

REPORTS AND DOCUMENTS

National implementation of international humanitarian law

Biannual update on national legislation and case law July–December 2006

A. Legislation

Argentina

*Law No. 26, on the implementation of the Rome Statute of the International Criminal Court,*¹ was adopted on 15 December 2006 and entered into force on 5 January 2007. The purpose of this law is to implement the provisions of the Rome Statute and to regulate co-operation and assistance between the State of Argentina and the International Criminal Court (ICC). It sets out the punishment, at the national level, for genocide, crimes against humanity and war crimes, as well as for offences against the administration of justice of the ICC. Crimes committed on Argentine territory or in areas under its jurisdiction, and those committed by state agents abroad in the exercise of their functions, fall within the scope of the law. So do crimes committed by Argentine nationals outside Argentine territory or by persons domiciled in Argentina. Under this law there are no statutory limitations for the core crimes defined under the Rome Statute.

Cyprus

*Law 23 (III)/2006,*² which amends the Rome Statute of the International Criminal Court (ratification) law of 2002, entered into force on 28 July 2006, following its

- 1 Ley de Implementación del Estatuto de Roma del 17 de julio de 1998, No. 26. Adopted on 15 December 2006, entered into force on 5 January 2007, published on 9 January 2007.
- 2 Law 23 (III)/2006 amending the Rome Statute of the International Criminal Court (ratification) law of 2002.

publication in the Official Gazette. This law defines genocide, crimes against humanity and war crimes as criminal offences punishable by life imprisonment. It also deems punishable certain ancillary acts: participating in the commission of any of the core crimes under the Rome Statute; inciting, inducing or procuring another to commit such offences; and attempting or conspiring to commit such offences. The Assize Court is given jurisdiction over the crimes defined in the law, irrespective of the place of commission and the nationality of the perpetrator. The court may take into consideration the International Criminal Court's Elements of Crimes when interpreting and applying the provisions of the law. Criminal prosecution for these crimes may be conducted only by the Attorney General, or initiated on his written approval.

Guatemala

Presidential decree No. 264,³ on the creation of a permanent commission on missing persons, was adopted on 25 May 2006 and published on 26 May 2006. It entered into force on 27 May 2006. This decree establishes a temporary commission to coordinate the efforts of state authorities and civic organizations in ascertaining the fate of persons who disappeared during the internal armed conflict between 1 January 1960 and 31 December 1996. The decree also stipulates how the commission shall be constituted and defines its functions. The commission's term is for one year, but may be extended by decision of the President. It will cease to exist if the Congress approves the creation of a national commission with an equal or greater scope of action.

Lebanon

Decision No. 38 of the Council of Ministers, approving the establishment of a national information bureau on missing persons was adopted on 18 February 2006 on the recommendation of the Lebanese Ministry of National Defence. This decision approves the creation of a national information bureau on missing persons. The bureau's mandate is to collect information about captured enemy soldiers from national detaining authorities, to register documents and information about enemy soldiers who died in detention or on the battlefield and, wherever possible, to facilitate the return of human remains and the personal effects of the deceased. The bureau will store information, gathered from the ICRC's Central Tracing Agency, about Lebanese prisoners of war and missing persons. It will also seek information about deceased Lebanese nationals and attempt to recover their bodies. Finally, it will pass on mail from prisoners of war and civilian detainees to the Central Tracing Agency, and collect mail from Lebanese detainees for distribution to their families.

3 Presidential decree on the creation of a permanent commission on missing persons (Comisión del Organismo Ejecutivo para la Búsqueda de Personas Desaparecidas durante el Conflicto Armado Interno), Acuerdo Gubernativo No. 264-2006.

FYR Macedonia

*The law on the prohibition of the development, production, stockpiling, and use of chemical weapons*⁴ was adopted on 31 May 2006 and published in the Official Gazette on 8 June 2006. This law sets out the obligations, prohibitions and limitations deriving from the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons. The chemical weapons to which the prohibitions apply are defined by the law, which also establishes a commission to implement the Convention. The law foresees that toxic chemicals may be produced for purposes not prohibited under the Convention. However, their production is conditional on a licence being issued by the Ministry of Health. The licence must first be approved by the ministries of the Interior, Finance, Environment and Physical Planning, and the Protection and Rescue Directorate. The same requirements apply to the import, export and transfer of toxic chemicals for purposes not prohibited under the Convention. The responsibility for overseeing the implementation of the Convention and of the law rests with the Ministry of the Interior and the Protection and Rescue Directorate. The law covers international inspections. Finally, the law includes provisions for punishing violations.

Mexico

*The law on the use and protection of the emblem and designation of the red cross*⁵ was adopted on 19 December 2006 and published in the Official Journal on 23 March 2007. This law identifies the entities that are entitled to make use of the red cross and other emblems provided for under the Geneva Conventions and their Additional Protocols. It sets out the penalties for misusing the emblem and entrusts the Ministry of the Interior with the responsibility to oversee the implementation of the law.

Moldova

Order No. 275 of the Ministry of Defence, approving the manual on the application of the law of armed conflict by the national army of the Republic of Moldova,⁶ was adopted on 5 December 2006. This order denotes the Ministry of Defence's approval of the manual on the application of the law of armed conflict by the national army of the Republic of Moldova. It calls on the chief of general staff of the national army to ensure that international humanitarian law (IHL) is incorporated into the education of army servicemen as well as into their practical

4 Law on the prohibition of the development, production, stockpiling, and use of chemical weapons, published in the Official Gazette No. 71/06 of 8 June 2006.

5 Ley para el uso y protección de la denominación y del emblema de la cruz roja, 19 December 2006.

6 Ministry of Defence Order No. 275 of 5 December 2006 on the approval of the manual on the application of the law of armed conflict by the national army of the Republic of Moldova.

training; it also calls for a system of periodic testing of knowledge in the field of IHL to be established and implemented. The manual enjoins commanders, legal advisers, and military medical personnel to abide by IHL and lists the basic IHL principles to be observed during combat training and military operations. It covers the treatment of the wounded, sick and shipwrecked and of prisoners of war, medical and religious personnel and civilians, and sets out rules for the protection of medical units and transports. It also includes disciplinary sanctions for violations of IHL.

Senegal

Decree No. 2006-783,⁷ relating to the creation of a national commission in charge of implementing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, was adopted on 18 August 2006. This decree replaces Order No. 05403 of 5 June 1999, as modified by Order No. 7828 of 27 October 1999. It establishes a new national commission for implementing the Ottawa Convention. The commission will be responsible for the development of a national strategy for anti-personnel mine action in Senegal, and for preparing and submitting periodic reports and other information required under the Convention. It will develop policies for providing effective assistance to anti-personnel mine victims and for ensuring their social reintegration, as well as policies for the economic reconstruction of geographical areas affected by anti-personnel mines. It will also follow up on co-operative arrangements between Senegal and its partners in the areas mentioned above. The commission will supervise the activities of a national mine action centre. The decree contains stipulations on the composition of the commission, its secretariat and its operating procedures.

Decree No. 2006-784,⁸ on the creation of the National Mine Action Centre of Senegal (CNAMS), was adopted on 18 August 2006. The decree creates a national mine action centre and defines its mandate and responsibilities. The centre will be responsible for implementing the national strategy for anti-personnel mine action in Senegal, as defined by the national commission on the Ottawa Convention. The composition of the centre, as well as the functions of its constituent entities, is provided for in the decree. The centre will include a cabinet that will advise and assist the director in managing the de-mining programme and in supervising management practices and operational procedures in mine victims' assistance. The centre will serve as the secretariat of the national commission and submit to it an annual report on the implementation of the Convention.

7 Décret No. 2006-783 relatif à la création de la Commission nationale chargée de la mise en oeuvre de la Convention sur l'interdiction de l'emploi, du stockage, de la production et du transfert des mines antipersonnel et sur leur destruction signée le 5 décembre 1997 à Ottawa.

8 Décret No. 2006-784 portant création du Centre national d'Action antimines au Sénégal (CNAMS).

United States

*The Military Commissions Act of 2006*⁹ was signed by the President on 17 October 2006. The act amends Title 10, United States Code, to authorize trial by military commission for violations of the law of war. Chapter 47A of Title 10, United States Code, provides definitions for the terms “unlawful enemy combatant” and “lawful enemy combatant”. It establishes procedures for using military commissions to try alien “unlawful enemy combatants” who are engaged in hostilities against the United States for violations of the law of war and other offences. It authorizes the president to establish military commissions for such offences, and declares that a military commission established under this chapter is a regularly constituted court as required by common Article 3 of the Geneva Conventions. Any alien “unlawful enemy combatant” is subject to trial by military commission under Chapter 47A.

Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission. The act details how cases are to be assigned and lists the criteria for eligibility; it does so for military judges as well as for prosecution and defence lawyers.

Matters of pretrial procedure – charges and specifications, the prohibition of compulsory self-incrimination, the treatment of statements obtained by torture or coercion – are elaborated in the act. So, too, are the trial procedures dealing with procedures and rules of evidence, the duties of prosecution and defence lawyers, the trial sessions, the presence and exclusion of the accused during proceedings, the protection and introduction of classified information, oaths, former jeopardy, pleas, the opportunity to obtain witnesses and other evidence, defences and rulings.

Regarding post-trial procedure and the review of military commissions, the act states that “a finding or sentence of a military commission ... may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused”. It also states that a military commission’s findings and the sentence pronounced by it shall be reported to the convening authority, to which the accused may submit matters for its consideration. The convening authority shall, in turn, have discretion to set aside or modify a finding of guilt and to order a proceeding in revision or a rehearing. Moreover, in each finding of guilt, the convening authority shall refer the case to the Court of Military Commission Review, which is established by the Secretary of Defence, and can act only in matters of law. Once all other appeals have been waived or exhausted, the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction, but only in matters of law, to determine the validity of a final judgment rendered by a military commission. The Supreme Court may review, by writ of certiorari, the final judgment of the Court of Appeals.

9 Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (17 October 2006), enacting Chapter 47A of Title 10 of the United States Code (also known as Senate Bill 3930).

The act lists the crimes for which a person can be tried by a military commission. These include the following: the murder of protected persons, attacking civilians, civilian objects, or protected property, pillaging, taking hostages, using protected persons or property as a shield, torture, cruel or inhuman treatment, mutilating or maiming, treachery or perfidy, improperly using a distinctive emblem, rape, terrorism, spying and conspiracy. The act adds that no person “may invoke the Geneva Conventions or any protocols thereto in any *habeas corpus* or other civil action or proceeding to which the United States ... is a party as a source of rights in any court of the United States or its States or territories”. It also provides a definition of the term “grave breach of common Article 3” of the Geneva Conventions, which includes, in particular, torture, cruel or inhuman treatment, performing biological experiments, murder, rape and taking hostages.

*The Geneva Distinctive Emblems Protection Act of 2006*¹⁰ was signed by the President on 12 January 2007. This act amends the federal criminal code to prohibit wearing or displaying the red crescent or the red crystal, or any other insignia imitating such emblems, for the fraudulent purpose of claiming membership of an authorized National Society that uses such emblems, the International Committee of the Red Cross (ICRC) or the International Federation of Red Cross and Red Crescent Societies (Federation). The act also prohibits the use of the designations “red crescent” or “third protocol emblem”. It imposes a fine and/or imprisonment of up to six months for such violations. The act authorizes the use of these emblems and designations, consistent with the Geneva Conventions, by the sanitary and medical services of the armed forces of states that are party to the Geneva Conventions of 12 August 1949, as well as by recognized National Societies, the ICRC and the Federation, and their respective duly authorized employees and agents. The act also authorizes the Attorney General to bring suit when the provisions of the act are violated.

Uruguay

Law 18.026, implementing the Rome Statute of the International Criminal Court,¹¹ entered into force on 25 September 2006 and was published in the Official Gazette on 4 October 2006. The purpose of this law is to implement measures regulating assistance and co-operation with the International Criminal Court in the fight against genocide, crimes against humanity and war crimes. The law applies to crimes that are committed – or the effects of which are felt – on the territory of Uruguay or in areas under its jurisdiction. It applies also to crimes committed

10 Geneva Distinctive Emblems Protection Act of 2006 (Short Title) – Public Law No. 109/481 – A Bill to amend Title 18, United States Code, to prevent and repress the misuse of the Red Crescent distinctive emblem and the Third Protocol (Red Crystal) distinctive emblem. HR6338.

11 Ley 18.026 ‘Establécense normas para efectivizar la cooperación con la Corte Penal Internacional en la lucha contra el genocidio, los crímenes de lesa humanidad y crímenes de guerra (Código Penal).

abroad by Uruguayan nationals in cases in which the accused has not been acquitted or sentenced abroad; or, if the accused has been sentenced, where the sentence has not been completed. The law states that there is no statute of limitations for the prosecution of crimes of genocide, crimes against humanity, or war crimes and that no amnesty, grace or any other type of clemency is permitted for such crimes. It makes superiors responsible for the conduct of their subordinates. Moreover, an accused person may not claim, for the purpose of evading criminal responsibility, that he or she was merely obeying a superior's orders.

B. National committees on international humanitarian law

Ecuador

*Presidential decree No. 1741,*¹² *establishing a national committee for the application of international humanitarian law*, was adopted on 16 August 2006. This decree establishes a permanent national committee – the Comisión Nacional para la aplicación del derecho internacional humanitario – for the implementation of international humanitarian law (IHL) in Ecuador. The decree defines the composition of the committee, and provides that the member representing the Ecuadorean Red Cross will preside over the committee and act as its secretary. The mandate of the committee requires it to carry out the following tasks: advising government authorities on acceding to international instruments that are relevant to IHL, and preparing draft laws, regulations and instructions to harmonize domestic law with the principles and norms of IHL, international criminal law and international human rights law. The committee will also promote the dissemination of IHL and its incorporation into training programmes at all levels of the educational system and of state institutions. It will also establish relations with national IHL committees in other countries and with the ICRC, and promote cooperation between the government and international organizations in order to strengthen respect for IHL.

Kuwait

Ministerial Decision No. 244/2006, concerning the establishment of a national committee on international humanitarian law, was adopted on 3 October 2006. This decision establishes a national committee on international humanitarian law (IHL) in Kuwait, to be chaired by the Assistant Under-Secretary of Legal Affairs and International Relations and to be composed of representatives from different ministries. The committee's functions include studying national legislation

12 Presidential decree No. 1741 establishing a national IHL committee, Decreto No. 1741 de Alfredo Palacio Gonzalez, Presidente Constitucional de la Republica.

relevant to IHL, providing advice on the national implementation of IHL, and setting up IHL training and dissemination programmes.

Madagascar

Decree No. 2006-435,¹³ relating to the creation, organization and operation of a national committee on international humanitarian law, was adopted on 27 June 2006. This decree establishes a national committee in Madagascar, with a mandate to support the national implementation of international humanitarian law (IHL) treaties to which Madagascar is a state party, to promote the dissemination of IHL in Madagascar, to advise the government on new developments in IHL, and to propose measures to harmonize national legislation with relevant international treaties. The decree contains stipulations on the composition of the committee, its organization and its operating procedures.

C. Case law

Bosnia and Herzegovina

On 11 July 2006, the Court of Bosnia and Herzegovina (BiH) found a Bosniak Serb police officer guilty of crimes against humanity that had been committed against Bosniak civilians in the municipality of Visegrad in 1992.¹⁴ The court ruled that the accused had aided and abetted members of the Serbian army and police and paramilitary groups in the abduction and enforced disappearance of Bosniak civilians, and in crimes of sexual violence against them. He was sentenced under the criminal code of BiH to five years' imprisonment.

On 29 September 2006, the Appellate Division Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina (BiH)¹⁵ revoked a first-instance verdict of the court dated 7 April 2006. The first-instance court had found the defendant guilty of crimes against humanity: specifically, on counts of imprisonment or other severe deprivation of physical liberty, and of committing acts of sexual violence, and of aiding and abetting in keeping women in sexual slavery. Both the prosecution and the defence appealed against the verdict, and the panel revoked both the acquitting and convicting parts of the first-instance decision. After concluding that certain provisions of the criminal procedure code had been violated and certain facts improperly evaluated and insufficiently established, the

13 Décret No. 2006-435 portant création, organisation et fonctionnement de la Commission Nationale de Droit International Humanitaire.

14 Court of Bosnia and Herzegovina, case of Boban Simsic, case no. X/KR/05/04, 11 July 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (accessed 1 May 2007).

15 Court of Bosnia and Herzegovina, case of Nedo Samardzic, case no. X-KR-05/49, September 29, 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (accessed 1 May 2007).

panel ordered a retrial before the Appellate Division Panel of Section I for War Crimes.

On 27 October 2006, the Appellate Division Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina (BiH)¹⁶ upheld the first-instance verdict of the court,¹⁷ which had found the accused guilty of crimes against humanity. The court ruled that the accused had ordered and taken part in the persecution of Bosniak civilians on political, national, ethnic, cultural and religious grounds, by carrying out murders and other inhumane acts. The accused contested the verdict, alleging that essential provisions of criminal procedure, of the Constitution of BiH, and of the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the right of the accused to a fair trial, had been violated. One of the legal issues raised by the defence was whether the first-instance panel had been correct to accept as proven a related prior finding – of a widespread and systematic attack against non-Serb civilians – by the International Criminal Tribunal for the former Yugoslavia (ICTY). The appellate panel concluded that the first-instance court had acted in compliance with the laws on the transfer of cases from the ICTY to the prosecutor's office of BiH and on the use of evidence collected by the ICTY in proceedings before the courts in BiH. The appellate panel also found that the application to the case of the 2003 criminal code of BiH and its system of penalties – although adopted after the commission of the crimes under consideration – had not violated the principle of legality. The panel based its decision on its judgment that the alleged criminal acts, at the time of their commission, had been criminal “according to the general principles of law recognized by civilized nations”. It concluded that, contrary to the arguments set out in the appeal, the first-instance panel had correctly established the criminal liability of the accused and that the sentence of long-term imprisonment fitted the gravity of the crime and the responsibility of the accused.

On 3 November 2006, Section I for War Crimes of the Court of Bosnia and Herzegovina (BiH) found a Bosnian Serb company commander guilty of aiding and abetting in committing murder.¹⁸ This criminal conduct occurred in July 1992, during what the court described as “a widespread or systematic attack by the army and police of the so-called Serb Republic of Bosnia and Herzegovina directed against civilian [*sic*] Bosniak population in the territory of the Municipality of Kljuc”. Legal issues in this case included the fairness of the court's judicial notice of facts established by the International Criminal Tribunal for the former

16 Court of Bosnia and Herzegovina, Section I for War Crimes, Panel of the Appellate Division, case of Dragoje Paunovic for the criminal offence of crimes against humanity, case no. X/KRZ-05/16, October 27, 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

17 Court of Bosnia and Herzegovina, case no. X-KR-05/16, 26 May 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

18 Court of Bosnia and Herzegovina, Section I for War Crimes, case of Marko Samardzija for the criminal offence of crimes against humanity, case no. X-KR-05/07, 3 November 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

Yugoslavia, and the legality of applying the 2003 criminal code of BiH and its system of penalties to acts committed in 1992. After concluding that the crimes in which the accused had taken an active part constituted crimes against humanity, and that they had violated the criminal code of BiH, the court sentenced the accused to twenty-six years' imprisonment.

On 3 November 2006, the Court of Bosnia and Herzegovina (BiH) found a member of the Serb Defence Forces guilty of participating in, aiding in, and instigating, the persecution of Muslims and Croats on the basis of their national, religious, political and ethnic affiliation.¹⁹ The court came to the conclusion that, in separate instances in 1992, the accused had participated in a widespread and systematic attack against civilians in the Sanski Most municipality and had committed crimes against humanity as they are defined by the criminal code of BiH. After considering a wide range of evidentiary questions, the court decided that the commission of several criminal acts, on separate occasions, demonstrated a certain persistence that had to be considered an aggravating circumstance when determining his punishment. The accused was sentenced to twelve years' imprisonment.

On 14 November 2006, the Court of Bosnia and Herzegovina (BiH) found a member of the army of the Serb Republic of Bosnia and Herzegovina guilty of committing crimes against humanity in the Foca municipality between April 1992 and February 1993.²⁰ The accused was found to have committed the crimes of enslavement, imprisonment, torture and various acts of sexual violence, as part of a systematic and widespread attack by the army and members of the police and paramilitary formations against non-Serb civilians. The legal issues addressed by the court included the referral of the case from the International Criminal Tribunal for the former Yugoslavia (ICTY) to the authorities of BiH, pursuant to Rule 11 *bis* of the ICTY's Rules of Procedure and Evidence, different issues relating to the conduct of the criminal trial, as well as the issue of legality in applying the 2003 criminal code of BiH and its system of penalties to the alleged crimes. The court handed down a sentence of sixteen years' imprisonment.

On 14 December 2006, Section I for War Crimes of the Court of Bosnia and Herzegovina (BiH) ruled that the accused – a former deputy camp commander in the municipality of Capljina belonging to a brigade of the Croatian Defence Council (HVO) – was guilty of committing war crimes against civilians in 1993.²¹ The court found that the accused had treated civilians in the Gabela Detention

19 Court of Bosnia and Herzegovina, case of Nikola Kovacevic, case no. X/KR/05/40, 3 November 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

20 Court of Bosnia and Herzegovina, case of Radovan Stankovic for the criminal offence of crimes against humanity, case no. X-KR-05/70, November 14, 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

21 Court of Bosnia and Herzegovina, Section I for War Crimes, case of Nikola Andrun, case no. X-KR-05/42, 14 December 2006. Available at <http://www.sudbih.gov.ba/?jezik=e> (last visited 1 May 2007).

Camp in an inhumane manner, by using torture and physical intimidation against them. The court also found that the accused had transferred a group of Bosniaks to a different camp with the intention of preventing Red Cross representatives from registering them. The accused was sentenced to thirteen years' imprisonment.

Israel

On 14 December 2006, the Supreme Court of Israel, sitting as the High Court of Justice, issued a decision in which it assessed the legality, under international law, of the Israeli government's policy of "targeted killings", employed against members of Palestinian terrorist organizations in the Gaza Strip and the West Bank.²²

The court's first finding was that a continuous situation of armed conflict exists between Israel and various Palestinian terrorist organizations, and that when an armed conflict is taking place in an occupied territory, it is subject to the law of international armed conflict. The court then considered whether the terrorists and their organizations were to be defined as combatants or civilians. It cited the rule of customary international law, according to which civilians are legally protected from attack only when they are not taking a direct part in hostilities. The court concluded that it was necessary to obtain well-founded and verifiable information about civilians allegedly taking part in hostilities before attacking them. It ruled also that civilians taking a direct part in hostilities may not be physically attacked if less harmful means could be employed against them, such as arrest, interrogation and trial. The court also held that any "targeted killing" had to comply with the customary principle of proportionality and that an independent investigation should be undertaken, after each attack, to ascertain whether proportionality and targeting norms had been respected. Based on the results of such an investigation, it might be appropriate to compensate innocent civilians who have been harmed. The court concluded that it could not determine in advance whether "targeted killings" were permitted under international law. The lawfulness of such killings, according to the court, was to be determined according to the particular circumstances of each case. Hence, in the case at hand, the demand of the petitioners that Israel completely refrain from applying a policy of "targeted killing" was denied.

United States

On 12 September 2006, the United States District Court for the Southern District of New York issued a decision²³ on a claim brought under the Alien Tort Statute²⁴ on

22 *The Public Committee against Torture in Israel et al. v. The Government of Israel et al.*, Supreme Court of Israel, HCJ 769/02, 14 December 2006.

23 *The Presbyterian Church of Sudan et al. v. Talisman Energy Inc. and Republic of the Sudan*, US District Court for the Southern District of New York, 01 Civ. 9882 (DLC), 453 F. Supp. 2d 633, 12 September 2006.

24 Alien Tort Statute, 28 United States Code, Para. 1350.

behalf of non-Muslim African civilians living in the oil-rich territory of southern Sudan who had suffered harm as a consequence of six years of armed conflict in the region. The claim was brought against the Republic of Sudan and a Canadian corporation that had allegedly aided or conspired with the government of Sudan in committing genocide, crimes against humanity and war crimes. The court found that the plaintiffs had failed to submit sufficient admissible evidence to show that the corporation had aided, conspired with or provided substantial assistance to the Sudanese government in the commission of the alleged crimes. The court, therefore, granted the defendant's motion for summary judgment.

On 22 December 2006, the United States District Court for the Southern District of Florida issued a decision²⁵ in a civil action brought under the Alien Tort Statute, which alleged that the Palestinian Authority and the Palestine Liberation Organization were responsible for the murder of an Israeli citizen. The defendants brought a motion to dismiss the claim, arguing that the court lacked subject-matter and personal jurisdiction over the case and that the plaintiffs had failed to state a claim upon which relief could be granted. The plaintiffs argued that the defendants' actions constituted a war crime and a violation of the Law of Nations for the purposes of the Alien Tort Statute. The court granted the defendants' motion for dismissal on the grounds that the plaintiffs had not sufficiently established a violation of the Law of Nations to give the court subject-matter jurisdiction under the Alien Tort Statute.

25 *Moshe Saperstein et al. v. The Palestinian Authority, The Palestine Liberation Organization, et al.*, Case No. 04-20225-CIV-Seitz/McAliley, 2006 U.S. Dist. Lexis 92778, 22 December 2006.