

International Human Rights

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I. Overview

The year 2002 saw several substantive milestones in the development of international human rights law.¹ However, many developments in state practice from the United States and other countries suggested that some government officials were willing to compromise individual human rights in fighting the war on terror.

The most important human rights development of 2002 was the long-anticipated creation of the International Criminal Court (ICC), providing a new forum in which to prosecute the most serious violations of human rights, including genocide, war crimes, and crimes against humanity.² The United States was one of only seven states to vote against the Rome Statute, but President Clinton had the United States sign the treaty on the eve of his departure from office.³ In an unprecedented act in international law, the Bush administration “withdrew” the U.S. signature on May 6, 2002.⁴ The United States also demanded that other nations enter into special agreements to exempt U.S. nationals from being placed on trial before that court. Additionally, in August, President Bush signed the American Servicemembers’ Protection

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1. As in earlier years, the severe space limitations for this article do not permit us to discuss many of the important legal developments in international human rights law. The omission of an area of law or any particular development should not be seen as suggesting that the area or development is not important or that the items discussed here are somehow more important. We recognize that there are other publications that provide more in-depth coverage of developments in international human rights law, including such topics as the reconstruction of Afghanistan after removal of the Taliban.

2. Nancy A. Combs et al., *International Courts and Tribunals*, 37 INT’L LAW. 523 (2003).

3. The United States signed the treaty on December 31, 2000.

4. See, e.g., Neil A. Lewis, *U.S. Is Set to Renounce Its Role in Pact for World Tribunal*, N.Y. TIMES, May 5, 2002, § 1, at 18.

Act⁵ that prohibits U.S. cooperation with the ICC and allows the President to refuse military aid to states that are parties to the treaty, except for major allies.⁶ As of January 1, 2003, 139 nations had signed and 87 nations had ratified or acceded to the treaty.

The United States also opposed a new Optional Protocol to the Convention Against Torture.⁷ The Protocol established a system for inspecting detention facilities where torture is suspected. The General Assembly approved the Torture Protocol in December by a vote of 127–4, where the United States was one of the votes against it. Some suspected that U.S. opposition to this Protocol stemmed from fear of criticism as to how the United States was treating prisoners of the war on terrorism.⁸

Actions in the United States seemed to set dangerous precedents for human rights violations in other countries. For example, the President of Uganda shut down the leading independent newspaper for a week because it was allegedly promoting terrorism by reporting a military defeat by a rebel group.⁹ The President of Liberia declared a newspaper editor and two others to be “illegal combatants’ who would be tried for terrorism in a military court.”¹⁰ Eritrea cited U.S. practices to justify detention of the founder of the country’s leading newspaper.¹¹ And Slobodan Milosevic, the former president of Yugoslavia who went on trial for war crimes before the International Criminal Tribunal for Yugoslavia, argued that the “troops under his command had merely been combating terrorism.”¹²

Human Rights Watch and other groups warn that “[t]he security threat posed by terrorism should not obscure the importance of human rights.”¹³ Although human rights concerns may be seen as a low priority, that view “is profoundly mistaken.”¹⁴ As stated by Human Rights Watch:

An anti-terrorism policy that ignores human rights is a gift to the terrorists. It reaffirms the violent instrumentalism that breeds terrorism as it undermines the public support needed to defeat terrorism. A strong human rights policy cannot replace the actions of security forces, but is an essential complement. A successful anti-terrorism policy must endeavor to build strong international norms and institutions on human rights, not provide a new rationale for avoiding and undermining them.¹⁵

II. Specific Areas

There is insufficient room in this article to review every development in the enormous field of international human rights law. The follow areas include developments in selected subject areas and geographic regions.

5. 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, Pub. L. No.107–206, §§ 2001–15, 116 Stat. 820 (2002) (codified at 22 U.S.C.A. §§ 7401 *et seq.*).

6. See HUMAN RIGHTS WATCH, 2003 WORLD REPORT: EVENTS OF 2002 516 (2003).

7. See Sean D. Murphy, *Efforts to Address Iraqi Compliance With UN Weapons Inspections*, 96 AM. J. INT’L L. 956, 971 (2002); HUMAN RIGHTS WATCH, *supra* note 6, at xix.

8. See, e.g., HUMAN RIGHTS WATCH, *supra* note 6, at xix.

9. See *id.* at xxv.

10. See *id.* at xxv.

11. See *id.* at xxvi.

12. See *id.* at xxv. His trial was still ongoing at the end of 2002.

13. See *id.* at xxxii.

14. *Id.*

15. *Id.*

A. CEDAW AND THE RIGHTS OF WOMEN

In the United States, the Senate Foreign Relations Committee voted 12–7 on July 30, 2002 to send the Convention on the Elimination of Discrimination Against Women (CEDAW) to the full Senate for its advice and consent on ratification.¹⁶ It was uncertain whether the Senate would act, however, because a mid-term election returned the Senate to Republican control. President Jimmy Carter had signed the treaty in 1980 on behalf of the United States, but it was never brought up for Senate approval. CEDAW had 169 state parties in 2002.

In other developments, Nigeria promised to block the execution of Amina Lawal, a single mother who had been sentenced under Islamic law to be stoned to death for having sex outside of marriage.¹⁷

B. RIGHTS OF THE CHILD

1. U.N. Special Session: *A World Fit for Children*

In May 2002, for the first time in its history, the U.N. General Assembly convened a Special Session dedicated entirely to children. This landmark event, attended by nearly 180 governments and more than 800 non-governmental organizations, provided an opportunity to assess progress made since the adoption of the U.N. Convention on the Rights of the Child in 1989 and the 1990 World Summit for Children. The U.N. also hoped that governments would address the most urgent needs of children through agreement on a final document incorporating a plan of action for the next decade. The document, entitled “A World Fit for Children,” focuses on four priority areas affecting children: (1) promoting healthy lives; (2) providing quality education; (3) protecting children against abuse, exploitation, and violence; and (4) combating HIV/AIDS.¹⁸ The selection of these four issues as needing the most urgent attention reflects their current impact on children around the world.¹⁹

16. See Sean D. Murphy, *Senate Consideration of CEDAW*, 96 AM. J. INT’L L. 971, 971–73 (2002); HUMAN RIGHTS WATCH, *supra* note 6, at xix.

17. Glenn McKenzie, *Nigeria Promises to Block Stonings*, HONOLULU ADVERTISER, Oct. 30, 2002, at A7.

18. See *A World Fit for Children*, U.N. GASS, A/S-27/19/Rev.1 (May 10, 2002), available at <http://www.unicef.org/specialsession/documentation/documents/A-S27-19-Rev1E-annex.pdf> (visited June 2, 2003). See also Jonathan Todres, *The Challenge of Creating “A World Fit for Children,”* 10 HUM. RTS. BRIEF 18 (Fall 2002).

19. Today, ten million children die each year before age five, the majority from malnutrition and other preventable causes. In addition, approximately 120 million out of 700 million primary school age children are not in school. Not only are these children deprived of an education, but they are also left more vulnerable to exploitation through child labor, prostitution, and involvement in armed conflict.

Each year, more than a million children enter the global sex trade industry, with increasingly younger children, many under the age of ten, drawn into the sex trade. See, e.g., Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B.U. PUB. INTEREST L.J. 1 (1999). An estimated 250 million children between the ages of five and fourteen work for a living, nearly half of them full time. In the past decade, approximately two million children have died as a direct result of armed conflict, and twenty million children remain displaced because of armed conflict and human rights violations. Moreover, the toll exacted on children by the HIV/AIDS epidemic continues to grow. Of the five million estimated new infections during 2002, approximately 800,000 were estimated to be in children under the age of fifteen. UNAIDS & WORLD HEALTH ORG., AIDS EPIDEMIC UPDATE 3 (Dec. 2002). Moreover, of the 3.1 million estimated deaths in 2002, 610,000 were of children under the age of fifteen years. *Id.* In addition, the AIDS epidemic has left millions of children orphaned and more vulnerable to human rights violations.

By adopting the plan of action from the Special Session, governments agreed to several specific goals in each of the four priority areas, including:

- a. Reducing infant mortality by at least one-third over the next decade, and by two-thirds by 2015;
- b. Increasing enrollment in quality, alternative primary education programs to at least 90 percent of primary school age children by 2010;
- c. Protecting children from abuse, neglect, exploitation, and violence;
- d. Reducing the prevalence of HIV infection among young men and women aged fifteen to twenty-four by 25 percent globally by 2010; and
- e. Reducing by 50 percent the number of infants infected by HIV.²⁰

The Special Session was not without controversy, and negotiations on the final document became contentious as delegates struggled on a few remaining issues, including: references to the U.N. Convention on the Rights of the Child (CRC); abortion, sex education, family planning and reproductive health; prohibitions on the death penalty in juvenile justice cases; and specific financial commitments by industrialized countries to developing nations. Eventually, compromise language was agreed to, and the outcome document was approved by the General Assembly without a vote. While a consensus on issues such as abortion and the death penalty continues to prove elusive, the agreed plan of action provides a broad mandate for governments to protect the rights and well-being of all children.

2. *CRC Optional Protocols Enter Into Effect*

Other notable events related to children's rights included the entry into force of two Optional Protocols to the Convention on the Rights of the Child.

First, the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, which has been ratified by 43 countries and signed by 105 countries, entered into force on January 18, 2002. This protocol expressly prohibits all forms of commercial sexual exploitation of children.²¹

Second, the Optional Protocol on the Involvement of Children in Armed Conflict, which has been ratified by 45 countries and signed by 111 countries, entered into force on February 12, 2002. This protocol prohibits the conscription or forced recruitment of children under 18 years of age, as well as their direct participation in armed conflict.²²

The U. S. Senate voted in June 2002 to give its advice and consent to the ratification of both Optional Protocols. Currently the United States has ratified both Optional Protocols, however it has not yet ratified the CRC itself.

3. *Convention on Migrant Workers and their Families*

On December 10, 2002 (International Human Rights Day), East Timor's National Parliament adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²³ East Timor's ratification was the twen-

20. *A World Fit for Children*, *supra* note 18.

21. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 263, U.N. GAOR, 54th Sess., U.N. Doc. A/54/RES/263 (2002).

22. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 263, U.N. GAOR, 54th Sess., U.N. Doc. A/54/RES/263 (2002).

23. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U.N. GAOR, 45th Sess., 69th mtg., U.N. Doc. A/RES/45/158 (1990).

tieth, and thus the Convention will enter into force on July 1, 2003. The Convention will provide a comprehensive set of protections to migrant workers and their children, who are often particularly vulnerable to exploitation and human rights abuses.

4. *Homeland Security Act*

In the United States, the Homeland Security Act of 2002²⁴ included particular provisions relating to children. Under the new law, responsibility for care of unaccompanied alien minors will be transferred from the Immigration and Naturalization Service (INS) to the Office of Refugee Resettlement of the U.S. Department of Health and Human Services.²⁵ Child rights advocates hope that this development will better ensure that cases are handled in a manner consistent with the best interests of these children. However, the final version of the Homeland Security Act failed to provide certain basic protections for unaccompanied alien children, including access to counsel, provision for standards of detention in children's cases, and the appointment of a legal guardian for children in custody.

C. DEATH PENALTY

Three death penalty cases before the U.S. Supreme Court illustrated views held that disparage reliance on customary international human rights law and even decisions of the highest courts of other common law countries.

First, noting that the world community overwhelmingly disapproves of imposing the death penalty for crimes committed by mentally retarded offenders,²⁶ the U.S. Supreme Court found that the execution of mentally retarded individuals violated the Eighth Amendment's prohibition against cruel and unusual punishment.²⁷ Although the majority opinion recognized the importance of international human rights law on this issue, a dissenting opinion by Chief Justice Rehnquist, joined by Justices Scalia and Thomas, criticized "the Court's decision to place weight on foreign laws."²⁸ The Chief Justice wrote that he could not see "how the views of other countries regarding the punishment of their citizens provide any support for the Court's ultimate determination."²⁹

Second, the U.S. Supreme Court voted 5-4 to deny a petition for writ of habeas corpus by a death row inmate who was under age 18 when he committed his offense.³⁰ The four dissenting justices stated that the Court should end the practice of executing individuals for crimes committed when they were juveniles.³¹ Currently, twenty-eight states prohibit the execution of juvenile offenders.³² Most other nations prohibit the death penalty entirely,

24. Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002).

25. *Id.* § 462.

26. *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002).

27. *Id.* at 321.

28. *Id.* at 322 (Rehnquist, C.J., dissenting).

29. *Id.* at 324 (Rehnquist, C.J., dissenting).

30. *In re Stanford*, 123 S. Ct. 472 (2002). The Supreme Court refused to hear a second case on the issue later in the year, denying the petition for cert by a death row inmate in Mississippi who was seventeen when he committed a capital offense. *Foster v. Epps*, 123 S. Ct. 625 (2002), *rehearing denied*, 123 S. Ct. 816 (2003).

31. Although normally four votes are sufficient, because *In Re Stanford* came to the Supreme Court through the little-used channel of original habeas corpus, five votes were needed in order for the Court to take the case. In January 2003, the Court again declined to hear a juvenile death penalty case, even though only four votes were needed. See *Hain v. Mullin*, 123 S. Ct. 993 (2003) (denying writ of certiorari in *Hain v. Gibson*, 287 F.3d 1224 (10th Cir. 2002)).

32. By comparison, thirty states prohibit the execution of mentally retarded individuals.

and of those that allow it, most prohibit the execution of juvenile offenders. Until the Supreme Court decides to revisit this issue, opponents of the juvenile death penalty will continue their reform efforts in state legislatures.

Third, the U.S. Supreme Court denied a writ of certiorari filed by a man who claimed that lengthy delays in carrying out his execution constituted cruel and unusual punishment.³³ Justice Breyer, in dissent, noted that the Supreme Court of Canada had recently held that “the potential for lengthy incarceration before execution is ‘a relevant consideration’ when determining whether extradition to the United States violates principles of ‘fundamental justice.’”³⁴ Justice Thomas, concurring in the denial of certiorari, criticized Justice Breyer’s citation of Canadian authority, stating: “this Court’s Eighth Amendment jurisprudence should not impose foreign moods, fads, or fashions on Americans.”³⁵

These three decisions evidence (a) an unfortunate failure of some justices to respect the opinions of the world community on fundamental principles of international human rights law, and (b) attacks on justices who do look to international human rights norms and foreign cases that apply those norms.

D. TORTURE

The United Nations General Assembly adopted a new Optional Protocol to the Convention Against Torture that allows inspection of detention facilities where torture is suspected.³⁶

In one national development, Judge Jayant Prakash of the Lautoka High Court in Fiji ruled that caning of students and prisoners violated the Constitution of Fiji, which provides that “[e]very person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.”³⁷

E. HUMAN RIGHTS AND CORPORATE RESPONSIBILITY—ALIEN TORT CLAIMS ACT

Domestic civil courts in the United States emerged again as a forum where victims of human rights violations could find tort remedies for violations of international law. For example, litigation continued against the Unocal Corporation for its alleged complicity in torture, forced labor, imprisonment, and execution committed by the Burmese military. In September 2002, the Ninth Circuit held in *Doe v. Unocal* that claims against Unocal were cognizable under the Alien Tort Claims Act (ATCA).³⁸ The Ninth Circuit reaffirmed that torture, murder, and slavery are *jus cogens* violations of the law of nations, and that forced labor is a modern variant of slavery that does not require state action to give rise to liability under the ATCA. The Ninth Circuit also held that the standard for “aiding and abetting”

33. *Foster v. Florida*, 123 S. Ct. 470 (2002).

34. *Id.* at 472 (Breyer, J., dissenting) (citing *United States v. Burns*, [2001] 1 S.C.R. 283, 353).

35. *Id.* at 470 n.1 (Thomas, J., concurring in denial of certiorari).

36. See Sean D. Murphy, *U.S. View on Pursuing a Torture Convention Protocol on Preventive Visits*, 96 AM. J. INT’L L. 970, 971 (2002); HUMAN RIGHTS WATCH, *supra* note 6, at xix.

37. *Fijian Judge Rules Caning Illegal*, HONOLULU ADVERTISER, Mar. 24, 2002, at A2.

38. *Doe I v. Unocal Corp.*, 2002 WL 31063976 (9th Cir. Sept. 18, 2002). On February 14, 2003, the Ninth Circuit vacated this decision and ordered reargument. See *Doe I v. Unocal Corp.* 2003 WL 359787 (9th Cir. Feb. 14, 2003).

is “knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime,”³⁹ and that a fact finder could find that Unocal met this standard. In an important observation for international lawyers, the Ninth Circuit noted that federal district courts “are increasingly turning to the decisions by international *criminal* tribunals for instructions regarding the standards of international human rights law under our *civil* ATCA.”⁴⁰ The court agreed with that trend, and stated that decisions by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda were “especially helpful for ascertaining the current standard for aiding and abetting” human rights violations.⁴¹ The court held that the ATCA does not require “state action” in order to sue for “acts of murder, rape, and torture which allegedly occurred in furtherance of the forced labor program.”⁴² Although the Ninth Circuit held that Unocal may be held liable for aiding and abetting soldiers in Myanmar in subjecting individuals to murder and rape, there was not “sufficient evidence to establish a claim of torture (other than by means of rape)”⁴³ That part of the ruling seems to ignore the court’s own conclusion that “[r]ape can be a form of torture.”⁴⁴

Although the Ninth Circuit found that the Unocal Corporation could be liable for aiding and abetting human rights violations, the court found that the Myanmar Military and government-owned Myanmar Oil enjoyed sovereign immunity under the Foreign Sovereign Immunities Act, because these entities had not performed any acts in the United States that would implicate one of the statutory exceptions to sovereign immunity.

In another Alien Tort Claims Act case, a district court awarded damages for Zimbabwe’s intentional violation of political rights and freedoms of political belief.⁴⁵

F. EUROPEAN HUMAN RIGHTS LAW

Moving from specific issues to specific geographic regions there was no particular trend in European human rights policies or jurisprudence that could be identified in 2002. Still, the European Court of Human Rights (Court) produced some decisions that could prove to be important precedents. Because so many countries have ratified the European Convention on Human Rights (ECHR), the Court’s precedential influence is far-reaching. The other great European institution that regularly addresses human rights is the European Union (EU). In 2002, the political branches of the EU government, rather than the European Court of Justice, were the more prominent agents in international human rights issues.

1. *The European Convention on Human Rights*

a. Assisted Suicide Case—The Protection of Life

In January 2002, the European Court of Human Rights granted an accelerated hearing to a case that exemplified a pressing contemporary debate. Diana Pretty suffers from motor

39. *Doe I v. Unocal Corp.*, 2002 WL 31063976 at *10.

40. *Id.* at *12.

41. *Id.* at *12.

42. *Id.* at *15.

43. *Id.* at *16.

44. *Id.* at *20.

45. *Tachiona v. Mugabe*, 234 F. Supp. 2d 401 (S.D.N.Y. 2002).

neurone disease, an incurable degenerative malady. She applied to the English courts to allow her husband to assist her in her suicide. When legal efforts in her native country proved unsuccessful, the plaintiff petitioned the Court for redress under the ECHR. Her complaint consisted of several grounds for relief; undertaking not to prosecute her husband if he assisted her to commit suicide; positive State obligation to provide a scheme in domestic law to enable her to exercise that right; the right to self-determination; violation of her right to manifest her beliefs; and, discrimination against those who are unable to commit suicide without assistance. The Court ruled against Ms. Pretty on each of the five counts.⁴⁶ The Court interpreted Articles 2, 3, and 8 of the ECHR all as protecting, not the right over life, but the protection of life. The Court rejected an argument that conceivably could have provoked the most elaborate dispute. To the plaintiff's plea under Article 9 (the right to Freedom, Conscience, and Religion), the Court held that the plaintiff was not seeking relief in accordance with her religious practices. She could not, therefore, resort to Article 9 for protection of her customary beliefs. Finally, the Court disagreed with the plaintiff that the English government had discriminated against her in violation of Article 14, which assures equal protection and non-discrimination under law. English law proscribes assisted suicide in all cases. According to the Court, the policy was neither irrational nor unjustifiably burdensome on only a portion of the population. The English authorities had enforced domestic law against the plaintiff no differently than they would have against anyone requesting assisted suicide.

b. Transsexuals

Another topic prominent in the 2002 decisions was the right of transsexuals to claim equal treatment. In two such decisions, the Court found violations of Article 8 of the ECHR (Right to Respect for Private and Family Life).⁴⁷ In both cases, the plaintiffs argued that the government should have changed their official identification records, such as birth certificates and pension fund accounts, to represent them as women. Left unrevised, these documents had engendered discrepancies in information that caused each plaintiff to lose social benefits. They had also suffered discrimination in their work places after people had uncovered their earlier male identities. In its rulings, the Court noted that there was no consensus among European countries about the legal status of transsexuals. Nevertheless, the Court in *Goodwin* held that "the very essence of the Convention is respect for human dignity and human freedom . . . including the right to establish details of their identity as individual human beings."⁴⁸ The *Goodwin* court also held that "the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable."⁴⁹

c. Other Individual Cases

Notable for its failure was Slobodan Milosevic's petition to the Court for admissibility. Milosevic challenged the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia, arguing that it lacked legitimacy under international law, and that, as a head of state he enjoyed immunity to such trials.⁵⁰ The Court ruled Milosevic's complaint inad-

46. *Pretty v. United Kingdom*, [2002] 35 E.H.R.R. 1.

47. *Goodwin v. United Kingdom*, [2002] 35 E.H.R.R. 18; *I. v. United Kingdom*, [2002] 2 F.L.R. 518.

48. *Goodwin v. United Kingdom*, [2002] 35 E.H.R.R. 18.

49. *Id.*

50. *Milosevic v. The Netherlands*, App. No. 77631/01 (Eur. Ct. H.R. Mar. 19, 2002).

missible because he had failed to exhaust his remedies. In withdrawing his appeal in the Dutch Court of Appeals, Milosevic had denied himself a potential further appeal to the Supreme Court of the Netherlands. The plaintiff's alleged concerns about a fair outcome from the Court of Appeals did not permit him to circumvent the correct judicial progress.

Another prominent European was also denied a full hearing before the Court. Victor-Emmanuel of Savoy, the son of Italy's last king, Umberto II, left Italy in 1946 when his father was exiled. Victor-Emmanuel inherited the title of the House of Savoy after his father's death in 1983, and set himself to overcoming the exile of the royal family from Italy. He pursued his case in various Italian courts to no avail. In his petition to the Court, Victor-Emmanuel maintained that his exclusion violated the second paragraph of Article 3 of Protocol No. 4 to the ECHR (prohibiting the expulsion of nationals).⁵¹ In addition, he charged that he "has been discriminated against, in breach of Article 14 of the Convention (prohibition of discrimination), and that he has been denied his electoral rights, guaranteed by Article 3 of Protocol No. 1 (right to free elections). He claims that, in consequence, the Italian State has breached Article 3 (prohibition of degrading treatment)."⁵² The Court initially postponed a hearing on the case until to April 16. Then, as the April hearing neared, the Court postponed the matter again to an undetermined date.

Some other notable figures fared slightly better before the Court. The family of Benedetto Craxi, former Prime Minister of Italy, appealed under the ECHR on the grounds that Craxi had been denied a fair trial in Italy.⁵³ He had been unable to cross-examine certain prosecution witnesses, some because they had died during the trial (violation of Articles 6(3) and (5)(d)). The Court agreed, finding that Craxi's lawyers had originally been sufficiently timely in raising the matter. Just what gain this ruling provides Craxi's survivors is unclear.

In 1998, the French Assize Court convicted Maurice Papon of crimes against humanity for aiding in the deportation of Jews to Auschwitz in convoys in July, August, and October 1942 and January 1944. Papon appealed to the Court that he had been deprived of the right to appeal particular disputed legal questions.⁵⁴ The Court agreed that Papon had suffered a violation of Article 6(1); despite the enormity of the crimes of which he had been accused, the Court wrote, Papon was nonetheless entitled to undiminished legal access to appeal.

Appeals arising from political disputes composed, as always, a significant portion of the Court's docket. Many of the cases heard by the Court originated in Turkey. The EU requires, in practice if not clearly by law, that Member States be democratic and cleave to a basic recognition of civil and human rights. Turkey often appears to perpetually undermine its pursuit of membership in the EU by violent suppression of different internal political movements. While other EU Member States may also commit transgressions against political dissenters, Turkey's practices stand out for their breadth and brutality.⁵⁵

51. Victor-Emmanuel of Savoy v. Italy, App. No. 53360/99, available at <http://www.echr.coe.int/>.

52. Press Release, European Court of Human Rights, Hearing Postponed in the Case of Victor-Emmanuel of Savoy v. Italy (Jan. 18, 2002), available at <http://www.echr.coe.int/Eng/Press/PressReleases.htm>.

53. Craxi v. Italy (No. 2), Dec. 5, 2002, No. 34896/97, available at <http://www.echr.coe.int/>.

54. Papon v. France, July 25, 2002, App. No. 54210/00, available at <http://www.echr.coe.int/>.

55. The Court determined violations of Articles of the ECHR, including the right to life (Article 2), in a number of decisions: Orak v. Turkey, Feb. 14, 2002, App. No. 31889/96, available at <http://www.echr.coe.int/> (applicant's 23-year-old son tortured and killed while in police custody); Yazar, Karatas, Aksoy, and Le Parti Du Travail Du Peuple (HEP) v. Turkey, Apr. 9, 2002, App. Nos. 22723/93, 227324/93, 22725/93, available at <http://www.echr.coe.int/> (Turkish government dissolved political opposition party representing Kurdish right

However, Turkey was by no means the only nation covered by the ECHR found by the Court to have discriminated against resident ethnic or religious groups. Cases were decided against Belgium,⁵⁶ the United Kingdom,⁵⁷ and Bulgaria.⁵⁸

G. THE EUROPEAN UNION

In the European Union (EU), the most significant event to bear on human rights was commencement of the Convention to prepare a possible "European Constitution." A constitution for Europe would serve as more than a "rulebook" for the EU's internal governance; it would also be a treaty among over twenty independent nations. Thus, the Convention will need to address a manifold of potential topics to include in a constitution: from the structure of the EU's government to the establishment of uniform social and civil rights, from legislative procedures to trade guidelines. The European Convention promptly began debate on the role of the Charter of Fundamental Rights (Charter), drafted in 2000. Will the Constitution incorporate the Charter as a type of "Bill of Rights?" Or will the Charter remain a document *sui generis*? Can the Charter have binding effect on all EU Member States if it is inherent in the Constitution? Conversely, does the EU need a full-blown constitution (whatever that might be), or does the Charter suffice? This first year of the Convention established important tendencies, but no certainties. The role of the Charter of Fundamental Rights was one of these foundational themes.

The European Parliament (EP) also engaged in advocacy for human rights. For example, after Romania agreed with the United States to sign a bilateral immunity agreement barring surrender of their respective citizens to the jurisdiction of the new International Criminal Court, the Parliament passed a resolution declaring its disappointment. It described the

to self-determination); *Gundogan v. Turkey*, Oct. 10, 2002, App. No. 31877/96, available at <http://www.echr.coe.int/> (member of outlawed Communist organization imprisoned without due process); *Öztürk v. Turkey*, Oct. 15, 2002, App. No. 24914/94, available at <http://www.echr.coe.int/> (newspaper editor's freedom of expression violated when police seized three editions of Kurdish-language); *Karakoc v. Turkey*, App. Nos. 27692/95, 28138/95, 28498/95, available at <http://www.echr.coe.int/> (newspaper editors imprisoned, fined for publishing "separatist propaganda"); *Algur v. Turkey*, Oct. 22, 2002, App. No. 32574/96, available at <http://www.echr.coe.int/> (applicant arrested in anti-PKK sweep imprisoned without due process, tortured); *Satik v. Turkey*, Oct. 22, 2002, App. Nos. 24737/94, 24739/94, 24740/94, 24741/94, available at <http://www.echr.coe.int/> (applicants, arrested for putative association with PKK, imprisoned without trial); *Ozel v. Turkey*, Nov. 7, 2002, App. No. 2739/98, available at <http://www.echr.coe.int/> (politically-involved applicant denied due process when sentenced to life imprisonment by potentially biased military court); *Kukuc v. Turkey*, Dec. 5, 2002, App. No. 28493/95, available at <http://www.echr.coe.int/> (applicant imprisoned, fined, after writing book containing interview with PKK leader); *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, Dec. 10, 2002, App. No. 25141/94, available at <http://www.echr.coe.int/> (government political party dissolved by government).

56. *Conka v. Belgium*, 34 Eur. Ct. H.R. 54 (2002) (Slovakian nationals of Romany descent were denied political asylum in Belgium, despite appeal that they were mistreated by police in their homeland).

57. *McShane v. United Kingdom*, 35 Eur. Ct. H.R. 23 (2002) (Royal Ulster Constabulary's investigation of death of applicant's husband, killed when run over by an armored personnel carrier in Northern Ireland, was inadequate and peremptory).

58. *Anguelova v. Bulgaria*, App. No. 38361/97 (Eur. Ct. H.R. Sept. 13, 2002), available at <http://www.echr.coe.int/> (applicant's son, 17-year-old Romany, killed while in police detention, may have been victim of discrimination); *Al-Nashef v. Bulgaria*, June 20, 2002, App. No. 50963/99, available at <http://www.echr.coe.int/> (applicant and family, of Palestinian origin, deprived of due process to contest deportation to Syria).

decision by a leading "candidate" country to the EU as a hindrance to the EU's goal of adopting the ICC statute as official EU policy.⁵⁹

Another resolution from the EP condemned the judgment and sentence issued by the Bakori Islamic Court in Katsina, Nigeria, against Amina Lawal. The court unleashed international criticism when it found Ms. Lawal guilty of adultery under Sharia law and sentenced her to death.⁶⁰ The state of human rights in Egypt was another focus of parliamentary decrees, in particular, police raids on night-clubs frequented by homosexuals,⁶¹ and the imprisonment of advocates for democracy "on the grounds of alleged misuse of EU funding, which had been repeatedly denied by the European Commission."⁶² Finally, the EP promulgated a resolution that "Member States and the candidate countries . . . implement a health and social policy which would lead to a lower incidence of abortion, with abortion being made legal, safe and accessible to all."⁶³ The resolution called on the Member States and candidate countries "to enhance the education of adolescents in this field [of family planning], and to provide access to health services without discrimination on grounds of sexual orientation, gender or marital status."⁶⁴

Just what consequence the EP's resolutions have in the international arena is unclear. The EU expends a large amount in international development; Afghanistan alone received 70 million Euros in reconstruction funds from the EU in 2002.⁶⁵ The foreign aid arm of the EU is the Humanitarian Aid Office of the European Commission (ECHO). In the last few years, it has become a prominent agency in international development and education. However, ECHO recently underwent public criticism for inefficiency. In response, the organization began reorganization in 2002 to become more streamlined.

H. UNITED NATIONS DECLARATION ON STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS

In another development that may affect international human rights law, the U.N. General Assembly adopted a resolution on state responsibility for internationally wrongful acts.⁶⁶ The resolution broadly provides that "[e]very internationally wrongful act of a State entails the international responsibility of that State."⁶⁷ States that cause an internationally wrongful act are "under an obligation to make full reparation for the injury caused by the internationally wrongful act."⁶⁸ In addition, the liability of "States" extends to persons who act under direction of the State or who exercise elements of government authority "in the

59. Bulletin EU, 9-2002, 1.2.2, available at <http://www.europa.eu.int/abc/doc/off/bull/en/200209/p102002.htm> (visited June 2, 2003).

60. Bulletin EU, 9-2002, 1.2.7, available at <http://www.europa.eu.int/abc/doc/off/bull/en/200209/p102007.htm> (visited June 2, 2003).

61. Bulletin EU, 7/8-2002, 1.2.5, available at <http://www.europa.eu.int/abc/doc/off/bull/en/200207/p102005.htm> (visited June 2, 2003).

62. Bulletin EU, 9-2002, 1.2.6, available at <http://www.europa.eu.int> (visited June 2, 2003).

63. Bulletin EU, 7/8-2002, 1.2.1, 1.2.6, available at <http://www.europa.eu.int> (visited June 2, 2003).

64. *Id.*

65. Bulletin EU, 9-2002, 1.2.8, available at <http://www.europa.int> (visited June 2, 2003).

66. G.A. Res. 56/83, U.N. GAOR, 56th Sess., U.N. Doc. A/RES56/83 (2002). See generally Daniel Bodansky & John R. Crook, *Introduction and Overview to the Symposium on the ILC's State Responsibility Articles*, 96 AM. J. INT'L L. 773 (2002).

67. G.A. Res. 56/83, U.N. GAOR, 56th Sess., at 2, U.N. Doc. A/RES56/83 (2002).

68. *Id.* at 8.

absence or default of the official authorities . . . ”⁶⁹ An injured state may take countermeasures against a state that is responsible for an internationally wrongful act, but those countermeasures may not affect “[o]bligations for the protection of fundamental human rights.”⁷⁰

III. Conclusion

International human rights law continues to develop in substance and in the availability of forums in which claims can be pressed. Substantive advances in human rights law appear to be under attack, however, even as further progress is being made around the world. As international human rights law continues to develop, attention must turn to not only the creation of normative law and the punishment of those responsible for human rights abuses, but also to the need to provide redress to the victims of human rights abuses.

69. *Id.* at 3.

70. *Id.* at 12.