

US pressed by events on international human rights law

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Human Rights

Over the last six years, the strengthening of international criminal law and the increase in the prosecution of crimes against humanity appear to have been swept along on a flood tide. Now, in 2005, its waters appear to be surging even more strongly as ex-president Augusto Pinochet of Chile, the Congolese and Ugandan rebels and elements of the Sudanese government all look likely to be recommended for prosecution and trial.

"An unprecedented movement has emerged to submit international politics to judicial procedures [and] has spread with extraordinary speed," Henry Kissinger has observed in a tone both despairing and disparaging. The East Timorese Nobel Prize winner Jos? Ramos-Horta is rather more welcoming, saying: "In this day and age you cannot kill hundreds of people, destroy a whole country, and then just get

fired."

In a short time, a UN commission of enquiry will report on alleged genocide in Sudan's Darfur region. It is expected to refer the results - damning ones - to the UN Security Council which must then decide whether or not to recommend prosecution by the recently formed, but American opposed, International Criminal Court (ICC).

A recent report on means of strengthening the UN, written by a group of eminent personalities, including former US National Security Adviser Brent Scowcroft, has advised: "The Security Council should stand ready to refer cases to the ICC."

This could become an explosive issue within the Bush administration. There is even pressure coming from its right to be on the side of international justice in Sudan - American fundamentalist groups which have been deeply involved in Sudan

appear to be lobbying for prosecution. It is a possibility that the US could abstain on the issue, leaving the way open for a majority on the Security Council to push the matter forward.

Even inside American jurisprudence opinion is changing in a quite radical way. Just before Christmas, Unocal, the giant oil company, announced that it had settled an action brought against it by Burmese villagers under the Alien Tort Claims Act that, although a 1789 law, has had new life breathed into it by a recent supreme court decision upholding its validity. Unocal was being prosecuted for colluding in human rights abuses in Burma.

The supreme court, also in December, announced that it was prepared to hear a case that concerns an order from the International Court of Justice (the so-called World

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Court that deals with disputes between nations) for US courts to review a death penalty case involving a Mexican. This is very different from its attitude a mere seven years ago when it snubbed its nose at a World Court order on a similar case.

The US - along with Russia, China and India - may be opposed to the International Criminal Court, but they are going to find it harder and harder to stand back as the number of prosecutions of the fledgling ICC mount.

By the fall, it is likely that the cases that have been referred to it by the governments of Uganda and the Democratic Republic of the Congo involving mass killings and sadistic acts by the rebel groups operating in the north of Uganda and the east of Congo will be ready for indictments. And in these

cases, there is nothing the US could do to stop them from going forward. Indeed, the administration is going to be pressed by human rights lobbies and perhaps even by powerful members of Congress to work to widen the prosecutions to indict also the governments of the Congo and Uganda. In fact, the very legislation that was drawn up to define the US relationship to the ICC has an unreported-on loophole that could allow the administration to support such prosecutions since it doesn't involve US nationals.

Meanwhile, it increasingly looks as if justice is finally going to catch up with Chile's Pinochet, the former military dictator and accused torturer. Chile's courts will decide this one, but the case would never have advanced so far if Spanish prosecutor Baltasar Garzon had not sought his arrest in London and Britain's highest court, the House of Lords, had not decided that

under the UN Convention against Torture Pinochet did not have sovereign immunity.

In international ad hoc courts, prosecutions continue against the war criminals of ex-Yugoslavia, Rwanda, Sierra Leone and East Timor, and in Cambodia, finally, a court has been established to try the war crimes of the Pol Pot era.

The rising tide of human rights prosecutions in the courtroom raises the interesting question about what the world community should do with its next Saddam Hussein. What if instead of a decade of sanctions and in the end a war, the Security Council had authorised an international prosecutor to investigate Saddam's war crimes? Once an indictment had been handed down, an international or even a national force could have been authorised to seize the indicted suspect.

Could it be that this flood tide will carry us that far?