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# **RESTORING SHATTERED LIVES**

## **A PRIMER ON WAR, TERRORISM AND THE U.S. CIVIL JUSTICE SYSTEM**

By Emily Gottlieb and Joanne Doroshow  
Center for Justice & Democracy

November 1, 2001

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### Introduction

If history is any guide, the protracted conflict in Afghanistan precipitated by the September 11 tragedies could have human rights consequences throughout the world. Further acts of terrorism both here and abroad, war crimes, torture (state-sponsored or otherwise), disappearances, summary executions, imprisonment, hostage-taking and other atrocities are all possibilities that, while awful to think about, historically have accompanied many violent confrontations and wars.

It is a little-known fact that, unlike other nations in the world, the United States has a civil justice system that can address these abuses. Indeed, when it comes to helping victims of human rights violations, the United States has the best and, under some circumstances, the only laws available for survivors to obtain some sort of redress and monetary compensation and to hold abusers financially accountable in court.

In September 2001, the U.S. Congress acted quickly to try to assist the victims most directly hurt by the events of September 11. In passing the Air Transportation Safety and System Stabilization Act, Congress included a section known as the “September 11 Victim Compensation Fund of 2001,” which sets up a federal entitlement program to provide compensation for victims of the attack.<sup>1</sup> Within weeks of this law’s passage, the widow of a

man killed at the World Trade Center (WTC) decided to forgo this process and file a case in New York federal court against Afghanistan, the Taliban, al-Qaida and its leader Osama bin Laden. Her husband was working in Tower One when American Airlines Flight 11 struck the building. Before he and a co-worker could be rescued by helicopter from the roof, Tower One collapsed.<sup>2</sup>

As soon as this lawsuit was filed, many new questions arose about war, terrorism and the U.S. civil justice system that have now become part of the national discussion. Under what authority can a U.S. citizen sue Osama bin Laden and the government of Afghanistan, let alone expect to collect any monetary compensation if successful? What options are available to survivors of possible terrorist attacks in the future? What if war crimes are committed during this protracted war or American citizens are taken hostage or imprisoned? Can a country be sued just for waging war? How about human rights abuses against Afghani women under the Taliban regime? What if it is discovered that U.S. corporations, like oil companies operating abroad, have assisted a government that has committed human rights abuses?

Our laws and our courts may provide a civil remedy to the victims in each of these scenarios. In fact, there have already been dozens of cases brought in U.S. courts over human rights violations that have occurred during past wars and conflicts. This primer will answer many questions about such lawsuits. The Appendices include an extensive compilation of both completed and pending cases involving circumstances that could be relevant to the situation in which we find ourselves today.

## WAR CRIMES AND SERIOUS HUMAN RIGHTS VIOLATIONS – WHY SUE AND WHY DO IT HERE?

Civil lawsuits by victims are important because most human rights violators will never be criminally prosecuted and, even if they are, prosecutions provide no opportunity for victims to be compensated for their injuries.

With the recent arrest and indictment of Yugoslavia's former president Slobodan Milosevic for Kosovo war crimes – Milosevic will be tried before the U.N.-sponsored war crimes tribunal in The Hague – the question arises whether international criminal prosecutions are always the best way to achieve justice for war crimes or other serious human rights violations.

Michael Ratner, an attorney with the Center for Constitutional Rights (CCR) and one of the leading human rights lawyers in United States, says no. Ratner explains that by relying solely on criminal prosecutions, “[t]he vast majority of violators will not be brought to justice nor will their victims be compensated for their injuries.” Moreover, “while some such cases can be initiated by individuals, they cannot be fully prosecuted without prosecutors and/or investigating judges.” In other words, due to political or other concerns, many individuals will never be prosecuted. “For these reasons,” says Ratner, “civil remedies have an important role to play as a means of enforcing human rights norms.”<sup>3</sup>

Civil lawsuits can accomplish far more than simply providing victims with monetary compensation.

As CCR attorney Michael Ratner explains,

- Civil remedies can deter future abusive conduct and send a message to others that such behavior is unacceptable.
- Whether or not money is actually collected (which can often be a problem), civil cases allow victims to tell their stories, confront their abusers and create an official record of their persecutions, which might also lead to criminal prosecutions.
- Filing civil suits can empower victims by giving them both a means to fight back and help them heal.
- As a result of civil lawsuits, human rights violators may be barred from the United States.
- U.S. court decisions declaring that torture and other abuses are violations of international law can have an effect world-wide.<sup>4</sup>

U.S. laws and U.S. courts are the most unique and advanced in the world in providing civil remedies (money damages) to victims of war crimes and human rights violations.

Michael J. Bazylar, professor of international law at Whittier Law School and a foremost authority on the use of courts to redress World War II wrongs, explains the importance of U.S. courts and law in the context of the U.S. Holocaust litigation. He writes,

*“It is a tribute to the United States system of justice that our courts can handle claims which originated over fifty years ago in another part of the world. Long-established [legal] principles, our independent judiciary, the American belief in jury trials, our system of evaluating damages, the ability to file class action lawsuits, and American-style discovery have made the United States the most attractive and, in most cases, the only forum in the world where Holocaust-era claims can be heard today.*

*“Diplomacy, individual pleas for justice by Holocaust survivors and various Jewish organizations for the last fifty years, and even suits in foreign courts, have not worked. It is only now, with the intervention of American courts, that elderly Holocaust survivors see their last great hope to obtain compensation being fulfilled... Obtaining compensation from bankers and industrialists who profit from human rights abuses sends a message to such entities that they cannot hide behind the ‘business as usual’ cloak when they become joint venturers with a dictatorial regime.”<sup>5</sup> (emphasis added)*

## U.S. LAWS – THE BEST IN THE WORLD

U.S. laws and U.S. courts permit civil remedies against human rights violators, including individuals, corporations and foreign governments.

The February 26, 1993 terrorist bombing of the World Trade Center, which killed six people and injured hundreds of others, has led to over 400 personal injury claims against the Port Authority of New York and New Jersey, then-owner of the WTC. The victims allege that the agency had been warned about the WTC's vulnerability to bomb attacks yet failed to guard against known risks or alert tenants of the dangers.<sup>6</sup>

The 1993 World Trade Center bombing cases, which were filed in state court, are somewhat unique. More often, cases involving terrorism, war crimes or serious human rights violations are filed in U.S. federal court and rely on one or more of four U.S. laws that specifically allow individuals to obtain a civil remedy against a foreign perpetrator: the Alien Tort Claims Act (ATCA), the Torture Victim Protection Act of 1991 (TVPA), the Anti-Terrorism Act of 1992 and the Foreign Sovereign Immunities Act (FSIA). Appendices A through C list dozens of cases that have been filed under these laws. Appendix D contains some unusual lawsuits that involve different kinds of claims, including contractual claims against insurance companies, lost property claims against banks, etc., that arose in connection with World Wars I and II.

1. **Alien Tort Claims Act (ATCA).**<sup>7</sup> This law allows people from countries outside the United States to use American federal courts to sue foreign individuals and multinational corporations that commit human rights violations abroad, provided the wrongdoing violates customary international law or a U.S. treaty. No other country in the world has a statute like this.

**For what kinds of conduct can individuals sue under the ATCA?** The ATCA permits victims to sue for acts of torture, crimes against humanity, war crimes, genocide, disappearances, summary execution, arbitrary detention, forced labor and cruel, inhuman and degrading treatment.<sup>8</sup>

**Who can be sued under the ATCA?** While the most obvious defendant in such cases is the actual perpetrator, others can be held liable as well. For example, those who order or authorize the violations can be sued. Those with command responsibility, including individuals with authority over the actions of their troops and subordinates, who knew about the violations, can be sued. Also, some cases have allowed suits against groups involved in human rights violations (*e.g.*, the Zimbabwe African National Union-Patriotic Front, the Islamic Salvation Front). Individuals who commit genocide, crimes against humanity and war crimes can be sued even if they are not acting with the authority of the state. Corporations involved in human rights abuses can also be sued if they are headquartered or doing business in the United States.<sup>9</sup>

2. **Torture Victim Protection Act of 1991 (TVPA).**<sup>10</sup> Enacted in 1992 as an amendment to the ATCA, the TVPA was created primarily to allow U.S. victims of certain human rights abuses abroad to sue in U.S. courts, just as people from other countries are permitted to do under the ATCA. People from other countries can also use the TVPA.

**For what kinds of conduct can individuals sue under the TVPA?** In some ways, the TVPA is more limited than the ACTA. Unlike the ATCA, this law cannot be used in cases involving disappearances, war crimes or genocide. Under the TVPA, victims can sue for torture or summary executions committed anywhere in the world. The TVPA also requires that lawsuits be filed within ten years after the torture or execution occurred.<sup>11</sup>

**Who can be sued under the TVPA?** Individuals sued under the TVPA must be acting under the authority or law of a foreign nation (which does not include the United States). It is unclear whether the term “individuals” includes multinational corporations.

3. **The Anti-Terrorism Act of 1992.**<sup>12</sup> This statute allows any U.S. citizen injured by an act of international terrorism to seek triple damages in federal court against the organization and/or individual(s) responsible.

**For what kinds of conduct can individuals sue under the Anti-Terrorism Act?** Victims may sue for activities that: 1) involve violent acts that violate U.S. federal or state laws or that would be considered a crime under such laws; 2) appear to be intended to intimidate or coerce civilians, influence government policy by intimidation or coercion or affect the government by assassination or kidnapping; and 3) occur primarily outside the U.S. or have certain overseas connections. The right to sue is further limited, however, in that victims cannot sue for loss or injury caused by an “act of war” (which means a declared war, an armed conflict between two or more nations or armed conflict between military forces) and must file any lawsuit within four years of injury.

**Who can be sued under the Anti-Terrorism Act?** Organizations and/or individuals responsible for the attack can be held liable under this statute. A U.S. Appeals Court is now considering whether victims can use the Anti-Terrorism Act to sue American-based charities that fund terrorist activities. The decision could have implications for victims of the September 11 disaster if U.S.-based organizations are found to have supported the attacks.<sup>13</sup>

4. **The Foreign Sovereign Immunities Act (FSIA).**<sup>14</sup> As a general rule, U.S. law recognizes the doctrine of “sovereign immunity,” which prevents other countries from being sued in U.S. courts. However, exceptions do exist under U.S. law when countries participate in certain types of misconduct. In 1976, Congress carved out some limited exceptions to sovereign immunity in the FSIA.

Section 1605(a)(1) of the FSIA permits lawsuits against foreign countries in cases where the nation has either expressly or indirectly “waived” sovereign immunity. What

constitutes an “implicit waiver” is a complicated area of international law – such claims may not offer much hope for success to victims who try to use it.

Another exception to sovereign immunity can be found in section 1605(a)(5) of the FSIA, which allows victims to sue foreign governments for personal injuries or death *provided it occurs in the United States and is due to the actions of a foreign state, its officials or employees*. The families of Pam Am Flight 103 victims, which crashed over Lockerbie, Scotland, tried to use this provision to sue Libya but were unsuccessful because the crash did not happen on U.S. soil. Applied to the September 11 terrorist hijackings, while these actions did indeed take place in the United States, imputing actual knowledge by officials of countries like Afghanistan, Saudi Arabia or whomever else might have supported the hijackers would probably be difficult.

Believing that much terrorism is state-sponsored, Congress decided in 1996 to add a new section to the FSIA – section 1605(a)(7) – which says that foreign nations can be sued here when they engage in acts of terrorism against American citizens anywhere in the world.

**For what kinds of conduct can individuals sue terrorist nations under the FSIA?** Under the 1996 law (as amended in 1997), American victims can sue terrorist countries for death or personal injury caused by torture, summary killing, aircraft sabotage or hostage taking. Such victims can also sue countries whose officials or employees provide “material support or resources” to those who torture or kill Americans, take them as hostages or sabotage aircraft with U.S. citizens aboard. According to the statute, victims must file suit within 10 years of death or injury, and they may seek both compensatory (compensation for injuries) and punitive (for egregious misconduct) damages.<sup>15</sup>

**Who can be sued as a terrorist nation under the FSIA?** Only a country specifically classified as a “terrorist nation” can be sued under this law. To date, *only seven countries have been so designated by the State Department: Iran, Iraq, Syria, Libya, Cuba, North Korea and Sudan. Afghanistan is not yet included.*

Center for Constitutional Rights attorney Michael Ratner has written that the requirement for State Department classification “highly politicizes the bringing of these human rights cases and undercuts their legitimacy. In the last annual designation of Cuba as a terrorist state, U.S. officials practically admitted that Cuba did not belong on the list and was not engaging in acts of terrorism. In fact, the designation appears to be for domestic political reasons.”<sup>16</sup>

**What about the recent lawsuit against Afghanistan?** As noted above, only countries specifically classified as “terrorist nations” can be held liable and to date Afghanistan is not one of them. Many expect that the State Department will soon add Afghanistan to the list and if it does the country’s liability would be retroactive, covering September 11 events. Not waiting for this to happen, a woman whose husband died in the September 11 World Trade Center attack has



already filed a lawsuit against Afghanistan and others for sponsoring the hijackers.<sup>17</sup> She argues that the U.S. government has been treating Afghanistan as a terrorist state since 1999 irrespective of the State Department's failure officially to classify it as such. For example, both Presidents Clinton and Bush signed Executive Orders freezing Afghanistan's assets on the grounds that the country has materially supported the terrorist activities of the Taliban, al-Qaida, Osama bin Laden and others.

## ONCE VICTIMS WIN, CAN THEY COLLECT ANY MONEY?

It is often the case that the officials or countries sued do not show up in court. In other words, these cases are typically uncontested and lead to default judgments in favor of the victim, which can be quite large. So what happens after they win?

When human rights lawsuits are brought against individuals who are not in the United States and have no assets here, collecting money for compensation can be very difficult. Collecting judgments against a multinational corporation may be easier.

According to CCR's Michael Ratner, not only are corporations able to pay judgments but suits against them "are generally for abuses that are continuing; those suits present the possibility of actually modifying current conduct; even the filing of such suits spotlights the egregious behavior of some of these multinationals and can lead to positive changes."<sup>18</sup>

Special legislation is needed to collect against the assets of foreign nations, particularly in suits filed against terrorist states under the FSIA.

The assets of terrorist states, such as bank accounts, real estate or other commercial property, are typically frozen in the United States. In 1998 Congress passed a law to allow American victims with judgments against terrorist nations (as designated by the State Department) to go after these frozen assets. The 1998 legislation also allows the President to prevent payments from frozen assets "in the interest of U.S. national security."

The State Department has traditionally been opposed to allowing frozen assets to be used in this manner, officials believing that diminishing assets weakens the government's leverage in dealing with terrorist countries, interferes with international diplomacy and potentially jeopardizes U.S. property abroad.<sup>19</sup> Therefore, it may come as little surprise that immediately after signing the 1998 law, President Clinton issued an Executive Order invoking the "in the interest of U.S. national security" provision, which prevented victims from collecting any money against terrorist-sponsoring nations.<sup>20</sup>

Unhappy with this blanket prohibition and under heavy lobbying and political pressure, Congress enacted special legislation in October 2000 essentially to override Clinton's Executive Order in a limited number of cases filed against Cuba and Iran. The list of those cases eligible for payment is rather arbitrary in that it singles out only two countries and includes only cases filed or with final judgments within a limited timeframe. For example, it includes hijacking victim Robert Stethem's case but not that of six other U.S. military personnel who were beaten and terrorized during the same incident (*see* Appendix C).<sup>21</sup>

There is an additional nuance to this law as well. The legislation orders that payments come directly from the U.S. Treasury, stipulating that the federal government should then try to get reimbursement from the countries involved. This has yet to be done.

In light of the events of September 11, Congress has considered, but has not passed, a "Justice For Victims Amendment" that would allow all American victims of state-sponsored terrorism to bring enforcement actions against the frozen assets of any terrorist-sponsoring nation.<sup>22</sup> Unless Congress enacts this or similar legislation, the frozen assets of Afghanistan or other countries found responsible for the September 11 attack or future incidents could be off limits to any victim who wins a lawsuit against them.

## THE COMPLICATED PROBLEM OF PRIOR TREATIES AND AGREEMENTS

Victims who sue for human rights abuses or war crimes may meet another obstacle in pursuing a civil lawsuit. Specifically, an international treaty with a nation involved in rights violations may bar a case, even if not brought against the nation itself but against a multinational corporation that operated in the country at issue.

Whether treaties prevent lawsuits from going forward is decided on a case-by-case basis.

First, judges examine the language of the treaty to determine its intent. If the language clearly states that the treaty preempts all litigation, the court's analysis goes no further and the case is dismissed. If the language is ambiguous, however, judges look to outside sources, such as the history of the treaty, the negotiations, congressional records and the State Department's position on whether the treaty precludes the lawsuit in question.<sup>23</sup>

Lawsuits involving Japanese slave labor during World War II are cases in point. For example, in September 2000 a federal judge dismissed a lawsuit brought by former American POWs against Mitsubishi, Nippon Steel and other Japanese companies, holding that a 1951 treaty between the United States and Japan preempted all individual slave labor-related lawsuits against Japanese corporations.<sup>24</sup> A case filed by Filipino slave laborers against the Mitsui and Ishihara companies was recently dismissed on the

same grounds, namely that the Philippines was a signatory to the 1951 treaty that preempted future claims.<sup>25</sup>

In contrast, other judges have rejected the argument that the 1951 treaty bars victims' claims and are allowing Japanese slave labor lawsuits to proceed.<sup>26</sup> For example, a former Korean slave laborer is pursuing a class action suit against Taiheyo Cement Corp. and its U.S. divisions for unjust enrichment and fraudulent business practices. Jae Won Jeong had been sent to a prison camp operated by the Onoda Cement Manufacturing Co. (now Taiheiyo Cement Corp.) during World War II after he refused to join the Japanese military.<sup>27</sup> And several thousand former American POWs are suing Mitsubishi Corp. over wartime forced labor. The survivors allege that they were beaten by Mitsubishi employees, given little food and forced to work in dangerous conditions.<sup>28</sup>

The U.S. State Department has consistently advocated dismissal of all Japanese slave labor cases, arguing that the 1951 treaty precludes such lawsuits. In response to the State Department's position, both the Senate and House of Representatives have adopted a budget provision barring the State and Justice Departments from using government money to oppose American POWs' slave labor claims against Japanese corporations or Japanese nationals. The provision is intended to make it easier for victims to file slave labor compensation lawsuits.<sup>29</sup>

Japan is being sued for waging war.

One of the most interesting recent suits to come along is a World War II-era case filed on behalf of both U.S. citizens and former U.S. soldiers against the country of Japan for war crimes and waging "a war of aggression in clear violation of international law and international treaties," which is a "criminal act that constitutes an intentional tort against the victims of war." The case has been filed as a class action lawsuit on behalf of over 437,000 U.S. civilians and members of the armed forces who were injured or killed by the Japanese Imperial Army during World War II. The lead plaintiff, retired Army colonel Melvin H. Rosen, is a former POW who was forced to do hard labor for three-and-a-half years in the Philippines. Rosen's co-plaintiff, Ethel Blaine Millet, was made to work as a nurse in Japanese POW camps after being captured during the war.<sup>30</sup> The suit faces many legal obstacles but it is certainly one to watch.

## Appendix A

# CASES BROUGHT IN THE UNITED STATES UNDER THE ALIEN TORT CLAIMS ACT AND THE TORTURE VICTIM PROTECTION ACT

### 1. CASES AGAINST FOREIGN INDIVIDUALS

**Rape, Murder and Torture in Bosnia-Herzegovina.** In 1993, a group of Muslim women and children who had been raped and sexually assaulted during a campaign of genocide and torture in Bosnia-Herzegovina filed suit against former Bosnian Serb leader Radovan Karadzic. On August 10, 2000, Karadzic was ordered to pay the victims \$745 million. Weeks later, a jury awarded 22 Muslim citizens of Bosnia-Herzegovina \$4.5 billion in compensatory and punitive damages for gross human rights abuses including murder, torture, forced impregnation and prostitution, rape and execution committed by individuals under Karadzic's command and control.<sup>31</sup>

**Torture and Massacres in East Timor.** When East Timor voted for independence from Indonesia in 1999, militias backed by the Indonesian army tortured and killed hundreds of East Timorese civilians. Victims filed a lawsuit against Lieutenant General Johnny Lumintang who orchestrated the violence with other members of the Indonesian military. On September 10, 2001, Lumintang was ordered to pay \$66 million in compensatory and punitive damages.<sup>32</sup> In an earlier 1991 case, Indonesian general Sintong Panjaitan orchestrated a massacre in East Timor that led to the deaths of over 200 Timorese. A New Zealand college student was killed in the attack. His mother filed suit against Panjaitan and was awarded \$14 million.<sup>33</sup>

**Torture and Massacre in Rwanda.** In 1994, thousands of Rwanda's Tutsi minority, as well as moderate members of the Hutu majority, were tortured and massacred. Jean Bosco Barayagwiza was one of the political leaders who coordinated and encouraged the violence against these individuals. Relatives of victims who died in the massacre filed suit against Barayagwiza. Having found Barayagwiza liable, a federal judge issued a default judgment totaling \$105 million, the majority of which was punitive.<sup>34</sup>

**Torture and Executions Under the Marcos Regime.** Nearly 10,000 Philippine citizens or family members of those who were tortured, summarily executed or disappeared during Ferdinand Marcos' martial law regime between 1972 and 1986 filed a class action lawsuit against his estate. After trials in 1992, 1994 and 1995, the Hawaii District Court awarded the victims \$1.9 billion in compensatory and punitive damages, a decision affirmed by a U.S. Appeals Court. In April 1999, the case settled for \$150 million.<sup>35</sup>

**Torture and Rape by Guatemalan Military.** Eight Guatemalan citizens victimized by military forces during the 1980s filed suit against former general Hector Gramajo. Some had been

subjected to torture and confinement while others were forced to watch as family members were beaten to death or summarily executed. In 1995, a federal judge awarded the victims \$47.5 million in compensatory and punitive damages.<sup>36</sup> In another case, Dianna Ortiz, an American nun engaged in missionary work in Guatemala, was kidnapped, repeatedly raped and tortured by military forces under the command of General Gramajo in November 1989. Ortiz filed suit against Gramajo and was awarded \$5 million in compensatory and punitive damages.<sup>37</sup>

**Kidnapping, Disappearances and Torture in Argentina.** In the late 1980s, the Center for Constitutional Rights won three civil judgments against Carlos Guillermo Suarez-Mason, an Argentine general responsible for the kidnapping, disappearance, detention, torture, rape and execution of thousands of Argentinean citizens between 1976 and 1979. *These lawsuits marked the first time that a commanding officer who was not the actual torturer was held liable for violating human rights.* In one case, a federal judge ordered Suarez-Mason to pay \$21 million in compensatory and punitive damages to a victim repeatedly detained, beaten and electrically shocked over a four-year period.<sup>38</sup>

**Imprisonment and Torture in Haiti.** In 1989 and 1990, six political opponents of the Haitian military regime were imprisoned, beaten and tortured at the direction of Prosper Avril, the former dictator-President of Haiti. As a result of the beatings, the men suffered extensive physical, emotional and psychological damage, prompting a federal judge to grant a default judgment totaling \$41 million.<sup>39</sup>

**Detention, Disappearances and Torture in Ethiopia.** Three women filed suit against Kelbessa Negewo, who as an Ethiopian security official oversaw their repeated detention, interrogation and torture in 1977 and 1978 in Addis Ababa, Ethiopia during the “Red Terror” period. One of the victims also charged that Negewo was responsible for the disappearance of her sister and the summary execution of her father. In August 1993, a judge issued a \$1.5 million judgment for the victims.<sup>40</sup>

**Torture and Murder in Paraguay.** In March 1976, 17-year-old Joel Filartiga was tortured to death by Americo Pena-Irala, the inspector general of police of Asuncion, Paraguay, in retaliation for his father’s opposition to the Paraguayan government. Pena-Irala fled to the United States and was tracked down by the victim’s brother and father who filed a civil suit against the former police official. *In a landmark decision, the Second Circuit ruled that foreigners could sue other foreigners in U.S. federal courts for violations of “universally accepted norms of the international law of human rights,” like murder or torture.* As a result, the Filartigas were able to pursue their civil case, which resulted in a \$10.3 million default judgment against Pena-Irala.<sup>41</sup>

#### THE FOLLOWING CASES ARE STILL PENDING:

**U.S. Embassy Bombing in Kenya.** Two civil lawsuits are proceeding on behalf of over 3,700 Kenyans injured or killed in the August 1998 bombing of the U.S. Embassy in Nairobi. One case names Osama bin Laden, who orchestrated the Embassy bombing, and the United States, which allegedly knew of the potential for terrorist attacks yet failed to take precautions, as

defendants. The other lawsuit seeks compensation from the U.S. government only, although bin Laden and the Taliban may be added as defendants in the near future. (Negligence claims were filed against the United States in this case. These claims are being brought under the Federal Tort Claims Act, which states that the federal government loses its sovereign immunity if its employees are negligent while doing their job.)<sup>42</sup>

**Murder and Torture in Zimbabwe.** In September 2000, four Zimbabweans filed suit against President Robert Mugabe, Foreign Minister Stan Mudenge and the Zimbabwe African National Union-Patriotic Front (ZANU-PF), among others, for murdering, torturing and terrorizing political opponents during Zimbabwe's parliamentary elections. Although the State Department has suggested that Mugabe and Mudenge be given immunity, the district court hearing the case has yet to rule on the issue.<sup>43</sup>

**Genocide and Torture in Bosnia-Herzegovina.** Four Bosnian Muslims seek to hold Nikola Vuckovic responsible for torture, genocide and other crimes committed against non-Serb prisoners during the 1992 "ethnic cleansing" campaign in Bosnia-Herzegovina. The trial is scheduled to begin in October 2001.<sup>44</sup>

**Torture and Execution in Chile.** In 1999, the family of Winston Cabello, a Chilean government economist, filed a lawsuit against Major Armando Fernandez-Larios for his role in Cabello's torture and execution by a Chilean military death squad. Trial is scheduled for March 2002.<sup>45</sup>

**War Crimes in Algeria.** The early 1990s marked the beginning of civil war in Algeria, resulting in widespread violence primarily against women and children, who were being killed, raped, butchered, tortured and forced into sexual slavery on a daily basis. In December 1996, nine women and men, together with the Algerian Assembly of Democratic Women, filed suit against Anwar Haddam and his group, the Islamic Salvation Front, seeking to hold them responsible for war crimes and crimes against humanity. The case is still in the discovery stages.<sup>46</sup>

**Massacre, Murder and Torture in China.** Members of the Chinese-banned spiritual group Falun Gong are pursuing two separate lawsuits against Zhou Yongkang and Zhao Zhifei, senior Chinese officials allegedly responsible for the murder, torture, detention and inhuman treatment of Falun Gong practitioners.<sup>47</sup> In addition, five Chinese dissidents have filed a federal lawsuit against former Chinese Premier Li Peng, seeking to hold him responsible for a 1989 military crackdown that resulted in the massacre of hundreds of demonstrators at Tiananmen Square.<sup>48</sup>

**Torture and Atrocities in El Salvador.** Salvadorian refugees seek to hold ex-Generals Jose Guillermo Garcia and Carlos Eugenio Vides Casanova accountable for torture and other atrocities they suffered from 1979 to 1983. Trial has been set for January 2002.<sup>49</sup>

## 2. CASES AGAINST MULTINATIONAL CORPORATIONS

**Chevron Aided Nigerian Military that Murdered and Tortured Protesters.** In 1998, Nigerian security forces flying in Chevron-owned helicopters fired machine guns on a group of peaceful environmental demonstrators aboard an offshore oilrig. The following year, Nigerian troops traveling in Chevron-owned vehicles attacked two villages where protests against the company had been staged. Civilians were either shot or burned to death during the raid or tortured by the police after the violence had ended. Twenty-two victims of the '98 and '99 attacks filed suit against Chevron, arguing that the company not only requested such actions be taken against the people but also aided government forces in missions to suppress them. The case is now in discovery.<sup>50</sup>

**Shell and Royal Dutch Petroleum Orchestrated Torture and Murder of Protesters.** In 1996, four Nigerians filed a civil lawsuit against the Royal Dutch Petroleum Company (“Royal Dutch”) and Shell Transport and Trading Company (“Shell Transport”), alleging that they instigated and orchestrated the imprisonment, torture and murder of local Nigerians who protested the corporations’ oil drilling on their lands. According to the complaint, Royal Dutch and Shell Transport “provided money, weapons, and logistical support to the Nigerian military, including the vehicles and ammunition used in the raids on the villages, procured at least some of these attacks, participated in the fabrication of murder charges against [some of the plaintiffs’ next of kin], and bribed witnesses to give false testimony against them.” The case has yet to be resolved.<sup>51</sup>

**Unocal Hire Burmese Military that Tortured and Enslaved Villagers.** In 1992, Unocal Corp., Myanma Oil and Gas Enterprise and Total S.A. entered into a joint venture to build a natural gas pipeline in Burma. Unocal then hired the Burmese military to provide security for the project, whose forces tortured, enslaved and forcibly relocated Burmese villagers. As a result, in 1996 Burmese refugees filed lawsuits against California-based Unocal in federal court, alleging that the company was complicit in the military’s human rights violations. Dismissal of the case is currently on appeal. Another case brought by the refugees is pending in California state court. The lawsuit charges Unocal with violations of the California Constitution and the state’s law on unfair business practices.<sup>52</sup>

### **Holocaust Slave Labor Cases.**

**German Companies.** In March 1998, a Belgian national deported by the Nazis and forced to work at Ford Motor Co.’s Germany subsidiary filed a lawsuit against Ford. Nearly 40 separate lawsuits followed against German companies who used slave laborers (prisoners taken from concentration camps, prisons, ghettos or other camp-like conditions) or forced laborers (civilians taken from German-occupied territories) during World War II. After extensive negotiations with the United States, in July 2000, Germany and German industries agreed to establish a \$5.1 billion fund dedicated, in part, to compensating slave labor victims. In return for their contributions to the fund, German government and industry were essentially given immunity from existing and future lawsuits. Payments to slave labor victims began in June 2001.<sup>53</sup>

**Austria and Austrian Industries.** Jewish Holocaust victims filed a class action lawsuit against the Austrian government and Austrian industries in 2000, seeking compensation for forced and slave labor during the Nazi regime. That same year, Austria agreed to settle the claims for \$410 million.<sup>54</sup>



## Appendix B

### CASES BROUGHT IN THE UNITED STATES UNDER THE ANTI-TERRORISM ACT OF 1992

**Youth Gunned-Down in Israel; Suit Against Hamas and U.S.-Based Groups.** The parents of David Boim seek to hold Hamas terrorist agents and various Islamic charities and individuals in the United States responsible for their son's death. The Boims allege, in part, that the charities were fronts for raising money to support Hamas, whose members gunned down 17-year-old Boim while he was waiting at a bus stop in Israel in 1996. *This lawsuit marks the first time that anyone has attempted to use the Anti-Terrorism Act to hold an American group responsible for funding terrorism. On September 25, 2001, the 7th Circuit U.S. Court of Appeals heard oral arguments on that very issue, which could provide victims of September 11 with a way to seek legal redress against American-based groups who helped finance the attacks.*<sup>55</sup>

#### **Suits Against the Palestinian Authority (PA) and the Palestinian Liberation Organization (PLO).**

Avigail Biton and Rachel Asraf have filed a lawsuit against Yasser Arafat, the PA and the PLO and two of its security officials, seeking to hold them accountable for a November 2000 bomb attack on a school bus in Gaza that killed Biton's husband and severely injured Asraf.<sup>56</sup>

The family of Esh Kodesh Gilmore is pursuing a case against the PA, the PLO, Yasser Arafat and the members and commanders of two guerilla factions who allegedly shot and killed Gilmore in East Jerusalem in October 2000.<sup>57</sup>

A suit has been filed against the PA and the PLO over the deaths of Yaron and Efrat Ungar in Israel. The Ungars were shot to death in their car in 1996 by members of the Hamas-Islamic Resistance Movement, a terrorist group based in and operating from territories controlled by the PA and the PLO.<sup>58</sup>

## Appendix C

### CASES BROUGHT IN THE UNITED STATES AGAINST “TERRORIST NATIONS” UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT

**Iraq: Americans Imprisoned and Tortured in Iraq Following Gulf War.** Four Americans working in various civilian capacities in and around the Kuwait-Iraqi border sued Iraq after being imprisoned and tortured in the 1990s for alleged border infractions after the Gulf War had ended. Testimony from hostages Clinton Hall, Kenneth Beaty, William Barloon and David Daliberti detailed how Iraq government employees placed loaded guns to their heads, incarcerated them in unsanitary places and subjected them to unspeakable conditions. In May 2001, a federal court entered an \$18.8 million-dollar judgment in favor of the victims and their wives.<sup>59</sup>

**Iran: Americans Killed by Suicide Bombers in Israel.**

On July 11, 2000, a federal judge ruled that the Republic of Iran was liable for \$327 million for the wrongful deaths of two American students, 25-year-old Matthew Eisenfeld and 22-year-old Sara Duker. Both were killed in a February 1996 Hamas terrorist bombing that destroyed the bus they were traveling on in Israel. The \$300 million punitive damages award represented three times the amount Iran was shown to spend each year sponsoring terrorists such as those involved in the explosion.<sup>60</sup>

Alisa Flatow, a 20-year-old college student studying in Israel, died in April 1995 after a suicide bomber drove a van loaded with explosives into the bus on which she was passenger. Her father sued Iran, its Ministry of Information and Security and three top Iranian officials for their involvement in the attack. Evidence showed that: 1) Iran had funded the terrorist cell responsible for Flatow’s death; 2) Iran’s Ministry had acted as a conduit for the provision of funds and training to the cell; and 3) Iran’s Supreme Leader, former President and former Minister had approved the provision of or conspired to provide material support and resources by Iran to the cell. In 1998, a federal judge entered a \$247.5 million default judgment, \$225 million of which was punitive, against the defendants.<sup>61</sup>

**Iran: American Citizen/Iranian Dissident Assassinated in France** On October 23, 1990, former university professor and Iranian dissident Cyrus Elahi, an Iranian-born U.S. citizen, was assassinated by Iranian intelligence operatives while leaving his apartment building in Paris, France. His brother filed a wrongful death suit against Iran and its Ministry of Information and Security for their role in the killing. In December 2000, a district court ordered Iran and its Ministry to pay \$11.7 million in compensatory damages, with the Ministry ordered to pay an additional \$300 million in punitive damages.<sup>62</sup>

## **Iran: Americans Held Hostage in Lebanon.**

Marine Lt. Colonel William R. Higgins was kidnapped, tortured, mutilated and killed by Iranian-backed Hezbollah terrorists in 1989 while on a United Nations peacekeeping mission in Lebanon. His wife filed suit against Iran and was awarded \$355 million in damages; \$300 million were punitive.<sup>63</sup>

Joseph Cicippio, David Jacobsen, Frank Reed and their families were awarded \$65 million in a default judgment against Iran after being held hostage in the 1980s by the terrorist group Hezbollah. During his captivity from 1986 to 1991, Cicippio, comptroller for the American University of Beirut and its hospital, was not only subjected to games of Russian roulette, threats of castration and random beatings but also bound by chains in rodent- and scorpion-infested cells. Fifty-four-year-old Jacobsen, CEO of the American University of Beirut Medical Center, endured similar tortures from May 1985 until November 1986. For 44 months (September 1986 to April 1990), Reed, who owned and operated two private schools in Beirut, was subjected daily to beatings, threats of death, solitary confinement and fed arsenic.<sup>64</sup>

Terry Anderson, chief Middle East correspondent for the Associated Press, was kidnapped and held hostage from March 1985 until December 1991 by Iranian-backed Hezbollah guerillas in Beirut. While a prisoner, he was chained to the floor, blindfolded, taunted, starved and confined in various unsanitary dungeons. Anderson filed a lawsuit against Iran and its Ministry of Information and Security and was awarded a \$341.7 million default judgment, \$300 million of which was punitive.<sup>65</sup>

Thomas Sutherland, a former dean at the American University of Beirut, was kidnapped, brutally tortured and tormented by members of Hezbollah from June 1985 to November 1991. During that time, he was confined to filthy dungeons, chained to the floor, wall and/or another hostage and forced to wear a blindfold at all times. Sutherland and his family filed a lawsuit against Iran and its Ministry of Information and Finance. In June 2001, a judge awarded \$353 million in damages, \$300 million of which were punitive.<sup>66</sup>

Reverend Lawrence Jenco was working as director of Catholic Relief Services in Beirut in January 1985 when he was kidnapped and taken hostage by the Islamic fundamentalist group Hezbollah. For over 18 months Jenco was not only chained, beaten, blindfolded and psychologically tortured but also denied adequate food, clothing, toilet facilities and medical care. After his release, he served as a priest in the U.S. until his death in July 1996. Nearly four years later, Jenco's family filed suit against Iran and its Ministry, winning a default judgment of \$314.6 million in compensatory and punitive damages.<sup>67</sup>

On January 24, 1987, 52-year-old Robert Polhill, a professor at Beirut University College, was kidnapped at a meeting orchestrated by Hezbollah. While a captive, he was chained, permitted to shower only a few times per year and given new clothes only when his old clothes rotted. Polhill was also deprived of regular, measured insulin shots for his diabetes, forcing him to estimate the proper dosage when insulin was provided, and developed cancer of the larynx. He was released on April 22, 1990, 1,185 days after the

initial kidnapping, and died nine years later. Polhill's family filed suit against Iran and its Ministry of Information and Security, which on August 23, 2001 was ordered to pay \$31.5 million in compensatory damages with the Iranian Ministry also paying an additional \$300 million in punitive damages.<sup>68</sup>

**Cuba: Cuban Exiles Shot Down.** A federal judge awarded \$187.5 million to the families of Mario de la Pena, Manuel Alejandro and Carlos Alberto Costa whose planes had been shot down by Cuban fighter jets in February 1996 after they flew into Cuban airspace (a fact the FAA acknowledges). The three men were members of "Brothers to the Rescue," a Miami-based Cuban exile group that had been flying missions over Cuba, dropping leaflets and generally trying to intimidate the Cuban government.<sup>69</sup>

#### THE FOLLOWING CASES ARE STILL PENDING:

**Afghanistan (as well as the Taliban, Al-Qaida And Osama bin Laden): September 11 World Trade Center Attacks.** The widow of a man killed in the September 11 World Trade Center attack has filed a lawsuit in New York federal court against Afghanistan, the Taliban, al-Qaida and its leader Osama bin Laden. Her husband was working in Tower One when American Airlines Flight 11 struck the building. Before he and a co-worker could be rescued by helicopter from the roof, One World Trade Center collapsed. The suit seeks damages for wrongful death, survival, assault, battery and false imprisonment, negligent and/or intentional infliction of emotional distress and racketeering under the federal RICO statute.<sup>70</sup>

**Iraq: POWs Used as "Human Shields" During Iraqi Invasion of Kuwait.** Hundreds of American citizens were rounded up and held hostage after Iraq's invasion of Kuwait in August 1990. Iraqi President Saddam Hussein had issued an order forbidding U.S. citizens from leaving Iraq or Kuwait, having decided to use them as leverage to prevent the United States from mounting an attack. While American women and children were released after one month, male hostages remained captive for over four months, many of whom were relocated to military and strategic sites across Iraq. Over 80 victims filed suit against Iraq and Saddam Hussein, and on June 29, 2001, a federal judge found Iraq liable. The court has yet to rule on damages.<sup>71</sup>

**Iran: Murder of Iranian Resistance Movement Leader.** The family of former Iranian Prime Minister Shahpour Bakhtiar (all of whom are U.S. citizens) has filed a wrongful death lawsuit against Iran and its Foreign Affairs and Intelligence Ministries. Bakhtiar had ruled for 39 days until Ayatollah Khomeini took control of the government, prompting Bakhtiar to go to France where he led the Iranian Resistance Movement. He was stabbed to death in his home on August 6, 1991, while under police protection, after an Iranian "fatwa" (*i.e.*, religious decree) was issued against him.<sup>72</sup>

**Libya: Bombing of Pan Am Flight 103.** Two civil lawsuits are proceeding against the Libyan government on behalf of 189 Americans killed in the bombing of Pan Am Flight 103 over Lockerbie, Scotland on December 21, 1988.<sup>73</sup>

**Iran: Car Bombing Outside U.S. Embassy in Beirut.** Survivors of U.S. Navy Petty Officer Michael Wagner are seeking to hold Iran accountable for its sponsorship of Hezbollah, the group responsible for a September 20, 1984 bombing outside the U.S. Embassy in Beirut. Wagner died while serving as a naval intelligence specialist at the Defense Attaché's office in the Embassy.<sup>74</sup>

**Iran: Car Bombing of U.S. Embassy in Beirut.** Victims of the April 18, 1983 suicide bombing of the U.S. Embassy in Beirut have filed a lawsuit against Iran for providing material support and resources to Hezbollah terrorists. The attack killed 17 U.S. citizens and 63 Lebanese nationals and seriously injured hundreds of others.<sup>75</sup>

**Iran: Bombing of Marine Barracks in Beirut.** Relatives of the 241 Americans killed in the 1983 bombing of a Marine barracks in Beirut have filed suit against Iran.<sup>76</sup>

**Iran: Hostage Taking and Execution of Navy Diver During Hijacking.** On June 14, 1985, Iranian-backed Hezbollah terrorists hijacked a TWA Athens-to-Rome flight with 145 passengers and nine crew members aboard. After the plane arrived in Lebanon, U.S. Navy diver Robert Stethem was executed and 39 Americans were held hostage, six of whom were U.S. military personnel. On January 28, 2000, Stethem's family filed a lawsuit against Iran. Five months later, the six servicemen did the same, having been beaten and terrorized by Hezbollah members for 17 days in Beirut. The cases are now being tried in federal district court.<sup>77</sup> The Stethem case is among those eligible for compensation by the Treasury Department but the servicemen's lawsuit is not (*see* Introduction). An April 2001 bill passed in the House (and referred to the Senate) would add the servicemen's case to the list of victims who could receive monetary compensation (although not punitive damages) from the U.S. Treasury should they prevail against Iran at trial.<sup>78</sup>

**Iran: Torture and Killing of American Diplomats during Hijacking.** A lawsuit is pending against Iran over its role in the 1984 torture and killing of American diplomats aboard a Kuwait Airways flight hijacked by Hezbollah terrorists.<sup>79</sup>

### **Iran: Hostage Taking.**

Former hostage Frank Regier has filed a lawsuit against Iran over his 1984 kidnapping and the 65 days he was held captive by Iranian operatives. Regier was serving as Chairman of the Electrical Engineering Department at American University of Beirut when he was abducted.<sup>80</sup>

Reverend Benjamin Weir is pursuing a lawsuit against Iran for its role in his May 1984 kidnapping and 16-month incarceration.<sup>81</sup>

Fifty-two former hostages are suing Iran after being held captive at the American Embassy in Tehran from 1979 to 1981. *The Justice Department is attempting to have the case barred because of a 1981 international agreement between the United States and Iran that conditioned release of the hostages on the United State's promise to bar Americans from pursuing lawsuits over the Embassy hostage crisis.*<sup>82</sup>

**Libya and Iran: Kidnapping and Murder of American in Lebanon.** Iran and its Ministry of Information of Security, as well as Libya and its Jamahiriya Security Organization, face a lawsuit for their roles in having Peter Kilburn kidnapped, held hostage, sold and murdered in Lebanon. On November 30, 1984, the time he was kidnapped, Kilburn was a librarian and instructor of library sciences at the American University of Beirut.<sup>83</sup>

**Libya: Imprisonment and Torture of Americans.** Michael Price and Roger Frey were detained, imprisoned and tortured in a Libyan prison cell for 105 days in March 1980, having been charged with taking illegal photos. The men seek to hold Libya responsible for the cruel and inhuman treatment they endured.<sup>84</sup>

## Appendix D

### MISCELLANEOUS WORLD WAR I AND II CASES

#### **Insurance Claims.**

**World War II.** In 1997, Holocaust victims and their heirs began filing class action and individual lawsuits against more than one-dozen European insurance companies for failing to pay life insurance claims. Though many suits are pending, some have been settled. For example, in 1998, Assicurazioni Generali, Italy's largest Italian insurance company, agreed to pay \$100 million to settle a class action lawsuit. Two years later, Generali promised to provide up to \$100 million to end thousands of Holocaust-era insurance claims. Settlement of insurance claims against German and Austrian companies were part of agreements brokered by the United States, which promised to ask U.S. courts to drop all Holocaust-related lawsuits.<sup>85</sup>

**U.S. Holocaust Insurance Statutes.** Since 1998, state legislatures around the country have enacted laws to make it easier to recover proceeds from insurance policies written to Holocaust victims. For example, New York passed the Holocaust Victims Insurance Act of 1998, which provides that any insurer doing business in New York who receives a claim from a Holocaust victim must make a diligent effort to investigate, resolve and settle the claim.<sup>86</sup> If the insurance company fails to do so, victims or their heirs can sue. Florida, California, Maryland, Washington, Minnesota and Texas have passed similar statutes.<sup>87</sup> However, in October 2001, federal courts struck down the Florida and California laws as unconstitutional violations of due process.<sup>88</sup>

**World War I.** More than 1.5 million Armenians were killed in a genocidal campaign during World War I. In 1999, over 10,000 heirs filed a class action suit against New York Life Insurance Company for unpaid life insurance benefits. The parties ultimately settled, with New York Life agreeing to pay beneficiaries 10 times the face value of the policies and contribute \$3 million to Armenian civic organizations.<sup>89</sup>

#### **Property Claims Against Banks.**

**Swiss Banks.** At the beginning of and during World War II, Jews and other victims of Nazi persecution deposited money in Swiss banks to protect it from confiscation. The Swiss banks also accepted and laundered assets looted by the Nazis, which included gold and proceeds from slave labor. After the banks failed to return their assets, Holocaust victims and their heirs filed three federal class action lawsuits (later consolidated) in April 1997 against Credit Suisse and the Union Bank of Switzerland, entities responsible for most of the deposit-taking activities in the 1930s and 1940s. In May 1998, one of the victims reached an individual settlement of \$500,000 with Credit Suisse that ended her

participation in the class action lawsuit. Three months later, the litigation against the Swiss banks settled for \$1.25 billion.<sup>90</sup>

**French Banks.** In 1997 and 1998, Jewish survivors of the Holocaust in France filed class actions against six French banks that had refused to return assets during or after World War II. The British Bank, Barclays Bank, Chase Manhattan Bank and J.P. Morgan, which had branches in France during the war, were also named as defendants for allegedly confiscating the deposits of Jewish people. A lawsuit was also filed against the banks in California state court. Barclays and J.P Morgan settled all claims against them, with Barclays paying \$3.6 million. On January 18, 2001, American and French officials reached an agreement on behalf of the victims with other banks. Under the settlement, the banks agreed to establish two funds – an unlimited fund for claimants with proof of wartime assets held in French banks and a \$22.5 million fund for other victims, who may have less evidence to support their claims. The banks made the settlement contingent upon the withdrawal and dismissal of all Holocaust-related lawsuits.<sup>91</sup>

**German Banks.** In June 1998, three Holocaust survivors filed a class action lawsuit against Germany's Deutsche and Dresdner Banks, alleging that they had looted the accounts and seized the property of Jewish people. Four months later, another class action suit was filed against Germany's Commerzbank, Deutsche Bank and Dresdner Bank, claiming that the banks had not only financed and profited from slave labor but also continued to withhold assets from Jewish survivors. After extensive negotiations, the German government and German industries reached an agreement with the United States in July 2000 that established a \$5.1 billion fund, meant in part to satisfy claims against German banks. In return for their contributions to the fund, the United States government agreed to try to have existing and future Holocaust-era lawsuits against German banks dropped.<sup>92</sup>

**Austrian Banks.** In 1998, Holocaust survivors filed a class action lawsuit against Creditanstalt and Austria Bank, which profited substantially from business dealings with the Nazis during World War II. In March 1999, the case settled for \$40 million.<sup>93</sup>

### **Other Property Claims.**

**Stolen Artwork.** During WWII, the Nazis stole an estimated 220,000 works of art totaling \$20.5 billion from museums and individuals. Few cases have been filed in the United States relative to the number of pieces looted. The first lawsuit to reach trial was against a Chicago businessman who had purchased a Degas painting that had been stolen. The parties settled in August 1998 on the eve of trial. Other recent cases have involved paintings by Henri Matisse, Gustav Klimt and Egon Schiele and illuminated manuscripts from the fifteenth and seventeenth centuries.<sup>94</sup>

**Stolen or Destroyed Property.** In 2000, Jewish Holocaust victims filed a class action lawsuit against Austrian government and industries, seeking compensation, in part, for homes, businesses and other assets that were stolen or destroyed during the Nazi regime. Following negotiations with the United States, Austria agreed that its government and



private-sector companies would provide \$210 million to compensate victims for stolen or destroyed property and \$150 million for lost apartments and businesses. In return, the United States agreed it would ask U.S. courts to dismiss all Holocaust-related lawsuits against Austria and its companies. Over 230 survivors and their heirs, who refused to sign the 2001 agreement, are pursuing a class action lawsuit against the Austrian government and its industries.<sup>95</sup>

**Japan sued for waging war.** A case has been filed on behalf of both U.S. citizens and former U.S. soldiers against the country of Japan for war crimes and waging “a war of aggression in clear violation of international law and international treaties,” which is a “criminal act that constitutes an intentional tort against the victims of war.” The case has been filed as a class action lawsuit on behalf of over 437,000 U.S. civilians and members of the armed forces who were injured or killed by the Japanese Imperial Army during World War II. The lead plaintiff, retired Army colonel Melvin H. Rosen, is a former POW who was forced to do hard labor for three-and-a-half years in the Philippines. Rosen’s co-plaintiff, Ethel Blaine Millet, was made to work as a nurse in Japanese POW camps after being captured during the war.<sup>96</sup>

## NOTES

<sup>1</sup> The Air Transportation Safety and System Stabilization Act provides September 11th victims with two options: 1) file a claim for compensation from a congressional fund administered by a special master whose damage award decision is final; or 2) sue the airlines and/or other entities involved. According to the statute, those choosing the compensation fund do not have to prove liability. Instead, victims must only establish that they have suffered economic and non-economic (*i.e.*, pain, trauma, lost quality of life) damages. By selecting this option, however, they relinquish the right to sue, punitive damages are barred and there is no appeal of the special master's decision. Bob Van Voris, "Questions arise on aid plan details," *National Law Journal*, October 8, 2001; Dan Margolies, "Congressional fund for terrorists' victims will protect airlines, speed restitution," *Knight Ridder*, October 4, 2001; Julie Kay, "Air bailout; Lawyers examine options for terror victims as federal bill provides buffer to airlines," *Broward Daily Business Review*, September 25, 2001.

<sup>2</sup> The suit seeks damages for wrongful death, survival, assault, battery and false imprisonment, negligent and/or intentional infliction of emotional distress and racketeering under the federal RICO statute. *Doe v. Islamic Emirate of Afghanistan*, 01 Civ. 9074 (S.D.N.Y., filed October 11, 2001)(complaint on file with CJ&D). *See also*, William Glaberson, "Widow of Terrorist Victim Sues bin Laden and Taliban," *New York Times*, October 13, 2001; Mark Hamblett, "First Suit Over WTC Attacks Names Taliban, Bin Laden as Defendants," *New York Law Journal*, October 12, 2001; Patricia Hurtado, "\$5M Suit Filed Against bin Laden," *Newsday*, October 12, 2001.

<sup>3</sup> *See*, Michael Ratner, "Civil Remedies for Gross Human Rights Violations: An Overview and Explanation," found at <http://www.humanrightsnow.org>.

<sup>4</sup> *Ibid.*

<sup>5</sup> Michael Bazyler, "Litigating The Holocaust," 33 *U. Rich. L. Rev.* 601, 603-604, 620 (May 1999).

<sup>6</sup> Bob Van Voris, "Suits Still Pending From 1993 Trade Center Blast," *National Law Journal*, October 3, 2001; Claude Slotnick, "Claims worth \$500M from '93 bombing still outstanding," *Daily Record Online*, September 13, 2001; Cerrisse Anderson, "Discovery Proceeding in Trade Center Case; Judge Orders Inspection of Security Reports," *New York Law Journal*, April 13, 1995; "New York Trade Center Suits Filed Before Deadline," *Liability Week*, February 28, 1994.

<sup>7</sup> 28 U.S.C. §1350 (2001).

<sup>8</sup> Craig Forcese, "ATCA's Achilles Heel: Corporate Complicity, International Law and the Alien Tort Claims Act," 26 *Yale J. Int'l L.* 487 (Summer 2001); Richard Herz, "Litigating Environmental Abuses Under the Alien Tort Claims Act: A Practical Assessment," 40 *Va. J. Int'l L.* 545, 552 (Winter 2000), found at <http://www.earthrights.org/pubs/atca.doc>; Elizabeth Amon, "Coming to America," *National Law Journal*, October 23, 2000; Frederic L. Kirgis, "Alien Tort Claims Act Proceeding Against Robert Mugabe" (September 2000), found at <http://www.asil.org/insights/insigh50.htm>; Michael Ratner, "Civil Remedies for Gross Human Rights Violations: An Overview and Explanation," found at <http://www.humanrightsnow.org>; David L. Bosco and Anne-Marie Slaughter, "Alternative Justice Facilitated by Little-Known 18th Century Law," found at [http://www.crimesofwar.org/relate\\_alternative\\_print.html](http://www.crimesofwar.org/relate_alternative_print.html).

<sup>9</sup> *See*, Michael Ratner, "Civil Remedies for Gross Human Rights Violations: An Overview and Explanation," found at <http://www.humanrightsnow.org>.

<sup>10</sup> Pub. L. 102-256 (enacted March 12, 1992).

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<sup>11</sup> Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://www.humanrightsnow.org>. See also, e.g., *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 104-106, (2nd Cir. 2000); *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 168-169 (5th Cir. 1999); *Ortiz v. Gramajo*, 886 F.Supp. 162, 175-176 (D. Mass. 1995).

<sup>12</sup> 18 U.S.C. §2331 et seq. (2001).

<sup>13</sup> *Boim v. Quranic Literacy Institute*, 127 F.Supp.2d 1002 (N.D. Ill. 2001). See also, Matt O’Connor, “U.S. appeals court debates a lawsuit over Israel slaying,” *Chicago Sun-Times*, September 26, 2001; Abdon M. Pallasch, “Could bin Laden be sued?” *Chicago Sun-Times*, September 26, 2001; “Suit Accusing Groups of Funding Terrorism Can Continue in Illinois Federal Court,” *White-Collar Crime Reporter* (March 2001); Judith Miller, “Suit Accuses Islamic Charities Of Fund-Raising for Terrorism,” *New York Times*, May 13, 2000.

<sup>14</sup> 18 U.S.C. §1602 et seq. (2001).

<sup>15</sup> “Foreign Sovereign Immunities Act,” 18 U.S.C. §1602 et seq.; Office of the Coordinator for Counterterrorism, U.S. Department of State, “Overview of State-Sponsored Terrorism Patterns of Global Terrorism – 2000,” April 2001, found at <http://www.state.gov/s/ct/rls/pgtrpt/2000/index.cfm?docid=2441>; Senator John Conyers Jr., “The ‘Justice For Victims Of Terrorism Act,’” found at [http://www.house.gov/judiciary\\_democrats/additionalviewhr3485.htm](http://www.house.gov/judiciary_democrats/additionalviewhr3485.htm); Warren D. Zaffuto, “A ‘Pirate’s Victory’: President Clinton’s Approach to the New FSIA Exception Leaves the Victors Empty-Handed,” 74 *Tul. L. Rev.* 685, 695-702 (December 1999).

<sup>16</sup> See, Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://www.humanrightsnow.org>.

<sup>17</sup> *Doe v. Islamic Emirate of Afghanistan*, 01 Civ. 9074 (S.D.N.Y., filed October 11, 2001)(complaint on file with CJ&D).

<sup>18</sup> Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://www.humanrightsnow.org>.

<sup>19</sup> Pamela S. Falk, “How families of victims of the Sept. 11 attacks may recover damages,” *Fulton County Daily Report*, October 5, 2001; Lori Litchman, “Senate Vote Means Ex-Hostages Can Recover \$ 65 Mil. from Iranian Assets,” *Legal Intelligence*, October 12, 2000.

<sup>20</sup> Bill Miller, “Terrorist Victims Set Precedent; U.S. to Pay Damages, Collect From Iran,” *Washington Post*, October 22, 2000; Senator John Conyers Jr., “The ‘Justice For Victims Of Terrorism Act,’” found at [http://www.house.gov/judiciary\\_democrats/additionalviewhr3485.htm](http://www.house.gov/judiciary_democrats/additionalviewhr3485.htm); Warren D. Zaffuto, “A ‘Pirate’s Victory’: President Clinton’s Approach to the New FSIA Exception Leaves the Victors Empty-Handed,” 74 *Tul. L. Rev.* 685, 695-702 (December 1999); “Presidential Determination No. 99-1 of October 21, 1998,” 63 Fed. Reg. 59201.

<sup>21</sup> Robert Schlesinger, “America Attacks/Legal Maneuver Lawsuits,” *Boston Globe*, October 10, 2001; “Payment for Political Attacks,” *ABCNEWS.com*, October 23, 2000, found at <http://abcnews.go.com/sections/us/DailyNews/hostagelawsuits001023.html>.

<sup>22</sup> “Justice For Victims Amendment,” H.R. 2975 (introduced in the House October 2, 2001; currently on the Senate calendar); “Victims of Trafficking and Violence Protection Act of 2000,” Pub. L. 106-386, §2002. See also, Jim Bodor, “Terrorists could face court suits; Victims weighing redress,” *Sunday Telegram*, October 14, 2001; Robert Schlesinger, “America Attacks/Legal Maneuver Lawsuits,” *Boston Globe*, October 10, 2001; “Cannon Introduces

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Justice For Victims Of Terrorism Amendment,” October 3, 2001, found at <http://www.house.gov/cannon/press2001/oct03.htm>; Lori Lichtman, “An Extraordinary Legal Journey,” *Legal Intelligencer*, January 17, 2001; Bill Miller, “Terrorist Victims Set Precedent; U.S. to Pay Damages, Collect From Iran,” *Washington Post*, October 22, 2000; Jonathan Groner, “Payback Time; Pushed by Terror Victims, Bill to Ease Seizure Of Assets From Rogue Nations Gains Ground,” *Legal Times*, June 5, 2000.

<sup>23</sup> See, e.g., *In re World War II Era Japanese Forced Labor Litigation*, 114 F.Supp.2d 939, 944-949 (N.D. Cal. 2000); *Iwanowa v. Ford*, 67 F.Supp.2d 424, 457-458 (D. New Jersey 1999).

<sup>24</sup> *In re World War II Era Japanese Forced Labor Litigation*, 114 F.Supp.2d 939 (N.D. Cal. 2000). See also, “San Francisco judge dismisses POW compensation case,” *Japan Weekly Monitor*, September 25, 2000.

<sup>25</sup> *In Re: World War II Era Japanese Forced Labor Litigation*, 2001 U.S. Dist. LEXIS 14641 (N.D. Cal. 2001). See also, K. Connie Kang, “Law Allowing Suits by Forced Laborers Voided,” *Los Angeles Times*, September 20, 2001.

<sup>26</sup> See, “L.A. court to hear 1st slave labor case against Japanese firm,” *Japan Weekly Monitor*, September 24, 2001; K. Connie Kang, “Law Allowing Suits by Forced Laborers Voided,” *Los Angeles Times*, September 20, 2001; Meg Laughlin, “The Never-Ending March,” *Miami Herald*, October 10, 1999; “Ex-POWs sue 2 giant Japan corporations,” *Copley News Service*, September 27, 1999; “State Action Against Japanese Industries,” citing *Jeong v. Onoda Cement Co. Ltd.*, BC217805 (Los Angeles Super. Ct., Cal., filed October 4, 1999) and *Dillman v. Mitsubishi Materials Corporation*, No. 814430 (Orange Cty. Super. Ct., Cal., filed September 14, 1999), found at <http://www.law.whittier.edu/sypo/final/r9.jpg> and <http://www.law.whittier.edu/sypo/final/r8.jpg>, respectively.

<sup>27</sup> “WWII Slave Labor Lawsuit Cleared For Trial,” *Mealey’s Publications*, October 11, 2001, citing *Jeong v. Onoda Cement Co. Ltd.*, No. BC217805 (Los Angeles Cty. Super. Ct., Cal.), found at <http://www.lexisone.com/news/nlibrary/n101101b.html>; “L.A. court to hear 1st slave labor case against Japanese firm,” *Japan Weekly Monitor*, September 24, 2001; K. Connie Kang, “Law Allowing Suits by Forced Laborers Voided,” *Los Angeles Times*, September 20, 2001. John Price, “Fifty years later, it’s time to right the wrongs of the San Francisco peace treaty,” *Japan Times*, September 6, 2001, found at <http://www.gainfo.org/SFPT/news/20010906cJPTimes.htm>.

<sup>28</sup> Lee Benson, “WWII vets fight one final battle,” *Deseret News*, October 28, 2001; K. Connie Kang, “Law Allowing Suits by Forced Laborers Voided,” *Los Angeles Times*, September 20, 2001; Meg Laughlin, “The Never-Ending March,” *Miami Herald*, October 10, 1999; “Ex-POWs sue 2 giant Japan corporations,” *Copley News Service*, September 27, 1999; Kellie Patrick, “POWs Suing On Claim Of Forced Labor,” *Sun-Sentinel*, September 16, 1999; Seana K. Magee, “Three Former United States POWs File Suit Against Mitsubishi,” *Malaysia General News*, September 15, 1999; “World War II POWs sue Mitsubishi,” *Orange County Register*, September 15, 1999; “State Action Against Japanese Industries,” citing *Dillman v. Mitsubishi Materials Corporation*, No. 814430 (Orange Cty. Super. Ct., Cal., filed September 14, 1999), found at <http://www.law.whittier.edu/sypo/final/r8.jpg>.

<sup>29</sup> “Administration told not to oppose American POW lawsuits against Japanese firms,” *Jefferson City News Tribune*, September 12, 2001, discussing the Commerce, Justice, and State Appropriations Act, 2002 (H.R. 2500, §626), found at [http://www.newstribune.com/stories/091201/wor\\_0912010926.asp](http://www.newstribune.com/stories/091201/wor_0912010926.asp); “Harkin Amendment To Help WWII’S POW’S Used For Slave Labor Passes Senate,” September 10, 2001, found at <http://harkin.senate.gov/news.cfm?id=178720>; “U.S. House passes bill to ease WWII lawsuits against Japan,” *Japan Politics & Policy*, July 23, 2001; Senate Judiciary Hearing on WWII POW Compensation, S. Hrg. 106-585, June 28, 2000, found at <http://www.gainfo.org/SFPT/UsSenateJudiciaryCommHearingPowCompensation28June2000.htm>; “San Francisco Peace Treaty: Has Justice Been Served and Peace Secured?” found at <http://www.gainfo.org/SFPT/SFPTSanFranciscoPeaceTreatyIntroduction.htm>. The Senate is also considering the POW Assistance Act of 2001, Senate Bill 1272, which gives American WWII veterans more time to file civil

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<sup>30</sup> *Rosen v. People of Japan*, No. 01C6864 (N.D. Ill., complaint filed September 4, 2001), found at <http://anthonydamato.law.northwestern.edu/Adobefiles/Rosen-Japan-Complaint-filed.pdf>. See also, Michael Ravnitzky, "POW reparations suit," *National Law Journal*, October 8, 2001; "U.S. war compensation suit seeks \$1 tril. from Japan," *Japan Policy & Politics*, September 10, 2001; "Ex-POWs demand their V-J Day; 4 former GIs seek to sue Japanese for slave labor," *Chicago Tribune*, September 8, 2001.

<sup>31</sup> "In some cases, justice carries no price tag," *National Law Journal*, February 19, 2001, citing *Doe v. Karadzic*, No. 93 Civ. 878 (S.D.N.Y., verdict September 25, 2000)(victims awarded \$4.5 billion) and *Kadic v. Karadzic*, No. 93 Civ. 1163 (S.D.N.Y., verdict August 10, 2000)(victims awarded \$745 million). See also, "Jury returns \$4.5 billion verdict against ex-Bosnian Serb leader Karadzic," *CNN.com*, September 26, 2000, found at <http://www.cnn.com/2000/WORLD/europe/09/26/us.bosnia.suit.ap>; Alexey Volynets, "Karadzic Trial," August 8, 2000, found at <http://www.fas.org/man/dod-101/ops/war/2000/08/000804-bosnia1.htm>; Martin Flumenbaum and Brad Karp, "War Crimes Jurisdiction," *New York Law Journal*, October 25, 1995.

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<sup>33</sup> Michael Ratner and Beth Stephens, "Tyrants, Terrorists and Torturers Brought to Justice; U.S. Courts Provide Compensation for Victims," *New York Law Journal*, May 15, 1995, citing *Todd v. Panjaitan*, No. CV-92-12255 (D. Mass., October 26, 1994). See also, "1995 Trial Lawyer of the Year finalists announced," *Indiana Lawyer*, July 26, 1995.

<sup>34</sup> *Mushikiwabo v. Barayagwiza*, No. 94 Civ. 3627 (S.D.N.Y., judgment entered April 8, 1996). See also, John R. Schmertz and Mike Meier, "Under Alien Tort Claims Act, New York district court grants default judgment against Rwandan leaders allegedly involved in massacre of Rwandan Tutsi minority," *International Law Update* (May 1996).

<sup>35</sup> "Notice of Proposed Settlement of Class Action," February 28, 1999 for *In Re: Estate of Ferdinand E. Marcos Human Rights Litigation*, MDL No. 840 (D. Hawaii, 1999)(on file with CJ&D). See also, "Victims of Ferdinand Marcos's Human Rights Abuses in the Philippines Win Class-Action Lawsuit," *CBS Evening News*, August 15, 1999; Lori Tighe, "\$150 million settlement in Marcos suit bittersweet," *Honolulu Star Bulletin*, April 30, 1999, found at <http://starbulletin.com/1999/04/30/news/story9.html>; "Vindicating Human Rights," *Trial Lawyers Doing Public Justice 1997*.

<sup>36</sup> *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995). See also, Michael Ratner and Beth Stephens, "Tyrants, Terrorists and Torturers Brought to Justice; U.S. Courts Provide Compensation for Victims," *New York Law Journal*, May 15, 1995; Judy Rakowsky, "Ex-Guatemala general, tied to abuses, loses a \$47m US suit," *Boston Globe*, April 15, 1995; "Guatemalan General Ordered to Pay \$47.5 Million for Atrocities," *Associated Press*, April 13, 1995.

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<sup>38</sup> *Martinez-Baca v. Suarez-Mason*, 1988 U.S. Dist. LEXIS 19470 (N.D. Cal.). See also, Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://humanrightsnow.org/articles.htm>; Michael Ratner and Beth Stephens, “Tyrants, Terrorists and Torturers Brought to Justice; U.S. Courts Provide Compensation for Victims,” *New York Law Journal*, May 15, 1995.

<sup>39</sup> *Paul v. Avril*, 901 F.Supp. 330 (S.D. Fla. 1994). See also, Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://humanrightsnow.org/articles.htm>; “1995 Trial Lawyer of the Year finalists announced,” *Indiana Lawyer*, July 26, 1995; “Ex-Haitian Strongman Ordered to Pay,” *National Law Journal*, July 18, 1994.

<sup>40</sup> *Abebe-Jiri v. Negewo*, 1993 U.S. Dist. LEXIS 21158 (N.D. Ga.). See also, e.g., Arlene Levinson, “Torture Turns Courts Into Tribunals,” *AP Online*, February 13, 1999.

<sup>41</sup> *Filartiga v. Pena-Irala*, 577 F.Supp. 860 (E.D.N.Y. 1984); *Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2nd Cir. 1980). See also, Michael Ratner, “Civil Remedies for Gross Human Rights Violations: An Overview and Explanation,” found at <http://humanrightsnow.org/articles.htm>; “Taking Tyrants To Courts,” *American Lawyer* (October 1991).

<sup>42</sup> Mark Fineman, “U.S. Strikes Back,” *Los Angeles Times*, October 12, 2001; Philip Ngunjiri, “Kenya Ask: Where’s the Justice in Bombing Verdict?” June 26, 2001, found at [http://www.africana.com/DailyArticles/index\\_20010626.htm](http://www.africana.com/DailyArticles/index_20010626.htm); Christine Haughney and Bill Miller, “Old law creates forum for war-crimes trials,” *Toronto Star*, August 13, 2000; Kevin Kelley, “Bombing Survivors Have a Week to Sue US Government,” *East African*, July 31, 2000; Kevin Kelley, “Deadline Approaches for 1998 Bomb Claims,” *East African*, March 13, 2000; Kelly Flaherty, “Burris Sues U.S. Over Kenya Embassy Bomb,” *Recorder*, March 8, 1999. See also, “Federal Tort Claims Act,” 28 U.S.C. § 2671 et seq. The Federal Tort Claims Act of 1946 (FTCA) allows individuals to sue the U.S. government for injuries or deaths caused by the negligence of its employees. To file for damages under the FTCA, the government employee must have been acting within the scope of his/her employment at the time of injury, and the federal courts must apply the law of the place where the negligence occurred. Victims cannot collect punitive damages and there is no right to jury trial under the FTCA.

<sup>43</sup> William Glaberson, “U.S. Courts Become Arbiters of Global Rights and Wrongs,” *New York Times*, June 21, 2001; “Moyo, a man obsessed with denying reports,” *Daily News*, May 14, 2001; “Mugabe not off the hook,” *Zimbabwe Standard*, March 4, 2001; RW Whitehead, “Press Statement No.3 – Zimbabwe citizens v. Mugabe, ZANU PF & others,” February 24, 2001, found at <http://www.mdczimbabwe.com/archivemat/civilsuitmug/stmt010224txt.html>; “Detail from the Clerk’s Certificate relating to the civil case brought against Mugabe in the US,” October 24, 2000, citing *Tachiona v. Mugabe*, No. 00-Civ-6666 (S.D.N.Y., complaint filed September 6, 2000), found at <http://www.mdczimbabwe.com/archivemat/civilsuitmug/cert001024txt.htm>; “Mugabe sued over election killings,” *BBC News*, September 10, 2000.

<sup>44</sup> “Seeking Redress On Behalf Of Torture Survivors: The Center for Justice and Accountability,” *Legal Support Network Newsletter* (Spring 2001), citing *Mehinovic v. v. Vuckovic*, 98-CV-2470 (N.D. Ga.), found at <http://www.amnesty-usa.org/lsn/spring2001.pdf>; Center for Justice & Accountability, “Projects,” found at <http://www.cja.org>. See also, Brent Israelsen, “Judge Won’t Drop Suit Accusing Serb of Torture,” *Salt Lake Tribune*, September 17, 1999; Arlene Levinson, “Foreign torture cases turn U.S. courts into human rights tribunals of a sort,” *Associated Press*, February 14, 1999; Bill Rankin, “Suit calls DeKalb man a war criminal; Plaintiff claims he was tortured in Bosnia prison,” *Atlanta Journal and Constitution*, August 28, 1998.

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<sup>46</sup> “Court Schedules for week of 10/13/01 to 10/19/01,” citing status hearing for *Doe v. Islamic Salvation Front*, No. 96-02792 (D.C.) (on file with CJ&D); Jennifer Green and Paul Hoffman, “Litigation Update,” *International Civil Liberties Report* (June 2000), found at [http://www.aclu.org/library/iclr/2000/iclr2000\\_6.pdf](http://www.aclu.org/library/iclr/2000/iclr2000_6.pdf). See also, *Doe v. Islamic Salvation Front*, 993 F.Supp. 3 (D.C. 1998) (rejecting Haddam’s motion to dismiss); International Women’s Human Rights Law Clinic, The Center For Constitutional Rights and The International League For Human Rights, “Shadow Report On Algeria,” found at <http://www.ilhr.org/ilhr/reports/shadow/>.

<sup>47</sup> “Another top Chinese official hit by Falungong torture suit,” *Agence France Press*, August 28, 2001; Wan Jinghua, “Overseas Lawsuits Have Made the US An Unsuitable Place for The Corrupt Chinese Officials Who Persecute Falun Gong,” July 22, 2001, found at <http://www.clearwisdom.net/emh/articles/2001/7/23/12474.html>; Chris Michaud, “Falun Gong adherent sues Chinese official in U.S.,” *Reuters*, July 18, 2001.

<sup>48</sup> “Li Peng Sued for Gross Human Rights Violations,” October 11, 2000, found at <http://www.hrichina.org/Lawsuit.htm>; Edward Wong, “Chinese Leader Sued in New York Over Deaths Stemming From Tiananmen Crackdown,” *New York Times*, September 1, 2000; “China Leader Sued Over Tiananmen,” *CBS News*, September 1, 2000, found at <http://www.kyw.com/now/story/0.1597.230043-406.00.shtml>; “Human Rights group sues high Chinese official over human rights abuses,” *International Law Update* (September 2000).

<sup>49</sup> Marianne Armshaw, “Salvadoran generals go to trial again; war crimes investigation,” *National Catholic Reporter*, May 4, 2001; “Seeking Redress On Behalf Of Torture Survivors: The Center for Justice and Accountability,” *Legal Support Network Newsletter* (Spring 2001), citing *Romagoza v. Garcia*, 99-8364-CIV (S.D. Fla.), found at <http://www.amnesty-usa.org/lsn/spring2001.pdf>; Center for Justice & Accountability, “Projects,” found at <http://www.cja.org>.

<sup>50</sup> Jason Hoppin, “Chevron’s Nigerian Quagmire,” *Recorder*, April 10, 2000; Jennifer Green and Paul Hoffman, “Litigation Update,” *International Civil Liberties Report*, citing *Bowoto v. Chevron*, No. 99-2506 (N.D. Cal. 1999), found at [http://www.aclu.org/library/iclr/2000/iclr2000\\_6.pdf](http://www.aclu.org/library/iclr/2000/iclr2000_6.pdf); Michael M. Bowden, “Is a 200-Year-Old Pirate Law The Next Wave in Tort Suits?” *Lawyers Weekly* (2000), found at <http://www.lawyersweekly.com/pirate.htm>. See also, Craig Forcese, “ATCA’s Achilles Heel: Corporate Complicity, International Law and the Alien Tort Claims Act,” 26 *Yale J. Int’l L.* 487, 489-90 (Summer 2001).

<sup>51</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 92-93 (2nd Cir. 2000), *cert. denied*, 121 S.Ct. 1402 (2001). See also, Robert P. Lewis, “Employers Compelled to Recognize Human Rights,” *New York Law Journal*, June 19, 2001; Craig Forcese, “ATCA’s Achilles Heel: Corporate Complicity, International Law and the Alien Tort Claims Act,” 26 *Yale J. Int’l L.* 487, 489-90 (Summer 2001); Mark Hamblett, “Nigerian Rights Suit to Proceed Against Shell,” *New York Law Journal*, September 15, 2000; Michael M. Bowden, “Is a 200-Year-Old Pirate Law The Next Wave in Tort Suits?” *Lawyers Weekly* (2000), found at <http://www.lawyersweekly.com/pirate.htm>. The victims also alleged RICO violations, as well as violations of international law, Nigerian law and state law torts. Robert P. Lewis, “Employers Compelled to Recognize Human Rights,” *New York Law Journal*, June 19, 2001.

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<sup>54</sup> “Austria and U.S. Agree on Holocaust Settlement,” *International Enforcement Law Reporter* (March 2001); Richard Wolffe, “US, Austria agree last-minute Holocaust deal,” *Financial Times (London)*, January 18, 2001; Sue Masterman, “Austria Reels: Holocaust Lawsuit Dwarfs German Fund,” *ABCNews.com*, April 17, 2000, found at [http://abcnews.go.com/sections/world/DailyNews/austria000417\\_holocaust.html](http://abcnews.go.com/sections/world/DailyNews/austria000417_holocaust.html); Larry Neumeister, “Suit Seeks Austria Holocaust Damages,” *Associated Press*, April 14, 2000.

<sup>55</sup> *Boim v. Quranic Literacy Institute*, 127 F.Supp.2d 1002 (N.D. Ill. 2001). *See also*, Matt O’Connor, “U.S. appeals court debates a lawsuit over Israel slaying,” *Chicago Sun-Times*, September 26, 2001; Abdon M. Pallasch, “Could bin Laden be sued?” *Chicago Sun-Times*, September 26, 2001; “Suit Accusing Groups of Funding Terrorism Can Continue in Illinois Federal Court,” *White-Collar Crime Reporter* (March 2001); Judith Miller, “Suit Accuses Islamic Charities Of Fund-Raising for Terrorism,” *New York Times*, May 13, 2000.

<sup>56</sup> *Biton v. Palestinian Authority*, No. 01-CV-00382 (D.C., filed March 20, 2001), complaint found at <http://www.stopterror.org/lawsuits.html>; Yigal Schleifer, “Gaza Bomb Victims File U.S. Suit Against The PA,” *Jerusalem Post*, March 12, 2001.

<sup>57</sup> *Gilmore v. Palestinian Authority* (D.C., filed April 18, 2001), complaint found at <http://www.stopterror.org/lawsuits.html>; “Slain Guard’s Family Sues PA To Expose ‘Real Arafat,’” *Ha’aretz*, May 4, 2001.

<sup>58</sup> *Ungar v. Palestinian Authority*, 153 F.Supp.2d 76 (D. Rhode Isl. 2001). *See also*, Jim Bodor, “Terrorists could face court suits; Victims weighing redress,” *Sunday Telegram*, October 14, 2001; Amy Fortili, “Federal Court Judge Agrees With Victims And Allows Suit Against PLO To Proceed To Trial,” *Associated Press*, July 27, 2001.

<sup>59</sup> *Daliberti v. Republic of Iraq*, 146 F.Supp.2d 19 (D.C. 2001). *See also*, Ed Asher, “Judge orders Iraq to pay 4 men \$18 million for captivity, torture,” *Houston Chronicle*, May 30, 2001; Bill Miller, “Judge Orders Iraq to Pay 4 Americans \$13 Million,” *Washington Post*, May 30, 2001.

<sup>60</sup> *Eisenfeld v. Republic of Iran*, 2000 U.S. Dist. LEXIS 9545 (D.C.). *See also*, “U.S. Judge Finds Iran Liable For \$327 Million In Bombing,” *Liability Week*, July 17, 2000; “U.S. Judge Orders Iran to Pay Families of Bombing Victims,” *New York Times*, July 13, 2000; Peter Geier, *Daily Record*, July 12, 2000.

<sup>61</sup> *Flatow v. Republic of Iran*, 999 F. Supp.1 (D.C. 1998). *See also*, Jonathan Groner, “Payback Time; Pushed by Terror Victims, Bill to Ease Seizure Of Assets From Rogue Nations Gains Ground,” *Legal Times*, June 5, 2000; Laurence Arnold, “Pursuing Justice, Father Finds White House A Foe,” *Record*, December 6, 1999; Mark Mueller, “Judge orders Iran to pay \$ 247M in death of Brandeis student,” *Boston Herald*, March 12, 1998.



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<sup>62</sup> *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97 (D.C. 2000). See also, David Rosenzweig, “Family of Slain Prime Minister Files Suit Against Iranian Government,” *Los Angeles Times*, August 8, 2001; “Iran: Newspaper urges government to retaliate against US move,” *BBC News*, December 23, 2000.

<sup>63</sup> “Ex-Hostages Awarded Damages/U.S. To Pay, Collect From Nations,” *Newsday*, October 23, 2000; “D.C.: U.S. Judge Orders Iran To Pay Marine’s Family \$355 Million,” *Liability Week*, September 25, 2000; Bill Miller, “Judge Tells Iran to Pay U.S. Family \$355 Million,” *Washington Post*, September 22, 2000.

<sup>64</sup> *Cicippio v. Islamic Republic of Iran*, 18 F.Supp.2d 62 (D.C. 1998). See also, Lori Litchman, “An Extraordinary Legal Journey,” *Legal Intelligencer*, January 17, 2001; “Judge Rules Iran Should Pay \$65 Million To Ex-Hostages,” *Chicago Tribune*, August 29, 1998; Bill Miller, “Ex-Hostages Awarded \$65 Million; U.S. Court Orders Iran to Pay Americans Held in Lebanon,” *Washington Post*, August 28, 1998.

<sup>65</sup> *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107 (D.C. 2000). See also, Laurie Asseo, “Former Hostage Awarded \$341 Million Verdict Against Iran,” *Legal Intelligencer*, March 27, 2000; “Ex-Hostage Wins Lawsuit Against Iran,” *Chicago Tribune*, March 25, 2000. Anderson was represented by the Washington-D.C. corporate law firm of Crowell & Moring. The firm represents many terrorism victims, in fact, the majority of former hostages suing Iran. The firm takes credit for playing a “substantial role in developing and getting enacted the Justice for Victims of Terrorism Act of 2000,” freeing up Iran’s assets so their clients could be compensated. See, “Expertise: Victims of Terrorism,” found at <http://www.crowell.com/content/Expertise/VictimsofTerrorism/Overview27/OurPracticeVictimsTerrorism.htm>. Crowell & Moring is now pushing to expand the law to allow more victims to collect payment. In justifying the firm’s trial lawyer role in these cases, attorney Karen Hastie Williams was quoted as saying, “It’s not really about money for the victims. The victims don’t want money. They want to inflict pain on the terrorist nations.” Jonathan Groner, “Payback Time; Pushed by Terror Victims, Bill to Ease Seizure Of Assets From Rogue Nations Gains Ground,” *Legal Times*, June 5, 2000. Clearly, the firm understands not only the importance of the civil justice system to those who have been injured, but also the system’s potential to punish and deter certain conduct. So it is rather ironic that for at least two decades the firm’s former senior partner, Victor Schwartz, has been the principal lobbyist in Congress for “tort reform,” particularly laws that would restrict the rights of victims injured by defective products to be compensated and to hold reckless corporations accountable in court.

<sup>66</sup> *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.C. 2001). See also, Mindy Sink, “National Briefing Rockies: Former Hostage Wins Lawsuit,” *New York Times*, June 27, 2001; M.E. Sprengelmeyer, “Ex-hostage gets \$353 million judgment against Iran,” *Scripps Howard News Service*, June 25, 2001. See, “Expertise: Victims of Terrorism,” found at <http://www.crowell.com/content/Expertise/VictimsofTerrorism/Highlights2/HighlightsVictims.htm>.

<sup>67</sup> *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.C. 2001). See also, “Joliet priest’s kin get \$314.6 million in suit against Iran,” *Chicago Tribune*, August 5, 2001; “Hostage Family Awarded \$314 Million,” *Commercial Appeal*, August 4, 2001; William Glaberson, “Court Case Seeks to Define a Catholic Priest’s Family,” *New York Times*, July 6, 2001.

<sup>68</sup> *Polhill v. Islamic Republic of Iran*, 2001 U.S. Dist. LEXIS 15322 (D.C.). See also, Nick Ravo, “Robert Polhill, 65, Lebanon Hostage for 3 Years,” *New York Times*, July 3, 1999; Louie Estrada, “Professor Robert Polhill Dies; Was U.S. Hostage in Lebanon,” *Washington Post*, July 2, 1999; Bud Newman, “Polhill’s wife says he is ‘physically weak, mentally strong’,” *U.P.I.*, April 27, 1990; “Expertise: Victims of Terrorism,” found at <http://www.crowell.com/content/Expertise/VictimsofTerrorism/Highlights2/HighlightsVictims.htm>.

<sup>69</sup> *Alejandro v. Republic of Cuba*, 996 F.Supp.1239 (S.D. Fla. 1997). See also, William Glaberson, “U.S. Courts Become Arbiters of Global Rights and Wrongs,” *New York Times*, June 21, 2001; Jonathan Groner, “Payback Time Pushed by Terror Victims, Bill to Ease Seizure Of Assets From Rogue Nations Gains Ground,” *Legal Times*, June 5,

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