State Responsibility for Ethnic Cleansing*, 32 U.C. DAVIS L. REV. 341, 345 (1999); Strobe Talbott, *Dayton and the World: A Look Ahead*, U.S. DEP'T OF STATE DISPATCH 569 (Nov. 18, 1996), available in 1996 WL 10106241; see also John Webb, Note, *Genocide Treaty—Ethnic Cleansing—Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia*, 23 GA. J. INT'L & COMP. L. 377, 379 (1993).

41. See HUMAN RIGHTS WATCH, *supra* note 1, at 314–17.

42. See *id.* at 318.

43. See HENKIN, *supra* note 10, at 715 (1999).

44. See *id.* at 658–64, 735.

45. See HUMAN RIGHTS WATCH, *supra* note 1, at xiv.

46. Michael Littlejohns & David Buchan, *Annan Backs 'Rights Beyond Borders'*, FIN. TIMES, Sept. 21, 1999, at 5.

47. See HUMAN RIGHTS WATCH, *supra* note 1, at xv.

48. *Id.*

at least so long as the force itself was committed to respecting human rights and humanitarian law. The incentive to commit atrocities by proxy would significantly diminish, and the barriers of sovereignty would no longer constrict the duty to prevent crimes against humanity.<sup>49</sup>

#### F. INTERNATIONAL CRIMINAL COURT

The Rome Statute of the International Criminal Court<sup>50</sup> will enter into force after sixty nations deposit instruments of ratification, acceptance, approval, or accession. Twenty-one nations signed the statute in 1999,<sup>51</sup> and six nations ratified it.<sup>52</sup> As of February 16, 2000, a total of ninety-four nations had signed the statute and seven had ratified it.<sup>53</sup> As nations continue to ratify the Rome Statute, "the question is no longer whether this landmark institution will become operational, but when."<sup>54</sup>

### III. The Rights of Women

#### A. CEDAW

The number of state parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) increased to 165 with the accessions of Tuvalu on October 6 and Niger on October 8, 1999.<sup>55</sup> The United States signed CEDAW in 1980 but has not ratified it.<sup>56</sup> In a dramatic political development on October 27, a group of Congresswomen interrupted a Senate hearing to urge Senator Jesse Helms to lift a procedural hold he has placed on the treaty.<sup>57</sup>

A significant legal development for CEDAW was the introduction of the right to petition through an Optional Protocol, which the General Assembly adopted in October 1999.<sup>58</sup> When the Optional Protocol enters into effect for the various nations, it will allow individuals or groups to submit signed communications to the U.N. Committee on the Elimination of Discrimination Against Women, which may then consider well-founded communications as to alleged violations of CEDAW if all domestic remedies have been exhausted and the matter is not being examined under another procedure of international investigation or settlement.<sup>59</sup>

49. *Id.* at xvi.

50. Rome Statute of the International Criminal Court, 53rd Sess., U.N. Doc. A/CONF.183/9 (1998) (as corrected by the procès-verbaux of November 10, 1998 and July 12, 1999).

51. Argentina, Armenia, Bangladesh, Benin, Burundi, Bulgaria, the Central African Republic, Chad, the Czech Republic, Estonia, Fiji, Haiti, Hungary, Kenya, Latvia, Malawi, Poland, Romania, Saint Lucia, Trinidad and Tobago, and Uganda signed the statute in 1999.

52. The statute was ratified in 1999 by the nations of Fiji, Ghana, Italy, San Marino, Senegal, and Trinidad and Tobago.

53. Norway ratified the treaty on February 16, 2000. A current list of signatories can be found at <<http://www.un.org/law/icc/statute/status.htm>>.

54. HUMAN RIGHTS WATCH, *supra* note 1, at xii.

55. See <<http://www.un.org/womenwatch/daw/cedaw/>>.

56. See, e.g., Valerie A. Dormady, *Status of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1998*, 33 INT'L LAW. 637, 643 (1999).

57. See Eric Schmitt, *Helms Orders 10 Women From House Out of a Senate Hearing*, N.Y. TIMES, Oct. 28, 1999, at A17.

58. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 54th Sess., Agenda Item 109, U.N. Doc. A/Res/54/4 (1999).

59. See *id.* arts. 1-3; see also LOUIS HENKIN, *supra* note 10, at 358-64.



## B. FEMALE GENITAL MUTILATION

Female genital mutilation (also called female genital cutting and female circumcision) (FGM) is the cutting or removal of all or a portion of the female genitals for cultural rather than for medical reasons.<sup>60</sup> The procedure takes a variety of forms including clitoridectomy, excision, and infibulation, the most severe form and the one most damaging to the health of women and girls. It is generally performed without anesthesia unless carried out in a hospital or medical clinic. Performance of this procedure by health professionals in any setting, including hospitals and other health facilities, has been resisted by a number of NGOs, as well as by the World Health Organization, because it would help to ingrain and legitimize the practice in the country. Rather, these organizations want the practice outlawed altogether.<sup>61</sup>

Estimates of the number of females who have been subjected to this practice range from 115 million to 130 million worldwide. Two million girls are believed to be at risk each year of being subjected to this practice.<sup>62</sup> The origins of the practice are unknown. It existed before the beginning of Christianity and Islam. It is not required by the Bible or the Koran. It crosses religious, ethnic, and cultural lines.<sup>63</sup> It was also recognized again in 1999 by the U.N. General Assembly as being a violation of women's human rights and a serious health issue.<sup>64</sup>

The U.S. Department of State established an interagency working group to coordinate U.S. government efforts on this issue. The group works closely with African and U.S. NGOs. In countries where FGM is practiced, the U.S. government continues to fund a growing number of locally-initiated projects aimed at eradicating FGM.<sup>65</sup>

FGM is prohibited in the United States on the federal and state level. Federal legislation enacted in 1996 specifically outlaws FGM for any person under the age of eighteen.<sup>66</sup> On the state level, fifteen states now specifically prohibit the practice. In addition to the states' legislation we previously noted in our annual review of recent developments,<sup>67</sup> the states of

60. For further background on recent developments related to FGM, see Michele Forzley et al., *International Health Law*, in this issue.

61. See Nahid Toubia, *Caring for Women with Circumcision*, RAINBO 15 (1999).

62. See Nahid Toubia, *Female Genital Mutilation: A Call for Global Action*, RAINBO 5 (1995).

63. See U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) 1 (Aug. 12, 1999).

64. The U.N. General Assembly adopted a resolution reaffirming that traditional or customary practices affecting the health of women and girls, including female genital mutilation, constitute a definite form of violence against women and girls and a serious human rights violation. See *Traditional or Customary Practices Affecting the Health of Women and Girls*, G.A. Res. 53/117, 53rd Sess., Agenda Item 103, at 2, U.N. Doc. A/RES/53/117 (1999).

65. In 1999, for example, the U.S. Department of State made small grants for projects in Chad, Djibouti, Ethiopia, Ghana, Senegal, Somalia, and Togo. The U.S. Agency for International Development has funded education, training, and advocacy programs in Kenya and Gambia; research in Burkina Faso, Eritrea, Ghana, Guinea, and Mali; and data collection in the Central African Republic, Côte d'Ivoire, Egypt, Eritrea, Mali, northern Sudan, and Yemen.

66. The penalty is a fine or imprisonment of not more than five years, or both. See 18 U.S.C. § 116 (Supp. III 1997).

67. The states we previously mentioned were California, Delaware, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode Island, Tennessee, and Wisconsin. See Harvetta M. Asamoah et al., *International Human Rights*, 33 INT'L LAW. 555, 558 (1999).

Colorado,<sup>68</sup> Nevada,<sup>69</sup> Oregon,<sup>70</sup> Texas,<sup>71</sup> and West Virginia<sup>72</sup> have now enacted legislation to ban FGM either outright or as a form of child abuse.

A law was passed in Senegal in January 1999 making FGM a criminal offense punishable by a sentence of up to five years in prison for the practitioner or a third person ordering the procedure to be carried out.<sup>73</sup> As of the end of 1999, a total of ten African countries where FGM is practiced have laws banning it. These include Burkina Faso, the Central African Republic, Chad, Côte d'Ivoire, Djibouti, Ghana, Senegal, Tanzania, and Togo.<sup>74</sup> The first country to outlaw the practice of infibulation (but not the forms of clitoridectomy and excision) was Sudan in 1946, but the current 1991 Penal Code in Sudan does not mention any form of FGM.<sup>75</sup>

Excision and infibulation, the most harmful forms of FGM, are practiced in Senegal. Estimates put the percentage of women and girls who have been subjected to one of these procedures at between five and twenty percent. The practice varies among ethnic groups. The largest group, the Wolof, do not practice FGM, while among the minority Halpurlen in rural areas, an estimated eighty-eight percent of females have been subjected to it.<sup>76</sup>

On November 27, 1999, 105 village communities (a total of 80,000 villagers) in Kolda in the southern region of Senegal publicly declared that they were banning the practice of FGM. The ban followed an eight-month education empowerment program by the NGO Tostan. Started as a basic education program some twenty-six years ago by a Peace Corp volunteer and a Senegalese actor, the Tostan program includes skill training for women in basic literacy, public health, women's health, problem solving, leadership, and management. The unexpected result of this education program was the decision by the women who had participated in the program, on their own, to ban FGM in their village first in 1997, and then in a much larger area in 1999. The program is spreading to other areas of Senegal and to other countries—hopefully with the same positive results.<sup>77</sup>

#### IV. The Rights of Children

Nineteen ninety-nine was a significant year for the rights of children, with the 10th Anniversary of the Convention on the Rights of the Child; critical developments pertaining

68. See COLO. REV. STAT. § 18-6-401401(1)(b)(1) (1999). Colorado also authorized a training program to: (a) carry out appropriate and culturally sensitive education, prevention, and outreach activities concerning female genital mutilation to inform the appropriate communities about the health risks associated with and the emotional and psychological trauma inflicted by that practice; (b) educate the medical community regarding recommended standards of practice involving the recognition and treatment of female genital mutilation; and (c) inform the medical community and other appropriate communities of the criminal penalties for child abuse involving female genital mutilation. See COLO. REV. STAT. § 25-30-101 (1999).

69. See NEV. REV. STAT. § 200.5083 (1999).

70. See 1999 Or. HB 3608 (1999).

71. See TEXAS HEALTH & SAFETY CODE ANN. § 166.001 (West 1999).

72. See W. VA. CODE § 61-8D-3a (2000).

73. See Nahid Toubia, *Caring for Women with Circumcision*, RAINBO 96 (1999); U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) IN SENEGAL 3 (Aug. 12, 1999).

74. Despite laws on the books banning FGM, they have not always been enforced. There have been several convictions, however, of practitioners of excision in Ghana. The opinion by some in Ghana, however, is that the law has driven FGM underground, making it more difficult to control.

75. See U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) IN SUDAN 3-4 (Aug. 12, 1999).

76. See U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) IN SENEGAL 1 (Aug. 12, 1999).

77. Information provided to Lois A. Gochnauer by Molly Melching, one of the founders of Tostan.

to child soldiers; trafficking, sexual exploitation and child labor; adoption; and other important issues. The ABA's new Subcommittee on the Rights of the Child (within the International Human Rights Committee) has been organized to address these and other matters.

#### A. 10TH ANNIVERSARY OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (CRC) passed its 10th anniversary on November 20, 1999. With 191 countries having ratified the instrument—every country in the world save Somalia and the United States—it stands as the most widely ratified human rights treaty in history.<sup>78</sup> The CRC calls for a comprehensive array of children's rights, including the child's right to life; freedom from discrimination; protection in armed conflicts; protection from torture or cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary deprivation of liberty; special treatment within the justice system; and the rights to education, health care, an adequate standard of living, and freedom from economic exploitation and other abuse.

To acknowledge the CRC anniversary and highlight major achievements and constraints in its implementation, the Office of the High Commissioner for Human Rights and the Committee on the Rights of the Child held a special two-day meeting in Geneva from September 30 to October 1, 1999.<sup>79</sup> This special session drew 200 representatives from governments, the United Nations, and NGOs. At the session, a roundtable group assessed various aspects of global implementation of the CRC, and the Committee on the Rights of the Child endorsed these recommendations:

- (a) to review and assess existing reservations to the CRC, and consider releasing a "general comment" in this area;
- (b) to increase attention to the CRC's legal status within national legislation, and the need for the two to be harmonized;
- (c) that states systematically review their legislation, to ensure compatibility with the CRC; and
- (d) that the Committee initiate discussions on an Optional Protocol for individual communications, to ensure legal remedies at the international level.<sup>80</sup>

In addition, on April 28, 1999, the U.N. Commission on Human Rights issued a sweeping resolution calling for full implementation of the CRC and action on a variety of fronts, including the sale and sexual exploitation of children, children in armed conflict, child labor, child refugees, and other CRC issues.

The Committee on the Rights of the Child kept a busy pace in 1999. In addition to the work of the special two-day meeting, three formal sessions, and a backlog of country reports,

78. See HUMAN RIGHTS WATCH, *supra* note 1, at 421. The ABA supports CRC ratification, subject to certain reservations, understandings, and declarations. See ABA Report on the U.N. Convention on the Rights of the Child to House of Delegates (Feb. 1994).

79. The Committee on the Rights of the Child is the U.N. group set up to monitor implementation of the CRC. It reviews reports periodically submitted by CRC member states and offers responsive guidance and recommendations.

80. The CRC's 10th Anniversary was marked elsewhere as well. Notably, the European Parliament passed a resolution acknowledging and celebrating the 10th Anniversary, and calling for the promotion and protection of children's rights in several contexts, including the CRC, the Lome Convention, future European treaties, the ILO Convention on the Worst Forms of Child Labour, and the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts.

the Committee adopted a recommendation on the administration of juvenile justice, and participated in working group discussions before the Commission on Human Rights concerning (1) an Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, and (2) the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts.

## B. CHILD SOLDIERS AND LANDMINES

Several significant developments in 1999 boosted efforts to eliminate the use of child soldiers in armed conflict.<sup>81</sup> The International Labour Organization's (ILO) Worst Forms of Child Labour Convention (ILO Convention No. 182),<sup>82</sup> adopted unanimously by the 174 member states of the ILO on June 17, 1999, prohibits the "forced or compulsory" recruitment of children (defined as anyone under eighteen years of age) for use in armed conflict.<sup>83</sup> ILO Convention No. 182 reflects a significant breakthrough in international law, as this is the first time that an eighteen-year minimum age limit has been set in relation to child soldiering in an international convention. It is also the first specific, legal recognition of child soldiering as a form of child labor. ILO Convention No. 182 calls on members to criminalize the forced or compulsory recruitment of children for use in armed conflict.

As the year ended, a U.N. working group was continuing negotiations toward an Optional Protocol to the CRC on Involvement of Children in Armed Conflict (Protocol). The Protocol had been undertaken to address an anomaly in children's rights standards under the CRC, which generally defines a child as any person under the age of eighteen, but includes the lower age of fifteen as a minimum for recruitment and use in hostilities.<sup>84</sup> In the negotiations, the United States and several other governments continued to oppose any restriction against the use of minors who volunteer for military service. Ultimately, the Protocol that was negotiated in January 2000 reflected this basic disagreement. It set eighteen as the minimum age for conscription and for direct participation in armed conflict, but allowed voluntary recruitment of sixteen and seventeen-year-olds. The Protocol also called for government measures and international assistance to demobilize and to rehabilitate former child soldiers, and to reintegrate them into society.<sup>85</sup>

Also at the United Nations, the Security Council passed Resolution 1261, which

[s]trongly condemns the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and calls on all parties concerned to put an end to such practices.<sup>86</sup>

81. See, e.g., HUMAN RIGHTS WATCH, *supra* note 1, at 461-64.

82. 38 I.L.M. 1207 (1999).

83. *Id.* During the negotiations, the United States confirmed its understanding that the lawful voluntary enlistment of sixteen and seventeen-year-olds into national armed forces does not constitute one of the "worst forms of child labor" under the new Convention.

84. Convention on the Rights of the Child, Nov. 20, 1989, art. 38, 28 I.L.M. 1456.

85. U.N. delegates also met in July and August 1999 to draft rules of procedure and evidence for the International Criminal Court, for which the Rome Statute makes the conscription, enlistment, or use in hostilities of children under the age of fifteen a war crime.

86. S.C. Res. 1261, 54th Sess., 4037th mtg., para. 2, U.N. Doc. S/Res/1261 (1999). Resolution 1261 also called for strict compliance with international law pertaining to the use of child soldiers, particularly the 1949 Geneva Convention (IV) and protocols thereto, as well as the CRC.

Regional conferences in 1999 drew attention to the problem of child soldiers and spurred work on the Protocol. Declarations against the use of children under eighteen in military forces were issued at the African Conference on the Use of Children as Soldiers,<sup>87</sup> the Latin American Conference on the Use of Children as Soldiers,<sup>88</sup> a conference of the Nordic Foreign Ministers,<sup>89</sup> and the European Conference on the Use of Children as Soldiers.<sup>90</sup> The African Conference was particularly important, as it built support for ratification of the African Charter on the Rights and Welfare of the Child, the only regional treaty that sets eighteen as the minimum age for recruitment and participation in armed conflict.

Finally, on March 1, 1999, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction<sup>91</sup> entered into force for those countries that had ratified it. Among the countries that have not yet signed the Convention—which prohibits the use, production, development, acquisition, sale, stockpiling, and transfer of landmines—are the United States, China, Russia, Yugoslavia, Saudi Arabia, Iraq, and Iran.<sup>92</sup>

### C. TRAFFICKING, SEXUAL EXPLOITATION, AND CHILD LABOR

ILO Convention No. 182 reflected the principle development in the area of trafficking, sexual exploitation, and child labor. ILO Convention No. 182, adopted unanimously by the 174 member states of the ILO in June 1999, requires states to take immediate steps to prevent, prohibit, and eliminate the “worst forms of child labor.”<sup>93</sup> The prohibition is broadly defined to encompass the sale and trafficking of children, debt bondage, forced or compulsory labor (including the forced recruitment of children for use in armed conflict), using children for prostitution or production of pornography, using children for illegal activities, particularly drug trafficking, and other work likely to “harm the health, safety or morals of children.”<sup>94</sup> The U.S. Senate gave its consent to ratification of ILO Convention No. 182 on November 5, 1999, subject to certain understandings, and the president ratified it on December 2, 1999.

At year’s end, negotiations in Vienna had intensified over the issue of trafficking in women and children. The forum was the U.N. Crime Commission’s Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, with one of four protocols to the new Convention pertaining to trafficking. This ongoing controversy concerns a proposed definition of trafficking based on abduction, force, fraud, deception, coercion, or other force-like conditions. A number of feminist and faith-based groups

87. African Coalition to Stop the Use of Child Soldiers, *Maputo Declaration on the Use of Children as Soldiers* (visited Apr. 20, 2000) <[http://www.child-soldiers.org/maputo\\_declaration.htm](http://www.child-soldiers.org/maputo_declaration.htm)>.

88. Latin American Coalition to Stop the Use of Child Soldiers, *Latin America Montevideo Declaration on the Use of Children as Soldiers* (visited Apr. 20, 2000) <[http://www.child-soldiers.org/montevideo\\_declaration.htm](http://www.child-soldiers.org/montevideo_declaration.htm)>.

89. Nordic Council of Ministers, *Declaration By the Nordic Foreign Ministers Against the Use of Child Soldiers* (visited Apr. 20, 2000) <<http://www.child-soldiers.org/nordic%20declaration.htm>>.

90. The Coalition to Stop the Use of Child Soldiers, *Europe Berlin Conference on the Use of Children as Soldiers* (visited Apr. 20, 2000) <[http://www.child-soldiers.org/berlin\\_declaration.htm](http://www.child-soldiers.org/berlin_declaration.htm)>.

91. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Mar. 1, 1999, 36 I.L.M. 1507.

92. See, e.g., Jodi Preusser Mustoe, Note, *The 1997 Treaty to Ban the Use of Landmines: Was President Clinton’s Refusal to Become a Signatory Warranted?*, 27 GA. J. INT’L & COMP. L. 541 (1999).

93. ILO Convention No. 182, *supra* note 82.

94. *Id.* art. 3(d).

voiced strong concern that this definition, supported by the majority of delegates and the United States, would legitimize prostitution and allow sex traffickers to escape prosecution by relying on a consent-based defense. This particular controversy does not extend to children, however, as a minor cannot be considered to "consent" to sex trafficking under the draft protocol.

Separately, a U.N. Human Rights Commission working group continued its efforts on an Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. However, a number of children's rights NGOs and the Committee on the Rights of the Child voiced concern that the protocol is unnecessary, would undermine the CRC, and conflict with existing international law and the 1996 Stockholm Agenda for Action.

On November 19, 1999, the fifty-four participating states of the Organization for Security and Cooperation in Europe (OSCE) approved the Istanbul Charter and Declaration, which included an initiative advanced by the Helsinki Commission on trafficking in human beings, particularly women and children. The United Nations Educational, Scientific and Cultural Organization (UNESCO) hosted a sizable conference in Paris in January to consider ways of combating pedophilia and child pornography on the Internet, issuing an action plan and declaration.

In the United States, members of Congress introduced anti-trafficking initiatives geared towards heightened prosecution, punishment, and enforcement. H.R. 3154,<sup>95</sup> introduced by Representative Gedjenson (D-CT), and S. 1842,<sup>96</sup> introduced by Senator Wellstone (D-MN), define trafficking as:

recruiting or abducting, facilitating, transferring, harboring or transporting person, by the threat or use of force, coercion, fraud or deception, or by the purchase, sale, trade, transfer or receipt of a person, for the purpose of subjecting that person to involuntary servitude, peonage, slavery, slavery-like practices, or forced or bonded labor or services.<sup>97</sup>

A controversial aspect of the legislation is whether the United States should be able to impose non-humanitarian sanctions against countries that engage in trafficking. The House Subcommittee on International Operations and Human Rights held a hearing on sex trafficking on September 14, 1999.

On June 12, 1999, President Clinton signed an executive order prohibiting federal procurement of goods that are mined, manufactured, or produced, wholly or in part, using forced or indentured child labor.<sup>98</sup> The Clinton administration also increased funding for the ILO's International Program for the Elimination of Child Labor and U.S. Customs border enforcement actions.

#### D. ADOPTION

On October 5, 1999, the Senate Foreign Relations Committee held a hearing on the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention on Intercountry Adoption) and its implementing legisla-

95. H.R. 3154, 106th Cong. (1999).

96. S. 1842, 106th Cong. (1999).

97. H.R. 3154 § 3; S. 1842 § 3.

98. Exec. Order No. 13,126, 64 Fed. Reg. 32,383 (1999).

99. S. 682, 106th Cong. (1999); H.R. 2909, 106th Cong. (1999).

tion.<sup>99</sup> The Hague Convention on Intercountry Adoption,<sup>100</sup> which the United States has signed but not ratified,<sup>101</sup> extends legal recognition to intercountry adoptions, provided they conform to internationally agreed upon Convention procedures and norms.

With respect to other adoption-related legislation, the Senate approved legislation introduced by Senator Nickles (R-OK) that would confer U.S. citizenship automatically and retroactively to birth upon foreign-born children adopted abroad or adopted in the United States.<sup>102</sup> Also, Representative Bliley (R-VA) and Senator Craig (R-ID) introduced bills that would increase the current adoption tax credit for all adoptions to \$10,000 (currently \$5,000), and make the adoption tax credit permanent law by repealing the current December 31, 2001 sunset for nonspecial-needs adoptions.<sup>103</sup>

## E. SELECTED CHILD RIGHTS CASES-1999

### 1. *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*<sup>104</sup>

In its first ever case involving children, *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*, the Inter-American Court on Human Rights condemned the state of Guatemala for violating the American Convention on Human Rights (ACHR) for the brutal murder of five "street children" and youth by Guatemalan police in 1990. Four of the children had been brutally tortured. Casa Alianza and the Center for Justice and International Law brought the case to the Inter-American Commission on Human Rights, which concluded in 1997 that Guatemala had violated various articles of the ACHR. The case then proceeded to the Inter-American Court, which in November 1999 unanimously ruled that Guatemala's actions had violated article 1 (obligation to respect rights); article 4 (the right to life); articles 5.1 and 5.2 (right to human treatment); article 7 (right to personal liberty); article 8.1 (right to a fair trial); article 19 (rights of the child); and article 25 (right to judicial protection) of the ACHR. The court also condemned Guatemala for violating articles 1, 6, and 8 of the Inter-American Convention for the Prevention and Punishment of Torture. In its sessions in 2000, the court is expected to recommend that compensation be paid to the families of the victims.

### 2. *Elían Gonzalez*

On November 25, 1999, this Cuban boy was rescued off the Florida coast after a shipwrecked voyage claimed the life of his mother, precipitating an international incident with Cuba, a nonsignatory to the Hague Convention on Civil Aspects of International Child Abduction. In the ongoing legal and political battle, the United States ordered the boy's return to his father in Cuba; a Florida state court ruled that to do so would cause the boy "imminent harm;" members of Congress called for his U.S. citizenship; and a federal court would take up the case.

100. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134.

101. See Rhonda McMillion, "Save the Children" More Urgent—U.S. Delays in Ratifying Accord Could Jeopardize Adoptions by American Citizens, 86 A.B.A. J. 94 (2000); see also Lisa M. Katz, Comment, *A Modest Proposal? The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 9 EMORY INT'L L. REV. 283 (1995).

102. S. 1485, 106th Cong. (1999).

103. H.R. 531, 106th Cong. (1999); S. 341, 106th Cong. (1999).

104. *Caso Villagran Morales y Otros (Caso de los "Ninos de la Calle")*, CHD-1.383-169 (1999).

### 3. *Baker v. Canada*<sup>105</sup>

A Jamaican woman with Canadian-born dependent children was ordered deported from Canada, and her application for landed immigrant status based on “humanitarian and compassionate considerations” was denied, without consideration of her children’s “best interests.” The Federal Court of Canada ruled that the CRC was inapplicable because it was not part of Canadian law.<sup>106</sup> Although the Canadian Supreme Court upheld the conclusion that the CRC had no direct application within Canadian law, it also stated that the values of the CRC “may help inform the contextual approach to statutory interpretation and judicial review.”<sup>107</sup> In this regard, in allowing the appeal and overturning the decision of a Canadian immigration officer, the Canadian Supreme Court ruled that in order for claims based on humanitarian and compassionate considerations to be “reasonable,” “the decision-maker should consider children’s best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them.”<sup>108</sup>

## V. Human Rights and Corporate Responsibility

### A. APPAREL AND FOOTWEAR WORKERS

Three developments seemed to advance the rights of workers in the apparel and footwear industry. First, companies increased their participation in the Fair Labor Association (FLA)<sup>109</sup> and the Social Accountability Program of the Council on Economic Priorities.<sup>110</sup> Second, private groups and the U.S. government filed a number of lawsuits to protest the treatment of apparel and footwear workers in the U.S. territory of Saipan.<sup>111</sup> In August, four corporate defendants agreed to pay \$1.25 million for an independent monitoring program to protect their workers.<sup>112</sup> Third, university students around the country demanded that their schools license university apparel only to companies with credible programs to monitor respect for workers’ rights.<sup>113</sup> In response to student demands, more than eighty universities joined the FLA by the end of 1999.<sup>114</sup>

### B. MASSACHUSETTS BURMA LAW

The U.S. Supreme Court agreed to review the Massachusetts Burma Law, which restricted the ability of the Commonwealth of Massachusetts and its agencies to purchase

105. *Baker v. Canada*, 174 D.L.R. (4th) 193 (1999), available in 1999 Can. Sup. Ct. LEXIS 44.

106. *Baker v. Canada*, 1997 2 F.C. 127.

107. *Baker v. Canada*, 174 D.L.R. at 77.

108. *Id.* at 82.

109. The Fair Labor Association had previously been known as the Apparel Industry Partnership (AIP), which President Clinton created in 1996 to address concerns about sweatshops in the United States and abroad. See Harvett M. Asamoah et al., *International Human Rights*, 33 INT’L LAW. 555, 563 (1999).

110. See HUMAN RIGHTS WATCH, *supra* note 1, at 464.

111. See *id.* at 464–65.

112. See *id.* at 465.

113. See e.g., *id.*; Steven Greenhouse, *Anti-Sweatshop Movement Is Achieving Gains Overseas*, N.Y. TIMES, Jan. 26, 2000, at A10; Steven Greenhouse, *Students Urge Colleges to Join New Group Against Sweatshops*, N.Y. TIMES, Oct. 20, 1999, at A21; Steven Greenhouse, *Activism Surges at Campuses Nationwide, and Labor Is at Issue*, N.Y. TIMES, Mar. 29, 1999, at A14; Steven Greenhouse, *Two Protests By Students Over Wages for Workers*, N.Y. TIMES, Jan. 31, 1999, at A12.

114. See HUMAN RIGHTS WATCH, *supra* note 1, at 465.



goods or services from companies that do business with Burma.<sup>115</sup> In 1999, the First Circuit declared that the Massachusetts law was unconstitutional because it: (1) interfered with the foreign affairs power of the federal government; (2) violated the Foreign Commerce Clause; and (3) violated the Supremacy Clause.<sup>116</sup> The U.S. Supreme Court's decision is expected by the end of the Court's 1999–2000 term.

In another litigation matter related to Burma, a group of Burmese citizens sued in the U.S. District Court for the Central District of California to enjoin an American company from participating in an oil pipeline project in Burma.<sup>117</sup> Although the court found that the citizens showed that they were suffering the adverse effects of alleged human rights violations, the court denied their motion to certify a class action because they did not prove that injunctive relief against the oil company would redress their injuries.<sup>118</sup>

## VI. Other Developments

### A. ISRAELI SUPREME COURT INVALIDATES THE USE OF TORTURE

In a landmark decision issued on September 6, 1999, the Israeli Supreme Court forbid the use of violent physical force by the General Security Service (GSS) when interrogating Palestinian suspects.<sup>119</sup> The Public Committee Against Torture in Israel, the Association for Citizen's Rights in Israel, and five individuals successfully argued that the interrogation methods amounted to acts of torture and were strictly prohibited under international law.<sup>120</sup> The GSS, for its part, had argued that it needed to use its violent interrogation methods to locate "ticking bombs" about which the suspects might have information. The Israeli Supreme Court rejected this "necessity" defense to the use of acts of torture. Although the decision was hailed as a positive step, some members of the Knesset drafted legislation to reauthorize the GSS to use its practices of torture.<sup>121</sup>

### B. U.N. SPECIAL RAPPORTEURS HAVE DIPLOMATIC IMMUNITY

The U.N. Commission on Human Rights appointed Dato' Param Kumaraswamy as a Special Rapporteur on the Independence of Judges and Lawyers.<sup>122</sup> In 1995, Kumaraswamy

115. *Natsios v. National Foreign Trade Council*, 120 S. Ct. 525 (1999). For further background on this law, see Asamoah, 33 INT'L LAW. at 561–62; and Harvetta M. Asamoah et al., *International Human Rights*, 32 INT'L LAW. 559, 561–63 (1998).

116. *National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999), cert. granted, 120 S. Ct. 525 (1999).

117. *Doe v. Unocal Corp.*, 67 F. Supp. 2d 1140 (C.D. Cal. 1999); see also *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174 (C.D. Cal. 1998); *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997).

118. *Doe*, 67 F. Supp. 2d at 1147.

119. *Public Committee Against Torture in Israel v. Israel* (visited Apr. 20, 2000) <<http://www.court.gov.il/mishpat/html/en/verdict/judgment.rtf>>.

120. See *id.*

121. See, e.g., Dan Izenberg, *Rivlin Slammed Over GSS-Technique Bill*, JERUSALEM POST, Dec. 10, 1999, at 4A, available in 1999 WL 9011914; Tracy Wilkinson, *Citing Terrorism Concerns, Israel May Return to Torture-Bill in Parliament Would Authorize 'Special Interrogation Means'—Rights Activists and Western Diplomats Warn of Repercussions*, L.A. TIMES, Dec. 3, 1999, at A5.

122. See *U.N. Special Rapporteurs are Entitled to Diplomatic Immunity*, 2(5) INT'L L. IN BRIEF 7 (1999) (reporting on the April 29, 1999 Advisory Opinion from the International Court of Justice on *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*).

gave an interview to the *International Commercial Litigation* magazine, in which he described certain litigations that had been carried out in Malaysia.<sup>123</sup> When two companies sued him for defamation in the amount of U.S.\$24 million, the U.N. Secretary-General sent a note to the Malaysian court advising that Mr. Cumaraswamy enjoyed immunity under the Convention on the Privileges and Immunities of the United Nations.<sup>124</sup> The Malaysian High Court for Kuala Lumpur, however, dismissed the Secretary-General's note as a mere "opinion" without binding effect in Malaysia.<sup>125</sup> A request was then made to the International Court of Justice (ICJ) to issue an Advisory Opinion.<sup>126</sup> On April 29, 1999, the ICJ held that Special Rapporteurs are entitled to privileges and immunities provided for under the Convention, that giving a press interview was "standard practice" for Special Rapporteurs, and that the statements uttered in the press interview at issue were within the scope of the Special Rapporteur's mission.<sup>127</sup> The decision will serve to strengthen the independence of the Special Rapporteurs and hopefully allow them to perform their duties without fear of nuisance lawsuits.

### C. SEXUAL ORIENTATION AND GENDER IDENTITY

Legal developments around the world continued to advance rights for lesbian, gay, bisexual, and transgendered persons. However, individual acts of violence, hate, and discrimination showed that there was still a long way to go to protect human rights.<sup>128</sup> One example of continuing discrimination came from Uganda, where President Yoweri Museveni ordered the Criminal Investigation Department to locate and arrest homosexuals in that nation.<sup>129</sup>

Several of the major legal developments of 1999 related to family law. In South Africa, the South African High Court (Cape of Good Hope Provincial Division) ruled that the Aliens Control Act of 1991 unconstitutionally discriminated against gay and lesbian life partners, and that the South African government failed to justify that discrimination.<sup>130</sup> In a landmark decision in Canada, the Canadian Supreme Court ruled that the definition of "spouse" as a "man and woman" in the Family Law Act unlawfully discriminated against gay and lesbian couples under the Canadian Charter of Rights and Freedoms, and that the term should be replaced with "two persons."<sup>131</sup> In France, legislation was passed to give

123. *See id.*

124. *See id.*

125. *See id.*

126. *See Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, 1998 I.C.J. 423 (Request for an Advisory Opinion) (Aug. 10, 1998), available in 1998 WL 1180015.

127. *See U.N. Special Rapporteurs*, 2(5) INT'L L. IN BRIEF 7 (reporting on the April 29, 1999 Advisory Opinion from the International Court of Justice on *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*).

128. *See, e.g., P.J. Engelbrecht, Alabama Gay Slain, Two Men Charged—Clinton, Gay Groups Condemn Anti-Gay Violence*, OUTLINES, Mar. 10, 1999, at 7; Paul Varnell, *Assault Rate Higher Among Gays [in Scotland]*, CHICAGO FREE PRESS, Feb. 16, 2000, at 17.

129. *See Ugandan President Orders Gays Arrested*, SOUTHERN VOICE, Oct. 7, 1999, at 9. The president also said that U.N. human rights conventions are "not universal to Africa." *Id.*

130. *National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs*, No. 3988/98 (Feb. 12, 1999), available at <<http://www.law.wits.ac.za/docs/gayaliens.pdf>>.

131. *M. v. H.*, 1999 Can. Sup. Ct. LEXIS 28 (1999); *see also Supreme Court of Canada Finds Family Law Act Discriminates Against Same-Sex Couples*, 2(6) INT'L L. IN BRIEF 14, 14-15 (1999); Lisa Neff, *Canada Court*

legal status to unmarried couples, including gay and lesbian couples.<sup>132</sup> And in Vermont, the Vermont Supreme Court ruled that the exclusion of same-sex couples from marriage benefits and protections violated the "Common Benefits Clause" of the Vermont State Constitution.<sup>133</sup>

Gays and lesbians continued to fare well before the European Court of Human Rights, which ruled that Britain's exclusion of homosexuals from its armed forces violated articles 8 and 14 of the European Convention on Human Rights, which grants a right to respect for private and family life.<sup>134</sup> The case was seen as an especially surprising one, given that it valued the right of privacy over the ostensible military concerns voiced in support of the exclusion. In response to the court's decision, Britain decided to end its exclusion of gays and lesbians in the military and to pay compensation to gay service members who had been fired.<sup>135</sup>

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*Redefines 'Spouse,'* WINDY CITY TIMES, May 27, 1999, at 1. For further background and context of this case, see KATHLEEN A. LAHEY, ARE WE 'PERSONS' YET? LAW AND SEXUALITY IN CANADA (1999).

132. See, e.g., Suzanne Daley, *France Gives Legal Status to Unmarried Couples*, N.Y. TIMES, Oct. 14, 1999, at A3.

133. *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999); see also, e.g., Lisa Neff, *Vermont Supreme Court Backs Same-Sex Marriage Benefits*, CHICAGO FREE PRESS, Dec. 22, 1999, at 16.

134. *Lustig-Prean v. United Kingdom*, Nos. 31417/96, 32377/96, 33985/96, and 33986/96 (Eur. Ct. Hum. Rts. 1999); see also *ECHR Finds Exclusion of Homosexuals from U.K. Military to be Violation of Human Rights*, 2(10) INT'L L. IN BRIEF 4 (1999).

135. See Rex Wockner, *Britain Will Lift Military Ban*, OUTLINES, Oct. 27, 1999, at 12.