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UNIVERSAL JURISDICTION:

The duty to enact and implement legislation

Chapter Six

As explained below in this chapter, approximately 95 states have enacted legislation which would permit their courts to exercise universal jurisdiction over persons suspected of at least some crimes against humanity, such as murder, torture or rape, in certain circumstances. In addition to the legislation or draft legislation of countries which are members of the Southern African Development Community (SADC) discussed below, it is expected that most of the other SADC members will include universal jurisdiction over crimes against humanity when they enact implementing legislation for the Rome Statute, including Angola, Namibia and Zambia.¹ Section I identifies the five basic models of legislation. Section II describes country by country the legislation and other state practice at the national level, such as cases in which national courts have exercised universal jurisdiction over crimes against humanity. State practice concerning torture is discussed in more detail in Chapter Ten.

I. TYPES OF LEGISLATION

As with legislation concerning war crimes, such legislation generally falls into one or more of five main models: express authorization to exercise universal jurisdiction over crimes against humanity, universal jurisdiction over ordinary crimes which may amount to crimes against humanity, universal jurisdiction over crimes defined or listed in treaties, universal jurisdiction over crimes under customary international law or general principles of international law and direct incorporation of international law. Many states, however, have legislation adopting a number of these approaches in different provisions.

A. Express authorization to exercise universal jurisdiction over crimes against humanity

A few states, such as *Canada*, *Belgium*, *New Zealand* and *Venezuela*, have adopted legislation in this first category expressly providing for universal jurisdiction over crimes against humanity. Other states, such as *South Africa* and *Switzerland*, have announced that they intend to do so in their legislation implementing the Rome Statute. A large group of states have expressly provided for universal jurisdiction over only specified crimes against humanity, such as *apartheid* and torture.

¹ At the conclusion of the SADC Workshop on Ratification of the Rome Statute of the International Criminal Court in Pretoria (5 to 9 July 1999), ministers adopted the Pretoria Statement of Common Understanding on the International Criminal Court affirming “the need for implementing legislation internally to give effect to the Rome Statute” and recommended “to the relevant authorities the use of the Ratification Kit developed by the SADC Conference on [the] International Criminal Court”. The Ratification Kit included a Model Enabling Act, which states in paragraph 5 (ii) that “[a]ny person who commits any of the crimes specified in Articles 6, 7 and 8 [of the Rome Statute] outside (name of the Country) may be prosecuted and punished for that crime in (name of the Country) as if the crime had been committed in (name of Country)”. The members of SADC are: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

B. Universal jurisdiction over ordinary crimes which may amount to crimes against humanity

A number of states, such as *Germany* and *Norway*, have enacted legislation in this second category which gives their courts universal jurisdiction over ordinary crimes, such as murder and crimes of sexual violence, which could amount to crimes against humanity if committed as part of a widespread or systematic pattern of crimes against humanity. Although such legislation can be used to investigate and prosecute crimes against humanity in a limited number of cases, it is unsatisfactory as it fails to take into account the differences between definitions of crimes against humanity and ordinary crimes and it does not permit courts to exercise jurisdiction over a wide range of other crimes against humanity. It does not fully reflect the nature and gravity of the crime as an attack, not just on the victim, but also on humanity itself. Other problems with such legislation may include statutes of limitations for ordinary crimes, immunities under national law and double criminality requirements.

C. Universal jurisdiction over crimes defined or listed in treaties

Legislation in the third category authorizing courts to implement treaty obligations to prosecute persons suspected of crimes defined or listed in treaties (without specifying that they must be crimes against humanity) falls into three basic groups: first, legislation referring to *treaties simply defining or listing crimes*; second, more narrow legislation citing *treaties imposing an obligation to prosecute*; such as certain provisions in *German* legislation, and third, even more narrow legislation referring only to those *treaties defining or listing crimes which require states parties to prosecute or extradite suspects*. Most legislation limits the treaties to *those the forum state has ratified*. However, sometimes the legislation appears to include *any international treaty*, even those which have not been ratified by the forum state, and sometimes even without specifying that the treaty must be in force.

A number of states with universal jurisdiction legislation of the first type have signed, but not yet ratified, certain treaties defining crimes against humanity such as the Rome Statute and the *Apartheid* Convention or prohibiting conduct which may amount to crimes against humanity in certain circumstances, such as the Convention against Torture.

It is important to discuss their legislation for at least two reasons. First, a state which has signed but not yet ratified a treaty is obliged under international law not to take any steps which would defeat the object and purpose of the treaty pending a decision on ratification (see Chapter Three, Section I). Failing to try or extradite persons in a state's territory who are suspected of violating a treaty could be seen as defeating the treaty's object and purpose. Second, some states have not signed or have not ratified such treaties. However, depending on the wording of this type of universal jurisdiction legislation, their courts may be able to exercise such jurisdiction over crimes defined in such treaties, when they eventually ratify the treaties. For example, as of 1 September 2001, 112 of the 139 states which have signed the Rome Statute had not yet ratified it, but most have pledged to do so as soon as possible. Not only does that treaty *define crimes* for the

purpose of the Court's jurisdiction, but the Preamble also recalls the *duty of states parties to investigate and prosecute* those responsible for such crimes.²

Many states which have such legislation have signed, but not yet ratified, the Rome Statute. When they have ratified the Statute, their courts may be able to exercise universal jurisdiction over crimes against humanity as defined in Article 7 of that treaty. Of course, the courts in those states may be able to exercise jurisdiction over certain crimes against humanity defined in other treaties to which they are a party, such as the Convention against Torture (see Part Four, Section I below) and the *Apartheid Convention* (see Part Four, Section IV.A.3 below).

D. Universal jurisdiction over crimes under customary international law or general principles of international law

Some states have legislation providing that their courts may exercise universal jurisdiction over crimes under international customary law, such as *Ecuador, Ethiopia, Georgia, Honduras* and *the Philippines*, or under general principles of international law, such as *Honduras, the former Yugoslav Republic of Macedonia* and *Tajikistan*.

E. Direct incorporation of international law

Another group of states provide in their national constitutions or legislation that international law, either conventional or customary, is part of national law. In some of those countries, such provisions permit courts to apply international law directly, including the exercise of universal jurisdiction and the trial of persons accused of crimes under international law, such as crimes against humanity. After the Second World War, the military courts and commissions of the *United Kingdom* and the *United States* prosecuted suspects for crimes against humanity directly under international law.

However, in many states today where their constitutions or legal systems provide that international law is part of their law courts will require implementing legislation.

As with war crimes legislation, each approach has strengths and weaknesses.

II. COUNTRY BY COUNTRY ANALYSIS

² In the Preamble, the states parties declare that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”, state that they are “determined to put an end to impunity for the perpetrators of these crimes” and recall that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. In addition, the fundamental principle of complementarity incorporated in Article 17 envisages that states parties retain the primary responsibility to investigate and prosecute crimes under international law. As stated above, nothing in the Preamble limits the duty of states to exercise jurisdiction over these crimes to territorial jurisdiction.

In this section, where the text of the relevant constitutional provision or legislation has been reproduced in Chapter Four, Section II, the text and the discussion of its scope and limitations will generally not be repeated in full.

· **Algeria:** There are two possible bases in Algeria for exercising universal jurisdiction over certain conduct amounting to crimes against humanity (for the scope of these provisions, see Chapter Four, Section II above).

First, under Article 123 of the Algerian Constitution, treaties, including jurisdictional provisions, duly ratified take precedence over national legislation and can be directly enforced by national courts. Second, Article 584 of the Penal Code (*Code Pénal*) permits Algerian courts to exercise universal jurisdiction over persons who committed a crime under Algerian law and subsequently acquired Algerian citizenship. Therefore, this article would permit Algerian courts to exercise jurisdiction over conduct abroad amounting to a crime against humanity in certain circumstances, such as murder, when the alien suspect subsequently becomes an Algerian national.

Algeria is a party to the Convention on the Suppression and Punishment of the Crime of *Apartheid* (*Apartheid* Convention) and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). However, torture is not a crime under national law and it appears that *apartheid* also is not expressly included in the Penal Code, so an investigation or prosecution for these two crimes against humanity would probably have to be based on ordinary crimes.

· **Argentina:** The government has stated that Argentina applies the *aut dedere aut judicare* obligation with respect to the crime against humanity of torture and this principle was already incorporated in a law on extradition which dates to 1885 (see discussion in Chapter Ten, Section II).

Argentina is a party to the Convention against Torture and to the Inter-American Convention on Torture and to the Inter-American Convention on the Forced Disappearances. It is also a party to the Rome Statute, but it had not yet implemented it as of 1 September 2001, although a working group drafting a proposal for implementing legislation for the Statute was expected to publish its report in September 2001.

· **Armenia:** There are two bases in Armenia for exercising universal jurisdiction over certain conduct amounting to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 6 of the Armenian Constitution provides that treaties ratified by Armenia can be enforceable by national courts and have priority over national legislation. Second, Article 14 of the 1999 Penal Code provides that foreign citizens or stateless

persons who have committed offences outside Armenia are criminally responsible under the Penal Code when they have committed an offence referred to in an international treaty ratified by Armenia, if they have not been tried for that offence in a foreign state.

Armenia is a party to the *Apartheid* Convention and the Convention against Torture.

- **Australia:** Australian courts can exercise universal jurisdiction over the crime against humanity of torture and will be able to exercise universal jurisdiction over the crimes against humanity listed in the Rome Statute after Australia ratifies the Statute.

Australian courts can now exercise universal jurisdiction over the crime against humanity of torture (see Chapter Ten, Section II). The current text of the bill defining crimes within the jurisdiction of the International Criminal Court provides for universal jurisdiction over crimes against humanity.³

Australia has ratified the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

- **Austria:** National courts can exercise universal jurisdiction over the crime against humanity of torture and, in certain circumstances, over conduct which is criminal in both Austria and the place where it occurred and which amounts to a crime against humanity, such as murder, abduction, assault and rape. Two provisions of the Austrian Penal Code would permit courts to exercise universal jurisdiction over certain conduct which, if committed during armed conflict, could amount to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 64.1.6 provides that certain crimes under Austrian law committed abroad are punishable under Austrian criminal law, regardless of the criminal law of the place where they occurred, when Austria is under an obligation to punish them.

³ International Criminal Court (Consequential Amendments) Bill 2001, A Bill for an Act to amend the *Criminal Code Act 1995* and certain other Acts in consequence of the enactment of the *International Criminal Court Act 2001*, and for other purposes, Exposure Draft, L:\Treaties folder\Treaties reviews\International Criminal Court\Legislation\ex draft CA Bill 220801.doc 30/8/2001 3:29 PM, Schedule 1- Amendment of the Criminal Code Act 1995, § 268.123 (1) (Geographical jurisdiction) (obtainable from <http://www.aph.gov.au/house/committee/jsct>). That provision reads: "Section 15.4 (extended geographical jurisdiction - Category D) applies to genocide, crimes against humanity and war crimes." The current wording of Section 15.4 describes the extended geographical jurisdiction of Category D as follows:

"If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

- (a) whether or not the conduct constituting the alleged offence occurs in Australia; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Australia."

This provision does not contain the restriction found in other extended geographical jurisdiction provisions in Section 15.4 to Australian citizens, so it would apply to anyone and therefore give Australia universal jurisdiction over genocide, crimes against humanity and war crimes.

In addition, Austrian courts might rely on a second provision of the Penal Code when the conduct would be criminal if it had occurred in Austria. However, there are three requirements which must be met before a court can exercise jurisdiction. Article 65.1.2 of the Penal Code provides that courts may exercise universal jurisdiction over offences committed abroad, provided that (1) the acts are also punishable in the place where they are committed (double criminality requirement), (2) the suspect, if a non-national, is present in Austria and (3) he or she cannot be extradited to the other state for reasons other than the nature and characteristics of the offence.⁴ Crimes under international law are not political offences.⁵

Austria is a party to the Convention against Torture. It has ratified the Rome Statute and is expected to enact implementing legislation in 2001.

· **Azerbaijan:** National courts may exercise universal jurisdiction over almost all crimes against humanity. Article 12 of the Azerbaijan Criminal Code contains three bases for courts to exercise universal jurisdiction over crimes against humanity (for text and scope of this article, see Chapter Four, Section II).

⁴ Article 65.1 provides:

“Acts other than those mentioned in §§ 63 and 64 that have been committed abroad are subject, insofar as the acts are also liable to punishment under the law of the scene of the crime, to Austrian criminal law:

....

2. If at the time of the act the perpetrator was a foreigner, trespassed within the country and for a reason other than the nature or feature of his act is not extradited abroad.

(2) The punishment is to be determined so that the perpetrator is not disadvantaged as regards the overall effect compared to the law of the scene of the crime.

(3) If there is no penal authority at the scene of the crime, then it suffices if the act is punishable under Austrian law.

(4) The liability to punishment lapses however:

1. If the liability to punishment of the act is cancelled under the law of the scene of the crime;

2. If the perpetrator has been finally acquitted or otherwise released from prosecution by a court of the state in which the act was committed;

3. If the perpetrator has been finally convicted by a foreign court and the punishment has been totally enforced or, if it has not been enforced, has been waived or its enforceability has been barred by limitation under the foreign law.”

⁵ The statement by a Vienna city councillor in a complaint to the city prosecutor alleging torture by the Deputy Chairman of the Revolutionary Council of Iraq, then in Vienna, that he was pursuing only claims of torture, not murder and other crimes against humanity, because “it is not legally possible to prosecute him in Austria” for these crimes, appears to be based on an incorrect understanding of Austrian law. Case Report to the Public Prosecutor of Vienna concerning Izzat Ibrahim Khalil Al Doori, submitted by Peter Pilz, 13 August 1999 (English translation by Amnesty International).

Azerbaijan is a party to the *Apartheid* Convention and the Convention against Torture. It has not signed the Rome Statute and had not ratified it as of 1 September 2001. However, it has provided that many of the crimes against humanity recognized in the Rome Statute and other instruments are crimes under national law.⁶

· **Belarus:** There are two bases in Belarus for exercising universal jurisdiction under the 1999 Criminal Code over most crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

Article 6 (1) of the Criminal Code gives courts custodial universal jurisdiction over stateless persons who are permanent residents in Belarus who have committed a crime abroad if these acts are punishable in the state where they were committed and they were not prosecuted in that state. Article 6 (4) states that the Criminal Code imposes criminal responsibility on a person for certain crimes listed in Article 6 (3), which include crimes against humanity and crimes committed outside Belarus which can be prosecuted by virtue of a treaty binding on Belarus.

Belarus is a party to the *Apartheid* Convention and the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001 had not yet ratified it. Article 128 defines the following as crimes against humanity when based on racial, national or ethnic grounds or on grounds of political belief and when committed against a civilian population: deportation, unlawful detention, enslavement, massive or systematic execution without trial, kidnapping, torture or acts of cruelty.⁷ Article 85 (4) provides that statutes of limitation do not apply to crimes against humanity.

· **Belgium:** There are two provisions in Belgian law providing for universal jurisdiction over conduct amounting to crimes against humanity.

⁶ Azerbaijan Criminal Code, Art. 105 (Extermination), Art. 107 (Deportation or forcible transfer of population), Art. 108 (Gender violation), Art. 109 (Persecution), Art. 110 (Enforced disappearance of persons), Art. 111 (Racial discrimination (apartheid)), Art. 112 (Deprivation of liberty contrary to the norms of international law) and Art. 113 (Torture). See remark following Article 103 stating: "Crimes against humanity means intentional actions, set out in Articles 103-113 of the present section when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

⁷ Belarus Criminal Code of 24 June 1999, entered into force, 9 July 2000, Art. 128 (English translation by Amnesty International based in part on French translation in ICRC IHL Database and in part on English translation in 3 Y.B. Int'l Hum. L. (2000) (forthcoming).

(1) **Legislation.** On 10 February 1999, Belgium adopted the *Loi relative à la répression des violations graves du droit international humanitaire*.⁸ Article 7 of the 1999 law provides in relevant part:

“The Belgian courts shall be competent to deal with breaches provided for in the present Act, irrespective of where such breaches have been committed.”⁹

⁸ The decision to fill part of the gap in Belgian legislation regarding crimes under international law arose in part because of concerns that persons suspected in Belgium of genocide and crimes against humanity in Rwanda in 1994 would escape criminal responsibility after a decision by the Rwanda Tribunal had acquitted a suspect of war crimes on the ground that the conduct was not sufficiently connected to the conflict between the government and the RPF. A colloquium organized by the *Sénat* (Senate) in 1996 recommended that this part of the gap be filled by amending the 1993 law to define crimes against humanity and genocide as crimes under national law. See A. Destexhe & M. Foret, *De Nuremberg à la Haye et Arusha. Actes du colloque organisé par le groupe PRL-FDF du Sénat* 144 (1997). It was given further impetus by the Report of the Parliamentary Commission of Inquiry regarding the events in Rwanda by M. Mahoux and M. Verhofstat of 6 December 1997, which concluded that “it is necessary to include in domestic criminal law provisions that punish crimes against humanity, in particular the crime of genocide”. *Ibid.*, Chapter 5, para. 53 (English translation of this document, as well as the French and Flemish originals of all Senate documents cited in this memorandum are obtainable from <http://www.senate.be>).

The first proposal was introduced in the Senate in October 1997. *Sénat de Belgique, Proposition de loi relative à la répression du crime de génocide, en application de la Convention internationale pour la prévention et la répression du crime de génocide du 9 décembre 1948, déposée par M. Foret et consorts, 16 octobre 1997*. In December 1998, the *Commission de la justice* (Justice Commission) of the Senate issued a report, including the views of the government, proposing that genocide, as defined in Article II of the Genocide Convention, and crimes against humanity, as defined in Article 7 of the Rome Statute, be made crimes under Belgian law. *Sénat de Belgique, Proposition de loi relative à la répression du crime de génocide, en application de la Convention internationale pour la prévention et la répression du crime de génocide du 9 décembre 1948, Rapport fait au nom de la commission de la justice par Mme Merchiers, 1 décembre 1998*. Amendments were proposed by the government and Senator Erdman. *Proposition de loi relative à la répression du crime de génocide, en application de la Convention internationale pour la prévention et la répression du crime de génocide du 9 décembre 1948 (Amendements N°1 du Gouvernement & N°2 de M. Erdman, 1 décembre 1998)*.

After the Senate passed the bill, the *Chambre des Représentants* (Chamber of Representatives) took up the bill, together with amendments proposed by the government. *Chambre des Représentants de Belgique, Proposition de loi relative à la répression des violations graves du droit international humanitaire, 1 décembre 1998, 1-749/4* (all documents of the Chamber of Representatives cited are obtainable from <http://www.dekamer.be>). In introducing the draft legislation, the Minister of Justice stated that the draft envisaged that official immunities would not prevent the application of the law, consistent with the principle in Article 27 of the Rome Statute, and that the law would have retrospective effect to violations before the law entered into force. *Chambre des Représentants de Belgique, Projet de loi relative à la répression des violations graves du droit international humanitaire, Rapport fait au nom de la Commission de la justice par M. Jo Van Overberghe, 29 janvier 1999, 1863/2-98/99, 2-3*. The law was adopted by a large majority in both houses of Parliament and was promulgated by the King of Belgium on 10 February 1999.

⁹ This law changed the title of the *Loi du 16 juin 1993 relative à la répression des infractions graves aux conventions internationales de Genève du 12 août 1949 et aux Protocoles I et II du 8 juin 1977, additionnels à ces conventions*, renumbered the articles and amended it to include universal jurisdiction

over crimes against humanity and genocide. The English translation is annexed to Stefaan Smis & Kim Van der Borgh, *Belgium: Act Concerning the Punishment of Grave Breaches of International Humanitarian Law*, 38 Int'l Leg. Mat. 918 (1999)

The breaches covered by Article 1 § 2 of the 1999 law include many of the crimes against humanity as defined in Article 7 of the Rome Statute:

“The crime against humanity defined below, committed in peace time or in time of war, shall constitute a crime under international law and be punishable in accordance with the provisions of the present Act. In accordance with the Statute of the International Criminal Court, a crime against humanity means any of the following acts, committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1° murder;

2° extermination;

3° enslavement;

4° deportation or forcible transfer [of population];

5° imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

6° torture;

7° rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

8° persecution against any identifiable group or collectivity or political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in the Article.¹⁰

¹⁰ The English translation of Article 3 § 2 is an amended version of a slightly inaccurate translation annexed to Smis & Van der Borgh, *supra*, n. 9, which reproduces the English version of relevant paragraphs of Article 7 of the Rome Statute, containing a reference to a restrictive definition of gender in Article 7 (3) of the Statute, which is not included in the 1999 Belgian law. The original French text of Article 2 reads:

“Constitue un crime de droit international et est réprimé conformément aux dispositions de la présente loi, le crime contre l’humanité, tel que défini ci-après, qu’il soit commis en temps de paix ou en temps de guerre. Conformément au Statut de la Cour pénale internationale, le crime contre l’humanité s’entend de l’un des actes ci-après commis dans le cadre d’une attaque généralisée ou systématique lancée contre une population civile et en connaissance de cette attaque :

1° meurtre;

2° extermination;

3° réduction en esclavage;

4° déportation ou transfert forcé de population;

5° emprisonnement ou autre forme de privation grave de liberté physique en violation des dispositions fondamentales du droit international;

6° torture;

7° viol, esclavage sexuel, prostitution forcée, grossesse forcée, stérilisation forcée et toute autre forme de violence sexuelle de gravité comparable;

8° persécution de tout groupe ou de toute collectivité identifiable pour des motifs d’ordre politique, racial, national, ethnique, culturel, religieux ou sexiste ou en fonction d’autres critères universellement reconnus comme inadmissibles en droit international, en corrélation avec tout acte visé dans le présent article.”

Loi relative à la répression des violations graves de droit international humanitaire, Moniteur Belge, 23 mars 1999, 9286.

However, possibly through an oversight or possibly because Parliament considered that the definitions in international law were not sufficiently precise, the 1999 law omitted three crimes against humanity (enforced disappearance, the crime of apartheid and other inhumane acts). Crimes against humanity within the scope of the 1999 law are not subject to statutory limitations.¹¹ Superior orders are not a defence to crimes against humanity in most cases.¹² Official immunities are not applicable to crimes covered by the 1999 law.¹³ Specific forms of ancillary crimes, including ordering, proposing or offering to commit, incitement to commit, participation and failure to act are punishable by the penalties for a completed crime.¹⁴ Most other general principles of law applicable to ordinary crimes in the Penal Code, however, apply to crimes against humanity.¹⁵

In addition, independently of this legislation, it is generally accepted that Belgian courts have universal jurisdiction over crimes against humanity as defined under customary international law.¹⁶ This doctrine is important to the extent that Article 7 of the Rome Statute may fall short of including all crimes against humanity under customary international law.

Belgium is a party to the Convention against Torture. It has ratified the Rome Statute, but as of 1 September 2001 it had not yet adopted implementing legislation.

¹¹ *Ibid.*, Art. 8.

¹² *Ibid.*, Art. 5 § 2 (for the text, see Chapter Four, Section II)

¹³ *Ibid.*, Art. 5 § 3 (for the text, see Chapter Four, Section II).

¹⁴ *Ibid.*, Art. 4 (for the text, see Chapter Four, Section II).

¹⁵ *Ibid.*, Art. 6 (for the text, see Chapter Four, Section II).

¹⁶ David, *Principes de droit des conflits armés*, *supra*, n. , 708.

In addition to the 1999 law, Article 8 of the Law Concerning the Provisions Regarding the Repression of Trafficking in Human Beings and of Child Pornography of 13 April 1995 (*Loi contenant des dispositions en vue de la répression de le traite des êtres humains et de la pornographie enfantine*) provides for universal jurisdiction over crimes against minors, some of which could amount to crimes against humanity if committed on a widespread or systematic basis, such as sexual violence and forced prostitution.¹⁷ To the extent that these crimes do not fall within the scope of the 1999 law, it appears that they would be subject to statutory limitations applicable to ordinary crimes and to official immunities.

(2) Criminal investigations and requests for extradition. There have been a number of criminal investigations and requests for extradition in cases of alleged crimes against humanity, including the following cases.

Former President Augusto Pinochet of Chile. On 6 November 1998, Daniel Vandermeersch, a Belgian *juge d'instruction* (investigating magistrate) in Brussels, ruled in a criminal investigation of former President Augusto Pinochet Ugarte that the court could exercise universal jurisdiction over conduct in Chile amounting to crimes against humanity based on customary international law, even in the absence of national legislation expressly providing for such jurisdiction (which was subsequently enacted on 10 February 1999). He explained that "there exists a rule of customary international law, indeed of *jus cogens*, recognizing universal jurisdiction and authorizing national state authorities to prosecute and bring to justice, in all circumstances, persons suspected of crimes against humanity."¹⁸

¹⁷ Law Concerning the Provisions Regarding the Repression of Trafficking in Human Beings and of Child Pornography of 13 April 1995, Art. 8. The original French text reads:

"Un article 10ter, rédigé comme suit, est inséré au Titre préliminaire du Code d'instruction criminelle:

'Art. 10ter. Le Belge ou l'étranger trouvé en Belgique, qui aura commis hors du territoire du Royaume une des infractions prévues par les articles 372, 373, 375 376 et 377 du Code pénal si le fait a été commis sur la personne d'un mineur de moins de 16 ans accomplis, par les articles 379, 380bis, 381bis et 383bis, § 1er et § 3, du même Code, par l'article 77bis, § 2 et § 3, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et par les articles 10, 11, 12, et 13 de la loi du 9 mars 1993 tendant à réglementer et à contrôler les activités des entreprises de courtage matrimonial pourra être poursuivi en Belgique même si l'autorité belge n'a reçu aucune plainte ou avis officiel de l'autorité étrangère."

Loi contenant des dispositions en vue de la répression de le traite des êtres humains et de la pornographie enfantine, 13 avril 1995, art. 8 (original French text obtainable from http://194.7.188/justice/index_fr.htm).

Several of these articles cover conduct which, if committed as part of a widespread or systematic pattern of crimes against humanity, could amount to crimes against humanity of sexual violence.

¹⁸ *Pinochet Ugarte, Ordonnance, Dossier no. 216/98; Notices no. 30.99.3447/98* (Arrond. De Bruxelles, Tribunal de première instance 6 November 1998), 8 (reprinted in 79 *Revue de droit pénal et de criminologie* 278, 288 (§ 3.3.3) (1999) ("[N]ous considérons qu'il existe une règle coutumière du droit des gens, voire de *jus cogens*, reconnaissant la compétence universelle et autorisant les autorités étatiques nationales à poursuivre et à traduire en justice, en toutes circonstances, les personnes soupçonnées de crimes contre l'humanité . . .") (citation omitted). See also Belga/Belgian Press Agency, 6 November 1998.

Prime Minister Ariel Sharon of Israel. For further information concerning this case, see Chapter Four, Section II.

President Saddam Hussein of Iraq. On 29 June 2001, it was announced by the Brussels Public Prosecutor's Office that a *juge d'instruction* (investigating judge), Damien Vandermeersch, had opened an investigation into attacks by government forces against Iraqi Kurds at the end of the Gulf War in 1991, alleging that they constituted crimes against humanity.¹⁹

Yasir Arafat of the Palestinian National Authority. On 5 July 2001 Haim Asulin, an Israeli who was seriously injured at the age of 17 in an attack on Maalot in northern Israel in 1974 by armed group of the Democratic Front for the Liberation of Palestine, a dissident faction of the Palestine Liberation Front (PLO), which killed 20 children, three other civilians and an Israeli soldier, was reported to have announced that he would file a complaint against Yasir Arafat, President of the Palestinian National Authority, for alleged crimes against humanity, in Belgium.²⁰ As of 1 September 2001, however, no such complaint was known to have been filed.

· **Bolivia:** Bolivian courts can exercise universal jurisdiction over the crimes against humanity of torture and *apartheid*.

Article 1 (7) of the Bolivian Penal Code (*Código Penal*) (for the text, see Chapter Four, Section II) gives national courts universal jurisdiction to try crimes committed abroad which the state is obliged under a treaty to punish. There is no requirement in this article for the suspect to be present in the territory to initiate an investigation.

Bolivia is a party to the *Apartheid* Convention, the Convention against Torture and the Inter-American Convention on the Forced disappearances. It has signed the Inter-American Convention on Torture in 1985. It has signed the Rome Statute and is

¹⁹ Bart Crols, *Belgian magistrate launches probe against Saddam*, Reuters, 29 June 2001 (reporting that a complaint by six people, four of whom were living in Belgium and one in the Netherlands, concerning attacks against Iraqi Kurds at the end of the Gulf War in 1991 had been found admissible and that it was being investigated by a *juge d'instruction* (investigating judge) in Brussels, Damien Vandermeersch). Reportedly, it is alleged that the attacks constituted crimes against humanity. BELGA, *Après Ariel Sharon, Saddam Hussein!*, *La Libre*, 29 juin 2001.

²⁰ BBC, *Israeli citizen to file suit against Arafat in Belgium*, 5 July 2001 [source: *Aanklacht tegen Arafat in België*, *De Standaard*, 5 July 2001].

expected to ratify it in 2001. Bolivia is a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

Article 12 of the Constitution states:

“All types of torture, coercion, menaces or any form of physical or psychological violence are prohibited under penalty of immediate dismissal and without prejudice to any punishment to which those who inflicted, ordered, incited or allowed them to occur may be liable”²¹

Article 34 of the Constitution states that “[t]hose who violate constitutional rights and guarantees shall be subject to prosecution by the ordinary courts”²²

The crime of torture is provided in Article 295 of the Penal Code:

“ILL-TREATMENT AND TORTURE”- *A public official who ill-treats or who orders or permits the ill-treatment of a detainee shall incur a penalty ranging from six months’ to two years’ deprivation of liberty. The penalty shall be from two to four years’ deprivation of liberty if any kind of torment or torture is inflicted.*

*If injury is caused as a result, the penalty shall be from two to six years’ deprivation of liberty; if it results in death, a penalty of ten years’ imprisonment shall apply.”*²³

²¹Art. 12 of the Constitution: “Queda prohibida toda especie de torturas, coacciones, exacciones cualquier forma de violencia física o moral, bajo pena de destitución inmediata y sin perjuicio de las sanciones a que se harán pasibles quienes las aplicaren, ordenaren, instigaren o consintieren.”

Available from <http://www.cajpe.org.pe/rij/bases/legisla/bolivia/decobo.HTM>

²² Art.34 of the Constitution: “Los que vulneren derechos y garantías constitucionales quedan sujetos a la jurisdicción ordinaria.”

²³ The original Spanish reads: (VEJACIONES Y TORTURAS).- “Será sancionado con privación de libertad de seis meses a dos años, el funcionario que vejare, ordenare o permitiere vejare a un detenido.
La pena será de privación de libertad de dos a cuatro años. si le infligiere cualquier especie de tormentos o torturas.

Article 34 of the Penal Procedure Code of 1999 (Law No. 1970 of 25 March 1999, published on 31 May, in force since 31 May 2001) states in Article 34 that “[p]riority will be given to the application of the rules regarding the statute of limitations contained in international treaties and covenants.”²⁴

· **Bosnia and Herzegovina:** Separate criminal codes apply in the two parts of the country, but both permit courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity when it is also a crime under national law, such as murder and rape. Bosnia and Herzegovina is a successor state to the Federal Socialist Republic of Yugoslavia, which was a party to the *Apartheid* Convention and it is a party to the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it.

In the *Federation of Bosnia and Herzegovina*, courts may exercise custodial universal jurisdiction over crimes under the law of the Federation which are punishable in the territorial state by five years’ imprisonment or more. Article 133 (2) of the Criminal Code of the Federation of Bosnia and Herzegovina provides:

Si éstas causaren lesiones, la pena será de privación de libertad de dos a seis años; y si causaren la muerte, se aplicará la pena de presidio de diez años.” (English translation by Amnesty International)
Bolivia has though not defined torture in national law as required by Article 1 of the Convention against Torture (see Chapter Ten. Section II).

²⁴ The original Spanish reads: “Tendrán aplicación preferente las reglas sobre prescripción contenidas en tratados y convenios internacionales” (English translation by Amnesty International)

“Criminal Legislation of the Federation applies to a foreigner who commits a criminal offence abroad against another country or a foreigner, for which the law of that country prescribes imprisonment for a term of five years or a heavier penalty, provided that the perpetrator is found on the territory of the Federation. Unless stipulated otherwise in this Code, the court in such cases may not pronounce a punishment which would be heavier than the one provided by the law of the country in which the criminal offence has been committed.”²⁵

Certain crimes against humanity are defined as crimes under the Federation Criminal Code.²⁶ Article 126 of the Criminal Code provides that crimes against humanity are not subject to statutes of limitations. The official commentary on these provisions explains that “the introduction of those provisions is an obligation towards the international community”.²⁷

In the *Republika Srpska*, Article 123 (2) of the Criminal Code of the Republika Srpska provides for custodial universal jurisdiction over any crime punishable by at least five years’ imprisonment, provided the suspect is not extradited to another state:

²⁵ Criminal Code of the Federation of Bosnia and Herzegovina with comment of new solutions and with registrar of notions (Sarajevo: Federalno Ministarstvo Pravde 1998), Art. 133 (2). For the venue of such cases, see Code of Criminal Procedure with comment of new solutions and with registrar of notions (Sarajevo: Federalno Ministarstvo Pravde 1998), Arts 25 -27. The official commentary explains that the new Criminal Code of the Federation “represents a new and modern unification of the old Criminal Code of the former SFRY and recent Criminal Code of R BiH”, the concept and content of which “are, to the highest possible extent, adjusted to the new constitutional provisions and numerous international acts which contain universal and modern standards of law” and that the reform was intended to implement “the rules and standards of the new contemporary legislation contained in numerous international conventions and other binding international acts.” *Explanation of new solutions in the Criminal Code of the Federation of BiH*, Criminal Code of the Federation of Bosnia and Herzegovina with comment of new solutions and with registrar of notions 627 (Sarajevo: Federalno Ministarstvo Pravde 1998).

²⁶ Criminal Code of the Federation of Bosnia and Herzegovina with comment of new solutions and with registrar of notions (Sarajevo: Federalno Ministarstvo Pravde 1998), Art.167 (Establishing Slavery and Transporting Enslaved People). Other crimes which may, in certain circumstances, constitute crimes against humanity include Art. 150 (Inciting National, Racial or Religious Hatred, Discord or Hostility)

²⁷ *Explanation of new solutions in the Criminal Code of the Federation of BiH*, Criminal Code of the Federation of Bosnia and Herzegovina with comment of new solutions and with registrar of notions 651(Sarajevo: Federalno Ministarstvo Pravde 1998).

“Criminal legislation of the Republika Srpska applies to a foreigner who commits a criminal offence abroad against another country or foreigner, for which the law of that country prescribes imprisonment for a term of five years or a heavier penalty, provided the perpetrator is found on the territory of the Republika Srpska and does not get extradited to the other country. Unless it is stipulated otherwise in this Code, the court in such a case may not impose a heavier punishment than the one provided by the law of the country in which the criminal offence has been committed.”²⁸

The Criminal Code prohibits a number of crimes against humanity.²⁹

²⁸ Criminal Code of the Republika Srpska, entered into force 1 October 2000, Art. 123 (2).

²⁹ Criminal Code of the Republika Srpska, Art. 437 (Establishing Slavery and Transporting Enslaved People).

There are several conditions which must be satisfied before a court may exercise jurisdiction under Article 123 (2). A prosecution may not be instituted if the suspect has served a sentence abroad for the crime, if the suspect has been released by a final and binding decision of a foreign court or if the territorial state requires the prosecution to be instituted by a personal complaint and no complaint has been filed.³⁰ Although the general rule is that the crime must also be punishable under the law of the territorial state, it may be prosecuted pursuant to Article 124 (4) if the act at the time it was committed was considered a criminal offence under general legal principles accepted by the international community at the time it was committed and the Republic Public Prosecutor then authorizes a prosecution.³¹ Crimes against humanity are not subject to statutes of limitations.³² The wording of the articles concerning amnesties and pardons suggests that the immunity from prosecution where a suspect has benefited from an amnesty or received a pardon applies only to amnesties or pardons issued by the Republika Srpska, not to foreign amnesties or pardons.³³

· **Brazil:** National courts can exercise universal jurisdiction over the crime against humanity of torture.

Article 7 (Part I) (a) of the Brazilian Criminal Code (for the text, see Chapter Four, Section II above) provides that national courts have custodial universal jurisdiction to try crimes which committed abroad which Brazil is obliged to repress under a treaty. It is not clear whether this provision requires that the treaty provide for universal jurisdiction or simply that the treaty require prosecution. The suspect must be in Brazil, the act must also be also punishable in the territorial state (double criminality), extradition for the crime be authorized under national law and the suspect must not have been acquitted, have completed a sentence or been pardoned.

Brazil is a party to the Convention against Torture and to the Inter-American Convention on Torture. It has signed the Inter-American Convention on the Forced

³⁰ Paragraph 2 of Article 124 (Special Preconditions for Prosecution) provides:
“In the cases stipulated under articles 122 [crimes committed by citizens abroad] and 123 of this Code, the prosecution shall not be instituted if:

- 1) the perpetrator has served the punishment he was sentenced to abroad;
- 2) the perpetrator has been freed by a final and binding decision of a foreign court;
- 3) according to the law of the foreign country, the prosecution is initiated on a personal complaint, and such complaint has not be[en] filed.”

³¹ Article 124 (4) provides:
“It is only after the approval of the Republic Public Prosecutor that prosecution may be instituted in the Republika Srpska in cases referred to under Article 123, paragraph 2 of this Code, regardless of the law of the country in which the criminal offence has been committed, if at the time of the commission the act in question was considered a criminal offence in accordance with the general legal principles recognized by the international legal community.”

³² Criminal Code of Republika Srpska, Art. 116.

³³ *Ibid.*, Arts 117 (Amnesty) and 118 (Pardon).

Disappearances. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. Brazil has defined torture as a crime in national law (see Chapter Ten).

· **Bulgaria:** Bulgarian courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity under two provisions of the Bulgarian Penal Code.

First, Article 6 (1) of the Penal Code provides that “the Penal Code shall also apply to foreign citizens who have committed abroad crimes against peace and humanity, whereby the interests of another state or foreign citizens have been affected”.³⁴ Section III (Liquidation of Groups of the Population (Genocide) and Apartheid) of Chapter Fourteen of the Penal Code (Crimes against Peace and Humanity) includes crimes which correspond in part to the crime of *apartheid*.³⁵

Second, Article 6 (2) states that “[t]he Penal Code shall also apply to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party”.

Bulgaria is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but had not yet ratified it as of 1 September 2001. It is a party to the Convention on the Non-Applicability of Statutory Limitations and has provided that statutes of limitation do not apply to crimes against humanity (see Chapter Four, Section II). As discussed below in Chapter Ten, Section II, the government has stated that Bulgaria may exercise universal jurisdiction over torture only when there is a bilateral treaty with the territorial state, although this may simply be a mistranslation, since the Penal Code contains no such limitation.

· **Burundi:** National courts may exercise universal jurisdiction over conduct which takes place abroad amounting to crimes against humanity. Article 4 of the Decree-Law No. 1/6 of 4 April 1981 provides for universal jurisdiction over any conduct abroad which would be a crime under Burundi law with a penalty of two or months’ imprisonment, unless the suspect is extradited and provided that the Prosecutor’s Office (*Ministère Public*) requests a prosecution (for the text and scope, see Chapter Four, Section II).

Burundi is a party to the *Apartheid* Convention and to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It has not been possible to obtain a copy of the Penal Code to determine

³⁴ Bulgarian Penal Code of 1968, as amended 1999, Art. 6 (1).

³⁵ Bulgarian Penal Code, Art. 417 (causing death or severe bodily injury to members of a racial group or imposing living conditions on them of such a nature to cause partial physical liquidation, when done with the aim of maintaining domination or systematic oppression of one racial group over another); Art. 418 (committing other acts, such as deprivation of liberty or imposing compulsory labour, with the same aim as in Article 417).

whether it provides that torture is a crime under national law, but the wording of Article 4 makes it clear that it includes any conduct that is a crime under national law, so it would cover conduct such as assault or rape when it amounts to torture. In addition, a draft law was prepared in 1997 to establish procedures for the prosecution and trial of persons responsible for acts committed since 21 October 1993 that are defined and punishable under the Penal Code and constitute crimes against humanity as defined in the Convention on the Non-Applicability of Statutory Limitations for War Crimes and Crimes against Humanity, or are crimes under the Penal Code committed in connection with events related to genocide and crimes against humanity (for the text and scope of this provision, see Chapter Four, Section II).

· **Cameroon:** Cameroon courts may exercise universal jurisdiction over the crimes against humanity of trafficking in persons, the slave trade, *apartheid* and torture.

Article 11 of the Criminal Code provides that the criminal law of Cameroon applies to trafficking of persons and the slave trade, both of which are considered to be crimes against humanity.³⁶

Cameroon is a party to the *Apartheid* Convention and the Convention against Torture and it has signed the Rome Statute. It has announced that it intends to ratify it in 2001.

³⁶The government delegation explained to the Committee against Torture that a foreigner may not be prosecuted in national courts for acts committed abroad unless the suspect was arrested in Cameroon and has not been extradited. In addition, proceedings must have been instituted by the procurator's office. Supplement to initial report, U.N. Doc. CAT/C/5/Add.26 (1991), para. 55.

· **Canada:** Canadian courts may exercise universal jurisdiction over all crimes against humanity recognized in the Rome Statute in most circumstances. Canada is a party to the Convention against Torture and has ratified the Rome Statute. The Crimes Against Humanity and War Crimes Act of 2000, which was enacted with a view to implementing the Statute, gives its courts universal jurisdiction over crimes against humanity as defined in the Statute (see Chapter Four, Section II above).³⁷

The Act provides that crimes against humanity committed outside Canada are crimes under Canadian law.³⁸ Section 6 (3) defines crimes against humanity as crimes against humanity under customary international law, conventional international law or general principles of law recognized by the community of nations and Section 6 (4) clarifies that the definition of crimes against humanity in Article 7 of the Rome Statute are, as of 17 July 1998, crimes according to customary international law.³⁹ Section 6 (5) notes that crimes against humanity were crimes under customary international law or general principles of law recognized by the community of nations before the London Agreement of 8 August 1945 establishing the Nuremberg Tribunal.⁴⁰

³⁷ An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts (Crimes Against Humanity and War Crimes Act), Bill C-19, 2nd Sess., 36th Parl., 48-49 Elizabeth II, 1999-2000, assented to 29 June 2000 (*obtainable from:* <http://www.parl.gc.ca>).

³⁸ Crimes Against Humanity and War Crimes Act, Sec. 6 (1) (b). That section states: “6. (1) Every person who, either before or after the coming into force of this section, commits outside Canada . . . (b) a crime against humanity . . . is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.” Section 8 is discussed below.

³⁹ Section 6 (3) reads:

“The definitions in this subsection apply in this section [Section 6, governing crimes committed outside Canada].

‘crime against humanity’ means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.”

Section 6 (4) states:

“For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.”

⁴⁰ Section 6 (5) provides:

“For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and
 (b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19,

1946.”

Canadian courts exercised universal jurisdiction over a non-Canadian accused of crimes against humanity during the Second World War in the *Finta* case under former Section 7 (3.71) of the Canadian Criminal Code (for the text, see Chapter Four, Section II above), which provided for universal jurisdiction over non-Canadians found in Canada for conduct outside Canada that constituted a crime against humanity if the conduct would have constituted an offence in Canada had it been committed in Canada.⁴¹

· **Chile:** Chile may exercise universal jurisdiction over the crime against humanity of torture.

Article 5 of the Chilean Constitution (for text, see Chapter Four, Section II above) recognizes as limits on sovereignty the respect for law which are inherent in the person and provides that the authorities have the duty to promote and respect rights guaranteed by treaties ratified by Chile which are in force. Article 6 of the *Código Orgánico de Tribunales* (Code on Organization of the Courts) requires courts to exercise jurisdiction over crimes and offences committed outside the national territory which are included in treaties signed by Chile (for the text of this provision and a discussion of a decision by the Supreme Court of Justice in the *Pedro Enrique Poblete Cordoba* case stating that Article 5 of the Constitution provides that courts may directly apply provisions of treaties in force to which Chile is a party, see Chapter Four, Section II above). This decision suggests that national courts could exercise universal jurisdiction over crimes against humanity, such as torture, where the treaty recognizes universal jurisdiction.

As discussed below in Chapter Ten, Section II, the government has stated that Chilean courts can exercise universal jurisdiction over torture. Chile has ratified the Convention against Torture and the Inter-American Convention on Torture . It has signed the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute and is expected to ratify it in 2001. Articles 150, 150A and 150B of the Penal Code prohibit torture.

Art. 150 of the Penal Code:

“The following shall incur penalties of shorter imprisonment or confinement (presidio o reclusión menores) with the corresponding penalty attaching to the main penalty (accessoria):

⁴¹ See *R. v. Finta*, 28 C.R. (4th) 265 (1994).

1. Whoever orders or prolongs unduly the incommunicado detention of a person deprived of their liberty or treats that person with unnecessary harshness, and
2. Whoever orders an arrest or detention arbitrarily in places other than those established by law.”

Art.150 of the Penal Code:

“Any public employee who inflicts on a person deprived of their liberty unlawful physical or mental ill-treatment or pressure, or orders or acquiesces in its infliction, shall incur medium to maximum terms of shorter imprisonment or confinement (*presidio o reclusion menor en sus grados medio a máximo*) with the corresponding penalty attaching to the main penalty.

The same penalties, although with minimum to medium terms, shall be applied to any public employee who, knowing of the occurrence of the acts listed in the preceding paragraph, fails to prevent or stop them, having the power or authority to do so.

If, by means of any of the acts referred to in the first paragraph, a public employee compels the victim or a third party to make a confession, to make any kind of statement or to give any information, the penalty shall range from the maximum term of shorter imprisonment or confinement to the minimum term of longer imprisonment or confinement, with the corresponding penalty attaching.

If the acts described in this article should result in any of the injuries referred to in Article 397 or in the death of the person deprived of their liberty, where the result is attributable to the public employee's negligence or recklessness, the penalty shall range from the minimum to the medium term of longer

imprisonment or confinement and absolute permanent disqualification.”

Article 150 B refers to the penalties imposed on those who commit the crime of torture who are not public employees.⁴²

· **China:** It appears that Chinese courts may exercise universal jurisdiction over the crimes against humanity of torture and that Chinese courts in the special autonomous region of Macau can exercise universal jurisdiction over certain conduct amounting to crimes against humanity.

⁴² Original Spanish reads:

Art. 150:

“Sufrirá las penas de presidio o reclusión menores y la accesoria que corresponda:

- 1. El que decretare o prolongare indebidamente la incomunicación de una persona privada de libertad o usare con ella de un rigor innecesario, y*
- 2. El que arbitrariamente hiciere arrestar o detener en otros lugares que los establecidos por la ley.”*

Art.150 A:

“El empleado público que aplicare a una persona privada de libertad tormentos o apremios ilegítimos, físicos o mentales, u ordenare o consintiere su aplicación, será castigado con las penas de presidio o reclusión menor en sus grados medio a máximo y la accesoria correspondiente.

Las mismas penas, disminuidas en un grado, se aplicarán al empleado público que, conociendo la ocurrencia de las conductas tipificadas en el inciso precedente, no las impidiere o hiciere cesar, teniendo la facultad o autoridad necesaria para ello.

Si mediante alguna de las conductas descritas en el inciso primero el empleado público compeliere al ofendido a a un tercero a efectuar una confesión, a prestar algún tipo de declaración o a entregar cualquier información, la pena será de presidio o reclusión menor en su grado máximo a presidio o reclusión mayor en su grado mínimo y la accesoria correspondiente.

Si de la realización de las conductas descritas en este artículo resultare alguna de las lesiones previstas en el artículo 397 o la muerte de la persona privada de libertad, siempre que el resultado fuera imputable a negligencia o imprudencia del empleado público, la pena será de presidio o reclusión mayor en su grado mínimo a medio y de inhabilitación absoluta perpetua.”

[Penal Code of 1874 as amended by Law 19567 of 01/07/1998]. Obtainable from:

<http://www.bcn.cl/imag/pdf/indiceleyes/otraleyj2.htm>

Article 9 of the Criminal Code states that “[t]his law is applicable to the crimes specified in international treaties to which the [People’s Republic of China] is a signatory state or with which it is a member and the [People’s Republic of China] exercises criminal jurisdiction within its treaty obligations.”⁴³ Since the Convention against Torture impose *aut dedere aut judicare* obligations under Articles 5 and 7, it appears that the exercise of universal jurisdiction by Chinese courts over persons suspected of torture is possible. Since the *Apartheid* Convention provides for permissive universal jurisdiction (see Chapter Thirteen, Section I), rather than obligatory universal jurisdiction, Article 9 probably would not provide a basis for universal jurisdiction.

Chinese courts in the special autonomous region, *Macau*, may exercise universal jurisdiction over certain conduct amounting to crimes against humanity. Article 5 of the Macau Criminal Code of 1998 provides for universal jurisdiction in two situations: when a foreign resident of Macau commits a crime abroad that is a crime in the place where it occurred and when anyone commits a crime where Macau is obliged by an international agreement or the dictates of judicial cooperation to apply its law to the crime. It states in relevant part:

“1. Unless provided for to the contrary by an international agreement enforceable in Macau or in accordance with the dictates of judicial cooperation, the criminal law of Macau shall also apply to acts committed outside Macau:

. . . .

c) By a resident of Macau against a non-resident, or by a non-resident against a resident, provided that:

- (1) the party is in Macau,
- (2) The act would also be punished by the legislation of the place where it was committed, except where no punitive power acts in that place, and
- (3) It constitutes a crime which permits the handing over of the agent and this cannot be granted,

2. The criminal law of Macau also applies to acts committed outside Macau provided that the obligation to try them results from an international agreement enforceable in Macau or in accordance with the dictates of judicial cooperation.”⁴⁴

⁴³ Criminal Law of the People’s Republic of China, adopted by the Second Session of the Fifth National People’s Congress on 1 July 1979 and amended by the Fifth Session of the Eighth National People’s Congress on 14 March 1997, Art. 9 (*obtainable from: <http://www.qis.net/chinalaw/prclaw60.htm>*).

⁴⁴ Macau Criminal Code of 1998, Art. 5 (Acts committed outside Macau) (English translation by Amnesty International). The original text in Portuguese reads:

“*Salvo disposição em contrário constante de convenção internacional aplicável em Macau ou de acordo no domínio da cooperação judiciária, a lei penal de Macau é ainda aplicável a factos praticados fora de Macau:*

. . . .

c) Por residente de Macau contra não-residente, ou por não-residente contra residente, sempre que:

(1) O agente for encontrado em Macau;

(2) Os factos forem também puníveis pela legislação do lugar em que tiverem sido praticados, salvo quando nesse lugar não se exercer poder punitivo; e

(3) Constituírem crime que admita entrega do agente e esta não possa ser concedida . . .

. . . .

2. A lei penal de Macau é ainda aplicável a factos praticados fora de Macau sempre que a obrigação de os julgar resulte de convenção internacional aplicável em Macau ou de acordo no domínio da cooperação judiciária.”

Código Penal de Macau, Imprensa Oficial de Macau, 1998, Art. 5º (Factos praticados fora de Macau).

China is a party to the *Apartheid* Convention and the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it.

· **Colombia:** In certain circumstances, Colombian courts may exercise custodial universal jurisdiction over conduct, such as murder, torture and rape, amounting to a crime against humanity when the conduct is a crime under national law and certain other conditions are satisfied.

Paragraph 6 of Article 16 (Extraterritoriality) of the Colombian Penal Code (*Código Penal*), Law 599 of 2000, in force since July 2001, provides that Colombian courts have jurisdiction over certain crimes committed abroad by foreigners against other foreigners, when the suspect is within Colombian territory, under certain circumstances (for the text, see Chapter Four, Section II).

This provision would appear to give Colombian courts jurisdiction over some conduct committed abroad by non-nationals which would amount to crimes against humanity when it would also amount to a crime under Colombian law with a penalty of at least three years' imprisonment, but only if the victim made a complaint or the Attorney General, a political official, authorized a prosecution and the suspect had not previously been tried. There is no requirement that a request for extradition have been made and refused.

Colombia is a party to the *Apartheid* Convention, the Convention against Torture and the Inter-American Convention on Torture. It has signed the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute, but as of 1 September 2001, it had not yet ratified it, although the government reportedly hopes that Colombia will be able to ratify it by the end of 2001. Colombia has made certain conduct which might amount to crimes against humanity crimes in the Penal Code, such as murder, torture, rape and forced disappearance, subject to penalties of more than three years, making them subject to universal jurisdiction under Article 16 (6) of the current Penal Code.⁴⁵

· **Costa Rica:** Costa Rican courts may exercise custodial universal jurisdiction over crimes against humanity such as trafficking in slaves, women or children, *apartheid* and torture.

Article 7 of the Costa Rican Penal Code (for the full text, see Chapter Four, Section II) provides for custodial universal jurisdiction over "anyone who takes part in the trafficking

⁴⁵ *Código Penal, Ley 599 de 2000 (julio 24), Art. 165 (Desaparición forzada)* (Forced disappearance); *Art. 174 (Privación ilegal de libertad)* (Illegal deprivation of liberty by a public servant); *Art. 175 (Prolongación ilícita de privación de la libertad)* (Illegal prolongation of a denial of liberty by a public servant); *Art. 178 (Tortura)*(Torture); *Art. 180 (Desplazamiento forzado)* (Forced displacement).

Between the 6 of July of 2000 and 24 of July 2001 a special Law on genocide, enforced disappearance, forced displacement and torture has been in force (Ley 589 of 6 July 2000). Law 589 in its Article 14 stated that the crimes stated in Law 589 were not subject to amnesty or pardon. Spanish text: "Los delitos que tipifica la presente ley no son amnistiables ni indultables."

of slaves, women or children . . . and anyone who commits other punishable acts against human rights covered by the treaties signed by Costa Rica or by this Code". This provision would include crimes against humanity recognized in treaties. Article 8 requires that the suspect be present in the territory and provides that a criminal prosecution may only be brought by "the relevant bodies".⁴⁶ Article 374 of the Penal Code provides for a sentence of ten to 15 years' imprisonment for "anyone who directs or belongs to organizations of an international nature which are engaged in the trafficking of slaves, women or children, . . . or who carry out acts of terrorism or breach the provisions of treaties on human rights protection to which Costa Rica is a signatory".⁴⁷

Costa Rica is a party to the *Apartheid* Convention, the Convention against Torture, the Inter-American Convention on Torture and the Inter-American Convention on the Forced Disappearances. It has ratified the Rome Statute, but as of 1 September 2001 it had not yet enacted implementing legislation.

· **Croatia:** Croatian courts may exercise universal jurisdiction over certain conduct which amounts to a crime against humanity when it is also a crime under national law, such as murder or rape, under two legislative provisions (for the scope of this provision, see Chapter Four, Section II).

First, under paragraph 1 of Article 14 (Applicability of Criminal Legislation to Criminal Offenses Committed Outside the Territory of the Republic of Croatia) of the Criminal Code, Croatian courts may exercise universal jurisdiction over anyone who commits a crime which Croatia is required to punish under international law and treaties. This provision would certainly authorize universal jurisdiction under the Convention against Torture and, to the extent that states have an obligation under international law to punish crimes against humanity under international law, it would authorize jurisdiction over such crimes.

⁴⁶ *Código Penal (Edición 1975)* Cuando pueden ser perseguidos los delitos mencionados anteriormente

ARTÍCULO 8º.- Para que los delitos a que se contrae el artículo 5º sean perseguibles en Costa Rica, se requiere únicamente la acción del Estado.

En los contemplados en los artículos 6º y 7º, es necesario que el delincuente esté en el territorio nacional.

Además en los casos del artículo 6º, se precederá con la simple querrela del ofendido y en los del artículo 7º sólo podrá iniciarse la acción penal, mediante instancia de los órganos competentes.

⁴⁷ Spanish Text reads:

Delitos de carácter internacional

ARTÍCULO 374.- Se impondrá prisión de diez a quince años a quienes dirigieren o formaren parte de organizaciones de carácter internacional dedicadas a traficar con esclavos, mujeres o niños, drogas estupefacientes o realicen actos de terrorismo o infrinjan disposiciones previstas en los tratados suscritos por Costa Rica para proteger los derechos humanos.

(Así modificada la numeración de este artículo por el numeral 185, inciso a), de la ley No.7732 de 17 de diciembre de 1997, que lo traspasó del 372 al 374)

(English translation by Amnesty International)

Second, Article 14 (4) and (5) impose an *aut dedere aut judicare* obligation on its courts to exercise custodial universal jurisdiction over persons found in Croatia who are suspected of committing crimes under national law abroad which are punishable by at least five years' imprisonment in the territorial state in cases where the foreigner is not extradited.

Croatia is a party to the *Apartheid* Convention and the Convention against Torture. It has ratified the Rome Statute, but as of 1 September 2001, it had not yet enacted implementing legislation. Torture is a crime under Article 176 of the Criminal Code.

· **Cuba:** There are two bases for Cuban courts to exercise universal jurisdiction over conduct abroad which would amount to crimes against humanity and would also violate Cuban law.

First, Article 5.1 of the Cuban Penal Code of 1987 states that Cuban criminal law applies to non-citizens resident in Cuba who commit a crime abroad if they are found in Cuba and are not extradited.⁴⁸

⁴⁸ The term non-citizens (*personas sin ciudadanía*) probably means stateless persons (see discussion of a similar term in legislation of Laos).

Second, Article 5.3 of the Penal Code provides that Cuban criminal law applies to foreigners and to non-citizens not resident in Cuba who commit a crime abroad if they are found in Cuba and not extradited under certain conditions. The requirement that the conduct be a crime in the state where it was committed does not apply if the crimes are against humanity, human dignity or collective safety or can be prosecuted pursuant to international treaties.⁴⁹ However, prosecutions based on Article 5.3 require the authorization of the Minister of Justice, a political official.

Cuban courts may exercise universal jurisdiction over the crime against humanity of *apartheid*. Article 120 (3) of the Penal Code provides that *apartheid* is a crime under Cuban law regardless where it has been committed. That provision states:

“Criminal liability for the acts described in the preceding paragraphs [defining *apartheid*] shall be enforced, regardless of the country in which those responsible carry out the acts or reside, and shall be applicable, regardless of motive, to private individuals, members of organizations and institutions and representatives of the State.”⁵⁰

Cuba is a party to the Convention against Torture and the *Apartheid* Convention. It has not signed the Rome Statute and had not yet ratified it as of 1 September 2001. Cuba is a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Article 65 (5) states that “[t]he provisions regarding the statute of limitations are not applicable in relation to crimes against humanity.”⁵¹

· **Cyprus:** Cypriot legislation provides that national courts have universal jurisdiction over conduct amounting to crimes against humanity of *apartheid* and torture committed abroad which is a crime under national law.

⁴⁹ *Código penal, artículo 5.3:*

“La ley penal cubana es aplicable a los extranjeros y personas sin ciudadanía no residentes en Cuba que cometan un delito en el extranjero, si se encuentran en Cuba y no son extraditados, tanto si residen en el territorio del Estado en que se perpetraron los actos como en cualquier otro Estado y siempre que el hecho sea punible también en el lugar de su comisión. Este último requisito no es exigible si el acto constituye un delito contra los intereses fundamentales, políticos o económicos, de la República, o contra la humanidad, la dignidad humana o la salud colectiva, o es perseguible en virtud de tratados internacionales.” (For English translation see Chapter IV Section II)

⁵⁰ Art.120 (3). “La responsabilidad por los actos previstos en los apartados anteriores es exigible con independencia del país en que los culpables actúen o residan y se extiende, cualquiera que sea el móvil, a los particulares, los miembros de las organizaciones e instituciones y los representantes del Estado.” (English translation by Amnesty International).

⁵¹ Original Spanish reads: “Las disposiciones sobre la prescripción de la sanción no son aplicables con respecto a los delitos de lesa humanidad.”

Section 5 (1) (e) (v) of the Cyprus Criminal Code 1972 provides that [t]he Criminal Code and any other law establishing an offence are applicable to all offences committed . . . (e) in any foreign country by any person where the offence . . . (v) is one of the offences for which, under any International Treaty or Convention binding on the Republic, the law of the Republic is applicable”.

Cyprus is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute and is expected to ratify it in 2001.

· **Czech Republic:** Subject to certain conditions, Czech courts may exercise universal jurisdiction over conduct which is a crime against humanity when it is also a crime under national law, such as murder or rape.

Section 20 (1) of the Criminal Code requires courts to exercise custodial universal jurisdiction over crimes committed abroad by aliens or stateless persons not resident in the Czech Republic, provided that the act is criminal in the place where it occurred and the suspects are not extradited (for the text and scope of this and other provisions, see Chapter Four, Section II). Section 18 (1) (b) provides that Czech law shall be applied to determine the punishability of an act committed abroad by a stateless resident of the Republic. In addition to other provisions giving courts custodial universal jurisdiction over analogous crimes, Section 20a (1) of the Criminal Code provides that Czech law shall also be applied to determine the punishability of an act when this is provided by a promulgated international treaty by which the Czech Republic is bound.

The Czech Republic is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. The only peacetime crime against humanity listed in Chapter X (Crimes against Humanity) of the Criminal Code is torture and other inhuman or cruel treatment in Section 259a (see discussion in Chapter Ten, Section II). *Apartheid* and persecution are defined as crimes against humanity under Section 263a of the Criminal Code, but only in wartime. Statutes of limitation do not apply to crimes against humanity (see Chapter Four, Section II).

· **Democratic Republic of the Congo (formerly Zaire):** National courts may exercise universal jurisdiction over conduct, such as murder or rape, which is a crime under national law and which would amount to a crime against humanity.

Article 3 of Book 1, Section 1 of the Penal Code of Zaire, which is believed to be still in effect (for text, see Chapter Four, Section II above) provides for custodial universal jurisdiction over crimes committed outside national territory which are punishable by more than two months, unless the suspect is extradited. This provision appears to be sufficiently broadly worded to include ordinary crimes which would constitute crimes against humanity if committed on a widespread or systematic basis.

The prosecution must be authorized by the Ministry of Justice, but if the offence is punishable under national law by a sentence of at least five years' imprisonment, the prosecution must have been based on a complaint by the victim or the territorial state.

The Democratic Republic of the Congo is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Denmark:** There are several provisions of the Danish Penal Code that give courts universal jurisdiction over certain conduct abroad which could amount to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II). However, the executive has interpreted Danish law restrictively with respect to allegations of torture amounting to crimes against humanity (see Chapter Ten, Section II).

First, Article 8 (5) of the Danish Penal Code provides for universal jurisdiction over violations of international treaties requiring Denmark to institute criminal proceedings.

Second, Article 8 (6) of the Penal Code provides for universal jurisdiction where transfer of the accused for legal proceedings in another country is rejected, and the act is committed within the territory recognized by international law as belonging to a foreign state is punishable with a sentence more severe than one year of imprisonment.

Third, Danish courts may exercise universal jurisdiction under Article 7 over alien residents for serious crimes committed outside the territory of any state and over nationals and residents of Nordic countries present in Denmark for crimes committed in a foreign state where the act also violated the law of the territorial state and is punishable in that state by at least one year in prison.

Denmark is a party to the Convention against Torture (see discussion in Chapter Ten). It has ratified the Rome Statute, but as of 1 September 2001 it had not yet enacted implementing legislation.

· **Dominican Republic:** Under a bill now being considered in Congress, if it is enacted in law, national courts would be able to exercise universal jurisdiction over certain conduct amounting to the crime against humanity of torture, but only when the conduct was either a crime, such as assault or rape, under the law of the Dominican Republic or the place where it occurred and only in the rare, but occasionally important, case where the suspect acquired Dominican nationality after the crime was committed.

Article 14 (Offences committed outside the territory of the Republic) of the proposed new Penal Code of the Dominican Republic provides for universal jurisdiction over crimes under national law when they are committed abroad by a person who

subsequently becomes a national, when the conduct is also a crime under the law of the territorial state.

The Dominican Republic has ratified the Inter-American Convention on Torture. It has signed the Convention against Torture, but it has not yet ratified it. It has not signed the Rome Statute and as of 1 September 2001 it had not yet acceded to it. Prosecutions pursuant to Article 14 are prohibited if the person was convicted abroad for the same acts and served the sentence or the case is subject to a statute of limitations.

· **East Timor:** Special panels of the District Court in Dili, East Timor, which is expected to become independent in 2002 (see Chapter Four, Section II), have universal jurisdiction over crimes against humanity.

Section 2.1 in Section 2 (Jurisdiction) of United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences provides for universal jurisdiction over torture (for the text and scope, see Chapter Four, Section II). The definition of crimes against humanity is essentially the same as in Article 7 of the Rome Statute. The Special Panel for Serious Crimes of the Dili District Court has stated that “crimes against humanity . . . deserve universal jurisdiction due [to] international customary laws and (more recently) international laws”.⁵²

· **Ecuador:** Article 18 of the Ecuadoran Code of Criminal Procedure of 2000 provides two bases for exercising universal jurisdiction over certain conduct amounting to crimes against humanity (for the text and scope, see Chapter Four, Section II).

First, Article 18 (6) provides that courts may exercise universal jurisdiction over crimes under international law in the circumstances envisaged in treaties, provided that the suspect has not been tried in another state. Second, Article 18 (7) states that foreigners may be prosecuted in any case provided for in the Penal Code (See Chapter Four for text of Art.5 (5a) and Art.5 (6a) of the Penal Code). Therefore, national courts could exercise universal jurisdiction under this article over crimes against humanity in treaties providing that Ecuadoran courts would have such jurisdiction, although probably not over customary international law.

Ecuador is a party to the *Apartheid* Convention, the Convention against Torture and the Inter-American Convention on Torture. It has signed the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute and is expected to ratify it in 2001.

Art. 187 of the Penal Code states:

“When an arrested or detained person is subjected to physical torture, the culprit shall be punished by three to six years’ ordinary imprisonment.

⁵² *Prosecutor v. Kasa*, Judgement, Case No. 11/CG/2000, Special Panel for Serious Crimes, Dili District Court, 9 May 2001.

The penalty shall be six to nine years' ordinary imprisonment if the torture results in any of the permanent injuries referred to in the section on injuries.

If the torture results in death, the culprit shall be punished by 12 to 16 years' rigorous imprisonment."⁵³

· **Egypt:** Apparently, Egyptian courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity when a treaty provides for universal jurisdiction over such crimes, including *apartheid* and torture.

According to the government of Egypt (see Chapter Four, Section II), the provisions of international treaties, including their jurisdictional provisions, are directly enforceable by Egyptian courts, although there appears to be no jurisprudence on this point. However, for a dissenting view, see Chapter Four, Section II.

Egypt is a party to the *Apartheid* Convention and the Convention against Torture.

Egypt has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. Egypt has defined torture as a crime under national law (see Chapter Ten, Section II). Other conduct amounting to crimes against humanity may have to be prosecuted as ordinary crimes, such as murder, abduction, assault and rape.

· **El Salvador:** El Salvador courts may exercise universal jurisdiction over crimes against humanity, in particular, *apartheid* and torture.

⁵³Spanish text reads: "Cuando la persona arrestada o detenida hubiere sufrido tormentos corporales, el culpable será reprimido con tres a seis años de reclusión menor. La pena será de reclusión menor de seis a nueve años, si de los tormentos hubiere resultado cualquiera de las lesiones permanentes detalladas en el capítulo de las lesiones. Si los tormentos hubieren causado la muerte, el culpado será reprimido con reclusión mayor extraordinaria de doce a dieciséis años."

Article 10 of the 1998 Penal Code of El Salvador provides courts with universal jurisdiction over crimes in national criminal law that affect “property internationally protected by specific agreements or rules of international law or seriously undermine universally recognized human rights.”⁵⁴

El Salvador is a party to the *Apartheid* Convention and the Convention against Torture. It is also a party to the Inter-American Convention to Prevent and Punish Torture. It has not signed or ratified the Rome Statute.

According to Article 99 of the Penal Code statutes of limitation do not apply to certain crimes amounting to crimes against humanity:

“Offences shall not be time-barred in the following cases: torture, acts of terrorism, kidnapping, genocide, violations of the laws and customs of war, enforced disappearance of persons, political, ideological, racial, sexual or religious persecution, provided that the acts in question were committed after the entry into force of this Code.”⁵⁵

· **Estonia:** Estonian courts can exercise universal jurisdiction over crimes against humanity under several provisions of the 1992 Criminal Code and the new Penal Code, which enters into effect in 2002. Both legislative provisions are reinforced by the Constitution.

⁵⁴ For the text of this provision and a discussion of its scope, see Chapter Four, Section II above.

⁵⁵ Spanish text reads: “No prescribe la pena en los casos siguientes: tortura, actos de

terrorismo, secuestro, genocidio, violación de las leyes o costumbres de guerra, desaparición forzada de personas, persecución política, ideológica, racial, por sexo o religión, siempre que se tratare de hechos cuyo inicio de ejecución fuese con posterioridad a la vigencia del presente Código.”

(English translation in CAT/C/37/Add.4 p.29)

Article 123 of the Constitution provides that “[i]f Estonian laws or other acts contradict foreign treaties ratified by the *Riigikogu*, the provisions of the foreign treaty shall be applied.”⁵⁶

(1) Current Criminal Code. Section 5 (Validity of the present code in respect of acts committed outside the territory of the Republic of Estonia) of the current 1992 Criminal Code provides:

“(1) A citizen of the Republic of Estonia, a citizen of a foreign country or a stateless person can be prosecuted under the present code for the act committed outside of Estonia:

1) if under an international treaty there has been presented a request to prosecute the offender and the act is punishable as a criminal offence in the place where it was committed or no criminal law of any country is in force in that place;

. . . .

(2) This code is in force in respect of acts committed outside the reach of the present code that are offences under the present code and the act is punishable as a criminal offence according to criminal law of the place it was committed or no criminal law of any country is in force in that place:

1) if the offender was a citizen of the Republic of Estonia or became a citizen of the Republic of Estonia after committing that act, or

2) if the offender was a citizen of a foreign country or a stateless person and detained in Estonia and shall not be extradited to any other country.

3) Regardless of the law of the place where the act was committed, this code is in force in respect of acts which are punishable as criminal offences under an international treaty concluded by the Republic of Estonia even if the act is committed outside the borders of the Republic of Estonia.”⁵⁷

⁵⁶ Constitution of the Republic of Estonia, 3 July 1992, Art. 123 (English translation in Jefri Jay Ruchti, *Estonia*, in Albert P. Blaustein & Gisbert H. Flanz, eds, *Constitutions of the Countries of the World* (Dobbs Ferry, New York: Oceana Publications, Inc. March 1994) (Release 94-2).

⁵⁷ Estonian Criminal Code of 1992, § 5 (English translations of current Criminal Code and Penal Code provided by the Legal Department of the Ministry of Foreign Affairs). The original text in Estonian is obtainable from <http://www.preventgenocide.org/law/domestic/estonia.htm>.

Crimes against humanity as defined in international law, presumably both customary and conventional international law, are defined as crimes under the Criminal Code.⁵⁸ Decisions to investigate or prosecute are taken by a prosecutor, not by a political official. A limited form of command and superior responsibility is included in the current Criminal Code.⁵⁹

(2) New Penal Code. A recently adopted new Penal Code, which will replace the current Penal Code when it enters into effect on 1 March 2002, and it appears that it will continue to provide for universal jurisdiction over genocide.

Section 8 (Validity of the penal law in respect of acts directed against internationally protected legal benefit) of the new Penal Code will provide:

“Irrespective of the law of the place an act was committed Estonian penal law is in force in respect of the act committed outside Estonian territory if the punishability of the act derives from the international treaty binding for Estonia.”⁶⁰

⁵⁸ Criminal Code, § 61.1 (Crime against humanity) (1). This paragraph defines the crimes as defined in international law, including genocide and a number of illustrative examples:

“Committing a crime against the humanity, including genocide, as those crimes are defined in the provisions of international law, that is willful acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, group offering resistance to occupying regime or other group, killing or causing serious or permanent or life threatening bodily or mental harm or torturing members of the group, forcibly taking away children, armed attack, deportation or banishment of native population in the time occupation or annexation, depriving or limiting economic, political and social rights - is punishable by eight to fifteen years’ imprisonment or by life imprisonment.”

⁵⁹ Criminal Code, § 61.1 (2), as amended 13 May 1998. This paragraph states that a “[r]epresentative of an authority under whose consent a crime indicated in the first section [§ 61.1 (1)] was committed, shall be liable as an accomplice according to section 6 of § 17. A broader definition more consistent with international law has been included in the new Penal Code (see below).

⁶⁰ Penal Code, effective 1 March 2002, § 8.

Since the punishability of the crime of genocide appears to apply to the question whether the conduct was subject to individual criminal responsibility, rather than to the question of jurisdiction, it would appear that Section 8 would permit an Estonian court to exercise universal jurisdiction over genocide committed abroad. However, the matter is not entirely free from doubt. Genocide will be defined as a separate crime under the new Penal Code.⁶¹ The new Penal Code will provide for command and superior responsibility for crimes against humanity and exclude superior orders as a defence.⁶²

Estonia is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute but it had not yet ratified it as of 1 September 2001. Estonia is a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and Section 53 (5) of the current Criminal Code provides that statutes of limitation do not apply to war crimes and crimes against humanity. This prohibition will be continued in the new Penal Code and will also be applicable to offences that are subject to life imprisonment (crimes against humanity and genocide).⁶³

· **Ethiopia:** Ethiopian courts may exercise universal jurisdiction over certain crimes against humanity (for the text and scope of the relevant articles, see Chapter Four, Section II above).

Article 17 of the Ethiopian Penal Code gives courts jurisdiction over offences committed abroad “against international law or an international offence specified in Ethiopian legislation or an international treaty or a convention to which Ethiopia has

⁶¹ *Ibid.*, § 90 (Genocide). The definition is broader than in Article II of the Genocide Convention and in Article 6 of the Rome Statute with respect to the protected groups, but appears to be narrower in terms of the prohibited acts, although the translation may be inaccurate. This section reads:

“Killing, torturing, causing bodily harm, imposing measures intended to prevent births within the group or forcibly depriving children of a national, ethnic, racial, religious group, of a group offering resistance to the occupying regime or of other social group or its member, with intent to destroy the group, in whole or in part, also putting members of a group to living conditions that have caused a danger to bring about destruction of the group, in whole or in part, is punishable by ten to twenty years’ imprisonment or life imprisonment.”

It is not clear to what extent command responsibility for genocide has been retained in the new Penal Code.

⁶² *Ibid.*, § 88 (Punishment for the offences prescribed in this chapter [Chapter 8 - Offences (Crimes) against the humanity and international security]). The first paragraph of this section defines the principle of command and superior responsibility in more detail than in the current Criminal Code and the second paragraph excludes superior orders as a defence:

“(1) In addition to the direct perpetrator of the offence prescribed in this chapter, the representative of state power or military authority who has given a command for committing an offence or under whose consent the offences has been committed or who has not prevented committing the offence although it has been in his or her power, shall be punished.
(2) Commitment of a crime prescribed in this chapter under a command of the representative of state power or military authority does not exclude punishment of the perpetrator of the crime.”

⁶³ Estonian Penal Code, entry into effect 1 March 2002, § 81 (2).

adhered". Article 18 (2) provides for jurisdiction over foreigners for certain serious crimes committed abroad.

Ethiopia is a party to the *Apartheid* Convention and the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it. Article 281, entitled "Genocide; Crimes against Humanity", defines some crimes against humanity, most of which also constitute genocide, as crimes under national law.⁶⁴ In addition, the Federal Courts Proclamation No. 25 of 1996 gives Federal Courts jurisdiction over criminal offences against the law of nations (for the text, see Chapter Four, Section II). The Constitution provides that statutes of limitation do not apply to crimes against humanity.⁶⁵

· ***Federal Republic of Yugoslavia:*** National courts may exercise universal jurisdiction over conduct amounting to crimes against humanity when it also violates national law, such as murder or rape, certain forms of persecution and slavery and the slave trade.

Article 107 (2) of the Criminal Code of Yugoslavia of 1976 provides for custodial universal jurisdiction over any crime punishable by at least five years' imprisonment:

"Yugoslav criminal law applies to a foreigner who commits a criminal act abroad against a foreign country or a another foreigner, for which this law provides imprisonment for a term of five years or a heavier penalty, provided the perpetrator is found on the territory of the SFRJ and is not extradited to a foreign country. Unless it is stipulated otherwise in this law, in such a case the court may not impose a heavier punishment than the one provided by the law of the country in which the criminal act has been committed."⁶⁶

⁶⁴ Article 281 provides:

"Whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, organizes, orders or engages in, be it in time of war or in time of peace:
(a) killings, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever; or
(b) measures to prevent the propagation or continued survival of its members or their progeny; or
(c) the compulsory movement or dispersion of peoples or children, or their placing under living conditions calculated to result in their death or disappearance,
is punishable with rigorous imprisonment from five years to life, or, in cases of exceptional gravity, with death."

⁶⁵ Constitution, Art. 28 (1). *That article states:*

"Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ."

⁶⁶ Criminal Code of Yugoslavia, adopted 28 September 1976, effective 1 July 1977, *obtainable*

The Federal Republic of Yugoslavia is a party to the *Apartheid* Convention and the Convention against Torture. The Criminal Code prohibits a number of crimes against humanity.⁶⁷

· **Finland:** Finnish courts may exercise universal jurisdiction over certain crimes against humanity under several provisions (for the text and scope, see Chapter Four, Section II).

First, Section 7 (International offence) of Chapter 1 (Scope of application of the criminal law of Finland) of the Finnish Penal Code provides that Finnish law applies to crimes committed abroad where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation binding on Finland (*international offence*). Further provisions on the application of this section may be governed by decree. As far as is known, no decree has yet been issued defining certain crimes against humanity as international offences. Section 7 applies to anyone, whether a citizen of Finland or not. Its broad wording would suggest that punishable acts include crimes listed in the Rome Statute, although this is not expressly stated.

Second, paragraphs 1 and 3 of Section 6 (Offence committed by a Finn) of Chapter 1 provide that Finnish law applies to persons resident in Finland at the time of offence or at the beginning of the trial and to persons found in Finland who are citizens or permanent residents of Nordic countries at the start of the trial.

Third, Section 8 (Other offence committed outside of Finland) of this chapter states that Finnish law applies to offences carrying a penalty of more than six months if the territorial state has requested prosecution or requested extradition and it was refused.

from http://pbosnia.kentlaw.edu/resources/legal/bosnia/criminalcode_fry.htm, Art. 107 (2).

⁶⁷ Criminal Code of Yugoslavia, Art. 154 (Racial and other discrimination) and Art. 155 (Establishing slavery relations and transporting people in slavery relation).

Finland is a party to the Convention against Torture. It has also ratified the Rome Statute and enacted implementing legislation on 28 December 2000 which apparently gives Finnish courts jurisdiction over crimes against humanity as defined in the Rome Statute. Finland has provided in its Penal Code that certain conduct amounting to crimes against humanity, in addition to ordinary crimes, are crimes under national law.⁶⁸ Although they are subject to a number of conditions, including a statute of limitations, Section 15 of Chapter 1 of the Penal Code may preclude their applicability to crimes against humanity as defined in the Rome Statute (see Chapter Four, Section II).

· **France:** French courts may exercise universal jurisdiction over the crime against humanity of torture and most crimes against humanity, but only if they were committed in the former Yugoslavia since 1991 or in Rwanda in 1994 or in neighbouring countries in that year, if by Rwandans.

(1) **Legislation.** There are a number of problems with substantive and jurisdictional legislative provisions concerning crimes against humanity, including inadequate definitions and the limited geographic and temporal scope of the legislation.

⁶⁸ Although specific crimes against humanity are not defined as such as crimes under Finnish law, a number of ordinary crimes would cover some of these crimes. For example, see Penal Code of Finland, Law 39/1889, Ch. 20 (Sex offences), Law 563/1998, § 1 (Rape); § 2 (Aggravated rape); § 3 (Coercion into sexual intercourse); § 4 (Coercion into a sexual act); § 5 (Sexual abuse); § 6 (Sexual abuse of a child); § 7 (Aggravated sexual abuse of a child); Ch. 21 (Homicide and bodily injury), Law 578/1995, § 2 (Murder); Ch. 25 (Offences against personal liberty), Law 578/1995, § 1 (Deprivation of personal liberty); § 2 (Aggravated deprivation of personal liberty); § 3 (Kidnapping); § 4 (Hostage taking). In addition, there are several crimes which overlap to some extent with crimes against humanity in peacetime, including violation of human rights in a state of emergency, Penal Code, Ch. 11, § 4 (Law 578/1995); aggravated violation of human rights in a state of emergency, Ch. 11, § 5 (Law 578/1995); ethnic agitation, Ch. 11, § 8 (Law 578/1995); and discrimination, Ch. 11, § 9 (Law 578/1995).

Definition of crimes against humanity. The current definition of crimes against humanity, as interpreted by French courts, is seriously flawed.⁶⁹ Article 212-1 of the Penal Code defines crimes against humanity other than genocide as follows:

“Deportation, enslavement, or the large-scale and systematic practice of summary executions or of kidnappings followed by the disappearance of victims, torture, or other inhumane acts, when inspired by political, philosophic, racial, or religious motives and organized in the execution of a prearranged plan against a group in the civilian population, are punishable by felony imprisonment for life.”⁷⁰

Presumably, this definition will be amended in the implementing legislation for the Rome Statute.

Another serious limitation on the effectiveness of the prohibition of crimes against humanity legislation in France is that, apart from crimes during the Second World War linked to the Axis Powers and in the former Yugoslavia and Rwanda, it applies only to crimes against humanity committed on or after 1 March 1994.⁷¹ Universal jurisdiction over crimes against humanity (apart from torture) committed after 1 March 1994 not linked to the former Yugoslavia or Rwanda is limited to crimes against humanity committed by persons who subsequently became French nationals.

⁶⁹ See Stern, *supra* n. 74.

⁷⁰ Penal Code, Art. 212-1 (1) (English translation in *The French Penal Code of 1994 as amended as of January 1, 1999* (Littleton, Colorado: Fred B. Rothman & Co. 1999) (Edward A. Tomlinson trans.)). The original text in French reads:

“La déportation, la réduction en esclavage ou la pratique massive et systématique d’exécutions sommaires, d’enlèvements de personnes suivis de leur disparition, de la torture ou d’actes inhumains, inspirées par des motifs politiques, philosophiques, raciaux ou religieux et organisées en exécution d’un plan concerté à l’encontre d’un groupe de population civile sont punies de la réclusion criminelle à perpétuité.”

Code pénal, art. 212-1, al. 1.

Articles 212-1 (2), 212-2 and 212-3 specify the appropriate punishments for crimes against humanity.

⁷¹ Penal Code, Art. 211-12. For example, in the case of Georges Boudarel, a French national alleged to be responsible for crimes against humanity inflicted on French prisoners of war in Indochina in the 1950s, the *Cour de cassation* stated that

the law of 26 December 1964, and the Statute of the International Military Tribunal of Nuremberg annexed to it concern only the acts committed in the name of the European States of the Axis; that, moreover, the Charter of the International Military Tribunal of Tokyo, which has neither been ratified by France nor published in France . . . concerns only the offences committed by the Japanese war criminals and their accomplices; that, therefore, the facts alleged by the complainants subsequent to World War II, could not be characterized as crimes against humanity.”

Boudarel case, Cass. crim., 1 April 1993, Gaz. Pal. 1993, 281 (English translation in Brigitte Stern, *International Decisions - In re Pinochet, French Tribunal de grande instance (Paris)*, 93 Am. J. Int’l L. 696 (1999) (it has not been possible to locate the original French text).

Crimes against humanity in the former Yugoslavia and Rwanda. French Law 96-432 of 22 May 1996, which implements Security Council Resolution 955 establishing the Rwanda Tribunal (for the text of Articles 1 and 2, see Chapter Four, Section II), provides jurisdiction over crimes against humanity committed in Rwanda during 1994 (for the 1998 decision by the *Cour de cassation* (Court of Cassation) to this effect, see below). The earlier French Law 95-1 of 2 January 1995, which implements Security Council Resolution 827 establishing the Yugoslavia Tribunal, similarly gives French courts jurisdiction over such crimes committed in the former Yugoslavia since 1991 (for the text of the relevant provision, see Chapter Four, Section II). However, French legislation does not provide for universal jurisdiction over crimes against humanity, except for torture (see Chapter Ten, Section II).

Crimes against humanity by persons who later became French nationals. Article 113-6 of the Penal Code (*Code pénal*) permits French courts to try persons for crimes under French law committed abroad by persons who subsequently become French nationals (for the text and scope, see Chapter Four, Section II).

Other problems with this legislation is the requirement that the suspect be found in France (see discussion of this problem in Chapter Four, Section II). It has been argued that another flaw in French law concerning universal jurisdiction concerning crimes against humanity is that it is limited to universal jurisdiction over such crimes as defined in French, rather than international, law. The wording of paragraph 2 of Article 1 of the 1995 law concerning the former Yugoslavia and of paragraph 2 of Article 1 of the 1996 law concerning Rwanda appears to require prosecution for crimes against humanity as defined in the Statutes of the two Tribunals. However, a leading commentator on French law concerning universal jurisdiction has stated that, in effect, the definitions used by courts in prosecutions pursuant to these two provisions will be the more restrictive definitions under French law.⁷²

One positive aspect of French law concerning crimes against humanity is that there is no statute of limitations (in contrast to war crimes, genocide and torture), but it appears that the provision on imprescriptibility is limited to crimes against humanity as defined in the General Assembly resolution of 13 February 1946 and the Nuremberg Charter, both of which limit the scope of the definition to crimes against humanity linked to war crimes or aggression.⁷³

(2) Recent investigations, prosecutions and jurisprudence. French courts, despite their recognition of the rule of *international law* permitting universal jurisdiction

⁷² Stern, *supra* n.74.

⁷³ Law of 26 December 1964. The original French text reads: “*Les crimes contre l’humanité, tels qu’ils sont définis par la résolution des Nations unies du 13 février 1946, prenant acte de la définition des crimes contre l’humanité, telle qu’elle figure dans la charte du tribunal international du 8 août 1945, sont imprescriptibles par leur nature.*” *Loi n. 64-1326 du 26 décembre 1964.*

over crimes against humanity, have only recently interpreted *national legislation* as authorizing universal jurisdiction over such crimes.

Barbie. In 1993, the *Cour d'Appel* (Court of Appeal), in a case involving territorial jurisdiction, recognized the existence of the fundamental rule of international law of universal jurisdiction in the *Barbie* case when it noted that “by reason of their nature, the crimes against humanity with which Barbie is indicted do not simply fall within the scope of French municipal law, but are subject to an international criminal order to which the notions of frontiers and extradition rules arising therefrom are completely foreign”⁷⁴

Javor. However, the following year in the *Javor* case, the investigating judge (*judge d'instruction*) held that the principles of crimes against humanity did not suffice to give French courts universal jurisdiction over such crimes committed in the former Yugoslavia:

“Although the applicant properly underlines the existence of universal principles defining the crime against humanity as an international crime, these principles alone are not sufficient to determine the jurisdictional reach of French courts[.]”⁷⁵

⁷⁴ *Fédération Nationale des Déportés et Internés Résistants et Patriotes and Others v. Barbie, Cour de Cassation (Chambre Criminelle)*, Judgment, 6 October 1983 (summarizing decision of *Cour d'Appel*), 78 Int'l L. Rep. 128.

⁷⁵ The original text reads:

“*si le requérant souligne justement l'existence des principes universels définissant le crime contre l'humanité comme un crime international, ces seuls principes ne sont pas suffisants pour fixer la compétence juridictionnelle des tribunaux français*”.

In re Javor, ordonnance, N. Parquet 94052 2002/7, Tribunal de grande instance, Paris, 6 May 1994, 2. For reports of these cases, see *Javor, Arrêt, no. 132, Cour de cassation, chambre criminelle, 26 mars 1996, 1996 Bulletin des Arrêts de la Cour de Cassation, Chambre Criminelle, nos. 1-6, 379.* See Brigitte Stern, *In re Javor*, 93 Am. J. Int'l L. 527 (1999); _____, *La compétence universelle en France: le cas des crimes commis en ex-Yougoslavie et au Rwanda*, 40 Ger. Y.B. Int'l L. 280, 293-294, 296-299 (1997). See also Claude Lombois, *De la compassion territoriale*, Rev. Sc. Crim., Apr. - Jun. 1995, 399; Michel Massé, *Ex-Yougoslavie, Rwanda: Une compétence “virtuelle” des juridictions françaises?* 1997 Rev. Sc. Crim. (n.s.) 893.

Another judge in the same court which decided the *Javor* case reached the same conclusion. He stated that the Nuremberg Charter, cited by the *parties civiles*, applied only to crimes against humanity committed during the Second World War. *Dupacquier et Gatari contre Zigiranyrazo and Nahimana, Ordonnance d'incompétence, Tribunal de grande instance de Paris, 23 février 1994* (Hervé Stephan, J.), 4.

The decision was affirmed on this point by the *Cour d'appel* (Court of Appeal). It held that neither of the grounds cited by the appellants, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the Nuremberg Charter, gave French courts jurisdiction.⁷⁶ The *Cour de Cassation* (Court of Cassation) affirmed the decision.⁷⁷

Munyeshyaka. On 26 July 1995, an investigating magistrate issued an arrest warrant for a Rwandan priest, Wenceslas Munyeshyaka, based on charges of crimes against humanity, genocide and torture committed in Rwanda in 1994 or in neighbouring countries by Rwandan citizens. On appeal, the *Cour d'appel de Nîmes* (Court of Appeal of Nîmes) held on 20 March 1996 that the magistrate lacked jurisdiction over crimes other than torture. However, one month after this decision, France implemented Security Council Resolution 955, which established the International Tribunal for Rwanda, by enacting Law 96-432 of 22 May 1996. Based on this new law, the *Cour de cassation* held on 6 January 1998 that French courts could exercise universal jurisdiction over crimes against humanity, based on this new legislation (for a discussion of this case, see Chapter Four, Section II). It stated that

“according to articles 1 and 2 of the above-mentioned act of 22 May 1996, the offenders or the accomplices of the acts that constitute, under articles 2 to 4 of the Statute of the International Tribunal, grave transgressions against the Conventions of Geneva of 12 August 1949, violations of the laws or customs of war, genocide or crimes against humanity, can, when they are found in France, be prosecuted and judged by the French jurisdictions, while applying French law[.]”⁷⁸

The decision necessarily applies to prosecutions pursuant to Law 95-1 of 2 January 1995 to crimes against humanity committed in the former Yugoslavia.

⁷⁶ In re *Javor*, Dossier No. A 94/02071, Arrêt, *Cour d'appel*, Paris, 24 novembre 1994, 6 (simply stating: “La cour considère que le juge d'instruction a, à bon droit écarté l'application des trois conventions suivantes : . . .”) (listing these instruments and the Genocide Convention).

⁷⁷ In re *Javor*, No. D 95-81.527.PF, Arrêt, *Cour de cassation*, Chambre criminelle, 26 mars 1996. However, the *parties civiles* do not appear to have cited these two instruments before the court and it does not appear to have addressed them.

⁷⁸ *Munyeshyaka*, Jugement, *Cour de cassation*, Chambre criminelle, No. 96-82.491 PF, 6 January 1998, *Bulletin des Arrêts de la Cour de Cassation*, N°1, Chambre Criminelle, janvier 1998, reprinted in 102 *Revue générale de Droit international public* 825 (1998/3); English translation by Louise Wesseling Plug in 1Y.B. Int'l Hum. L. 598, 599 (1998). The original French text reads:

“Attendu que, selon les articles 1er et 2 de la loi du 22 mai 1996 précité, les auteurs ou complices des actes qui constituent, au sens des articles 2 à 4 du statut du tribunal international, des infractions graves aux Conventions de Genève du 12 août 1949, des violations des lois ou coutumes de guerre, un génocide ou des crimes contre l'humanité, peuvent, s'ils sont trouvés en France, être poursuivis et jugés par les juridictions françaises, en application de la loi française[.]”

Other cases involving crimes against humanity. However, French courts have consistently stated that they cannot exercise universal jurisdiction over crimes against humanity - apart from torture - in other situations.⁷⁹

France is a party to the Convention against Torture and it has ratified the Rome Statute. Unfortunately, France reportedly has not yet decided whether to give its courts universal jurisdiction over crimes against humanity when it enacts legislation implementing its obligations under the Rome Statute. Unless it does so, French legislation providing for universal jurisdiction over such crimes will continue to be limited to crimes against humanity in the former Yugoslavia since 1991 and in Rwanda in 1994, and war crimes committed by Rwandan citizens in neighbouring countries, except for torture (see Chapter Ten, Section II below).

· **Georgia:** Georgian courts may exercise universal jurisdiction over conduct amounting to crimes against humanity in three situations (for the text and scope of these provisions, see Chapter Four).

First, paragraph 1 of Article 5 (Criminal responsibility for a crime committed overseas) of the Criminal Code of Georgia provides universal jurisdiction over aliens permanently resident in Georgia who commits acts abroad which are crimes under the Code, as well as crimes under the law of the territorial state .

Second, Article 5 (2) permits national courts to exercise universal jurisdiction over aliens permanently resident in Georgia who commit acts abroad which are crimes under the Code and under international undertakings, even if not crimes under the law of the territorial state.

Third, Article 5 (3) provides universal jurisdiction over foreigners and stateless persons not permanently resident in Georgia who have committed a serious crime within the meaning of Georgia's international undertakings.

Georgia is a party to the Convention against Torture and it is a successor state to the USSR, which was a party to the *Apartheid* Convention. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. Certain conduct amounting to crimes against humanity, in addition to ordinary crimes, is made criminal under the Criminal Code.⁸⁰

⁷⁹ Stern, *supra*, n.74 , 697 (stating that "French courts had determined that universal jurisdiction for crimes against humanity does not exist in the French legal system."). For example, in 1998, the investigating judge *juge d'instruction* in the *Pinochet* case, Roger Le Loire, "refused to indict Pinochet for crimes against humanity because such an indictment could be based neither on national law nor on any relevant self-executing international convention or international customary rule." *Ibid.*, 698 (describing the rationale for the order in the case, which is not publicly available).

⁸⁰ Criminal Code, Art. 126 (Torture); Art. 143 (Illegal deprivation of liberty); Art. 156 (Persecution); Art. 408 (Crimes against humanity).

· **Germany:** There are four provisions in the German Penal Code which permit courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity (for the text and scope of relevant provisions not quoted below, see Chapter Four, Section II above).

First, Article 6 (9) of the German Penal Code provides that German criminal law applies to conduct, including conduct abroad, which Germany is obliged to prosecute under a treaty to which it is a party.

Second, Article 6 (4) provides:

“Regardless of the law at the place of the commission, the German criminal law is also applicable to the following acts committed outside of Germany:

....

(4) Traffic in human beings (section 180b) and aggravated traffic in human beings (section 181).”⁸¹

Third, Article 7 (2) (1) states that German criminal law applies to persons who commit crimes where such conduct is punishable under the law of the place where it occurred, or if no criminal enforcement existed in that place at the time the crime was committed, if they subsequently become German citizens.

Fourth, Article 7 (2) (2) of the Penal Code provides that German criminal law applies to foreigners arrested in Germany for acts punishable in the territorial state if the suspect is not extradited.

Germany is a party to the Convention against Torture and it has ratified the Rome Statute. Germany has not defined crimes against humanity as crimes under national law.⁸² It not yet certain whether Germany will provide for universal jurisdiction over crimes against humanity in its implementing legislation for the Rome Statute, but a working group has prepared draft legislation including universal jurisdiction over crimes against humanity and other crimes within the jurisdiction of the International Criminal Court in the as recognized in the *Entwurf eines Völkerstrafgesetzbuch* (EGVStB), Draft of a law for the introduction of a Code of Crimes under International Law (see Chapter Four, Section II).

⁸¹ Penal Code, Art. 6 (4) (English translation in *Federal Penal Code of the Republic of Germany* (Fred R. Rothman 1987).

⁸² In contrast, the German Democratic Republic defined certain crimes against humanity as crimes under national law. See Chapter 1 (*Verbrechen gegen die Souveränität der Deutschen Demokratischen Republik, den Frieden, die Menschlichkeit und die Menschenrechte*) of the Special Part of the *DDR-Strafgesetzbuch* (StGB), Penal Code of 1968, §§ 85-95; see also Eric Buchholz & Ulrich Dähn, *German Democratic Republic: National Report*, 60 *Revue Internationale de Droit Pénal* 317 (1988).

· **Ghana:** Ghanaian courts can exercise universal jurisdiction over certain crimes against humanity, including the slave trade, trafficking in women and children and *apartheid*.

Article 56 (4) (a), (c) and (n) of the Courts Act, 1993 read:

“Any person (whether a citizen of Ghana or not) is liable to be tried and punished in Ghana for the respective offence if he does an act which if done within the jurisdiction of the courts of Ghana would have constituted any of the following offences -

(a) slave trade or traffic in slaves;

....

(c) traffic in women or children;

....

(n) any other offence which is authorised or required by a convention or treaty to which the Republic is a signatory to be prosecuted and punished in Ghana.”⁸³

Ghana is a party to the *Apartheid* Convention, which authorizes states parties to prosecute suspects on the basis of universal jurisdiction. Ghana is also a party to the Rome Statute, but as of 1 September 2001 had not yet enacted any implementing legislation.⁸⁴ However, it is expected that drafting implementing legislation will include universal jurisdiction over crimes against humanity and other crimes within the Court’s jurisdiction.

· **Greece:** Greek courts can exercise universal jurisdiction pursuant to Article 8 (Crimes abroad which are always punishable under Greek law) of the Greek Criminal Code over the crimes against humanity of slave-trading and torture.

Article 8 (h) provides universal jurisdiction over persons responsible for slave-trading.⁸⁵ Article 8 (k) provides universal jurisdiction over crimes where treaties provide for Greek law to apply.⁸⁶

⁸³ Ghanaian Courts Act, 1993, Act 459, Art. 56 (4) (n).

⁸⁴ Although the Rome Statute does not expressly *authorize* states parties to exercise universal jurisdiction over crimes within the Court’s jurisdiction, the states parties recognize in the Preamble that it is “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”.

⁸⁵ “Greek criminal legislation is applicable both to nationals and non-nationals of this country, irrespective of the laws of the place of their commission, for the following acts committed abroad: . . . h) an act of slave-trafficking or procurement for the purpose of debauchery” Criminal Code, Article 8 (h). (English translation by Amnesty International).

⁸⁶ “Greek criminal legislation is applicable both to nationals and non-nationals of this country, irrespective of the laws of the place of their commission, for the following acts committed abroad: k) any other crime for which specific provisions or international conventions signed and ratified by the Greek state provide for the application of Greek criminal legislation.” Criminal Code, Article 8 (k). (English translation by Amnesty International).

Greece is a party to the Convention against Torture. Abduction into slavery and slave trading are crimes under national law.⁸⁷

· **Guatemala:** Guatemala courts appear to be able to exercise universal jurisdiction over crimes against humanity.

Article 5 (5) (e) of the Penal Code of Guatemala (for the text, see Chapter Four, Section II) provides that national courts have jurisdiction over any offence committed abroad which under a treaty is punishable in Guatemala. This constitutional provision is supplemented by Article 16 of the Criminal Procedure Code (*Código Procesal Penal*) [published 5 June 1996, in force 18 June 1996], which provides that courts and other authorities responsible for trials must fulfill the obligations imposed on them by international treaties in the matter of respect for human rights (for the text see Chapter Four, Section II).

Article 378 of the Penal Code provides that “[a]nyone who infringes or breaches their humanitarian duties . . . or commits any inhumane act against the civilian population . . . shall be liable to imprisonment for a period of twenty to thirty years.” It is not clear if this provision covers crimes against humanity in peacetime. (For the text of the provision see Chapter Four, Section II).

Guatemala is a party to the Convention against Torture and the Inter-American Convention on Torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it. Torture is a crime under national law, but the definition is not fully consistent with Article 1 of the Convention against Torture (see Chapter Ten, Section II).⁸⁸

⁸⁷ Penal Code, Art. 322 (Abduction); Art. 323 (Slave Trade).

⁸⁸ The relevant articles on torture in original Spanish are:

Article 201 bis of the Penal Code: “*Tortura. Comete el delito de tortura quien por orden, con la autorización el apoyo o aquiescencia de las autoridades del Estado, infrinja intencionalmente a una persona, dolores o sufrimientos, físicos o mentales, con el fin de obtener de ella o de un tercero información o confesión, por un acto que haya cometido, o que persiga intimidar a una persona o, por ese medio, a otras personas.*

Igualmente cometen el delito de tortura los miembros de grupos o bandas organizadas con fines terroristas insurgentes, subversivos o de cualquier otro fin delictivo.

No se consideran torturas las consecuencias de los actos realizados por autoridad competente en el ejercicio legítimo de su deber y en el resguardo del orden público.

El o los responsables del delito de tortura serán sancionados con prisión de veinticinco a treinta años.” Article 425 of the Penal Code (*Código Penal*):

“Abuso contra particulares. El funcionario o empleado público que ordenare apremios indebidos, torturas, castigos infamantes, vejaciones o medidas que la ley no autoriza, contra presos o detenidos, será sancionado con prisión de dos a cinco años e inhabilitación absoluta. Igual sanción se aplicará a quienes ejecutan tales órdenes.”

The Code of Penal Procedure (*Código Procesal Penal*) in Article 85 states:

“Métodos prohibidos para la declaración. El sindicado no será protestado, sino simplemente amonestado para decir la verdad. No será sometido a ninguna clase de coacción,

amenaza o promesa, salvo en las prevenciones expresamente autorizadas por la ley penal o procesal. Tampoco se usará medio alguno para obligarlo, inducirlo o determinarlo a declarar contra su voluntad, ni se le harán cargos o reconveniones tendientes a obtener su confesión."

· **Honduras:** Article 5 (5) of the Honduran Penal Code (for the text and scope, see Chapter Four, Section II above) provides that courts have custodial universal jurisdiction over crimes committed abroad when permitted by international treaties.

Honduras is a party to the Convention against Torture. It has signed the Inter-American Convention on Torture and the Inter-American Convention on the Forced Disappearances. It has ratified the Rome Statute, but as of 1 September 2001 it had not yet enacted implementing legislation.

Torture is a crime under national law (see Chapter Ten, Section II).

· **Hungary:** There appear to be two possible situations when Hungarian courts can exercise universal jurisdiction over crimes against humanity (for the history, text and scope of the relevant legislative and constitutional provisions and jurisprudence, see Chapter Four, Section II above).

First, Article 4 (1) (a) of Act IV of 1978 on the Criminal Code (formerly, Section 5 (a) of the Hungarian Penal Code of 1961), permits national courts to exercise universal jurisdiction over conduct amounting to crimes against humanity when it is also a crime under Hungarian law and the law of the place where it was committed. Second, Article 4 (1) (c) of Act IV of 1978 (formerly, Article 5 (b) of the Hungarian Penal Code of 1961) provides that national courts can exercise universal jurisdiction over certain conduct amounting to crimes against peace and humanity.

Hungary is a party to the Convention against Torture and the *Apartheid* Convention and it has signed the Rome Statute, but as of 1 September 2001, it had not yet ratified it. Hungary does not appear to have made *apartheid* or torture a crime, but some aspects of the crime against humanity of persecution are made criminal and the government has stated that the Convention against Torture has been incorporated into national law (see Chapter Ten, Section II).⁸⁹

· **Iran:** Article 8 of the Iranian Islamic Penal Code provides for universal custodial jurisdiction over crimes which are the subject of a special law or which the state is required by a treaty to prosecute when the suspect is found in the territory (for the text and scope, see Chapter Four, Section II).

Iran is a party to the *Apartheid* Convention. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Iraq:** Iraqi courts may exercise universal jurisdiction under two legislative provisions over certain crimes against humanity, in both cases subject to a number of conditions.

⁸⁹ Criminal Code, Sec. 139 (Crime against a Group of a Nation, People, Race or Religion).

Article 13 in Section 4 (Comprehensive Competence) of the Iraqi Penal Code of 1997 provides universal jurisdiction over the crimes against humanity of slave trading and trafficking in women and children:

“In cases other than those cited in Articles 9, 10 and 11, this law applies to everyone apprehended in Iraq for having committed one of the following crimes or offences: sabotaging or damaging means of communication and international transport or trading in women, children, slavery or drugs.”⁹⁰

In addition, Iraq can exercise universal jurisdiction over crimes and offences committed abroad by foreigners which are criminal in the place where they occurred under Article 10 in Section 3 (Personal Competence) of the Penal Code, provided that the foreigner subsequently becomes an Iraqi national. That article provides:

“Any Iraqi who commits, while abroad, a crime or offence, punishable by the law of that country, and is apprehended in Iraq, shall be punished according to the law.

*This law applies whether the perpetrator acquired the Iraqi nationality after committing the crime or was an Iraqi at the time of the crime and lost his nationality thereafter.”*⁹¹

In both situations, prosecutions may only be initiated with the permission of a political official, the Justice Minister, and *ne bis in idem* precludes a second trial if a sentence has been served or elapsed through prescription.⁹² If the sentence has not been fully served or the acquittal abroad concerns certain crimes by Iraqi officials, then they may be retried in Iraq.⁹³

⁹⁰ Penal Code of Iraq, 1997, Art. 13 (English translations of Penal Code by Amnesty International).

⁹¹ *Ibid.*, Art. 10.

⁹² *Ibid.*, Art. 14 -1. That provision states:

“Tracking those who commit a crime outside the Republic can only be initiated by the permission of the Justice Minister. If a foreign court has passed its final sentence against such a person, where the sentence has been served, or if the claim or punishment has elapsed, it is not permissible to try such a person. To ensure that the final judgement has been passed and that the claim or punishment has elapsed, reference should be made to the law of the country concerned.”

⁹³ *Ibid.*, Art. 14-2. That provision reads:

“Had the punishment imposed not been served in full, or the acquittal was concerning a crime cited in Articles 9 and 12, and was based on the fact that the law of such a country did not punish such an act, it is then permissible to track down and try the accused before Iraqi courts.”

Any sentence served would be taken into account. *Ibid.*, Art. 15 (“The time spent by an accused in

detention, custody or prison abroad for a crime committed should be taken into account.”).

Iraq is a party to the *Apartheid* Convention. It has not signed the Rome Statute and as of 1 September 2001 it had not ratified it.

· **Ireland:** As described above in Chapter Four, Section II, Article 29 (8) of the Irish Constitution provides that “[t]he State may exercise extraterritorial jurisdiction in accordance with the generally recognized principles of international law.” This constitutional provision permits Irish courts to exercise universal jurisdiction over crimes against humanity, but apparently only to the extent that they were expressly authorized to do so by legislation. The only legislation which might reach conduct amounting to crimes against humanity in certain circumstances is the Criminal Justice (United Nations Convention against Torture) Act, 2000 (discussed in Part Four, Section I).

Ireland is a party to the Convention against Torture. It has signed the Rome Statute and is expected to ratify it after a referendum in 2001.

· **Israel:** Sections 1 and 3 of the Israeli Nazi and Nazi Collaborators (Punishment) Law, 5710/1950, which prohibit certain crimes committed during the Second World War by Germans and their collaborators, including crimes against humanity, have been interpreted in the *Eichmann* case as applying to acts committed outside Israel by non-Israeli citizens.

Israel is a party to the Convention against Torture. It has signed the Rome Statute, but it had not yet ratified it as of 1 September 2001. There is no statute of limitations for crimes against humanity as defined in the Nazis and Nazi Collaborators (Punishment) Law.⁹⁴

⁹⁴ Crimes against Humanity (Abolition of Prescription) Law, 5726-1966, adopted by the Knesset on 14 February 1966 and published on 23 February 1966.

In 1961, an Israeli court tried and convicted Adolf Eichmann of crimes against humanity, as well as other charges, committed in Germany during the Second World War based in part on universal jurisdiction.⁹⁵ Most scholars have concluded that this case was a proper exercise of universal jurisdiction by a national court over crimes against humanity. Moreover, not a single state objected to the assertion of universal jurisdiction over the accused, although the manner of his seizure and transfer to the court was widely criticized. Indeed, at the same time the Security Council criticized the abduction as a violation of Argentina's sovereignty and called for Israel to make appropriate reparations, it implicitly approved of Israel's exercise of jurisdiction when it stated that it was "Mindful of the universal condemnation of the persecution of the Jews under the Nazis, and of the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused".⁹⁶

In addition, Israeli courts exercised universal jurisdiction over John Demjanjuk. He was extradited to Israel from the United States in February 1986 and convicted on 18 April 1988 in the District Court of Jerusalem of crimes against humanity committed in Europe during the Second World War under Section 1 (a) (2) of the Nazi and Nazi Collaborators (Punishment) Law, as well as other crimes under international law.⁹⁷ His conviction was overturned on the grounds that there was insufficient reliable evidence to satisfy the requirement of proof of guilt beyond a reasonable doubt.⁹⁸

· **Italy:** There are two separate provisions in the Italian Penal Code which would appear to permit national courts to exercise universal jurisdiction over at least some crimes against humanity.

First, Article 10 of the Italian Penal Code (for the text and scope, see Chapter Four, Section II above) expressly provides for custodial universal jurisdiction over common crimes committed abroad against foreigners or citizens or against foreign states or the Italian state if the crime is one for which the penalty is not less than three years (for the text and scope, see Chapter Four, Section II above). Second, under Article 7 (5) of the Italian Penal Code (for the text and scope, see Chapter Four, Section II above), courts have jurisdiction over a foreign national for crimes committed abroad where there is a specific law or treaty which establishes the applicability of Italian criminal law. In

⁹⁵ *Attorney General of Israel v. Eichmann*, 36 Int'l L. Rep. 18 (Isr. Dist. Ct. - Jerusalem 1961), *aff'd*, 36 Int'l L. Rep. 277 (Isr. Sup. Ct. 1962).

⁹⁶ S.C. Res. 138 (1960).

⁹⁷ *The Demjanjuk Appeal*, summary by Asher Felix Landau, Jerusalem, 29 July 1993 (obtainable from <http://www.mfa.gov.il/mfa/go.asp?MFAH0a450>); *The Demjanjuk Case - Factual and Legal Details*, 28 July 1993 (obtainable from <http://www.mfa.gov.il/mfa/go.asp?MFAH0a430>).

⁹⁸ *Decision of Israel Supreme Court on Petition Concerning Jon (Ivan) Demjan[j]uk on August 18, 1993* (unofficial summary of decision) (obtainable from <http://www.mfa.gov.il/mfa/go.asp?MFAH0azk0>).

addition, Article 8 of the Penal Code (for the text and scope, see Chapter Four, Section II above) provides protective jurisdiction over “political crimes”. As used in Article 8, however, this term does not have its usual meaning in international law, which excludes crimes under international law such as crimes against humanity, but is interpreted in a way which would include such crimes.

Italy is a party to Convention against Torture and the Rome Statute, but it has not as of 1 September 2001 enacted legislation providing that crimes within the International Criminal Court’s jurisdiction are crimes under Italian law. However, the draft bill implementing the Rome Statute will provide that “criminal provisions should be introduced to make all the criminal offences referred to in the Statute punishable under national law”.⁹⁹

· **Japan:** It is possible that Japanese courts may be able to exercise universal jurisdiction over certain aspects of the crime against humanity of torture.

Article 4-2 (Crimes committed outside Japanese territory to be governed by treaty) of the 1966 Penal Code provides universal jurisdiction over certain crimes under Japanese law committed by anyone outside Japan when a treaty requires that they be punished even if committed outside Japan (for the scope of this provision, see Chapter Four, Section II). That article states:

⁹⁹ Draft Bill for the Ratification of the Statute Establishing the International Criminal Court, adopted by the Italian Cabinet, 8 October 1998, Art. 2 (unofficial translation by No Peace Without Justice, www.agora.stm.it/npwj).

“In addition to those provided for in the preceding three Articles [dealing with protective and active personality jurisdiction], this Code shall also apply to every person who has committed outside Japanese territory those crimes mentioned in Book II [Articles 77 to 264] which are considered to be punishable by a treaty even if committed outside Japanese territory.”¹⁰⁰

This provision would appear to permit a court could exercise universal jurisdiction over any conduct which amounts to an ordinary crime under national law and which is also conduct over which a treaty provides for universal jurisdiction.

Japan is a party to the Convention against torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it. There are a number of crimes mentioned in Book II which might constitute the crime against humanity of torture, including: rape and other crimes of sexual violence (Articles 176 to 182) and inflicting bodily injury (Articles 204 to 208-2).

· **Jordan:** Article 10 (4) of the Penal Code (for the scope of this provision, see Chapter Four, Section II above) permits courts to exercise a limited form of universal jurisdiction over acts of foreigners committed abroad, if the foreigner is resident in Jordan, including, apparently, crimes committed before the person became a resident. It would appear that the acts covered could include conduct, such as murder or rape, which would amount to crimes against humanity.

Jordan is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Kazakhstan:** Two legislative provisions permit national courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity (for the text and scope, see Chapter Four, Section II).

First, Article 7 (1) of the Penal Code permits national courts to exercise universal jurisdiction over stateless persons suspected of a crime committed abroad which is also a crime under the law of the territorial state. Second, Article 7 (4) of gives courts universal jurisdiction over offences where this is provided in a treaty to which Kazakhstan is a party, provided that the suspect has not been tried in another state.

Kazakhstan is a party to the Convention against Torture and it is a successor state to the USSR, which was a party to the *Apartheid* Convention. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it.

· **Kyrgyzstan:** National courts may exercise universal jurisdiction over the crimes against humanity of *apartheid* and torture when they have been committed by persons

¹⁰⁰ Penal Code of Japan (1996), EHS Law Bulletin Series, II EHS, PA-PC, Nos. 2400, 2402, Art. 4-2.

who are now stateless citizens permanently resident in Kyrgyzstan, apparently including crimes committed before becoming stateless or permanent residents.

Article 6 (1) of the Criminal Code (for the text and scope of this provision, see Chapter Four, Section II) provides for jurisdiction over crimes committed abroad by citizens and permanent residents who are stateless and it may be possible that this provision applies to crimes committed before they acquired citizenship or permanent residence.

Kyrgyzstan is a party to the *Apartheid* Convention and the Convention against Torture and it has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It has defined some conduct amounting to torture as a crime under national law (see Chapter Ten, Section II).

· ***Lao People's Democratic Republic:*** There are two provisions permitting national courts to exercise universal jurisdiction in Laos over conduct abroad amounting to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

First, paragraph 2 of Article 4 (The enforcement of the criminal code outside the territory of the Lao People's Democratic Republic) of the Criminal Code provides that aliens and non-citizens (apparently, stateless persons) who reside in Laos can be held criminally responsible for conduct abroad which constitutes a crime under national law. Second, paragraph 3 of that article provides that foreigners can be held criminally responsible for conduct abroad that constitutes a crime under national law.

Laos has ratified the *Apartheid* Convention. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it.

· ***Latvia:*** There are two legislative provisions, whose origins can be traced back to Russian universal jurisdiction of 1903 (see Chapter Two, Section II.A), authorizing Latvian courts to exercise universal jurisdiction over certain conduct that might amount to crimes against humanity (for the text and scope, see Chapter Four, Section II).

First, Sub-section 1 of Section 4 (Applicability of the Criminal Law Outside the Territory of Latvia) of the Criminal Law of Latvia provides for universal jurisdiction over aliens and stateless persons resident in Latvia for any crimes committed abroad.

Second, Subsection 4 of Section 4 provides for universal jurisdiction over aliens and stateless persons not permanently resident in Latvia who are suspected of crimes abroad when it is so provided in treaties to which Latvia is a party, if they have not previously been tried for the same crime.

Latvia is a party to the *Apartheid* Convention and to the Convention against Torture. Statutes of limitation do not apply to crimes against humanity.¹⁰¹ However,

¹⁰¹ *Ibid.*, § 27 (4) ("A person who has committed an offence against humanity, an offence against peace, a war crime or has participated in genocide, shall be punishable irrespective of the time when such

only one crime specifically included in Chapter IX (Crimes against Humanity and Peace, War Crimes and Genocide) resembles a crime against humanity within the meaning of Article 7 of the Rome Statute.¹⁰²

· **Lebanon:** National courts can exercise universal jurisdiction over certain conduct abroad amounting crimes against humanity (for the text and scope of the relevant provision, see Chapter Four, Section II).

Article 23 of the Penal Code (*Code pénal*) provides that Lebanese law applies to every foreigner found in Lebanese territory who has committed abroad a crime in the cases not covered by the articles granting protective or active personality jurisdiction, subject to a number of conditions.

Lebanon is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Liberia:** Apparently, Liberian courts can exercise universal jurisdiction over certain conduct amounting to crimes against humanity when such conduct constitutes a crime under national law (for the text and scope of the relevant provisions, see Chapter Four, Section II. Article 1.4.1 (f) of the Liberian Penal Law provides that except as otherwise expressly provided, extraterritorial jurisdiction over an offence exists when jurisdiction is conferred upon Liberia by treaty). However, Article 1.5.1 provides that no conduct constitutes an offence unless it is a crime defined by statute. Article 1.4.1 (f) would appear to give Liberian courts universal jurisdiction over conduct which violated Liberian law, such as murder, assault or rape, which amounted to a crime against humanity.

Liberia is a party to the *Apartheid* Convention. It has signed the Rome Statute, but it had not yet ratified it as of 1 September 2001.

· **Liechtenstein:** Article 64 (1) (6) of the Penal Code (for the text and scope, see Chapter Four, Section II above) provides for universal jurisdiction over acts which Liechtenstein is obliged to prosecute even when such acts are not criminal in the territorial state. This provision may be sufficiently broadly worded to include other crimes against humanity, since, as demonstrated in this paper, there is an emerging general principle that every state has an obligation to prosecute such crimes.

Liechtenstein is a party to the Convention against Torture. It has signed the Rome Statute, but it had not yet ratified it as of 1 September 2001.

offence was committed.”).

¹⁰² *Ibid.*, § 78 (Violation of National or Racial Equality and Restriction of Human Rights) appears to cover much of the conduct prohibited by the crime against humanity of persecution.

·**Lithuania:** Lithuanian courts can exercise universal jurisdiction over certain conduct amounting to crimes against humanity (for the text of the relevant legislative and constitutional provisions see Chapter Four, Section II).

Current Criminal Code. There are two bases for the exercise of universal jurisdiction under the Current Criminal Code. The first paragraph of Article 6 (Criminal Responsibility for Crimes Committed Abroad) provides for universal jurisdiction over stateless persons permanently resident in Lithuania who have committed a crime under Lithuanian law abroad. The second paragraph of this article provides for universal jurisdiction over crimes committed abroad by other persons, but only if the conduct was a crime under the law of the place where it occurred and in Lithuania and the lesser of the two possible penalties is applied.

The new Criminal Code. The new Criminal Code provisions which are to enter into effect from 1 January 2003 clarify that they will apply to war crimes and crimes against humanity and eliminate the double criminality requirement for these crimes and certain other crimes. Article 5 (Criminal Responsibility of the Citizens of the Republic of Lithuania and Other Persons that Live Permanently in Lithuania for Crimes Committed Abroad) provides:

*“Citizens of the Republic of Lithuania and other persons permanently resident in Lithuania shall be held responsible for the crimes committed abroad in accordance with this Code.”*¹⁰³

Paragraph 1 of Article 7 (Criminal Responsibility for Crimes Provided for in International Treaties) provides:

“The persons shall be held responsible in accordance with this Code, regardless of their nationality and place of residence and regardless of whether their deed is punishable under the law of the territory where the crime has been committed, when they commit crimes responsibility for which is provided for by international treaties.

1. Crimes against humanity and war crimes (Articles 99 to 113). . . .”¹⁰⁴

The exercise of universal jurisdiction pursuant to Articles 5 and 6 is subject to a number of conditions, including that the conduct be criminal in both Lithuania and in the place where it occurred and that the maximum penalty should not exceed that applicable in the place where it occurred. Paragraph 1 of Article 8 (Criminal Responsibility for Crimes Committed Abroad) states:

¹⁰³ Criminal Code of Lithuania, entry into effect, 1 January 2003, Art. 5. English translations of the new Criminal Code are by Amnesty International.

¹⁰⁴ *Ibid.*, Art. 7.

“1. A person who has committed crimes abroad, provided for by Article 5 and Article 6 of this Code, shall be held responsible in accordance with penal law only in the event where the deed is recognized as a criminal offence which is punishable by the Criminal Code of the country where the crime has been committed and the Republic of Lithuania. If a person who committed a crime abroad is tried in the Republic of Lithuania but the two countries stipulate different penalties for the criminal offence, the person shall be punished in accordance with the law of the Republic of Lithuania but it shall not exceed the maximum penalty stipulated by the law where the criminal offence was committed.

When a prosecution could otherwise be brought under Articles 5, 6 or 7, it may not proceed if the suspect has served a sentence for the conduct abroad, all or part of that sentence was waived, the suspect was acquitted or exempted from criminal responsibility because of a statute of limitations or other legal provision in the territorial state. Paragraph 2 of Article 8 states:

“2. A person who has committed a criminal offence stipulated by Articles 5, 6 and 7 of the Criminal Code of the Republic of Lithuania, shall not be held responsible under this code if that person:

- 1) Has served a sentence given by a court in the foreign country;
- 2) Serving of the whole sentence given by a court in the foreign country or part thereof was waived;
- 3) Was acquitted by a court of law of a foreign country or exempted from criminal responsibility or a penalty or penalties were not given because of statute of limitations or on basis of other legal provisions of that country.”

Lithuania is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It has not been possible to determine if crimes against humanity are crimes under the current Criminal Code or other legislation, so prosecutions before 1 January 2003 may have to be for ordinary crimes under national law such as murder, abduction, assault or rape. It is believed that after that date, a number of crimes against humanity will be expressly included in the new Criminal Code, but it has not been possible to locate the text of any such provisions.

· **Luxembourg:** National courts may exercise universal jurisdiction over the crime against humanity of torture abroad. Article 7-4 of the Act of April 2000 provides for universal jurisdiction over torture committed abroad (for the text and scope of all relevant legislation, see Chapter Ten, Section II).

Luxembourg is a party to the Convention against Torture. It has ratified the Rome Statute, but it had not yet enacted implementing legislation as of 1 September 2001. Torture is a crime under national law.

· **Macedonia, The former Yugoslav Republic of:** Macedonian courts may exercise universal jurisdiction over crimes against humanity pursuant to Article 119 (2) of the Criminal Code of the Republic of Macedonia when such conduct is a crime under national law and the law of the territorial state and it is possible, according to an authoritative government opinion, that they may do so even if the conduct is not criminal under national law in the place where it occurred (for the text and scope, see Chapter Four, Section II). This provision appears to be sufficiently broad to include some ordinary crimes which would amount to crimes against humanity if committed during armed conflict.

The former Yugoslav Republic of Macedonia is party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but, as of 1 September 2001, it had not yet ratified it. It is not known if Macedonia has defined any crimes against humanity as crimes under national law, so prosecutions may have to be for ordinary crimes, such as murder, abduction, assault and rape.

· **Malta:** Maltese courts can exercise universal jurisdiction over the crime against humanity of torture. Section 5 of the Criminal Code of Malta permits courts to exercise universal jurisdiction over torture (for the text and scope of relevant legislation, see Chapter Ten, Section II).

Malta is a party to the Convention against Torture. It has signed the Rome Statute, but it had not yet ratified it as of 1 September 2001. It has defined torture as a crime under national law.

· **Mexico:** Article 6 of the *Código Penal Federal* (Federal Penal Code) of 1931, as amended 2000 (see Chapter IV Section II) provides that courts have jurisdiction to try crimes under a special law or under international treaties imposing this obligation on Mexico. That article provides:

“When an act is committed which is not an offence under this Code but is an offence under a special law or under an international treaty to which Mexico is a party, the respective law or treaty shall apply, taking into account the provisions of Book I of this Code and, if applicable, the subsequent provisions of Book II.”

There appears to be no jurisprudence concerning this provision. Article 6 is drafted sufficiently broadly (for a discussion see Chapter IV Section II) to suggest that national courts could apply universal jurisdiction provisions for the crime of *Apartheid* and torture committed in a widespread and systematic manner.

Mexico has ratified the *Apartheid* Convention, the Convention against Torture and the Inter-American Convention on Torture. It has signed the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute, but had not yet ratified it as of 1 September 2001.

· **Moldova:** National courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity committed abroad (for the text and scope of the relevant legislative and constitutional provisions, see Chapter Four, Section II)

Article 4 of the Criminal Code of Moldova (Applicability of this Code in relation to acts committed on the territory of the Republic of Moldova or beyond its borders) provides for universal jurisdiction in two situations. The second, unnumbered paragraph of this article provides for universal jurisdiction over crimes committed abroad by stateless persons when the conduct is a crime under the Criminal Code of Moldova, which could include certain conduct amounting to crimes against humanity.

The fourth unnumbered paragraph of Article 4 provides that national courts may exercise universal jurisdiction over foreigners for conduct abroad that is a crime under the Moldovan Criminal Code when such jurisdiction is provided for in international agreements. However, since Moldova is not a party to the *Apartheid* Convention or to the Convention against Torture, this provision is not likely to be useful.

Moldova has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It has not been possible to determine whether Moldova has defined any crimes against humanity as crimes under its national law, so prosecutions may have to be for ordinary crimes under national law, such as murder, abduction, assault and rape.

· **Monaco:** There are three legislative provisions that permit the courts of Monaco to exercise universal jurisdiction over certain conduct that may amount to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 6-1 of the Code of Criminal Procedure provides universal jurisdiction over any person who commits a felony (*crime*) or a misdemeanour (*délit*) abroad who subsequently becomes a national of Monaco.

Second, Article 9 (2) provides for universal jurisdiction over any foreigner who has committed a felony or a misdemeanour abroad who is found in Monaco in possession of objects acquired by means of the crime.

Third, Article 8 (3) permits courts to exercise universal jurisdiction over certain conduct against minors that may amount to crimes against humanity of trafficking, enforced prostitution, sexual slavery or other forms of sexual violence.

Monaco has ratified the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Mongolia:** There are two provisions which provide Mongolian courts with universal jurisdiction over at least some conduct amounting to crimes against humanity (for the text, see Chapter Four, Section II).

First, paragraph b of Article 3 of the Criminal Code provides that stateless persons in the territory who have committed crimes abroad, if found in Mongolia be subject to criminal responsibility and punishment under the Criminal Code. Second, paragraph c of Article 3 provides that foreign citizens who have committed crimes abroad shall be subject to criminal responsibility according to the Criminal Code when provided for by international agreements. Paragraph c is strengthened by Article 10 (3) of the Constitution, which provides that treaties to which Mongolia is a party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

Independently of these two legislative provisions, it may be possible that Article 10 (1) of the Constitution of Mongolia, which requires that Mongolia “adhere to the universally recognized norms and principles of international law . . .”, permits the exercise of universal jurisdiction based on customary international law or general principles of law.

Mongolia is a party to the *Apartheid* Convention. It has signed the Rome Statute, but it has not yet ratified the Rome Statute as of 1 September 2001.

· **Netherlands:** Netherlands courts can exercise jurisdiction over certain crimes against humanity, such as torture, in some circumstances.

On 20 November 2000, the *Gerechtshof te Amsterdam* (Amsterdam Court of Appeal) held that a Netherlands trial court could exercise universal jurisdiction over the crime against humanity of torture under the Netherlands Act against Torture (for a discussion of this case, see Chapter Ten, Section II). In addition, it suggested in *obiter dicta* that Netherlands courts could exercise universal jurisdiction over other crimes against humanity, provided that Dutch law had implemented its international obligations. It stated:

“In his report, the expert furthermore states that Bouterse is subject to prosecution under customary international law but he also pointed out - and rightly in the opinion of the Court of Appeal - that Dutch law requires a national act for incorporating obligations under international law in its own system as for punishability of human conduct (cf. 94 of the Netherlands Constitution).

The Court of Appeal shares the expert’s view that crimes against humanity committed outside the framework of the Netherlands Act against Torture are criminalised to a limited degree in Dutch law, namely in the Netherlands Criminal Law in Wartime Act (*Wet Oorlogsstrafrecht*). In that act, crimes against humanity are not considered as isolated offences but as circumstances aggravating war crimes. But as considered earlier, war crimes are not involved in the present case.”¹⁰⁵

¹⁰⁵ *Bouterse* Case, Decision (*beschikking*), Petition numbers R 97/163/12 Sv and R 97/176/12 Sv, Court of Appeal, 5th chamber, 20 November 2000, para. 8.2 (unofficial English translation *obtainable from* <http://www.icj.org/objectives/decision.htm>).

It is not entirely clear whether this simply means that the law criminalizing conduct amounting to a crime against humanity, such as murder, assault, rape, false imprisonment or kidnapping, must state that it is an implementation of an international obligation or simply make the conduct a crime under national law. However, the expert's opinion of which the court approved seems to favour the first, restrictive reading.¹⁰⁶

The Netherlands is a party to the Convention against Torture. It has ratified the Rome Statute, but it had not yet enacted implementing legislation as of 1 September 2001, although it was expected to do so in 2001. The implementing legislation is expected to provide for universal jurisdiction over crimes against humanity as defined in the Rome Statute.

· ***New Zealand:*** New Zealand courts may exercise universal jurisdiction over all crimes against humanity recognized in the Rome Statute.

¹⁰⁶ Opinion by C.J.R. Dugard, Senior Counsel, Supreme Court of South Africa and Professor of Public International Law, University of Leiden, 7 July 2000, submitted to the Amsterdam Court of Appeal in the *Bouterse* Case (obtainable from <http://www.icj.org/objectives/decision.htm>).

It has ratified the Rome Statute. Article 10 provides that crimes against humanity, as defined under Article 7 of the Rome Statute, are crimes under New Zealand law.¹⁰⁷ Article 8 of the International Crimes and International Criminal Court Act 2000 provides for universal jurisdiction over crimes against humanity.¹⁰⁸ Article 8 came into effect on 1 October 2000.¹⁰⁹

· **Nicaragua:** Nicaraguan courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity.

Article 16 (3) (f) of the Penal Code of Nicaragua (for the text, see Chapter Four, Section II above) provides for universal jurisdiction, *inter alia*, over the crimes against humanity of the slave trade, including certain forms of trafficking of women and children, and racial discrimination. Article 552 of the Penal Code provides that “[a] person commits the offence of slavery and shall be liable to imprisonment for a period of three to five years when he engages in the international trafficking of women or children for the purposes of prostitution or sexual intercourse.”¹¹⁰

¹⁰⁷ International Crimes and International Criminal Court Act 2000, Art. 10.

¹⁰⁸ *Ibid.*, Art. 8 (Jurisdiction in respect of international crimes) provides:

“(1) Proceedings may be brought for an offence---

(a) against section 9 or section 10, if the act constituting the offence charged is alleged to have occurred---

(i) on or after the commencement of this section; or

(ii) on or after the applicable date but before the commencement of this section; and would have been an offence under the law of New Zealand in force at the time the act occurred, had it occurred in New Zealand; and

(b) against section 11, if the act constituting the offence charged is alleged to have occurred on or after the commencement of this section; and

(c) against section 9 or section 10 or section 11 regardless of---

(i) the nationality or citizenship of the person accused; or

(ii) whether or not any act forming part of the offence occurred in New Zealand; or

(iii) whether or not the person accused was in New Zealand at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence.”

Previously, New Zealand had provided for universal jurisdiction over slave trading. Crimes Act 1961, § 98. See Roger S. Clark, *Criminal code reform in New Zealand? A Martian's view of the Erewhon Crimes Act 1961 with some footnotes on the 1989 bill*, 21 Vict. U. Wellington L. Rev. 1, 15 nn. 62, 64 (1991).

¹⁰⁹ International Crimes and International Criminal Court Act 2000, Art. 2 (2) (specifying that sections other than Sections 6, 7, 14 to 23, Parts 3 to 10, Sections 178 to 180 and Sections 182 to 184 come into force on 1 October 2000). Article 8 (1) (a) (i) provides that proceedings may be brought for an offence against Section 10 if the act constituting the offence charged occurred on or after the date of commencement of Section 8 (1 October 2000) and Article 8 (1) (a) (ii) states that they may also be brought “on or after the applicable date but before the commencement of this section; and would have been an offence under the law of New Zealand in force at the time the act occurred, had it occurred in New Zealand”.

¹¹⁰ Original Spanish text: “Comete delito de Trata de Blancas, el que se dedique al tráfico internacional de mujeres o de niños destinados a la prostitución o comercio carnal y sufrirá la pena de presidio de 3 a 5 años.”

A 1999 proposal to reform the Penal Code would simplify and expand the scope of Article 16. The new Article 16 (1) (Principle of universality) would provide:

“(1) The criminal laws of Nicaragua will also apply to those Nicaraguans and foreigners who have committed outside the national territory any of the following crimes:

a. genocide, torture and forced disappearances;

....

e. slavery and slave trading;

f. racial discrimination;

g. crimes against the international order;

h. crimes against international humanitarian law;

....

j. crimes of trafficking in immigrants

[k.] crimes of international trafficking of persons;

p. whatever other crime that, according to treaties and international conventions, must be prosecuted in Nicaragua, in accordance with constitutional norms.

(2) (...).”¹¹¹

Nicaragua is a party to the *Apartheid* Convention and the Convention against Torture. It has signed both the Inter-American Convention on Torture and the Inter-American Convention on the Forced Disappearances. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified the Rome Statute.

· **Norway:** Norwegian courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity.

Section 12 (4) of the Norwegian General Civil Penal Code of 1902, as amended 1998, provides that, “[u]nless it is otherwise specially provided or accepted in an agreement with a foreign State, Norwegian criminal law shall be applicable to acts committed: . . . (4) abroad by a foreigner when the act either” constitutes murder, assault and certain other crimes under Norwegian law or “is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein” (for a more complete text and the scope of this provision, see Chapter Four, Part II). Section 12 (4) would, therefore, include some conduct amounting to crimes against humanity.

Norway is a party to the Convention against Torture and the Rome Statute.

· **Panama:** Article 10 of the Panamanian Penal Code (for the text and scope, see Chapter Four, Section II above) provides for custodial universal jurisdiction over crimes included in treaties ratified by Panama.

¹¹¹ Proposal concerning the Penal Code of the Republic of Nicaragua, Article 16 (Principle of universality). The relevant part of the original Spanish text of the proposal reads:

“1. *Las leyes penales nicaragüenses o extranjeros que hayan cometido fuera del territorio nacional algunos de los siguientes delitos:*

a. genocidio, tortura y desaparición forzada;

....

e. esclavitud y comercio de esclavos;

f. discriminación racial;

....

g. delitos contra el orden internacional;

h. delitos contra el derecho internacional humanitario;

....

j. delitos de tráfico de inmigrantes;

[k]. delitos de tráfico internacional de personas;

....

p. cualquier otro delito que, según los tratados o convenios internacionales, deba ser perseguido en Nicaragua, de acuerdo con las normas constitucionales.

2. *Para todos los supuestos expresados en este artículo rige el literal c contenido en el artículo 14.”*

Proyecto de Código Penal de la República de Nicaragua, Comisión de Justicia de la Asamblea Nacional, 24 de noviembre de 1999, Artículo 16 (Principio de universalidad). The original Spanish text is obtainable from <http://www.asamblea.gob.ni/codigopenal.htm>.

Panama is a party to the *Apartheid* Convention, the Convention against Torture, the Inter-American Convention on Torture and the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it.

· **Paraguay:** Two provisions of the Penal Code (for the text and scope of both, see Chapter Four, Section II) permit Paraguayan courts to exercise universal jurisdiction over conduct amounting to crimes against humanity.

First, Article 8 (7) of the Penal Code, Law No. 1160/97 in force since 1999, provides that Paraguayan criminal law applies to certain crimes which it is obliged to prosecute by virtue of a treaty in force when the crimes are committed outside Paraguay. Second, Article 9 of the Penal Code provides for custodial universal jurisdiction over other acts carried out abroad. This section appears to be sufficiently broadly worded to include ordinary crimes which would amount to crimes against humanity, such as murder or rape, provided that they are punishable under the law of the place where they occurred.

Paraguay is a party to the Convention against Torture and the Inter-American Convention on the Forced Disappearances. It has ratified the Rome Statute, but as of 1 September 2001 it had not yet enacted implementing legislation.

· **Peru:** Article 2 (5) of the Peruvian Penal Code provides that courts may exercise universal jurisdiction over crimes committed abroad which Peru is required to punish pursuant to a treaty (for the text, see Chapter Four, Section II above).

Peru is a party to the *Apartheid* Convention, the Convention against Torture and the Inter-American Convention on Torture. It has signed the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute and it has announced that it intended to ratify it in 2001. Torture is a crime under national law (see Chapter Ten, Section II) and so are enforced disappearances (see Chapter Twelve).

· **Philippines:** It appears that Philippine courts can exercise universal jurisdiction over conduct abroad amounting to crimes against humanity when it also constitutes an ordinary crime under national law, such as murder, kidnapping, assault or rape.

Generally accepted principles of international law are part of the law of the Philippines. Article 2 (3) of the Constitution of 1935 provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the nation”. As explained above in Chapter Four, Section II, the Philippine Supreme Court gave this concept a broad reading in the *Kuroda* case more than half a century ago to include crimes against humanity. It stated:

“In accordance with the generally accepted principles of international law of the present day, including the Hague Convention and significant precedents of international jurisprudence established by the United Nations, all those persons,

military or civilian, who have been guilty of planning, preparing or waging a war of aggression and of the commission of crimes and offences consequent thereto, in violation of the laws and customs of war, of humanity and civilization, are held accountable therefor. Consequently, in the present promulgation and enforcement of Executive Order No. 68, the President of the Philippines has acted in conformity with the generally accepted principles and policies of international law which are part of our Constitution.”¹¹²

The Supreme Court found that “the rules and regulations [governing the military commissions, which included jurisdiction over crimes against humanity] form part of and are wholly based on the generally accepted principles of international law Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them, for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.”¹¹³ For a more extended discussion of the *Kuroda* doctrine, see Chapter Four, Section II.

The Philippines has ratified the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute but, as of 1 September 2001, it had not yet ratified it. However, the Philippines has not defined any crimes against humanity as crimes under national law. Nevertheless, it would appear that under the *Kuroda* doctrine Philippine courts could exercise universal jurisdiction over crimes against humanity committed abroad, either directly or as crimes under national law, such as murder, abduction, assault or rape.

· *Poland*: Chapter XIII (Liability for offences committed abroad) of the Penal Code, which regulates extraterritorial jurisdiction, provides two bases for universal jurisdiction over conduct amounting to crimes against humanity, one over ordinary crimes and the other over crimes which Poland is required to prosecute under an international treaty (for the full text and scope of all the relevant provisions, see Chapter Four, Section II).

The first basis is set out in Article 110 (2), which provides for custodial universal jurisdiction over aliens who have committed crimes abroad which have no link with Poland when the crime would have been subject to a penalty of two years’ imprisonment if committed in Poland, but Article 111 requires that the conduct have been punishable in the place where it occurred (double criminality).

The second basis for universal jurisdiction is found in Article 113, which provides:

¹¹² *Kuroda, supra*, 177 (citing *Ex parte Quirin*, 317 U.S. 1 (1942)).

¹¹³ *Ibid.*, 178.

“Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements.”¹¹⁴

This legislative provision is reinforced by the Constitution. Article 91 (1) states that “[a]fter promulgation thereof in the Journal of Laws of the Republic (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.”¹¹⁵ Article 91 (2) provides that “[a]n international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.”¹¹⁶

¹¹⁴ *Ibid.*, Art. 113 (revising former Art. 115).

¹¹⁵ Polish Constitution of 1997, Art. 91 (1).

¹¹⁶ *Ibid.*, Art. 91 (2). Article 9 provides that “[t]he Republic of Poland shall respect international law binding upon it.”

Poland has ratified the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. Poland has provided in Chapter XVI (Offences against peace, and humanity, and war crimes) of the Special Part of the Penal Code that certain conduct which may amount to crimes against humanity in certain circumstances are crimes under national law.¹¹⁷ Statutes of limitation do not apply to crimes against humanity (see Chapter Four, Section II).

Portugal: There are three provisions in Portuguese law which permit national courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 5 1 (b) of the Penal Code of Portugal (*Código Penal Português*) provides for universal jurisdiction over persons suspected of certain crimes of sexual violence, provided that the suspect is found in Portugal and it is not possible to extradite the person. It states:

“Unless any international treaty or agreement is to the contrary, Portuguese criminal law shall also apply to acts committed outside national territory:

....

(b) When they constitute crimes defined in Articles 159, 160, 169, 172, 173, 176, 236 to 238, paragraph 1 of Article 239 and Article 242, if the suspect is found in Portugal and it is not possible to extradite the suspect.”¹¹⁸

Second, Article 5 (1) (e) provides Portuguese courts with jurisdiction over crimes for which extradition is permitted have been committed by foreigners abroad when they are found in Portugal and cannot be extradited.

Third, Article 5 (2) of the Penal Code provides for universal jurisdiction over acts committed abroad which the state is obligated under any international treaty to try.

¹¹⁷ The Special Part applies to civilians, as well as to the military. In contrast, the Military Part applies only to the military. The relevant provisions include Art. 119 (making unlawful threats towards groups or individuals because of their national, ethnic, political or religious affiliations or beliefs), which could under certain circumstances amount to crimes against humanity, and Art. 120 (using a means of mass extermination prohibited by international law), which could include the crime against humanity of extermination.

¹¹⁸ Portuguese Penal Code of 1999, Art. 5 (1) (b). Several of the crimes covered in the articles listed in Article 5 (1) (b) could, in certain circumstances, amount to crimes against humanity if committed as part of a widespread or systematic pattern of crimes against humanity, including: Article 159 (Slavery) (*Escravidão*); Article 160 (Abduction) (*Rapto*); Article 169 (Trafficking in persons) (*Tráfico de pessoas*), Article 172 (Sexual abuse of minors) (*Abuso sexual de crianças*); Article 173 (Sexual abuse of minors who are dependants) (*Abuso sexual de menores dependentes*); and Article 176 (Procuring and trafficking in minors) (*Lenocínio e tráfico de menores*).

Portugal is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 had not yet ratified it.

· **Romania:** Article 6 of the Romanian Criminal Code of 1988 (for the text and scope of this and other relevant provisions, see Chapter Four, Section II above) gives national courts custodial universal jurisdiction over crimes specified in the Criminal Code by foreigners and stateless persons committed abroad, provided that the conduct was criminal in the place where it occurred and there are no bars to prosecution under the law of that place.

Article 7 of this Code states that “[t]he provisions included in Articles 5 and 6 shall only apply if international agreements do not otherwise provide.” The meaning of this provision is not entirely clear, but it appears to mean that if a treaty provides for universal jurisdiction without the restrictions in Article 6, then the broader treaty provisions would control. There does not seem to be any jurisprudence or authoritative commentary on Articles 6 and 7.

Article 6 appears to be worded sufficiently broadly to include ordinary crimes which would amount to crimes against humanity. In addition, several articles which describe conduct which amounts to war crimes may also cover crimes against humanity in peace, since there is no express requirement that the prohibited conduct occur during armed conflict.¹¹⁹

Romania is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 had not yet ratified it. Romania is a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, but it is not clear if statutes of limitation apply to crimes against humanity.¹²⁰

· **Russian Federation:** Russian courts may exercise universal jurisdiction over the conduct amounting to the crimes against humanity of *apartheid* and torture.

Article 12 (3) of the Russian Criminal Code gives Russian courts universal jurisdiction over foreign citizens and stateless persons not permanently resident in the

¹¹⁹ Criminal Code, Art. 358 (Inhuman treatment); Art. 359 (Destruction of certain objectives and appropriation of certain goods).

¹²⁰ Article 121 of the Criminal Code provides that statutes of limitation do not apply to crimes against peace and humankind. Title XI (Crimes against peace and mankind) do not define crimes against humanity as crimes under the Criminal Code. It is possible that Article 121 will be read to apply to any conduct amounting to crimes against humanity, even if not listed in Title XI, but it has not been possible to locate any authoritative jurisprudence or commentary on this question.

Russian Federation for crimes under Russian law where a treaty provides for prosecution for such conduct, as long as the suspects have not been convicted of such conduct in another state (for the text and scope of that provision, see Chapter Four, Section II above).

The Russian Federation is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It has not expressly defined crimes against humanity as crimes under national law, apart from torture (see Chapter Ten, Section II). Therefore, it is likely that only a limited amount of conduct amounting to *apartheid* that was also a crime under the Criminal Code could be prosecuted on the basis of universal jurisdiction. There is no jurisprudence on the question.

- *Senegal*: Senegalese courts may not exercise universal jurisdiction over crimes against humanity (for a discussion of the relevant jurisprudence, see Chapter Ten, Section II).

- *Slovak Republic*: There are three legislative provisions in the Penal Code of permitting courts in the Slovak Republic to exercise universal jurisdiction over conduct amounting to crimes against humanity whose origins date to proposals made in the former Czechoslovakia in 1926 (see Chapter Two, Section II.A).

These three legislative provisions are reinforced by two provisions of the Constitution.

Article 1 (2) of the Constitution of 1992, as amended 2001, provides that “[t]he Slovak Republic recognizes and observes the general principles of international law, international treaties, by which it is bound, and its further international obligations.”¹²¹ Second, as of 1 July 2001, Article 7 (5) of the Constitution authorizes direct enforcement of treaty obligations. It provides:¹²²

¹²¹ Constitution of the Slovak Republic, 3 September 1992, as amended 23 February 2001 (English translation in Gisbert H. Flanz, *The Slovak Republic*, in Gisbert H. Flanz, *Constitutions of the Countries of the World* (Dobbs Ferry, New York: Oceana Publications, Inc.) (Release 2001-3, May 2001), Art. 1 (2).

¹²² During the consideration of the initial report of Slovakia to the Committee against Torture, Ms. Štofová of the Slovakian delegation explained that

“On 1 July 2001 an amendment to the Constitution with far-reaching implications for the relationship between international law and domestic legislation would come into force. It would basically change the existing dualist system into a monist system entailing direct implementation of certain international treaties. Under article 7, paragraph 5, of the Constitution, the following international instruments would acquire such status: treaties on human rights and fundamental freedoms, self-executing treaties and treaties establishing specific rights and duties of individuals.”

Summary records of the 467th meeting of the Committee against Torture, 7 May 2001, U.N. Doc. CAT/C/SR.467, 16 May 2001, para. 8.

“International treaties concerning human rights and fundamental freedoms, international treaties, for whose implementation a law is required, and international treaties which directly establish rights or obligations of physical persons or juridical persons and which were ratified and promulgated in the manner established by law, have precedence before those (established) by laws.”¹²³

¹²³ Constitution of 1992, as amended 2001, Art. 7 (5). During the consideration of the initial report of Slovakia to the Committee against Torture, Ms. Štofová of the Slovakian delegation explained the scope of the predecessor of Article 7 (5) as follows:

“under article 11 of the Slovak Constitution [“International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.” (obtainable from http://www.uni-wuerzburg.de/law/1000000_.htm)], international human rights treaties ratified by Slovakia and promulgated in the Official Gazette took precedence over domestic legislation but not over the Constitution itself. In some cases, moreover, the Constitution afforded greater protection than international instruments. If a complaint was filed concerning the practical application of a right protected by an international standard, the right concerned must be interpreted and applied in accordance with the Constitution and in the light of the international standard and any relevant case law. In the absence of precedents, the Slovak judicial authorities were required to explain the content and purpose of the protected right. A party to legal proceedings who was dissatisfied with a decision taken by the domestic courts could lodge a complaint with the relevant international body. The Constitutional Court had ruled along those lines in decision No. 28/1996.”

Summary records of the 467th meeting of the Committee against Torture, 7 May 2001, U.N. Doc. CAT/C/SR.467, 16 May 2001, para. 7.

First, Article 19 of the Penal Code states that foreign nationals and stateless persons who are not resident in the Slovak Republic are criminally liable for certain war crimes committed abroad.¹²⁴ Article 19 provides in relevant part:

“This Act shall also be used to determine criminal liability for criminal offences of . . . use of prohibited means of warfare and unlawful combat practices (sections 187a and 188), . . . war atrocities (section 263), persecution of the population (section 263a), plundering in the war operations theatre (section 264), abuse of internationally recognised and state symbols (section 265) . . . if such a criminal offence was committed abroad by a foreign national or a stateless person who does not have permanent residency on the territory of the Slovak Republic.”¹²⁵

Second, Article 20 provides that foreign nationals or stateless persons who are permanent residents are criminally responsible for conduct abroad which is a crime under the law of Slovakia and the law of the place where it occurred, if they are found in Slovakia and if they are not extradited to another state.¹²⁶ They may not, however, be given a more severe sentence than they would have received in the territorial state.

Third, Article 20a of the Penal Code provides for universal jurisdiction over conduct abroad that is criminal under Slovakian law when this is required by a treaty binding on Slovakia.¹²⁷ It states:

“(1) This Act shall be used to determine criminal liability also when it is prescribed by a promulgated international instrument which is binding for the Slovak Republic.

¹²⁴ Summary of Section 19 of Penal Code in the initial report of the Republic of Slovakia to the Committee against Torture, U.N. Doc. CAT/C/24/Add.6, 18 August 2000, para. 77. It has not been possible to locate a copy of the full text of the current Penal Code of the Slovak Republic or a translation of the full text in English.

¹²⁵ Penal Code of 1961, as amended, § 19 (unofficial English translation provided by the government).

¹²⁶ Summary of Section 20 of the Penal Code in the initial report of the Republic of Slovakia to the Committee against Torture, U.N. Doc. CAT/C/24/Add.6, para. 78.

¹²⁷ Summary of Section 20a of the Penal Code in the initial report of the Slovak Republic to the Committee against Torture, U.N. Doc. CAT/C/24/Add.6, para. 79.

(2) Provisions of Sections 17 through 20 shall not be used if their use is prohibited by an international instrument which is binding for the Slovak Republic.”¹²⁸

The government has explained that “[t]he reason for such legislation is also the common interest of States to sentence negative phenomena which are a threat to all countries (e.g. combatting slavery, trafficking in women, children, international terrorism, the crime of genocide).”¹²⁹ It has further explained the differences between the provisions on universal jurisdiction.¹³⁰

It is understood that the Penal Code is to be revised and that the current Section 19 is to be amended and renumbered as Section 6 and include additional crimes, but these do not appear to include additional crimes against humanity. Section 20a would be renumbered as Section 8 without substantive changes.

¹²⁸ Penal Code, § 20a (unofficial English translation provided by the government).

¹²⁹ Initial report of the Slovak Republic to the Committee against Torture, U.N. Doc. CAT/C/24/Add.6, para. 79.

¹³⁰ During the consideration of the initial report of the Slovak Republic to the Committee against Torture, Ms. Štofová of the Slovak Republic delegation explained that

“ The principle of universal jurisdiction was recognized in Slovak law in articles 19, 20 and 21 of the Criminal Code. A distinction was drawn between absolute universality (arts. 19 and 21) and subsidiary universality (art. 20). Article 19 listed crimes that were punishable in Slovakia even if perpetrated abroad by a foreign citizen or stateless person not permanently resident in Slovakia. Those crimes included terrorism, sabotage and genocide, but not torture. Article 21, meanwhile, covered crimes defined in international treaties binding on Slovakia, one of which was the Convention. Under article 20 of the Criminal Code, Slovak courts were authorized to initiate criminal proceedings even if the crime in question had been committed abroad by a foreign citizen or stateless person who did not have permanent residence in Slovakia, provided that the crime was punishable in the territory where it had occurred and that the offender had been arrested in the territory of Slovakia and not extradited.”

Summary records of the 467th meeting of the Committee against Torture, 7 May 2001, U.N. Doc. CAT/C/SR.467, 16 May 2001, para. 12.

The Slovak Republic is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. Certain acts or omissions amounting to crimes against humanity as defined in Article 7 of the Rome Statute are defined as crimes under Slovak law, but most of them must have occurred during armed conflict.¹³¹ Torture is also a crime under national law, but it can take place in peacetime.¹³²

- **Slovenia:** Slovenian courts may exercise universal jurisdiction over certain conduct amounting to crimes against humanity.

Article 123 (2) of the Penal Code of Slovenia (for the text and scope, see Chapter Four, Section II) provides that the Penal Code applies to foreigners found in the territory who have committed crimes abroad against another country or any of its citizens, provided that the offence is punishable by at least three years' imprisonment under the Penal Code. Thus, this article would appear to give Slovenian courts universal jurisdiction over a number of ordinary crimes under Slovenian law punishable by more than three years' imprisonment which would amount to crimes against humanity if committed on a widespread or systematic basis.

Slovenia is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001, it had not yet ratified it.

- **South Africa:** Although as of 1 September 2001 South Africa had not expressly provided for universal jurisdiction over crimes against humanity, it intends to do so.

(1) **Draft legislation introduced by the government.** The draft implementing legislation for the Rome Statute, which was introduced in Parliament on 18 July 2001, provides for universal jurisdiction over crimes against humanity as defined in Article 7 of the Rome Statute. Section 4 (2) of the draft bill states:

“In order to secure the jurisdiction of any court referred to in section 166 (c) to (e) of the Constitution for purposes of this Act, any person who commits a crime contemplated in subsection (1) [genocide, crimes against humanity or war crimes as defined in the Rome Statute] outside the territory of the Republic if

....

¹³¹ Criminal Law, Sec. 263a (Persecution of the population) provides that persons who implement the policy of *apartheid* or performs other inhuman acts on the grounds of racial discrimination or terrorizes the civilian population during an armed conflict commit a crime and also includes a number of specified war crimes.

¹³² *Ibid.*, Sec. 259a (Torture and other inhuman and cruel treatment).

- (b) that person is not a South African citizen, but is ordinarily resident in the Republic; or
- (c) that person, after the commission of the crime, is present in the territory of the Republic. . .”¹³³

South Africa has ratified the Rome Statute and the Convention against Torture.

¹³³ Republic of South Africa, International Criminal Court Bill, as introduced on 18 July 2001, § 4 (2) (b) & (c). The full text of the bill is *obtainable from* <http://www.polity.org.za/govdocs/legislation/index.htm>. The memorandum accompanying the draft bill states: “A person who commits such a crime outside of the Republic is deemed to have committed that crime in the Republic if he or she is a South African citizen or is ordinarily resident in the Republic, if he or she is in the Republic after the commission of the crime . . .” Memorandum on the Objects of the International Criminal Court Bill, 2001.

(2) Failed attempt to open criminal investigation based on universal jurisdiction.

Sometime in November 1999, it became known that Mengistu Haile Mariam, the former head of the Dergue, which ruled Ethiopia from 1974 to 1991, had entered South Africa from Zimbabwe, where he was in exile, to obtain hospital treatment for heart problems. On 24 November 1999, Peter Takirambudde, Executive Director of the Africa Division of Human Rights Watch, wrote to Penuell Mpapa Maduna, the Minister of Justice, and to the Minister of Foreign Affairs, urging that South Africa open a criminal investigation of Mengistu Haile Mariam for alleged crimes against humanity and torture.¹³⁴ Several South African non-governmental organizations were scheduled to present evidence to the Director of Public Prosecution and the South Africa Human Rights Commission concerning Mengistu Haile Mariam.¹³⁵ The Minister of Justice stated that he had requested that the National Director of Public Prosecutions, Bulelani Ngcuku to investigate the possibility of charging Mengistu Haile Mariam with crimes against humanity, suggesting that the Minister believed that South Africa had jurisdiction over such crimes, even in the absence of a statute defining the crimes and providing for jurisdiction.¹³⁶ Others shared that view. For example, J. D. van der Vyver argued that it would have been consistent with the South African Constitution for a national court to have exercised universal jurisdiction over crimes under international law.¹³⁷ Section 232 of the Constitution provides that “[c]ustomary law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament”.¹³⁸ According to van der Vyver, Section 35 (3) (l) of the Constitution envisages that persons can be tried directly for crimes under international law.¹³⁹ That section states: that “[e]very accused person has a right to a fair trial, which includes the right . . . (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted[.]”¹⁴⁰ Similarly, such trials were, in his view, “authorised by the Supreme Court Act 59 of 1959”.¹⁴¹ That Act provides:

¹³⁴ Letter to Penuell Mpapa Maduna, Minister of Justice, from Peter Takirambudde, Executive Director, Executive Director, African Division, Human Rights Watch, 24 November 1999 (*obtainable from <http://hrw.org/press/1999/nov/menltr.htm>*).

¹³⁵ Human Rights Watch, *South Africa Urged to Prosecute Ethiopian Dictator*, 6 December 1999 (the South African organizations were: the Human Rights Committee, the Centre for Applied Legal Studies (University of Witwatersrand) and the Centre for Human Rights (Pretoria)).

¹³⁶ *Ibid.*

¹³⁷ J. D. van der Vyver, *Universal jurisdiction in international criminal law*, 24 South African Y. B. Int’l L. 107, 129-130 (1999).

¹³⁸ Constitution of the Republic of South Africa, as adopted on 8 May 1996 and amended on 11 October 1996, Act 108 of 1996 (*obtainable from <http://www.polity.org.za/govdocs/constitution/saconst.html>*), § 232.

¹³⁹ van der Vyver, *supra*, n. 136, 130.

¹⁴⁰ Constitution, § 232.

¹⁴¹ van der Vyver, *supra*, n. 136, 129.

“A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and shall, subject to the provisions of subsection (2), in addition to any powers or jurisdiction which may be vested in it by law, have the power . . .”¹⁴²

He stated that the offences and jurisdiction were vested by common law, as well as by statute, and that customary international law was part of the law of South Africa.¹⁴³

At the same time as these efforts were being undertaken, it was reported that Ethiopia had requested his extradition to stand trial in Ethiopia, where he was on trial *in absentia* on charges that included the killing of 2,000 people. It is not clear what the nature of the request was. Ethiopia stated that it had filed a formal request for his extradition, although there is no extradition treaty between Ethiopia and South Africa, but South African authorities said that they had only had an approach by the Ethiopian embassy in South Africa.¹⁴⁴ On 8 December 1999, it was reported that Mengistu Haile Mariam had returned to Zimbabwe.¹⁴⁵

· **Spain:** There are two grounds under Spanish law for exercising universal jurisdiction over conduct which may amount to a crime against humanity (for the text and scope of these provisions, see Chapter Four, Section II).¹⁴⁶

First, Article 23.2 of the *Ley Orgánica del Poder Judicial* (Organic Law of the Judicial Power), *Boletín Oficial del Estado*, No. 157, 6/1985 of 1 July 1985, provides that Spanish courts may exercise universal jurisdiction over ordinary crimes committed abroad by aliens who subsequently become Spanish nationals, provided that the act was punishable under the law of the place where it occurred and the suspect has not been acquitted, convicted or pardoned.

Second, Article 23.4 of this law provides universal jurisdiction over certain enumerated crimes and any other offence acts committed outside Spain which Spain has a duty to prosecute under international treaties. That provision states:

¹⁴² Supreme Court Act 59 of 1959, § 19 (1) (a).

¹⁴³ van der Vyver, *supra*, n. 136, 130 (citing Kriegler, *Hiemstra Suid-Afrikaanse Strafproses* 279 (5th ed. 1993)).

¹⁴⁴ Greg Barrow, *Ethiopians push SA for Mengistu extradition*, BBC News, 3 December 1999.

¹⁴⁵ *Mengistu skips South Africa*, BBC News, 8 December 1999.

¹⁴⁶ In addition to the other sources on Spain cited in the bibliography (Annex I), the following unpublished papers were used in drafting the entries on Spain in this memorandum: Valentine Bück, *Rapport Espagnol*, unpublished manuscript submitted for discussion to the *Etude Comparée des Critères de Compétence Juridictionnelle en Matière de Crimes Internationaux (Crimes Contre l'Humanité, Génocide, Torture, Crimes de Guerre, Terrorisme)*, Paris, 2 to 3 July 2001; Luc Reydam, *Spain*, a chapter in his book, *Universal Jurisdiction in International Law* (Oxford: Oxford University Press)

“The Spanish courts shall also try acts committed abroad by Spaniards or foreigners outside Spanish territory which are likely to be deemed to constitute the following offences punishable under Spanish law:

- a) Genocide.
- b) Terrorism.
- c) Piracy and the unlawful capture of aircraft.
- d) Falsification of foreign currency.
- e) Offences related to prostitution and the corruption of minors and disabled.
- f) Unlawful trafficking of psychotropic, toxic and narcotic drugs.
- g) And any other offence which Spain has a duty to prosecute under international treaties and conventions.”¹⁴⁷

Spain has ratified the Convention against Torture. It has also ratified the Rome Statute, but it has not yet enacted implementing legislation.

A Spanish judge has opened criminal investigations against former President Pinochet concerning crimes committed in Chile involving victims of Spanish, Chilean and other nationalities and a criminal investigation against the members of the Argentinian military junta concerning crimes committed during the military government which amount to crimes against humanity. An investigating judge opened a criminal investigation against former presidents of Guatemala on allegations of torture and other crimes under international law (see Chapter 8, Section II).

· **Sri Lanka:** The High Court of Sri Lanka can exercise universal jurisdiction over the crime against humanity of torture.

Article 4 (1) of the Torture Act No. 22 of 1994 provides for universal jurisdiction over torture committed abroad (for the text and scope of all relevant legislation, see Chapter Ten, Section II).

Sri Lanka is a party to the *Apartheid* Convention and the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it. Torture is a crime under national law.

· **Sweden:** Swedish courts may exercise universal jurisdiction under two legislative provisions (for the text and scope of relevant provisions, see Chapter Four, Section II) over certain conduct amounting to crimes against humanity.

(1) **Legislation.** The first provision, Section 2 of Chapter 2 of the Swedish Penal Code of 1962, entered into force 1965, provides for custodial universal

¹⁴⁷ For original Spanish text see Chapter Four, Part B.

jurisdiction over aliens domiciled in Sweden and over aliens found in the territory suspected of committing crimes abroad which are crimes under Swedish law punishable by more than six months, provided that they are crimes in the state where committed.

The second, Section 3 of Chapter 2 of the Penal Code, provides universal jurisdiction over crimes carrying a penalty of four years under Swedish law which are crimes under international law. Section 6 of Chapter 22 provides that

“[a] person guilty of a serious violation of a treaty or agreement with a foreign power or an infraction of a generally recognized principle or tenet relating to international humanitarian law concerning armed conflicts shall be sentenced for crime against international law (*folkrättsbrott*) to imprisonment for at most four years.”

It then contains an illustrative list of crimes, all of which take place in armed conflict, so it is not clear if persons “guilty of a serious violation of a treaty or agreement with a foreign power” must have committed the crime during armed conflict or if this part of the section includes crimes during time of peace.

These broad provisions would appear to permit Swedish courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity.

Sweden is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified the Statute, although it was expected to do so in 2001.

(2) Criminal investigations. In February 1995, the Public Prosecutor in Vaxjo reportedly ordered the opening of a criminal investigation against Siniša Jazić, a non-national, for the murder of Bosnian Muslims in detention camps in the territory of the former Yugoslavia. Under the circumstances, the alleged murder could have amounted to a crime against humanity. The Public Prosecutor reportedly decided not to pursue the case because of insufficient evidence.

However, in May 1999, the Public Prosecutor in Stockholm declined to open preliminary investigations of approximately 165 criminal complaints filed against former President Augusto Pinochet alleging that he was responsible for murder, torture and other crimes in circumstances suggesting that they amounted to crimes against humanity. The Public Prosecutor reportedly explained that Sweden lacked temporal jurisdiction over the complaints, citing the judgment of the United Kingdom’s House of Lords, since all of the complaints involved acts of torture.

· *Switzerland:* It is possible that Swiss courts can exercise universal jurisdiction over some conduct amounting to crimes against humanity, but to the extent that they

cannot yet do so, these gaps are to be remedied in implementing legislation for the Rome Statute.

Article 6*bis* of the *Code pénal suisse* (Swiss Criminal Code), in effect since 1 July 1983, provides that the Code is applicable to anyone who committed a crime abroad which the state is obliged to prosecute by virtue of an international treaty, if the act is also punishable in the state where it was committed and if the suspect is found in Switzerland and not extradited. Foreign law will apply if it is more favourable to the accused. However, the person may not be punished in Switzerland if the person has been acquitted in the state where the act was committed. Article 6*bis* states:

“1. This Code shall apply to anyone who has committed a crime or offence in a foreign country which Switzerland, by virtue of an international treaty, has undertaken to prosecute, if such act is also punishable in the country in which it was committed and if the perpetrator is in Switzerland and has not been extradited to the foreign country. The law of the foreign country will, however, apply if it is more favourable to the accused.

2. The perpetrator may not be punished in Switzerland:

if he has been acquitted in the foreign country where the act was committed for the same act by a final judgment;

if he has served the sentence given against him in the foreign country, if there was remission of the sentence or if the time-limit for enforcement of the sentence has expired.

If he has served only part of the sentence given against him in the foreign country, that part of the sentence will be taken into account in the sentence to be given against him.”¹⁴⁸

¹⁴⁸ Article 6*bis* provides:

“1. Le présent code est applicable à quiconque aura commis à l'étranger un crime ou un délit que la Confédération, en vertu d'un traité international, s'est engagé à poursuivre, si l'acte est réprimé aussi dans l'Etat où il a été commis et si l'auteur se trouve en Suisse et n'est pas extradé à l'étranger. La loi étrangère sera toutefois applicable si elle est plus favorable à l'inculpé.

2. L'auteur ne pourra plus être puni en Suisse:

s'il a été acquitté dans l'Etat où l'acte a été commis, pour le même acte par un jugement passé en force;

s'il a subi la peine prononcée contre lui à l'étranger, si cette peine lui a été remise ou si elle est prescrite.

S'il n'a subi à l'étranger qu'une partie de la peine prononcée contre lui, cette partie sera imputée sur la peine à prononcée.”

Code pénal suisse, du 21 décembre 1937, Art. 6*bis* (introduit par le ch. I de la LF du 17 déc. 1982, en vigueur depuis le 1er juillet 1983 (RO 1983 543 544; FF 1982 II 1)). (English translation by Amnesty International). For the Swiss government's explanation of this provision, see Switzerland's Initial Report to the UN Committee against Torture, UN Doc. CAT/C/5/Add.17,

para. 52.

The government has stated that “[t]he principle of *aut dedere aut judicare* is known to Swiss legislation (see arts. 5 and 6 *bis* CP). Furthermore, Switzerland has confirmed it by ratifying various international conventions.”¹⁴⁹

Switzerland is a party to the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified the Statute, although it plans to do so in 2001. Although Switzerland does not define crimes against humanity as crimes under Swiss law or have legislation expressly providing for universal jurisdiction over them, the government has stated that it will remedy these gaps in its Penal Code and to federal civil courts with universal jurisdiction over these crimes in the legislation implementing the Rome Statute.¹⁵⁰

¹⁴⁹ Initial report of Switzerland to the Committee against Torture, U.N. Doc. CAT/C/5/Add.17 (1989), para. 55 (footnote omitted).

¹⁵⁰ Message of the Federal Council; *Message relatif au Statut de Rome de la Cour pénale internationale, à la kiu fédérale sur la coopération avec la Cour pénale internationale ainsi qu'à une révision du droit pénal, 15 novembre 390* (obtainable from http://www.eda.admin.ch/sub_dipl/f/home/info/trdisc.html and <http://www.iccnw.org>) (“L’ordre juridique suisse ne connaît pas la notion de crime contre l’humanité. Toutefois, dans la plupart des cas, les actes individuels sont d’ores et déjà couverts par les dispositions actuelles du code pénal. Afin d’assurer la poursuite sans lacune des crimes contre l’humanité en Suisse, les modifications nécessaires devraient être introduites dans le droit suisse dans les meilleurs délais.”).

Switzerland cooperated with the Rwanda Tribunal in arresting and surrendering a person charged with crimes against humanity, among other crimes.¹⁵¹ However, its courts have declined to exercise universal jurisdiction over persons accused of crimes against humanity.¹⁵² In contrast, Swiss courts have accepted jurisdiction over persons accused of committing crimes against persons with dual Swiss nationality on the basis of passive personality jurisdiction.¹⁵³

¹⁵¹ On 28 April 1997, Swiss *Tribunal fédéral* (Federal Tribunal) ordered the surrender of Alfred Musema, who had been arrested in Switzerland in February 1995 and then under investigation by Swiss military judicial authorities, to the International Criminal Tribunal for Rwanda on charges of crimes against humanity and other crimes under international law. For a discussion of this case, see Chapter Four, Section II.

¹⁵² On 30 April 1999, a military court held that, even if Switzerland had an obligation under international law to repress crimes against humanity, the court did not have jurisdiction under the Swiss Military Penal Code over charges against a Rwandan of crimes against humanity committed in Rwanda. *Fulgence Niyonteze, jugement (Tribunal militaire de Division 2, 30 avril 1999)*, 13. It explained that

“même si l’on admettait que la Suisse a, en vertu du droit international coutumier, une obligation de réprimer les crimes contre l’humanité et de crime de génocide où qu’ils aient été commis, cela ne signifie pas encore nécessairement qu’en l’absence de toute disposition légale, le Tribunal de céans puisse exécuter cette obligation ;

Qu’en effet, en application du principe nulla poene sine lege (art. 1er CPM), un juge pénal ne peut condamner que celui qui a commis une infraction prévue par la loi et ne peut prononcer qu’une peine ou une mesure également prévue par la loi ;

Que les notions de crimes contre l’humanité et de crime de génocide ne se confondent pas en Suisse avec des normes précises qu’un juge peut directement appliquer pour prononcer une sanction, contrairement aux situations invoqués par l’auditeur et existant dans de nombreux autres pays ;

• • • •

Que’en conséquence, même s’il admettait sa compétence, le Tribunal de céans ne pourrait pas forcément condamner l’accusé à une peine pour crimes contre l’humanité et crime de génocide en l’absence de base légale suffisante et qui plus est de sanction pénale[.]”

Ibid., 11–12.

However, on appeal, the First Military Appeals Court is reported to have stated that Article 109 of the Military Penal Code might cover, in addition to violations of international humanitarian law, acts of genocide, at least to the extent that they were committed in connection with an armed conflict, and a commentator has suggested that the reasoning of this decision might apply with equal force to crimes against humanity. Cottier, *supra*, 227. For further discussion of this case with regard to jurisdiction over war crimes, see Chapter Four, Section II; and with regard to jurisdiction over genocide, see Chapter Eight, Section II.

¹⁵³ A Geneva prosecutor has opened a criminal investigation of former General Pinochet concerning the “disappearance” of person with Chilean and Swiss nationality and sought his extradition from the United Kingdom to Switzerland. A Swiss court has requested the extradition from Argentina of former Admiral and deputy military junta member Emilio Massera

· ***Syrian Arab Republic:*** It appears that two legislative provisions permit Syrian courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity committed abroad (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 20 of Title I (Competence), Section 3 (Personal Competence) of the Syrian Penal Code of 1949, as amended 1953 provides for jurisdiction over crimes in the Code committed by foreigners abroad. Second, Article 23 of Title I, Section 4 (Comprehensive Competency) provides for jurisdiction over crimes committed by foreign residents, without any territorial restriction, when extradition has either not been requested or has not been accepted.

Syria is a party to the *Apartheid* Convention. It has signed the Rome Statute but as of 1 September 2001 it had not yet ratified it. The Penal Code does not provide that crimes against humanity are crimes under national law, so prosecutions based on universal jurisdiction would have to be brought for ordinary crimes, such as murder, abduction, assault or rape.

· ***Tadjikistan:*** There are two bases for exercising universal jurisdiction over crimes against humanity under the 1998 Criminal Code of the Republic of Tadjikistan.

First, Paragraph 1 of Article 15 provides for jurisdiction over stateless permanent residents who committed crimes under Tadjikistan law outside the country (for the text and scope, see Chapter Four, Section II above). This would permit national courts to exercise universal jurisdiction over conduct which is a crime under national law, such as murder, torture and rape, under circumstances when it would amount to a crime against humanity. Second, Article 15 (2) of the Criminal Code provides for jurisdiction over foreigners and stateless persons not resident in Tadjikistan who commit crimes under the Code when the crime is prohibited by norms of international law or treaties (for the text and scope, see Chapter Four, Section II above).

in December 1998 for the “disappearance” of a person with Chilean and Swiss nationality in Argentina in 1977.

Tajikistan is a party to the Convention against Torture and, as a successor state to the USSR, it would be bound by the *Apartheid* Convention. It has signed the Rome Statute and ratified it, but as of 1 September 2001 it had not yet enacted implementing legislation. However, it has defined torture as a crime under national law in terms which include some of the conduct in the definition in the Convention against Torture.¹⁵⁴

· ***Trinidad and Tobago:*** Although Trinidad and Tobago does not have universal jurisdiction over crimes against humanity, it has ratified the Rome Statute and is reliably reported intends to provide for universal jurisdiction over all crimes in the Statute, including crimes against humanity.

· ***Turkey:*** Article 6 (b) of the Penal Code (for the text, see Chapter Four, Section II above) provides for universal jurisdiction over crimes carrying a penalty of at least three years, provided that there is no extradition treaty with the territorial state or state of the suspect's nationality and the prosecution is authorized by the Minister of Justice. This article appears to be sufficiently broadly worded to include conduct which would amount to crimes against humanity when it would constitute ordinary crimes, such as murder, abduction, assault or rape.

Turkey is a party to the Convention against Torture. It has not signed the Rome Statute and as of 1 September 2001, it had not yet ratified it.

· ***Turkmenistan:*** There are two legislative provisions, whose origins can be traced back to Russian universal jurisdiction legislation of 1903 (see Chapter Two, Section II.A), permitting national courts to exercise universal jurisdiction over certain conduct amounting to crimes against humanity abroad.

Article 8 (1) of the Turkmenistan Criminal Code of 1997, entered into force 1 January 1998, provides:

“Nationals of Turkmenistan and permanent residents of Turkmenistan without citizenship who have committed a crime outside Turkmenistan, provided for under the criminal laws of Turkmenistan, shall be subject to responsibility under criminal laws of Turkmenistan, if responsibility for the act as committed, is provided for under the criminal laws of the state on whose territory it has been committed and the said persons have not been convicted in a foreign state. In this case, a penalty may not be imposed that exceeds the upper limit for the penalties provided for under the law in force in the *locus criminis*.”¹⁵⁵

¹⁵⁴ Criminal Code, Art. 117 (Torture).

¹⁵⁵ Turkmenistan Criminal Code of 1997, entered into force 1 January 1998, Art. 8 (1) (English)

Second, Article 8 (2) states:

translation by Amnesty International).

“Foreign nationals and stateless persons who do not reside permanently in Turkmenistan, are subject to responsibility under the criminal laws of Turkmenistan for a crime committed outside Turkmenistan, if the crime is directed against Turkmenistan or its citizens and also in the cases provided for by international treaties entered into by Turkmenistan, if they have not been convicted in a foreign state and criminal proceedings have been instituted against them on the territory of Turkmenistan.”¹⁵⁶

Turkmenistan is a party to the Convention against Torture. It has not signed the Rome Statute and, as of 1 September 2001, it had not yet ratified it. The Criminal Code does not define crimes against humanity as crimes under national law, except for torture, so prosecutions for crimes against humanity would have to be based on conduct that was also an ordinary crime under national law, such as murder, abduction, assault or rape. Such crimes are subject to statutes of limitations. There is no requirement in the Criminal Code that a political official, such as the Minister of Justice, approve an investigation or prosecution. The Criminal Code does not include provisions on immunity or require that the conduct abroad be a crime in the territorial state.

· *Ukraine:* Ukrainian courts can exercise universal jurisdiction over conduct amounting to crimes against humanity in two situations: stateless persons suspected of crimes abroad and foreigners suspected of crimes abroad in circumstances provided by treaties (for the text and scope of these provisions, see Chapter Four, Section II).

First, Article 5 of the Criminal Code of 1997 provides that stateless persons who have committed crimes abroad can be tried in the Ukraine. Second, foreign nationals can be held responsible for crimes abroad under Ukrainian criminal law in cases provided for in international treaties.

In addition, it may be possible to exercise universal jurisdiction pursuant to Article 9 of the Constitution, which provides that international law is part of national law. For a discussion of this possibility, see Chapter Four, Section II

The Ukraine is a party to the *Apartheid* Convention and the Convention against Torture. It has signed the Rome Statute, but as of 1 September 2001 it had not yet ratified it. It does not appear to have expressly provided that crimes against humanity are crimes under national law, but Article 5 would appear to give courts jurisdiction over conduct committed abroad, such as murder and rape, which are crimes under national law, when they amount to crimes against humanity.

· *United Kingdom:* United Kingdom courts can exercise universal jurisdiction pursuant to Section 134 of the Criminal Justice Act, 1988 over the crime against humanity of torture which occurred after 8 December 1988 and over the continuing

¹⁵⁶ *Ibid.*, Art. 8 (1).

torture inflicted on families of “disappeared” persons whose fate has not been resolved even when the enforced disappearance – also a crime against humanity – occurred before that date (see discussion in Chapter Ten, Section II, which includes the text of this provision).

The United Kingdom is a party to the Convention against Torture. It has signed the Rome Statute, but it had not yet ratified it as of 1 September 2001, although it was expected to do so in the first half of 2001. It has enacted implementing legislation for the Rome Statute that provides for universal jurisdiction in England and Wales over residents, but not over all persons present in the country.

· **United States:** As noted above in Chapter Two, Section III.A, United States military courts and commissions established pursuant to Allied Control Council Law No. 10 and other authority exercised universal jurisdiction over persons accused of crimes against humanity which occurred during the Second World War in such cases as *In re List (Hostages Case)*. However, no legislation now expressly provides for civilian or military courts with universal jurisdiction over crimes against humanity, apart from torture (see discussion below in Chapter Ten, Section II).

It is possible that United States military courts or commissions can continue to exercise universal jurisdiction over such crimes, at least to the extent that they are linked in some manner to armed conflict, although there seems to be no definitive jurisprudence or commentary on the subject. It appears as if the military courts and commissions immediately after the Second World War considered crimes against humanity as war crimes writ large for the purposes of jurisdiction, although no link to armed conflict was required under Allied Control Council Law No. 10.

However, there appears to be no legislation expressly authorizing Federal or state civilian courts to exercise universal jurisdiction over crimes against humanity (apart from torture, as described in Chapter Ten, Section II, or certain conduct which would be prohibited as an ordinary crime over which Federal courts may exercise universal jurisdiction). For the scope of the jurisdiction of military and civilian courts over war crimes (which also included crimes against humanity in cases involving the Second World War), see Chapter Four, Section II above.

In 1985, a Federal District Court authorized the extradition of a person alleged to have committed acts in Germany and other countries during the Second World War which amounted to crimes against humanity, including genocide, to Israel.¹⁵⁷ In that case, the District Court explained:

¹⁵⁷ *In matter of Demjanjuk*, 603 F. Supp. 1468 (N.D. Ohio, *aff'd*, 776 F.2d 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986)).

“The universality principle is based on the assumption that some crimes are so universally condemned that the perpetrators are the enemies of all people. Therefore, any nation which has custody of the perpetrators may punish them according to its law applicable to such offences . . . Israel or any other nation . . . may undertake to vindicate the interest of all nations by seeking to punish the perpetrator of such crimes.”¹⁵⁸

Senior United States government officials have recognized the existence of universal jurisdiction over crimes against humanity. In 1997, after reports that Pol Pot, the head of the Khmer Rouge, had been taken into custody by other members of the Khmer Rouge, the United States Secretary of State, Madeline Albright, and other high-level United States officials pressed states with universal jurisdiction legislation, including Canada, Denmark, Israel and Spain, to accept custody with a view to a possible trial either by an international criminal tribunal for Cambodia or, if it proved impossible to establish such a tribunal, by their national courts.¹⁵⁹ Indeed, the following year, State Department Spokesman James P. Rubin expressly stated with respect to a possible trial of Pol Pot that “[a] third country which asserts universal jurisdiction could, of course, try him.”¹⁶⁰ The State Department has also indicated in August 2000 that states could exercise universal jurisdiction over crimes against humanity which it alleged Saddam Hussein, the head of state of Iraq, had committed.¹⁶¹

¹⁵⁸ *Ibid.*,

¹⁵⁹ See, for example, Mark Kennedy & Giles Gherson, *Canada in a spin over U.S. request*, *The Ottawa Citizen*, 14 June 1997; see also Elizabeth Becker, *US Spearheading Effort to Bring Pol Pot to Trial*, *New York Times*, 24 June 1997; *Editorial, A Trial for Pol Pot*, *New York Times*, 24 June 1997; Anthony De Palma, *Canadians Surprised by Proposal to Extradite Pol Pot*, *New York Times*, 24 June 1997; Barbara Crossette, *Beijing Says It Won't Go Along with Creation of Pol Pot Tribunal*, *New York Times*, 25 June 1997; *US to Press for Pol Pot Trial*, *New York Times*, 30 July 1997. In addition, see Steven Erlanger, *Death of Pol Pot: The Inner Circle - U.S. Wants to Try Khmer Rouge Leaders*, *New York Times*, 18 April 1998.

¹⁶⁰ U.S. Department of State, Daily Press Briefing, 13 April 1998, obtainable from: <http://secretary.state.gov>.

¹⁶¹ The United States Department of State has accused Saddam Hussein of crimes against humanity. U.S. Department of State, *Saddam Hussein's Iraq*, 13 September 1999 (updated 24 March 2000), obtainable from: <http://usinfo.state.gov>. In August 2000, Ambassador-at-Large for War Crimes Issues David Scheffer indicated that in addition to the possibility of establishing *ad hoc* international criminal tribunals with jurisdiction over these crimes, the United States was looking at the possibility of “various national courts around the world that might be able to exercise such jurisdiction” and that the United States was “very prepared to assist anyone out there to pursue this issue”. *On-the-Record Briefing on the Tenth Anniversary of the Iraqi Invasion of Kuwait*, 2 August 2000, obtainable from: <http://www.state.gov>.

David Scheffer, then Ambassador at Large for War Crimes, has recounted a number of efforts by the United States to persuade other states to exercise universal jurisdiction over these suspects and other persons suspected of crimes against humanity from Turkey and Ethiopia.¹⁶²

· **Uruguay:** Uruguayan courts may exercise universal jurisdiction over conduct amounting to crimes against humanity when it violates national law, such as murder, abduction, assault and rape.

Article 10 (7) of the current Uruguayan Penal Code (for the text, see Chapter Four, Section II above) provides that courts have universal jurisdiction to try crimes which were committed abroad, when this is provided for in national law or in treaties.

Uruguay is a party to the Convention against Torture, the Inter-American Convention on Torture and the Inter-American Convention on the Forced Disappearances. It has signed the Rome Statute, but as of 1 September 2001, it had not yet ratified it.

· **Uzbekistan:** There are two bases for courts to exercise universal jurisdiction over certain conduct which may amount to crimes against humanity (for the text and scope of these provisions, see Chapter Four, Section II).

¹⁶² David Scheffer, *Opening Address*, 35 New Eng. L. Rev. 233, 234-235 (2001).

First, the first unnumbered paragraph of Article 12 of the 1994 Uzbekistan Criminal Code, as amended 1998, provides that national criminal law applies to stateless persons who have committed a crime outside the national territory, provided that they have not served a sentence for the crime in the place where it was committed. Second, the third unnumbered paragraph of Article 12 of the Criminal Code provides national courts with universal jurisdiction over foreign citizens and stateless persons not permanently resident in Uzbekistan for offences under the Criminal Code committed outside the country only when international treaties or agreements so provide.¹⁶³

Uzbekistan is a party to the Convention against Torture, and as a successor state to the USSR it is bound by the *Apartheid* Convention. It has not signed the Rome Statute and as of 1 September 2001 had not yet ratified it. It is not known if Uzbekistan has defined crimes against humanity as crimes under national law, so prosecutions may have to be based on ordinary crimes, such as murder, abduction, assault or rape.

· *Vanuatu*: National courts can exercise universal jurisdiction over the crimes against humanity of slave trading and trafficking in persons.

Paragraph 1 of Article 5 (International offences) of the Penal Code provides:

¹⁶³ The third paragraph of Article 12 provides:

“Foreign citizens and also persons without citizenship, not living permanently in Uzbekistan, are subject to responsibility under the present Code for crimes committed outside its borders, only in cases foreseen by international treaties or agreements.” (English translation by Bill Bowring, University of North London)

The government has stated that “[a]liens and stateless persons not permanently resident in Uzbekistan can only be held liable under the Uzbek Criminal Code for crimes committed outside Uzbekistan when international treaties or agreements so provide.” Initial report of Uzbekistan to the Committee against Torture, U.N. Doc. CAT/C/Add.3, 24 August 1999), para. 106.

“The criminal law of the Republic shall apply to piracy, hijacking of aircraft, traffic in persons, slave trading and traffic in narcotics committed within or beyond the territory of the Republic.”¹⁶⁴

Aliens may be tried under this provision for crimes committed abroad, provided that they have been arrested in Vanuatu, extradition has not been requested and the Prosecutor has consented to a prosecution.¹⁶⁵ Nothing in Article 5 prohibits opening a criminal investigation of a suspect who is not in the country.

Vanuatu has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified it. Slavery and trafficking in persons are defined as crimes under national law.¹⁶⁶

· **Venezuela:** Article 4 (9) of the Venezuelan Penal Code provides that courts have jurisdiction to try and punish crimes which international law characterizes as atrocities and against humanity committed abroad, by nationals or foreigners, when they are subsequently found in Venezuelan territory (for the full text of this provision, see Chapter Four, Section II).

Venezuela is a party to the *Apartheid* Convention, the Convention against Torture, the Inter-American Convention on Torture and the Rome Statute, but it has not enacted legislation specifically implementing any of these treaties. It is a party to the Inter-American Convention on the Forced Disappearances and it has implemented national legislation (see Chapter Twelve).

· **Viet Nam:** There are two provisions which permit Vietnamese courts to exercise universal jurisdiction over some conduct amounting to crimes against humanity, such as murder or rape (for the text and scope, see Chapter Four, Section II).

First, Article 6 (2) of the Criminal Code of the Socialist Republic of Vietnam gives courts universal jurisdiction when “provided for by international agreements that the Socialist Republic of Vietnam has signed or recognized”. Second, Article 6 (1) of the

¹⁶⁴ Laws of the Republic of Vanuatu, Revised Edition 1988, Act 17 of 1981, Penal Code, Art. 5 (1).

¹⁶⁵ *Ibid.*, Art. 5 (2) (“No alien may be tried in the Republic for such an offence committed abroad unless he has been arrested in the Republic and his extradition has not been applied for, and the Public Prosecutor has consented in writing to his prosecution.”).

¹⁶⁶ Penal Code, Art. 102 (Slavery). However, these crimes are subject to a statute of limitations of 20 years under Article 15 of the Penal Code and to a defence of superior orders under Article 22, contrary to the rule recognized in the Nuremberg Charter.

Criminal Code provides for universal jurisdiction over crimes under national law committed abroad by aliens resident in the state.

Vietnam is a party to the *Apartheid* Convention, but it has not signed the Rome Statute and as of 1 September 2001 it had not yet ratified the Rome Statute.