

GLOBAL ISSUES

Throughout the year, Human Rights Watch engaged in a number of major campaigns and advocacy initiatives on issues of global significance and impact. From international justice to economic development, from the counterterrorism agenda to refugee issues, we had a significant impact on a number of critical international debates, either pushing new boundaries for human rights or defending the achievements of recent years in an increasingly difficult world environment.

INTERNATIONAL JUSTICE

On July 1, the world celebrated a major achievement for international justice and human rights with the entry into force of the treaty establishing a permanent International Criminal Court (ICC). The court will be able to investigate and prosecute those individuals accused of crimes against humanity, genocide, and war crimes when national courts fail to act. At the time of writing, eighty-seven states had become parties to the ICC treaty.

This triumph notwithstanding, Human Rights Watch joined with other supporters of the ICC—governments and nongovernmental organizations (NGOs) alike—in defending the court against systematic attacks by the United States. The U.S. claimed to fear politically motivated investigations and prosecutions of its military and political officials and personnel. But given the safeguards built into the ICC treaty against such a scenario, the U.S. appeared to be more ideologically opposed to being held accountable to international law.

The U.S. was one of only seven states (with China, Iraq, Israel, Libya, Qatar, and Yemen) to vote against the Rome Statute of the International Criminal Court in 1998. But former president Bill Clinton had chosen to sign the Rome Statute on the eve of his departure from office, with a view to maintaining U.S. influence on the establishment of the court. However, in an unprecedented diplomatic maneuver on May 6, 2002, the Bush administration effectively withdrew the U.S. signature of the treaty. While U.S. Ambassador for War Crimes Issues Pierre-Richard Prosper claimed the administration was “not going to war” with the court, this renunciation of the treaty paved the way for a comprehensive U.S. campaign to undermine the ICC.

First, the Bush administration sought a United Nations Security Council reso-

lution providing an exemption for U.S. personnel operating in U.N. peacekeeping operations. After failing in May to obtain a specific exemption for peacekeepers in East Timor, the Bush administration vetoed an extension of the U.N. peacekeeping mission for Bosnia and Herzegovina in June unless the Security Council granted a complete exemption. Human Rights Watch lobbied intensively with Security Council members and ICC supporting states to block the U.S. move, warning not only of the dangers to the court but the dangers of Security Council members effectively using their veto power to rewrite international treaties. Ultimately, the U.S. failed in its bid for an ironclad exemption; instead the Security Council approved a limited, one-year exemption for U.S. personnel participating in U.N. peacekeeping missions or U.N.-authorized operations, albeit with an intention to renew this measure on June 30, 2003.

Second, the Bush administration began to pressure states around the world to enter into bilateral agreements requiring them not to surrender U.S. nationals to the ICC. The goal of these agreements (“impunity agreements,” which the U.S. misrepresents as being consistent with article 98 of the ICC treaty) is to exempt U.S. nationals from ICC jurisdiction. They would lead to a two-tier rule of law for the most serious international crimes: one that applies to U.S. nationals; another that applies to the rest of the world’s citizens. Human Rights Watch campaigned actively for governments to reject this U.S. move, providing legal advice on the incompatibility of such agreements with the ICC treaty and encouraging public and parliamentary debate on the issue. We pressed the European Union (E.U.) to adopt a strong, collective response—but were deeply disappointed when the United Kingdom engineered a compromise whereby individual E.U. members could strike deals with the U.S. so long as they met a vague and unsatisfactory set of criteria. At this writing, however, only fifteen governments had signed such agreements with the United States: Romania, Israel, East Timor, Marshall Islands, Tajikistan, Palau, Mauritania, Dominican Republic, Uzbekistan, Honduras, Afghanistan, Micronesia, Gambia, El Salvador, and Sri Lanka.

Finally, the U.S. Congress backed up the Bush administration’s efforts to undermine the court by passing the American Servicemembers’ Protection Act (ASPA), which was signed into law by President George W. Bush on August 3. The ASPA prohibits U.S. cooperation with the ICC; authorizes the president to “use all means necessary and appropriate” to free U.S. personnel (and certain allied personnel) detained or imprisoned by the ICC (the so-called Hague Invasion provision); refuses military aid to states parties to the treaty (except major U.S. allies); and prohibits U.S. participation in peacekeeping activities unless immunity from the ICC is guaranteed. However, all of these provisions are offset by waiver provisions that allow the president to override ASPA “in the national interest,” rendering its impact discretionary.

Amidst these serious challenges to the fledgling court, the Assembly of States Parties held its historic first meeting from September 3 to 10 to facilitate the prompt establishment of the ICC. One of the most important challenges facing the court is the nomination and election of the first group of judges. Recognizing the crucial role the judges will play in establishing the credibility and impartiality of the court, Human Rights Watch campaigned for the nomination of highly qualified judges

with fair gender and geographical representation. Many civil society groups around the world joined us in the campaign for transparent nomination proceedings at the national level that would produce qualified candidates rather than political appointments. Now that thirty-one nominations have been made public, we have turned our attention to holding civil society interviews with judicial candidates. The judges and prosecutor will be elected in February 2003 and the court will be operational shortly after.

On other fronts, the year saw mixed developments in the work of the various ad hoc international criminal tribunals and other initiatives taken by the international community to ensure justice for the victims of specific human rights crises.

In the course of the year, the International Criminal Tribunal for the former Yugoslavia (ICTY) hit its stride. Trial and appeals chambers issued significant decisions. The three trial chambers conducted as many as six trials simultaneously. The judges continued, through further amendments to the rules of procedure, to expedite proceedings to reduce delays.

In February, prosecutors at the ICTY began to try Slobodan Milosevic on sixty-six counts of genocide, crimes against humanity, and war crimes arising from Croatia, Bosnia, and Kosovo. Indicted when a sitting head of state, Milosevic’s prosecution marked a qualitative step forward against impunity. Fair and orderly trial proceedings were maintained notwithstanding strains caused by Milosevic’s courtroom behavior.

The International Criminal Tribunal for Rwanda (ICTR) faced significant obstruction from the Rwandan government, which reacted to investigations into abuses committed by the Rwandan Patriotic Front (responsible for installing the present government in power) by restricting the travel of witnesses called to testify in the Arusha court. Human Rights Watch urged the Security Council and influential governments to bring pressure to bear on the Rwandan government to renew its cooperation with the ICTR.

In Sierra Leone, the U.N. moved ahead with the establishment of a special court to try those most responsible for the grave abuses that had marked that country’s civil war. As the first mixed national and international tribunal of its kind, operating in conjunction with a Truth and Reconciliation Commission, the Special Court for Sierra Leone represents an important new model for international justice. Human Rights Watch provided active support to the court, drawing upon both our long-term research on Sierra Leone and policy experience with tribunals and truth commissions elsewhere.

In East Timor, however, the victims of grave abuses committed by the Indonesian military and local militias in the lead up to the country’s 1999 independence vote still awaited justice. In August, the first verdicts in cases tried before a specially established human rights court in Jakarta were announced: only one of seven defendants charged with crimes against humanity, former East Timor governor Abilio Soares, was convicted and given an unconscionably light sentence of three years of imprisonment. In late November, another East Timorese, Eurico Guterres, was sentenced to ten years of imprisonment also for crimes against humanity; four other defendants, including three Indonesian military and police, were acquitted. The verdicts exemplified Indonesia’s lack of will to bring its military and police to

account for the violence in East Timor. By contrast, the underresourced and underfunded U.N. Serious Crimes Investigation Unit in East Timor continued to prosecute East Timorese before the Special Panels of the Dili District Court (a mixed national/international justice mechanism). Efforts to prosecute Indonesians there remained almost entirely unsuccessful due to Indonesia's refusal to honor international arrest warrants.

In Afghanistan, sadly, there was almost no progress toward accountability for past abuses. The Bonn peace agreement left open the question of whether and how perpetrators might be brought to justice, but the inclusion of many powerful warlords in the new government created a formidable obstacle. While the newly created Afghan national human rights commission was asked to lead consultations within Afghan society on options for justice, these issues received little support and attention from the U.N.'s own mission in Afghanistan, fearful that they might undermine the fragile peace rather than consolidate it.

In Cambodia, negotiations between the government and U.N. on measures to bring Khmer Rouge leaders to justice stalled. The U.N. legal office announced it was withdrawing from further discussions on the establishment of a special "mixed tribunal" composed of both Cambodian and international judges and prosecutors when the Cambodian National Assembly passed a law setting up such a tribunal with serious shortcomings from a human rights perspective. In late 2002, however, Japan and France sponsored a resolution in the U.N. General Assembly requesting the secretary-general to resume negotiations. However, many governments expressed serious reservations about the lack of assurances of good faith from the Cambodian government.

Human Rights Watch continued to make progress on the case against Chad's exiled former president, Hissène Habré. Habré lives in exile in Senegal, where he was indicted in February 2000 on charges of torture and crimes against humanity before Senegal's highest court ruled a year later that he could not be tried there. Habré's victims are now seeking his extradition to stand trial in Belgium based on that country's model universal jurisdiction law, and Senegal has agreed to hold Habré pending an extradition request. In February and March 2002, a Belgian judge and police team visited Chad with the cooperation of the Chadian government, opening a significant breach in the wall of secrecy and impunity in a country where Habré's most brutal henchmen still occupy many key security posts. The team visited Habré's jails and mass grave sites, took the testimony of a number of Habré's associates, and even allowed former victims to confront their torturers.

Continued progress on the Habré case, as well as on others filed in Belgium, will depend however on the outcome of an ongoing debate over the continuing validity of Belgium's universal jurisdiction law, which came under attack on a number of fronts. A disappointing ruling by the International Court of Justice found that a Belgian arrest warrant against the then-acting foreign minister of the Democratic Republic of Congo (DRC) violated international law by refusing to recognize the minister's immunity from criminal jurisdiction. The ruling ignored a growing trend in international law against immunity for the worst atrocities, but left intact the Belgian law's provisions allowing prosecution of crimes against humanity in Belgium regardless of the crimes' connection to Belgium or the accused's presence

on Belgian soil. Later, however, Belgian appeals courts restricted the law's application to defendants already on Belgian territory, rulings that would effectively bar the prosecution of defendants such as Habré.

Human Rights Watch joined Belgian and international NGOs in a campaign to preserve the law, and helped victims from Chad, Rwanda, Guatemala, and elsewhere make their case. We argued that victims had taken great risks to file cases in Belgium and that it would be irresponsible to curtail the law now and leave the victims exposed. As of July, a political majority had coalesced to retain the law's essential features, but the Belgian Employer's Federation, with U.S. government support, was still lobbying to undermine the law.

In an exercise of universal jurisdiction, a Danish court on November 19 began proceedings against Nizar al-Khazraji, former chief of staff of Iraq's armed forces, for his suspected involvement in war crimes perpetrated in Iraq against Kurdish civilians during the 1980-88 Iran-Iraq war. He was charged with violating articles 146 and 147 of the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War.

UNITED NATIONS ISSUES

Throughout the year, Human Rights Watch played a frontline role in defending the United Nations' human rights system from attack. The 2002 session of the U.N. Commission on Human Rights proved to be one of the most difficult in memory, with a solid bloc of hostile governments seeking to protect each other from scrutiny and undermine the commission's capacity to spotlight abuse. Procedural motions were used to an unprecedented degree to prevent debate on countries such as Zimbabwe, and the reporting of special rapporteurs was severely curtailed on the basis of time pressures and budget constraints.

The United States, which in 2001 for the first time had not been elected as a member (but was reinstated at the end of the 2002 session), obstructed positive initiatives, such as a Mexican draft resolution on protecting human rights in the fight against terrorism. And European governments spent more time seeking to build consensus, both amongst themselves and with abusive governments, than galvanizing criticism where it was needed. Votes to censure Russia over its conduct in Chechnya and to extend scrutiny of Iran were defeated by narrow margins, and no member of the commission showed the political will to even introduce a resolution critical of China.

In an initiative led by Cuba, some of the most abusive governments launched a review of the commission's procedures, ostensibly to "strengthen and improve the effectiveness of its working methods," but in reality to undermine its ability to subject countries to human rights scrutiny and criticism. Human Rights Watch worked with a coalition of human rights NGOs to influence this process, mobilizing progressive governments from all regions to suggest positive reforms and defend the commission from attack. We lobbied for improved reporting procedures that would ensure better follow up to the findings of different treaty bodies and special rapporteurs and engage countries in more interactive debates.