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International Human Rights

MARK E. WOJCIK, CRIS REVAZ, AND BENJAMIN L. APT*

I. Overview

The field of international human rights law continues to present tremendous challenges and victories in the substantive development of human rights norms, punishment of those who violate them, and providing redress, where possible, for victims of human rights abuses. The year 2001 saw major developments in enforcing human rights law,¹ most particularly in the capture, transfer to The Hague, and trial of former Yugoslav president Slobodan Milosevic² and the indictment in Chile of former president Augusto Pinochet.³ In the United States, a former member of the Klu Klux Klan was sentenced to life in prison for his part in a 1963 church bombing in Birmingham, Alabama that killed four black girls.⁴ In other parts of the world, the year 2001 saw public hearings of the Human Rights Violation Investigation Commission in Nigeria,⁵ and the condemnation of Russia by the U.N.

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1. As in earlier years, our review of developments in international human rights law during the year 2001 cannot cover all of the issues that deserve to be covered. The omission of a particular subject matter area or legal development from this article is not a commentary about the importance of that development, but a necessary concession to the space limitations of this article and a positive recognition that many of the issues of importance to the international human rights legal community overlap with areas covered in other articles in this issue.

2. HUMAN RIGHTS WATCH, *WORLD REPORT 2002*, at xvi (2002). Milosevic, a lawyer who never practiced law, would defend himself when the trial began, continuing his challenges to the authority of the International Criminal Tribunal for the Former Yugoslavia. See, e.g., Peter Ford, *As Trial Begins, Milosevic Unfazed*, CHRISTIAN SCI. MONITOR, Feb. 13, 2002, at 1. The hearings were expected to last more than a year. *Id.* at 7; see also, e.g., Ian Fisher, *Milosevic, On Offensive, Ever Mindful of History*, N.Y. TIMES, Mar. 3, 2002, § 1, at 7; Peter Ford, *Milosevic Begins His War-Crimes Defense With BroadSides*, CHRISTIAN SCI. MONITOR, Feb. 15, 2002, at 7.

3. The trial against Pinochet was abandoned on medical grounds. HUMAN RIGHTS WATCH, *supra* note 2, at xvi.

4. *One Year, Two Worlds: What Was News in 2001*, WALL ST. J., Jan. 2, 2002, at R12, R13 [hereinafter *News in 2001*].

5. *Top 10 Stories*, WORLD PRESS REVIEW, Mar. 2002, at 23.

Human Rights Commission for atrocities in Chechnya and for the Russian government's failure to identify and prosecute those responsible.⁶ Among those killed in Chechnya was Viktor Popkov, a Russian human rights defender who was shot in his car in June.⁷

There were also developments in substantive law, including enough ratifications to bring into force the two Optional Protocols to the Convention on the Rights of the Child. The International Court of Justice ruled in the *LeGrand* case that the United States had violated the rights of Germany in failing to afford Germany its rights under the 1963 Convention on Consular Relations.⁸ There was continued progress toward establishing an International Criminal Court, with ratifications by forty-seven of the sixty countries needed to bring it into existence.⁹ The United States, however, continued its opposition to that body. The need for such a permanent court continued to be manifest, however, as efforts to establish a criminal tribunal in Cambodia for former members of the Khmer Rouge proved unsuccessful,¹⁰ atrocities committed in East Timor in 1999 continued unpunished,¹¹ and other individuals responsible for crimes in the former Yugoslavia continued to elude arrest.¹² Trials continued to prosecute those responsible for the massacres in Rwanda.¹³

In addition to its opposition to the International Criminal Court and other international tribunals,¹⁴ the United States struck a blow against international law when it withdrew from the Anti-Ballistic Missile Treaty.¹⁵ The United States also again failed to ratify other important international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

Unfortunately, the year 2001 also saw continued abuses of human rights around the world. The most dramatic were the events of September 11, 2001, which are discussed further in this article.

There were also assassinations of human rights workers and lawyers in Columbia, including: Iván Villamizar Luciani, a former public advocate; Carmenza Trujillo Bernal, a member of the Caldas Human Rights Committee; Gonzalo Zárate Triana, a founding mem-

6. HUMAN RIGHTS WATCH, *supra* note 2, at xvi; see also Barbara Crossette, *Russia Using Brutality to Suppress Chechens, Rights Group Says*, N.Y. TIMES, Feb. 28, 2002, at A9. Human rights problems continued in Russia itself, where the country's human rights commissioner said that private citizens feel "absolutely helpless" if pursued by the police, prosecutors, or the courts. *World Briefing*, N.Y. TIMES, Jan. 3, 2002, at A8.

7. HUMAN RIGHTS WATCH, *supra* note 2, at xxviii.

8. *LeGrand Case (F.R.G. v. U.S.)*, 40 I.L.M. 1069, 2001 I.C.J.; Peter C. Hansen, *Germany Challenges U.S. Failure to Notify Nationals of Consular Access*, INT'L LAW NEWS, Winter 2002, at 21-22 (newsletter of the ABA Section of International Law and Practice). Domestic courts in the United States, however, seem to be unaware of the ruling. See, e.g., Douglass W. Cassell, Jr., *Ignoring the World Court*, CHI. DAILY L. BULL., Jan. 10, 2002, at 6.

9. HUMAN RIGHTS WATCH, *supra* note 2, at xvi.

10. HUMAN RIGHTS WATCH, *supra* note 2, at xvi, 199-200, 592; see also Ilene R. Prusher, *For War-Crime Tribunals, 'Justice' Is a Relative Term*, CHRISTIAN SCI. MONITOR, Feb. 15, 2002, at 7 (reporting that U.N. Officials had concluded that the proposed tribunals in Cambodia would not meet the basic standards for a fair trial).

11. HUMAN RIGHTS WATCH, *supra* note 2, at xvi; see also HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 672-93 (2d ed. 2000); Simon Montlake, *Indonesia Slowly Investigates Dutch Journalist's Death*, CHRISTIAN SCI. MONITOR, Feb. 15, 2002, at 8.

12. See, e.g., Robert Wright, *Karadzic Escapes Arrest by Peacekeeping Force*, FIN. TIMES, Mar. 1, 2002, at 3.

13. See, e.g., Marlise Simons, *Trial Centers on Role of Press During Rwanda Massacre*, N.Y. TIMES, Mar. 3, 2002, § 1, at 3.

14. See Carol Hoyos, *US Launches Campaign to Close UN Criminal Tribunals*, FIN. TIMES, Mar. 1, 2002, at 4.

15. *Top 10 Stories*, *supra* note 5, at 23.

ber of Meta Civic Committee for Human Rights; Dario Suárez Menese, leader of a local displaced group; José Jorge Navarro G., director of a local chapter of the Colombian Red Cross; José de Jesús German, a person about to deliver material in the attorney general's investigation of a retired general accused of supporting paramilitary groups; Alma Rosa Jaramillo Lafourie, a lawyer who worked with a development and peace program; Eduardo Estrada, who worked with the same group; Yolanda Cerón Delgado, a Roman Catholic nun and human rights defender; Julian Rodríguez Benítez, member of the human rights group CREDHOS; Juan Manuel Corzo, director of the attorney general's investigations into other assassinations; and Miguel Ignacio Lora, Yolanda Paterina, Carlos Arturo Pinto, Mariá del Rosario, and Maria del Rosario Rojas Silva, all of whom had investigated paramilitary or guerilla activities in Colombia.¹⁶ Other human rights workers have "disappeared" and are presumed dead, including Kimy Pernia Domicó, leader of the indigenous Emberá-Katío.¹⁷

Killings occurred in other countries as well. Human rights defender Digna Ochoa was assassinated in her law office in Mexico City; a note left by her body threatened similar assassinations to members of the Miguel Agustín Pro Juárez Human Rights Center where Ochoa had worked.¹⁸ In Indonesia, human rights defenders in Aceh province were extrajudicially executed, including: Muhamed Efendi Malikon, secretary of the Care Forum for Human Rights; Yusuf Usman, a member of that group; Suprin Salaiman, a lawyer who was accompanying a client to a police interrogation session; and Jafar Syehdo, a volunteer with the Indonesian Red Cross.¹⁹ In Nigeria, Chief Bole Ige, Nigeria's attorney general and minister of justice, was assassinated on December 23, 2001.²⁰ Ige, a Christian, had spoken out against a sentence handed down by an Islamic court in Nigeria.²¹ In India, the district secretary of the Nalgonda Branch of the Andhra Pradesh Civil Liberties Committee, Azam Ali, was killed by two youths wielding swords.²² And in Uzbekistan, an activist in the Human Rights Society of Uzbekistan, Shovruk Ruzimuradov, was apparently tortured to death while in police custody.²³

Lawyers in other countries also faced harassment. In China, judicial officials in Shenzhen told lawyer Zhou Litai to close his law offices; he had been representing workers injured in factory accidents and promoting workplace safety rights for workers.²⁴

Hina Jilani, the U.N. Secretary-General's Special Representative for Human Rights Defenders, finished her first year in office in 2001; she continues her work in urging governments to implement the 1998 Declaration on Human Rights Defenders.²⁵ In a related development, the 2001 Nobel Peace Prize was awarded jointly to Kofi Anan and the United Nations.²⁶ Also in 2001, the American Bar Association Section of International Law and

16. HUMAN RIGHTS WATCH, *supra* note 2, at xxvii–xviii.

17. HUMAN RIGHTS WATCH, *supra* note 2, at xxvii.

18. HUMAN RIGHTS WATCH, *supra* note 2, at xxviii.

19. *Id.*

20. *Top 10 Stories*, *supra* note 5, at 23.

21. *Another Political Death in Nigeria Deepens Mystery and Spurs Fears*, N.Y. TIMES, Jan. 9, 2002, at A9 (also reporting the fatal stabbing of S.A. Awonusi, a senior aide to the Chief Justice of the Supreme Court).

22. HUMAN RIGHTS WATCH, *supra* note 2, at xxviii.

23. *Id.*

24. Craig S. Smith, *China Tells Lawyer Who Aids Injured Workers to Close His Office*, N.Y. TIMES, Jan. 3, 2002, at A5.

25. HUMAN RIGHTS WATCH, *supra* note 2, at xxvii.

26. *News in 2001*, *supra* note 4, at R12, R16.

Practice posthumously awarded its International Rule of Law Award to Rosemary Nelson, a solicitor from Northern Ireland who had been killed in front of her home in 1999.²⁷ The Section honored her vision that resorting to judicial resolution of disputes was a better course of action than violence.

II. Human Rights and the Attacks on America

On September 11, 2001, an organized group of terrorists linked to Osama bin Laden hijacked four commercial airplanes. American Airlines Flight 11, flying from Boston to Los Angeles, was diverted into the north tower of the World Trade Center in New York. Twenty minutes later, United Airlines Flight 175, also flying from Boston to Los Angeles, flew into the other tower. A third plane, American Airlines Flight 77, flying from Dulles Airport in Washington, D.C. to Los Angeles, crashed into the Pentagon. A fourth plane, United Airlines Flight 93, flying from Newark to San Francisco, crashed in Pennsylvania after its passengers heroically fought with the hijackers. The Twin Towers collapsed, and thousands were killed. The casualties included the passengers on the planes, persons in the buildings that were hit, and many of the rescue personnel who had come to assist.

Before the nation had a chance to recover from those attacks, biological attacks of anthrax were made in Florida, Washington, New York and New Jersey. Thousands of prank attacks and false alarms followed in many areas of the country.²⁸

The hijacking of commercial airplanes and the biological attacks were clear violations of international human rights law and humanitarian law. As Human Rights Watch explained:

The September 11 attacks were antithetical to the values of human rights. Indeed, it is the body of international human rights and humanitarian law—the limits placed on permissible conduct—that explains why these attacks were not legitimate acts of war or politics. If the human rights cause stands for anything, it stands for the principle that civilians should never be deliberately slaughtered, regardless of the cause. Whether in time of peace or war, whether the actor is a government or an armed group, certain means are never justified, no matter what the ends.²⁹

They note further:

Terrorism is less likely when the public embraces the view that civilians should never be targeted—that is, when the public is firmly committed to basic human rights principles.

Building a stronger human rights culture—a culture in which any disregard to civilian life is condemned rather than condoned—is essential in the long run for defeating terrorism.³⁰

Traditional and unlikely allies banded together to decry the terrorist acts, and a coalition of nations retaliated for the attacks. Many domestic and international events in the aftermath of September 11 continue to challenge and divide the human rights community.³¹

27. See *Protection of Human Rights Advocates in Northern Ireland*, Hearing before the Commission on Security and Cooperation in Europe, 106th Cong., 2d Sess. (Mar. 14, 2000) (CSCE 106-2-5), available at <http://www.csce.gov> (last visited July 3, 2002), also available from the U.S. Government Printing Office in Washington D.C.

28. For example, Clayton Waagner of Ohio was arrested in December on suspicion of sending as many as 550 anthrax hoax letters to abortion clinics. *News in 2001*, *supra* note 4, at R12.

29. HUMAN RIGHTS WATCH, *supra* note 2, at xv.

30. *Id.* at xvii.

31. See, e.g., Michael Ignatieff, *Human Rights on Hold: War Against Terrorism Allows Abuses Elsewhere to Go Unchecked*, HONOLULU ADVERTISER, Feb. 10, 2002, at B1, B4.

For example, the United States refused to release the names of more than 1,000 people whom it had detained after the attacks. Some civil liberties groups expressed their outrage at the detentions; others accepted the curtailments of individual liberty. Some of the fighters for the Taliban and al Qaeda have been sent to the U.S. Naval Base at Guantanamo Bay, Cuba, where they were called “unlawful combatants”—a name that was described as an “ill-defined category which allows the [United States] wide latitude in how to handle them.”³² Some have argued that because they were captured as part of the U.S. “war on terrorism,” they should be treated as prisoners-of-war and granted the protections of the Geneva Conventions.³³

The international coalition of nations that invaded Afghanistan ended the rule of one of the world’s worst violators of human rights—the Taliban regime. The Taliban had severely oppressed the rights of women—prohibiting them to attend schools, hold jobs, to show their faces, or even to walk alone on the street.³⁴ The Taliban readily used violence against those who failed to follow its strict interpretations of Islamic law.³⁵ The Taliban murdered those who were thought to sympathize with its military adversaries.³⁶ The Taliban’s Ministry for the Promotion of Virtue and the Prevention of Vice ordered the small number of Hindus and Sikhs still living in Afghanistan to fly yellow flags over their homes and to wear special yellow labels on their clothing that would distinguish them from Muslims, a measure that prompted comparisons to the yellow stars worn by Jews in Nazi Germany.³⁷

The Taliban arrested twenty-four foreign and local aid workers, including two Americans, on suspicion of propagating Christianity.³⁸ The Taliban destroyed two pre-Islamic statues of Buddha.³⁹ It forced an Italian-funded hospital to close after the hospital management allowed men and women to eat in the same room.⁴⁰ The Taliban’s religious police also raided another hospital operated by the International Committee of the Red Cross.⁴¹ The United Nations World Food Program, attempting to assist women there in Afghanistan, prohibited discrimination against women in programs that it funded. However protests against women being allowed to work forced the closure of some bakeries in Kabul that provided subsidized bread.⁴²

To put it mildly, the collapse of the Taliban government is a welcome improvement in human rights. Yet its downfall also resurrected a common problem for the international

32. Seth Stern & Peter Grier, *Guantanamo Quandary: Untangling the Legalities in a Name*, CHRISTIAN SCI. MONITOR, Jan. 30, 2002, at 3.

33. See *id.*; see also Katharine Q. Seelye, *For America’s Captives, Home Is a Camp in Cuba, With Goggles and a Koran: The Treatment of Prisoners Is Drawing Scrutiny From Human Rights Groups*, N.Y. TIMES, Jan. 20, 2002, § 1, at 12; see also Andres Leighton, *Afghan War Captives Begin 4th Day of Hunger Strike*, HONOLULU ADVERTISER, Mar. 3, 2002, at A10.

34. See, e.g., Guy Chazan, *For Afghan Women, a Slow Re-Emergence: Some Return to Society, But After the Taliban, Many Are Reluctant*, WALL ST. J., Jan. 3, 2002, at A6.

35. See HUMAN RIGHTS WATCH, *supra* note 2, at xxiii.

36. *Id.*

37. See Barry Bearak, *Taliban Plan Identity Label for Hindus*, N.Y. TIMES, May 23, 2001, at A9; Michael McGuire, *Taliban Orders Non-Muslim Ids*, CHI. TRIB., May 23, 2001, § 1, at 1; see also Amy Walman, *Keeping Their Faiths Under Taliban Rule Drew Sikhs and Hindus Together*, N.Y. TIMES, Jan. 20, 2002, § 1, at 12.

38. See *News in 2001*, *supra* note 4, at R12.

39. See *id.*

40. See McGuire, *supra* note 37, at 1.

41. See Barry Bearak, *Afghanistan: Taliban Raid Red Cross Hospital*, N.Y. TIMES, June 2, 2001, at A5.

42. See McGuire, *supra* note 37, at 1.

human rights community: that of trying to prevent those individuals who were responsible for the atrocities from having any role in a future government or security force.⁴³

III. European Court of Human Rights

A. TERRORISM AND INDEPENDENCE MOVEMENTS

An observation often heard in the aftermath of the September 11th bombings was that one person's terrorist is another person's freedom fighter. This has long been a real paradox facing the European Court of Human Rights (ECHR). Every year, the ECHR hears complaints concerning people imprisoned or killed because of their suspected involvement with terrorist groups. Sometimes the national governments are the plaintiffs and putative members of the opposition groups are the defendants. Often, though, the reverse is true. In many cases, the Court finds that the governments' actions violated any of several of the articles of the European Convention on Human Rights. Yet, in other cases, the Court upholds the official efforts against domestic political movements.

Over the last several years, Turkey has been the leading source of ECHR cases involving human rights violations resulting from state suppression of political opposition. The Turkish government typically acts quickly to stem any movements for independence among its Kurdish population. The most prominent organization fighting for Kurdish independence is the Kurdistan Workers Party, otherwise known as the PKK.⁴⁴ The PKK has undertaken bombings and shootings (sometimes against fellow Kurds) both in Turkey and abroad (primarily in Germany).⁴⁵ The Turkish government regularly categorizes people suspected of fighting for Kurdish political rights as members of the PKK.

In the past year, the ECHR heard numerous cases brought by Turkish citizens against the Turkish government claiming mistreatment or killing of Kurds. The plaintiffs typically complained of violations of Article 2 (the duty of the state to protect life), Article 3 (the prohibition of torture), Article 7 (no punishment in the absence of an extant law), and Article 8 (the right to a private and family life).⁴⁶ Other cases reflecting similar facts focused on the lack of fair procedure or due process.⁴⁷

43. See HUMAN RIGHTS WATCH, *supra* note 2, at xxiii.

44. See Turkish Ministry of Foreign Affairs, *Terrorism and the PKK*, available at <http://www.mfa.gov.tr/grupa/acf/default.htm> (last visited July 3, 2002).

45. See *id.*

46. See, e.g., *Soysal v. Turkey*, App. No. 50091/99 (2001); *Dulasüü v. Turkey*, App. No. 25801/94 (2001); *Cicek v. Turkey*, App. No. 25704/94 (2001); *Ecer and Zeyrek v. Turkey*, No. 29295/95 and No. 29363/95 (2001) (charging that the national court violated Article 7 (no punishment in the absence of an extant law) when it imposed a heavier penalty than the crime charged warranted); *Tanis and Deniz v. Turkey*, No. 65899/01 (2001); *Berkay v. Turkey*, App. No. 22493/93 (2001); *Akdeniz v. Turkey*, App. No. 23954/94 (2001); *Altay v. Turkey*, App. No. 22279/93 (2001); *Süüarli v. Turkey*, App. No. 24490/94 (2001) (holding that although the PKK may have kidnapped the victim from prison the Turkish authorities were responsible to protect prisoners adequately); *Avsüüar v. Turkey*, App. No. 25657/94 (2001); *Irfan Bilgin v. Turkey*, App. No. 25659/94 (2001); *Aydin v. Turkey*, App. No. 46231/99 (2001) (killing of politician of Kurdish origin by unidentified perpetrators).

47. See *Sadak v. Turkey*, App. No. 29900/96, No. 29901/96, No. 29902/96 and No. 29903/96 (2001); and *Süüahiner v. Turkey*, App. No. 29279/95 (2001); *Ari v. Turkey*, App. No. 29281/95 (2001); *Yilmaz v. Turkey*, App. No. 29286/95 (2001); *Ketenogüülu v. Turkey*, App. No. 29360/95 and No. 29361/95 (2001); *Yildirim v. Turkey*, App. No. 30451/96 (2001); *Tamkoc v. Turkey*, No. 31881/96 (2001); *Yalgin v. Turkey*, App. No. 31892/96 (2001); *Gunes v. Turkey*, App. No. 31893/96 (2001); *Süüahin v. Turkey*, App. No. 31961/96 (2001); *Kizilışz v. Turkey*, App. No. 31962/96 (2001); *Fikret Dogüüan v. Turkey*, App. No. 33363/96 (2001); *Yakisüü v. Turkey*, App. No. 33368/96 (2001); *Yalgin v. Turkey*, App. No. 33370/96 (2001).

The ECHR struck from its docket several cases concerning extra-judicial killings of political activists, where the government either unilaterally admitted to violations of the Convention and offered compensation to the victim's survivors,⁴⁸ or settled with the survivors.⁴⁹ Plaintiffs also challenged the Turkish government's attempts to control religious expression. In one instance, a woman complained that the administration of her university had prevented her from wearing a headscarf on campus.⁵⁰ In another incident, the head of an "extremist" Islamic sect was "convicted for statements made on television."⁵¹ Yet Turkish courts on occasion also punished outspoken secularists. After a Turkish district court fined an author of a book criticizing Islam, he appealed against a violation of Article 10 (freedom of expression) before the ECHR.⁵²

Turkey was not the only signatory to the European Convention on Human Rights to be charged in 2001 with violating the right of Muslims to free exercise of their religion (Article 9) or the prohibition against unjustified discrimination (Article 14). A case against Bulgaria involved the deportation of a person who taught Islam allegedly without due authorization.⁵³ Switzerland was sued when it prohibited a teacher from wearing an Islamic veil while on duty.⁵⁴ The ECHR determined the latter complaint to be inadmissible, however, on the grounds that:

[t]he ban on the applicant's wearing of a Muslim headscarf while teaching had not been imposed because she was a woman but had pursued the legitimate aim of ensuring the neutrality of State primary education. A similar ban could be imposed on a man wearing clothes that identified him as a member of a particular religious denomination.⁵⁵

Great Britain is another signatory of the Convention whose history of confronting violent organizations in Northern Ireland has precipitated frequent complaints before the ECHR. In 2001, the Court heard six cases that had certain critical elements in common. Four of them concerned Northern Irish citizens whose deaths had occurred during encounters with the Royal Ulster Constabulary (RUC)⁵⁶ since renamed the Northern Ireland Police Service. The national investigations conducted by the British government in each instance had lasted several years, but invariably resulted in the exoneration of the defendant RUC personnel. The ECHR handed down identical rulings in all four cases, finding the same error in each case. It ruled that the British government had failed to safeguard the procedural require-

48. *Akman v. Turkey*, App. No. 37453/97 (2001).

49. *K. Aydin, C. Aydin and S. Aydin v. Turkey*, App. Nos. 28293/95, 29494/95 and 30219/96 (2001); *Degüer v. Turkey*, App. No. 24934/94 (2001); *Avci v. Turkey*, App. No. 24935/94 (2001); *Orak v. Turkey*, App. No. 24936/94 (2001); *Bogüa v. Turkey*, App. No. 24938/94 (2001); *Dogüan v. Turkey*, App. No. 24939/94 (2001); *Parlak, and others v. Turkey*, App. No. 24942/94 (2001); *Kizilgedik v. Turkey*, App. No. 24944/94 (2001); *Bogü v. Turkey*, App. No. 24946/94 (2001); *Demir v. Turkey*, App. No. 24990/94 (2001); *Süüenses v. Turkey*, App. No. 24991/94 (2001); *I.I. v. Turkey*, App. Nos. 30953/96, 30954/96, 30955/96 and 30956/96 (2001).

50. *See Tekiüin v. Turkey*, App. No. 41556/98 (2001).

51. *See Gÿndÿz v. Turkey*, App. No. 35071/97 (2001).

52. *See Aydin Tatlav v. Turkey*, App. No. 50692/99 (2001).

53. *See Al-Nashif v. Bulgaria*, App. No. 50963/99 (2001).

54. *See Dahlab v. Switzerland*, App. No. 42393/98 (2001).

55. *Id.*

56. *See Jordan v. United Kingdom*, App. No. 24746/94 (2001); *McKerr v. United Kingdom*, App. No. 28883/95 (2001); *Kelly v. United Kingdom*, App. No. 30054/96 (2001); *Shanaghan v. United Kingdom*, App. No. 37715/97 (2001).

ments of Article 2, which requires investigations that can lead to the identification and punishment of those responsible for the killings.⁵⁷ The Court therefore examined whether the British government had complied with this procedural aspect of Article 2. The Court found that the investigations had been insufficiently impartial and transparent, the inquests had been poorly documented, and the complainants in the original investigations had not been provided with adequate legal representation.⁵⁸ The other two cases arose from the arrests of suspected IRA fighters.⁵⁹ Here, too, the ECHR held that the British government had not adequately protected the procedural rights of the detainees.

B. ASYLUM AND REFUGEE STATUS

Asylum also became a more salient issue for member nations of the Convention in 2001. The ECHR considered several cases from different countries regarding various dispositions of asylum requests. A citizen of Tanzania who had sought asylum in the United Kingdom brought one such case.⁶⁰ Despite the complainant's claim that he had been tortured in his homeland because of his opposition to the national government, his initial application for asylum was rejected, and his subsequent appeal to the national Special Adjudicator was denied. The ECHR found for the complainant under Article 3 (the prohibition of torture). The ECHR found the argument of the United Kingdom, that the plaintiff could return to a part of Tanzania where he was less likely to be detained ("inner flight"), unconvincing—and the complainant's risk of torture, in contrast, quite real.⁶¹

Not all cases concerning a group's pursuit of its national or ethnic recognition involved violence. In *Stankov and the United Macedonian Organisation*,⁶² the plaintiffs comprised an association seeking greater rights for Macedonians within Bulgaria (Stankov had been a regional leader in the organization). The Bulgarian courts denied their request to register as a legal political organization on the grounds that the group violated national unity. The ECHR held for the plaintiffs, concluding that the official Bulgarian practice violated the right to peaceful assembly.

C. SEXUAL DISCRIMINATION

The ECHR admitted for future judgment a number of appeals charging governmental denial of equal treatment of homosexuals.⁶³ The court also struck a case brought against the United Kingdom.⁶⁴ In *Sutherland*, a British national complained that the British criminal laws controlling the minimum age of sexual consent discriminated against him as a gay man. Whereas men and women could legally engage in consensual heterosexual sexual activities beginning at age sixteen, the minimum age for consensual homosexual involvement was

57. *See id.*

58. *See id.*

59. *O'Hara v. United Kingdom*, App. No. 37555/97 (2001); *Brennan v. United Kingdom*, App. No. 39846/98 (2001).

60. *Hilal v. United Kingdom*, App. No. 45276/99 (2001).

61. *Id.*

62. *Stankov v. Bulgaria*, App. No. 29221/95 and App. No. 29225/95 (2001).

63. *S.L. v. Austria*, App. No. 45330/99 (2001) and *A.V. v. Austria*, App. Nos. 39392/98 and 39829/98 (2001); *Sutherland v. the United Kingdom*, App. No. 25186/94 (2001).

64. *Sutherland*, App. No. 25186/94.

eighteen. He presented his complaint under both Article 8 (right to respect for family life) and Article 14 (freedom from discrimination). In 1997, the European Commission on Human Rights found merit in Sutherland's charge that the laws violated Article 8. However, by the time the case reached the ECHR, the British Parliament had passed the Sexual Offences (Amendment) Act of 2000, (amending the 1998 Crime and Disorder bill), reducing the age of consent for homosexual acts between consenting males to sixteen.⁶⁵

The British government moved to have the ECHR strike the case as moot. The Court complied.⁶⁶ Although Sutherland had not been prosecuted under the law, his brief before the Court documented that several hundred men were convicted in 1990 and 1991. However, in none of these cases did the men derive their standing to appeal before the ECHR. The explanation lies in Article 34 (Individual Applications): The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or its protocols. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. Article 34 allows an individual to petition the Court if he or she stands in probable danger of prosecution under a contested law. Here, for example, the complainants' conduct in their personal lives contravened the respective national laws controlling homosexual activities; the laws potentially affected them as they were at risk of being arrested at any time.

In another case, the plaintiff in *Frette v. France*⁶⁷ was a single gay man whose attempt to adopt a child was barred by the Conseil d'Etat. In its preliminary ruling on admissibility (whether the complainant had presented a prosecutable claim under a stated article of the Convention), the ECHR agreed that the complainant had colorable claims of procedural infractions under Articles 6(1), 8, and 14.

D. EXTRADITION AND THE DEATH PENALTY

A case of particular interest to Americans was the extradition of David Einhorn from France back to the United States. Einhorn was an American who was convicted in federal district court in absentia in 1993. He had fled the country before the conclusion of the criminal investigation. The French authorities arrested Einhorn in 1997 but declined to extradite him to the United States because he faced the death penalty under Pennsylvania law. Capital punishment is not only illegal under French law, but the law prevents delivering a person within the country's borders to another state where he will likely be executed. Following changes in the criminal procedures of Pennsylvania the United States in 1998 promised France that it would grant Einhorn a new trial if he were extradited. In addition, the United States promised France that Einhorn would not be subject to the death penalty, regardless of the trial's outcome. Under these conditions, the French government agreed to extradite Einhorn. He protested the extradition before the ECHR under Articles 3 and 6. The Court ruled against Einhorn in light of the terms of agreement between the United States and France.⁶⁸

65. Sexual Offences (Amendment) Act, 2000, c. 44 (Eng.).

66. See Sutherland, App. No. 25186/94.

67. *Frette v. France*, App. No. 36515/97 (2002).

68. *Einhorn v. France*, App. No. 71555/01 (2001).

IV. The European Court of Justice and the European Union

The European Court of Justice (ECJ) is not generally considered to be a human rights court as such, as other branches of the EU government are the more usual fora for such issues. Nonetheless, among the cases the ECJ heard in 2001 were a few that raised questions of human rights, specifically, the rights of refugees.

The ECJ conjoined several similar cases from Germany that challenged the ability of a EU member state to enforce national laws denying social benefits to refugees within its borders.⁶⁹ With the exception of one, involving an Algerian and her Moroccan husband, these complaints were presented by Palestinian or Kurdish citizens who had arrived in Germany from Lebanon. All involved families that had been residing in Germany since the 1980's. In December 1993, a new German law came into effect that, for a short period, prohibited the government from treating refugee families differently from families of migrant workers.⁷⁰ Because migrant workers received child benefits when living in the EU, the complainants maintained that they should have enjoyed similar funding without interruption. The ECJ held for the plaintiffs. It found that Germany was a signatory of the Geneva Convention for Refugees (1951) as well as the New York Convention on Stateless Persons (1954). The country was therefore responsible for fundamental support of refugee families residing within its borders. Moreover, the Treaty of Rome (1957) mandated that member states must not officially discriminate in their treatment of migrant workers.⁷¹ The most significant holding of the opinion was its rejection of any distinction between migrant workers—and thereby refugees—arriving from non-EU lands and those migrating from one member state to another.

Other organs of the EU effected policies in 2001 that bore on human rights. On January 1, 2001, the European Commission established the EuropeAid Cooperation Office to organize and administer the Commission's foreign aid distribution programs. The new office grew out of an extensive reform of the Commission's external programs first announced on May 16, 2000 and promulgated in Special Report No. 12/2000 issued in August 2000.⁷²

The EuropeAid Cooperation Office serves under the European Community Humanitarian Office (ECHO), overseen by Commissioner Chris Patten, to provide the practical vehicle of the Commission's humanitarian aid. The EU donates considerable monetary and advisory aid to countries throughout the world including countries in Africa, Asia, South America, and the former Soviet Block. Funding in 2000 equaled 7.6 billion Euros, with a still larger budget presented in the following year. In addition to economic help, EuropeAid oversees programs promoting democracy and human rights.⁷³

Until the events of September 11, the most pressing international concern facing the EU was preparing for enlargement of the Union. As part of this growth, the EU monitors the political qualifications of candidate nations to join the EU. Democracy and a respect for human rights are primary criteria. While the ECHR continued to hear many cases of

69. Khalil v. Bundesanstalt für Arbeit, 3 C.M.L.R. 50 (E.C.J. 2000).

70. *See id.*

71. *See* TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS, Oct. 2, 1997, O.J. (340) art. 20 (1997).

72. Special Report No. 12/2000 on the Management by the Commission of European Union Support for the Development of Human Rights and Democracy in Third Countries, 2000 O.J. (C230/1) 1.

73. Bulletin EU 6–2001, 1.2.10; Bulletin EU 10–2001, 1.2.9; Bulletin EU 11–2001, 1.2.4, available at <http://www.europa.eu.int> (last visited July 3, 2002).

potential human rights violations against Turkey, the EU, for its part, continued to deliberate over Turkey's accession to the Union. EU officials have variously praised Turkey for pursuing constitutional reforms, while indicting its frequent, unacceptable disregard for civil rights.⁷⁴

Other present concerns have been the creation of a unified asylum and immigration policy for people arriving from non-EU Member States, the effective spread of democratization and tolerance abroad, and the fight against organized crime.⁷⁵ The European Parliament formally called for the ratification of the Rome Treaty, creating the Permanent International Criminal Court (ICC), in January 2001.⁷⁶ The United States, in contrast, remains one of a handful of nations opposed to the ICC's formation.

None of these issues were overshadowed by September 11; to the contrary, they became more urgent. At the Council's Meeting in Laeken in the final months of 2001, the Ministers of Justice and Home Affairs of the EU Member States collectively called for an "Action Plan" to stem the illegal smuggling of immigrants into the EU.⁷⁷ In 2001 and the recent years preceding, the underground trade bringing workers into Europe had become increasingly brutal and, for the recipient countries, embarrassing. At times it had resulted in the hapless immigrants' deaths. Europeans called on their governments, and on the EU, to block this illicit commerce.

While Europe has witnessed a widespread, rising animosity toward immigrants in general, the outcry against the conditions of illegal immigrant workers has alarmed many Europeans. At the same time that the EU contends with an increasing xenophobia and protecting illegally smuggled foreign workers, it is trying to liberalize national asylum laws and protections.

The attacks on the United States precipitated an emergency meeting of the European Council, as well as the Presidents of the European Parliament and the European Commission, on September 21.⁷⁸ The EU has meanwhile fashioned a "European Policy to combat terrorism."⁷⁹ Alongside its efforts against terrorism, the EU has also dedicated itself to the reconstruction of Afghanistan. While some funding and construction has been provided since December, the EU's complete plan for reconstruction necessarily remains undefined.

V. Rights of Children

For children, the horrific tragedy of September 11, 2001 was most immediately felt by those who forever lost fathers and mothers in the Twin Towers, at the Pentagon, or in the

74. Bulletin EU 6-2001, 1.6.22; Bulletin EU 10-2001, 1.6.23, *available at* <http://www.europa.eu.int> (last visited July 3, 2002).

75. Bulletin EU 9-2001, 1.2.1 (recording official EU responses to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Tolerance in Durban, South Africa), *available at* <http://www.europa.eu.int> (last visited July 3, 2002).

76. Bulletin EU, 1/2-2001, 1.2.1, *available at* <http://www.europa.eu.int> (last visited July 3, 2002).

77. This resolution resulted in the "Comprehensive Plan" proposed by the Spanish Presidency of the EU on February 4, 2002 at Santiago de Compostela, which the Ministers of Justice and Home Affairs of the EU Member States promptly endorsed.

78. Bulletin EU 9-2001, I-Extraordinary Brussels European Council, 1.1, 1.6, 1.6.4, 1.6.47, 1.14, *available at* <http://www.europa.eu.int> (last visited July 3, 2002).

79. Bulletin EU 9-2001, 1.8. *See also* Bulletin EU 9-2001, 1.4.1; Bulletin EU 10-2001, 1.4.1, 1.5.1, *available at* <http://www.europa.eu.int>; Memo/01/424.

Pennsylvania countryside. But its wrenching aftermath reached countless others, those around the world who witnessed the murderous acts on television, the innocents in Afghanistan whose lives hung in the balance during the U.S.-led campaign, and the thousands of unaccompanied immigrant children caught up in the U.S. hunt for terrorists.

In Afghanistan, five million women and children faced the triple threat of war, famine, and winter. The Bush administration strove to avoid civilian casualties, and participated in a commendable humanitarian relief effort to provide food, clothing and medical aid to the Afghan people. The White House particularly highlighted the plight of Afghan children, and called on American children for \$1 donations.⁸⁰ Still, errant bombs killed or injured an uncertain number of Afghan civilians, including children, and the war uprooted families and turned countless numbers into refugees as the harsh Afghan winter began. In addition, there were reports that Northern Alliance and Taliban forces employed child soldiers, and that nearly 5,000 cluster bombs littered the country, posing a special danger to young children. By year's end, the lives of as many as 100,000 or more innocent Afghan children were still at grave risk.

The events of September 11 forced the United Nations to postpone until May 2002 its Special Session on Children, which was to occur later that month. Before the tragedy, government and NGO delegates wrangled over the terms of a draft "outcome document," which was to articulate a guiding set of principles and actions that would help fulfill commitments made at the 1990 World Summit for Children, and address currently emerging concerns. Some 100 NGO representatives from the "Child Rights Caucus" sought to strengthen language in the document dealing with education, health, protection against abuse, neglect, exploitation and violence, armed conflict, and sex trafficking, among others, while preserving references to the U.N. Convention on the Rights of the Child (CRC). The U.S. delegation, however, sought to minimize references to the CRC, which the United States has not yet ratified, and also opposed certain language regarding access of adolescents to sexual and reproductive health care, information and services.

By year's end, ten countries had ratified the Optional Protocol on Child Soldiers to the Convention on the Rights of the Child, the minimum number needed for the treaty to go into effect, which was to occur on February 12, 2002. The Protocol establishes eighteen as the minimum age for conscription, forced recruitment, or direct participation in armed conflict.⁸¹ The scope of the problem was highlighted in a June report by the Coalition to Stop the Use of Child Soldiers, which found that hundreds of thousands of children were fighting in the armed forces of more than thirty countries, and even more were recruited into paramilitary and non-state armed groups in over eighty-five countries. Also by year's end, sixteen countries had ratified and more than seventy-five others had signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which calls for an end to sexual exploitation and trafficking of children. This Protocol entered into force on January 18, 2002.⁸² The United States has signed, but not yet ratified, both

80. The program proved controversial and was abandoned.

81. For more information on the protocol, see DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 40-82 (3d ed. 2001).

82. Office of the High Commissioner for Human Rights, *OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY*, U.N. Doc. A/RES/54/263 (2002).

Protocols. In August, the ABA again urged the Senate Foreign Relations Committee to consider the Protocols for ratification at the earliest opportunity.⁸³

In June, the Inter-American Court on Human Rights ordered Guatemala to pay a total of more than half a million dollars to the families of five street children who were brutally tortured and murdered by two National Policemen in June 1990. This was the first case in the twenty-year history of the Court where the victims of a resolved case were children. Guatemala was given six months to comply with the court's ruling. In a unanimous decision, the Court declared that Guatemala had violated multiple provisions of the American Convention on Human Rights, including Article 19 (Rights of the Child). Guatemala was also condemned for violating Article 1, 6, and 8 of the Inter-American Convention for the Prevention and Punishment of Torture. The Court ordered Guatemala "to adopt the legislative, administrative and any other measure necessary" to ensure Guatemalan law reflects Article 19. By year's end, however, Guatemala had still not released payment to the victims' families in accordance with the court order.

Casa Alianza, the NGO that brought the case, also sued Honduras before the Inter-American Commission for the murder of street children in violation of Article 4 of the Convention. It claimed that approximately 1,000 children have been murdered there since 1998, and also called for the establishment of a U.N. war crimes tribunal to examine these "crimes against humanity."⁸⁴

In September, University of Philadelphia Professors Richard J. Estes and Neil A. Weiner released a landmark study on trafficking and sexual exploitation of children in the United States. The report estimates that roughly 17,000 foreign children illegally brought into the United States each year become victims of sexual exploitation. In the wake of the Estes report, NGOs from the United States, Canada, and Mexico met in December to formulate a plan to combat sex trafficking in North America. This plan was submitted to the Second World Congress on Child Sexual Exploitation in Yokohama, Japan (Dec. 17–21, 2001).⁸⁵ At that gathering, the NGO Group for the Convention on the Rights of the Child urged governments and intergovernmental agencies to reinforce existing international mechanisms for implementing the Agenda for Action adopted in Stockholm in 1996, and to explore regional and national mechanisms for action.

In 2001, the United States continued as one of just a few countries that impose capital punishment for juvenile offenders. Approximately eighty-two individuals in the United States who were juveniles at the time of their offense remained on death row by year's end. The state of Texas executed Gerald Mitchell in October for killing two men when he was seventeen years old. Mitchell was the eighteenth juvenile offender executed in the United States and the tenth in Texas since 1976. The state of Georgia executed Jose Martinez High on November 6, 2001. He was seventeen years old at the time of his crime, and forty-three years old at the time of his execution.

In a particularly bizarre and disturbing case, France's highest appeals court ruled that disabled children are entitled to compensation if their mothers were not given the chance

83. ABA Leadership, *House of Delegates 2000 Annual Meeting*, Report No. 106A, available at <http://www.abanet.org> (last visited July 3, 2002).

84. Casa Alianza, *The Murder of Children in Honduras is a Crime Against Humanity*, Sept 20, 1999, available at <http://www.casa-alianza.org> (last visited July 3, 2002).

85. *Trafficking in Children for Sexual Purposes: An Analytical Review* (Second World Congress Against Commercial Sexual Exploitation of Children, Yokohama, Japan) Dec. 17–20, 2001, available at <http://www.focalpointngo.org> (last visited July 3, 2002).

to have an abortion. The ruling followed a case brought by three families with physically handicapped children, who contended that if doctors had detected the fetuses' disabilities, they would have had the pregnancies terminated. The case, which effectively bestowed a "right not to be born," caused a huge furor among human rights activists, the disabled, and the medical community. The decision was overturned in January 2002 by the French Parliament, which passed a law removing any legal right "not to be born."⁸⁶

Another decision drawing wide condemnation occurred in Egypt, where a fifteen-year-old boy was sentenced to three years in prison for practicing homosexuality. The youth was arrested in May along with fifty-two other males aboard a Nile riverboat restaurant in Cairo. He was to serve his sentence in a prison for young offenders, and remain under police supervision for three years, after his release from jail.

In the final days of the Clinton administration, the Treasury Advisory Committee on International Child Labor Enforcement released its *Forced Child Labor Advisory Manual*. This document provides important information to help importers, manufacturers, retailers, trade association officials, attorneys, brokers, freight forwarders, and others involved in importing (or advising importers) identify goods that may be produced with forced or indentured child labor.⁸⁷

Finally, with respect to legislative developments, the House passed legislation that would prevent the importation into the United States of "conflict diamonds."⁸⁸ Trade in such diamonds from African nations such as the Sudan, Congo and Sierra Leone has financed years of brutal civil war and internal strife, with widespread use of child soldiers and the maiming, torture and killing of many children. In addition, Senator Tom Harkin (D-Iowa) introduced important legislation amending the Fair Labor Standards Act to provide much-needed protection for child farm workers.⁸⁹ And Senator Dianne Feinstein (D-California) and Representative Zoe Lofgren (D-California) offered legislation that would correct abusive conditions for unaccompanied immigrant children in the United States and require that each unaccompanied child have counsel and guardian *ad litem*, a recent ABA policy objective.⁹⁰

VI. Death Penalty

Use of the death penalty continued around the world, although there was progress made in enacting legislation to specifically prohibit the execution of persons with mental retardation. After the U.S. Supreme Court ruled in 1976 that the death penalty was constitutionally permissible, thirty-five persons with mental retardation have been executed in the United States.⁹¹ The U.S. Supreme Court was poised to consider the issue again in 2001, but North Carolina's enactment of legislation to prohibit the execution of persons with mental retardation made the case moot. The only other nations reported to execute persons with mental retardation are Japan and Krygystan. Krygystan has since informally denied that it will continue to use the practice.

86. *The Right to Be Born*, CHRISTIAN SCI. MONITOR, Jan. 11, 2002, at 6.

87. Int'l Child Labor Enforcement, U.S. Customs Service, *Forced Child Labor Advisory* (Dec. 2000), available at <http://www.customs.treas.gov/enforcem/enforcem.htm> (last visited July 3, 2002).

88. Clean Diamond Trade Act, H.R. 2722, 107th Cong. (1st Sess. 2001).

89. CARE Act, S. 869, 107th Cong. (1st Sess. 2001).

90. Unaccompanied Alien Child Protection Act of 2001, S. 121, 107th Cong., §§ 301-303 (2001).

91. Rodney Ellis, *The Hard-Line Punishment Texans Don't Support*, N.Y. TIMES, June 2, 2001, at A23.

Use of the death penalty for others continued in many nations. In the United States, Oklahoma carried out the first execution of a black woman in the United States since 1954.⁹² In China, the government executed twenty-nine people in a single day as part of its “Strike Hard” campaign against crime.⁹³ In Iran, a thirty-five-year-old woman was partially buried in a hole at Evin Prison in Tehran and stoned to death after the Supreme Court upheld her conviction for acting in “obscene sex films.”⁹⁴ The woman had denied committing any crime.⁹⁵ Stoning is reported to be a rare punishment in Iran, where drug smugglers and murderers are usually condemned to death by hanging.⁹⁶ At the end of the year, Saudi Arabia sentenced three men convicted of sodomy to be publicly beheaded.⁹⁷ During 2001, Saudi Arabia executed at least 122 people, usually by public beheading.⁹⁸

VII. Slave Labor

Survivors of slave labor camps in Nazi Germany were eligible for \$7,000 in reparations, and those who worked in factories or on farms were eligible for payments of \$2,200 each.⁹⁹ The payments were part of a \$4.5 billion fund to compensate workers and to avoid further lawsuits in the United States.¹⁰⁰

VIII. Conclusion

Human rights law and practice continues its development around the world. Despite numerous setbacks and problems in enforcing human rights norms and in bringing justice to the victims of abuse, there is slow and steady progress on many fronts. Unfortunately there is no shortage of cases where human rights continue to be violated. In addition, there is a shortage of lawyers and human rights advocates who are willing and able to undertake the representation of these victims.

92. Wanda Jean Allen was executed in Oklahoma on January 12, 2001. See *News in 2001*, *supra* note 4, at R12.

93. *29 Executed in One Day as Chinese Crack Down*, CHI. SUN-TIMES, May 22, 2001, at 25.

94. *Woman in Iran Stoned to Death for Making Porn Film*, CHI. SUN-TIMES, May 22, 2001, at 3.

95. *Id.*

96. *Id.*

97. The men—Abi bin Hatan bin Saad, Mohammad bin Suleiman bin Mohammad, and Mohammad bin Khalil bin Abdullah—were found guilty of “engaging in the extreme obscenity and ugly acts of homosexuality, marrying among themselves and molesting the young” and were beheaded on January 1, 2002. Katie Szymanski, *U.S. Silent on Saudi Sodomy Executions*, BAY AREA REP., Jan. 10, 2002, at 14; *Saudi Arabia Executes Three*, FIN. TIMES, Jan. 2, 2002, at 5 [hereinafter *Executes Three*].

98. *Executes Three*, *supra* note 97, at 5.

99. Roger Cohen, *German Industry Clears Way to Pay Nazi Slave Workers*, N.Y. TIMES, May 23, 2001, at A8; *News in 2001*, *supra* note 4, at R12, R14.

100. Cohen, *supra* note 99, at A8.

