Human Rights Watch World Report 2001
This report reviews human rights practices in seventy countries and describes events from November 1999 through October 2000.
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INTERNATIONAL JUSTICE

Introduction
The emerging system of international justice was further strengthened in 2000. Despite the British government’s release of General Augusto Pinochet from custody in March, the litigation surrounding the requests for his extradition produced important additional consequences. The four states that had sought his extradition from London, Belgium, France, Spain, and Switzerland all successfully challenged, before a British court, the decision by Jack Straw, the home affairs minister, not to disclose Pinochet’s medical records. In an illustrative example of the synergy between justice at the international level and increased access to national courts, the Chilean Supreme Court in August lifted Pinochet’s parliamentary immunity and opened the way to his trial before the courts there. This synergy took another form in West Africa. In February, Senegalese authorities arrested former Chadian leader Hissène Habré on charges of torture in Chad during the 1980s. While a court dismissed the indictment in July, the decision was appealed in Dakar. Inspired by the litigation in the Senegalese court, Chadian victims moved to bring cases against Habré’s accomplices to court in Chad. In August, reflecting greater international cooperation on these justice issues, Mexican authorities, responding to a request from a Spanish judge, arrested Ricardo Cavallo, an Argentinian accused of torture during the “Dirty War.”

Meanwhile, the International Criminal Tribunal for Yugoslavia (ICTY) obtained custody of senior indictees, including Momcilo Krajišnik, the wartime president of the Bosnian Serb assembly and the highest ranking politician arrested so far. With the fall of the Milosevic government in Belgrade in October, the possibility increased that Slobodan Milosevic, Ratko Mladic, Radovan Karadzic, and other senior indictees from Yugoslavia would be apprehended and held to account in The Hague. During 2000, the new government of Croatia undertook to cooperate more closely with the ICTY by transferring a Croatian indictee to the tribunal and allowing it to carry out investigations on Croatian territory of alleged crimes against Serbs in 1991. The International Criminal Tribunal for Rwanda convicted three defendants of genocide as it took measures to reform its procedures to facilitate greater efficiency. The jurisprudence and judicial practice of the ad hoc tribunals enriched the work of the Preparatory Commission for the International Criminal Court as it drafted the Rules of Procedure and Evidence and Elements of Crimes for the ICC. In response to horrific crimes, new, mixed judicial mechanism were established. The United Nations Security Council authorized the creation of a mixed national-international tribunal to prosecute human rights criminals in war-torn Sierra Leone. In Cambodia, the United Nations continued negotiations with the Hun Sen government to ensure that the mixed national-international tribunal being established there to try Khmer Rouge leaders adhered to international standards for fair trial. Momentum for the early establishment of the International Criminal Court (ICC), a cornerstone of a strengthened system of international justice, grew dramatically. The process of ratifying the ICC Treaty highlighted another aspect of the intersection of justice on the international plane.
and the national level. As states began adopting the implementing legislation necessary to make cooperation with the permanent international court meaningful, they seized the opportunity to amend domestic criminal law to strengthen prosecution of genocide, crimes against humanity, and war crimes by national courts.

Human Rights Watch was encouraged by these and other developments, but recognized the serious challenges ahead. Prosecuting human rights criminals on the basis of universal jurisdiction regardless of a territorial or nationality nexus required a solid commitment of political will and the process was subject to corruptive political interference. States lacked appropriate domestic legislation to allow them to pursue these cases, while others were reluctant to invoke universal jurisdiction even for the most egregious human rights crimes. While the two existing ad hoc tribunals, with a limited geographical mandate, continued to deepen the jurisprudence of international humanitarian law and practice, their work was hampered by inconsistent support for apprehension of indictees. The balance shifted away from the impunity so often associated with these crimes, but further steps were needed to reinforce the trend toward accountability.

Prosecutions

Hissène Habré

In February 2000, a Senegalese court indicted Chad’s exiled former dictator, Hissène Habré, on torture charges and placed him under house arrest. It was the first time that an African had been charged with atrocities against his own people by the court of another African country.

Habré ruled Chad from 1982 until he was deposed in 1990 by current president Idriss Deby and fled to Senegal. Since Habré’s fall, Chadians have sought to bring him to justice. The Chadian Association of Victims of Political Repression and Crime (AVCRP) compiled information on each of 792 victims of Habré’s brutality, hoping to use the cases in a prosecution of Habré. A 1992 truth commission report accused Habré’s regime of 40,000 political murders and systematic torture. With many ranking officials of the Idriss Deby government, including Deby himself, involved in Habré’s crimes, however, the new government did not pursue Habré’s extradition from Senegal.

In 1999, with the Pinochet precedent in mind, the Chadian Association for the Promotion and Defense of Human Rights requested Human Rights Watch’s assistance in bringing Habré to justice in Senegal. Researchers visited Chad twice, where they met victims and witnesses and benefited from the documentation prepared in 1991 by the Association of Victims. Meanwhile, Human Rights Watch quietly organized a coalition of Chadian, Senegalese, and international NGOs to support the complaint, as well as a group of Senegalese lawyers to represent the victims. Seven individual Chadians and one Frenchwoman, whose Chadian husband was killed by Habré’s regime, acted as private plaintiffs, as did the AVCRP.

In a criminal complaint filed in Dakar Regional Court, the plaintiffs, several of whom came to Senegal for the event, officially accused Habré of torture and crimes against humanity. The torture charges were based on the Senegalese statute on torture as well as the 1984 Convention against Torture which Senegal ratified in 1987. The groups also cited Senegal’s obligations under customary international law to prosecute those accused of crimes against humanity.

In the court papers presented to the Investigating Judge, the groups provided details of ninety-seven political killings, 142 cases of torture, and one hundred “disappearances,” most carried out by Habré’s
dreaded DDS (Documentation and Security Directorate), as well as a 1992 report by a French medical team
on torture under Habré, and the Chadian truth commission report. The organizations presented the sworn
testimony of two former prisoners who were ordered by the DDS to dig mass graves to bury Habré’s
opponents. Two of the plaintiffs described being subjected to a torture method called the “Arbatachar,” in
which a prisoner’s four limbs were tied together behind his back, leading to loss of circulation and paralysis.

On the eve of the filing, the NGOs and the plaintiffs met with the Senegalese minister of justice, who
assured that there would be no political interference in the work of the judiciary. The case, brought as a
private prosecution, moved with stunning speed. The judge first forwarded the file to the prosecutor for his
non-binding advice. The prosecutor, made aware of the need to act quickly so that Habré did not flee the
country and so the victims could be heard before returning to Chad, gave his favorable advice within two
days. The next day the victims gave their closed-door testimony before the judge, something they had waited
nine years to do. The judge then called in Habré on February 3, 2000, indicted him on charges of complicity
with torture, and placed him under house arrest. He also opened an investigation against persons still to be
named for “disappearances, crimes against humanity, and barbarous acts,” meaning that he can later indict
Habré or others on these charges.

Unfortunately, politics then entered the picture. In March 2000, Abdoulaye Wade was elected president
of Senegal. Habré’s attorney was one of Wade’s closest aides and became a presidential adviser while
continuing to defend Habré. When Habré filed a motion to dismiss the case, the state prosecutor, reversing
the previous position, supported the motion. President Wade also headed a panel that removed the
Investigating Judge who was handling the case and promoted the chief judge before which the motion to
dismiss was lodged. Habré also reportedly spent lavishly to influence the outcome of the case.

On July 4, 2000, the court dismissed the charges against Habré, ruling that Senegal had not enacted
legislation to implement the Convention against Torture and therefore had no jurisdiction to pursue the
charges because the crimes were not committed in Senegal.

The victims appealed the dismissal to the Cour de Cassation, Senegal’s highest court. In the meantime,
public opinion increasingly questioned Senegal’s moves. The United Nations special rapporteurs on the
independence of judges and lawyers, and on torture, made a rare joint and public expression of their concern
to the government of Senegal over the dismissal and the surrounding circumstances.

Cavallo

On August 24, Mexican authorities arrested Ricardo Miguel Cavallo, accused of having been a torturer
in the Navy Mechanics School during Argentina’s 1976 to 1983 military government. Cavallo was allegedly
implicated in hundreds of cases of kidnapping, “disappearance,” and torture. An order for Cavallo’s arrest,
and then a formal extradition request, later came from the same Spanish judge, Baltasar Garzon, who sought
to extradite Augusto Pinochet. The case was pending at the time of this writing.

The Cavallo case could potentially extend the “Pinochet precedent” to a country, Mexico, that was once
considered a haven of impunity. In addition, by targeting a lower-ranking official, the arrest spoke to police
officers and soldiers around the world telling them that if they committed torture today, they could be
apprehended tomorrow, and not only in Europe.
Montesinos

Human Rights Watch actively opposed impunity for Vladimiro Montesinos, the Peruvian intelligence chief and close ally of Peruvian President Alberto Fujimori, who had fled to Panama to seek political asylum. Human Rights Watch had documented Montesinos’ involvement in human rights abuses in Peru. Evidence linked him to kidnappings and murders carried out by a death squad belonging to a Peruvian intelligence agency. He was also implicated in the torture of army intelligence agents and journalists who were suspected of leaking information to the press about the agency’s illegal activities. Human Rights Watch staff visited Panama in October to press the government to deny Montesinos political asylum, since he was a perpetrator, not a victim, of political persecution. Human Rights Watch asked Panamamian authorities to open a judicial inquiry and prosecute Montesinos for these crimes. In late October, Montesinos left Panama and returned to Peru.

The International Criminal Court

As the number and diversity of state signatories and parties grew during 2000, momentum for the early entry into force of the International Criminal Court Treaty increased significantly. The court, which will prosecute crimes of genocide, crimes against humanity and war crimes where national courts fail to do their job, will be a cornerstone in the emerging system of international justice. The adoption of national implementing legislation for the treaty highlighted the possibilities to strengthen national enforcement of international criminal law while enhancing protections for the rights of the accused. The Preparatory Commission for the International Criminal Court, which met three times from late 1999 until mid-2000, completed its work on the Elements of Crimes and Rules of Procedure by its June 30, 2000 deadline. Governments and nongovernmental organizations (NGOs) convened regional and sub-regional conferences to accelerate ratification and the adoption of meaningful implementing legislation. Simultaneously, NGOs engaged in intensive advocacy efforts on behalf of the court. These positive developments stood in stark contrast to the continuing efforts of the United States government to re-open and weaken the treaty by carving out an exemption from prosecution for U.S. nationals.

Growing Momentum

States worldwide solidified their commitment to ending impunity through the International Criminal Court Treaty. Over the year nearly thirty states committed themselves to the objectives and purposes of the treaty by becoming signatories. As of this writing, 114 states had signed the treaty. But more than just the numbers increased. The state signatories became more diverse as well. Reflecting the increasingly universal support for the court, the Russian Federation, Mexico, Morocco, Sudan, Kuwait, Thailand, and Nigeria all signed the treaty in 2000.

One year ago four states had completed ratification. As of late October, twenty-one states, just over one-third the total necessary to trigger the treaty’s entry into force, had completed their ratification processes. In 2000, more states which saw the court as providing important protection against egregious crimes drove the quickening pace of ratification. These states sought to become states parties as quickly as possible. The twenty-one states parties included a small number whose national legal systems first required the adoption of implementing legislation necessary to bring domestic law into conformity with the treaty. Their ratification
represented the fruition of intensive legislative work over the past eighteen months. The group of state parties included members of the sixty-strong “Like Minded Group” of states, those that had shown the greatest commitment to an independent and effective court, as well as states not previously known for their strong support of the court. The growing regional diversity of states parties reinforced the legitimacy and credibility of a universally-supported court.

During the year, government and intergovernmental organization officials convened regional and sub-regional conferences to accelerate the process of ratification. In May, the Foreign Ministry of Spain convened the Ibero-American Meeting on International Criminal Justice in Madrid. Government officials, academics, and other experts from the region shared views on ICC ratification and implementation. In mid-May, the Council of Europe convened a Consultative Meeting for Member States in Strasbourg to exchange experience on ratification and implementing legislation. The Council of Europe circulated a questionnaire with information about progress and obstacles to ratification that led to greater awareness among the council’s forty-one member states. In early June, the General Assembly of the Organization of American States met in Canada and adopted a resolution that called for ICC signature and ratification. Numerous foreign ministers there expressed their support for the court and NGOs reaffirmed their commitment to working with governments to obtain the early establishment of the court. In October, Pacific Island law ministers met in Rarotonga in the Cook Islands to attend a seminar on implementing the Rome Statute. This session addressed the importance of the court and provided a forum for South Pacific states to discuss issues they faced in implementing the treaty.

The United Nations Millennium Summit in early September showcased the mounting support for the court. Four governments deposited their instruments of ratification during the Millennium Summit and eleven signed the treaty. Twenty heads of state and government representing nations as diverse as New Zealand and Croatia cited the importance of the ICC in their formal statements. Foreign ministers repeatedly expressed their governments’ support for early entry into force of the treaty at the debate opening the U.N. General Assembly session. At the opening of the session Canadian Foreign Minister Lloyd Axworthy launched Canada’s campaign on behalf of the ICC. He pledged Canadian assistance for regional conferences and Canadian government lawyers to assist states in ratification and implementing legislation. During the General Assembly’s Sixth Committee debate on the ICC at the end of October, delegates described the progress towards the early establishment of the court as an irresistible trend. In addition, the numerous interventions sounded a clear rejection of U.S. efforts to obtain an exemption for U.S. nationals. In a marked change from previous years, many delegations, whether they had ratified or not, called on all states to sign and ratify as quickly as possible. These developments represented a growing commitment to end impunity for genocide, crimes against humanity, and war crimes.

The Work of the Preparatory Commission

The achievements of the Preparatory Commission for the International Criminal Court’s during 2000 provided another indication of the growing support for the court. As a concession that allowed U.S. participation in the drafting, the Final Act of the Rome Treaty mandated that the Preparatory Commission enumerate the Elements of Crimes for genocide, crimes against humanity, and war crimes as well as draft
the Rules of Procedure and Evidence. Negotiators completed a draft of the court’s Elements of Crimes and Rules of Procedure and Evidence on schedule on June 30, 2000. With the Elements of Crimes, the negotiators specified the intent and nature of the conduct which the ICC prosecutor will have to prove in order to gain a conviction before the court. The Elements of Crimes for genocide and war crimes were, for the most part, finalized at the March 2000 session of the commission. Negotiators at the June session focused on several outstanding issues pertaining to crimes against humanity. Although the completed Rules of Procedure and Evidence for the ICC contained political compromises necessary for adoption by consensus, they maintained the important balance between the due process rights of the accused and the need to protect victims of heinous crimes from further trauma in the court. The rules retain the underlying principle that the chambers of the court maintain ultimate control over the conduct of proceedings. The Preparatory Commission’s adoption of these two subsidiary instruments by consensus, unlike the treaty itself, reflected the growing acceptance of the court and contributed to the accelerating pace of ratifications.

Constitutional Challenges and Opportunity for Law Reform

The growing number of signatures and ratifications appeared even more remarkable as the domestic hurdles to ratification became clearer. In many states ratification generated debate about the compatibility of the ICC Statute with certain constitutional norms. Poland, Estonia, Brazil, Portugal, the Czech Republic, and Costa Rica, to name only a few, debated these constitutional questions. The stakes were particularly high for states with relatively new constitutions that had not previously amended their fundamental law. The debate centered on three constitutional norms: prohibitions on the extradition of nationals, provisions on immunities, and prohibitions on life imprisonment. A small number of states, including Germany and France, chose to amend their constitutions before ratifying. Others, such as Belgium, chose to amend the constitution after ratification so that the amendment procedure would not delay ratification. In other states, including Norway, Venezuela, and Argentina, interpretation of the relevant constitutional provisions led to the conclusion that initial concerns about compatibility were unfounded and that the constitution did not require amendment.

As of this writing, both Canada and New Zealand had enacted their implementing legislation. In August, the United Kingdom released its draft implementing law for public comment prior to its introduction into Parliament. While the worldwide process of amending national criminal laws to conform with the requirements of the Rome Treaty was only in its early phase, initial experience highlights the extraordinary potential the implementing process offers to reform domestic criminal law more generally. Taking the opportunity afforded by the adoption of implementing legislation, Canada and New Zealand introduced laws to give their national courts the authority to investigate and prosecute the ICC crimes on the basis of universal jurisdiction. Italy and France, among others, were considering following suit.

The locus of ICC activity had shifted decisively to the national arena. As the possibility of transforming domestic criminal law and enhancing respect for human rights domestically became evident, the potential extended benefits of the ICC process became clearer.

United States

The United States government continued to pose the greatest obstacle to the effective functioning of the
court. During 2000, the Clinton administration intensified its efforts to obtain an exemption for U.S. nationals from prosecution by the ICC. Before and during each of the Preparatory Commission sessions since the end of 1999, the U.S. government campaigned hard to gain acceptance of its proposal for an exemption. At the March session, the U.S. delegation circulated a two-part proposal that contained a procedural rule and text for the Relationship Agreement between the ICC and the United Nations. By making the Relationship Agreement binding on the treaty, the proposed procedural rule provided a bridge to the exemption for U.S. nationals. The proposed Relationship Agreement text contained language that would exempt nationals of nonparty states unless the Security Council had taken specified measures under its powers to maintain international peace and security.

In advance of the June session, U.S. government lobbying intensified. In mid-April, U.S. Secretary of State Madeleine Albright sent a letter to her counterparts in capitals worldwide pressing them to accept both the proposed procedural rule and the exemption text for the Relationship Agreement. In May, the Portuguese Presidency, on behalf of the European Union, convened a meeting for E.U. Members States to formulate a common position rejecting the March U.S. proposal. The European initiative galvanized more intense diplomatic activity by Washington. Following the E.U. coordination effort, U.S. officials visited European capitals to enlist acquiescence to, if not active support for, U.S. demands. Nonetheless, on May 29, the Portuguese, as E.U. president, presented an informal demarche rejecting the U.S. two-part proposal.

At the June Preparatory Commission session the U.S. introduced its proposed procedural rule, but not a text for the Relationship Agreement. The proposed rule effectively amended the treaty by qualitatively broadening the type of agreements that the court could enter into beyond the limited exception already contained in the treaty. Denying that the rule was only the first step in a two-part plan, the U.S. delegation insisted the proposed rule was a “separate and distinct proposal . . . It should not be interpreted as requiring or in any way calling for the negotiation of provisions in any particular international agreement by the Court or by any other international organization or State.” Given the procedural nature of the rule, a sufficient number of European Union and “Like Minded” member states felt that it was best to “give the Americans” a concession. The commission adopted a convoluted but harmless procedural rule that essentially repeated the language of the statute of the court. Nonetheless, the United States side, contradicting previous statements about the stand-alone character of the rule, publicly touted the rule as the first step to the desired exemption.

Coinciding with the start of the June Preparatory Commission session, the Republican Party leadership of the U.S. Senate and House of Representatives introduced the American Servicemembers Protection Act. This bill would have eliminated U.S. military assistance for states, other than NATO members and the State of Israel, that ratified the ICC treaty until the U.S. Senate had given its advice and consent on the ICC Treaty. This politically partisan effort, intended in part to intimidate delegations into submitting to U.S. demands, clarified the congressional leadership’s views on the court. As of this writing, the bill appeared to be dead.

**The Work of Nongovernmental Organizations**

The Coalition for the International Criminal Court continued to work intensively over the year. The coalition, composed of over one thousand civil society groups, worked on several levels. CICC staff coordinated civil society involvement in the three Preparatory Commission sessions over the year and
brought activists from Latin America, Asia, Africa, the Middle East, and Europe to the Preparatory Commission meetings. The coalition organized the nongovernmental organizations to cover and report on the most important substantive issues and enabled civil society to press for stronger provisions. It took a strong principled stand in encouraging state opposition to United States government efforts to carve an exemption into the treaty for U.S. nationals. Coalition staff conducted missions to Bangladesh, Brazil, South Africa, Bulgaria, Mexico, and Argentina to name only a few.

Throughout 2000, the coalition initiated conferences on the ICC to engage officials and civil society in closer cooperation. In February, the coalition together with Mexican NGOs and academics convened a conference in Mexico City to examine the establishment of the ICC and the position of the Mexican government. In April, the Asian NGO Network for an ICC convened a conference in Dhaka, Bangladesh on the ICC and promoted ratification by Bangladesh. In July, No Peace Without Justice, a coalition member, convened a conference in Rome to mark the second anniversary of the treaty on July 17, 2000. Parliamentarians for Global Action convened a session for Latin American parliamentarians in Buenos Aires in October.

To highlight the importance of the early entry into force of the treaty among other constituencies, coalition staff also attended conferences focusing on other substantive issues including the Accra Workshop on War Affected Children in West Africa. The conference, which brought together officials from the sixteen members of the Economic Community of West African States (ECOWAS), included a session on the International Criminal Court and in the final declaration ECOWAS states committed themselves to “ratify the Statute of the International Criminal Court . . .”

**The Work of Human Rights Watch**

Believing that the International Criminal Court will be a cornerstone of an emerging system of international justice and that the treaty’s early entry into force will be an important practical and symbolic measure against impunity, during 2000, Human Rights Watch devoted considerable resources to the establishment of the court. Through visits to selected capitals and participation at numerous conferences Human Rights Watch staff attempted to better understand the various constitutional, legal, and political obstacles to ratification in key states. On this basis Human Rights Watch formulated its research and advocacy strategy to overcome the principal hurdles. Human Rights Watch assisted ratification by analyzing the questions of the compatibility between constitutional provisions and the Rome Treaty. At the 1999 November-December Preparatory Commission, Human Rights Watch circulated an informal paper on the compatibility of the treaty’s provisions on immunities, extradition of nationals, and life imprisonment with constitutional norms. The paper summarized the diverse experience with these questions and highlighted the modes of interpretative analysis that made amendments moot. Simultaneously, and in close conjunction with its focus on constitutional issues, Human Rights Watch International Justice Program staff conducted missions to Bolivia, Costa Rica, Panama, Mexico, Argentina, Uruguay, Canada, Croatia, Slovakia, the Czech Republic, Estonia, Spain, Portugal, the United Kingdom, France, New Zealand, Australia, South Africa, Malawi, and Namibia. Human Rights Watch divisional staff included ICC advocacy on missions in Egypt, Thailand, Brazil, and Japan.

In the course of the year, as states addressed the challenge of implementing legislation, Human Rights
Watch became increasingly involved in issues of national implementing law. Staff discussed and provided input on legislative proposals being considered in Canada, New Zealand, Argentina, and the United Kingdom.