

TOWARD PROSECUTION OF IRAQI CRIMES UNDER INTERNATIONAL LAW: JURISPRUDENTIAL FOUNDATIONS AND JURISDICTIONAL CHOICES

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Between October 1943 and January 1944, the United States and Great Britain, bowing to rising pressure for post-war punishment of "Hitlerite Criminals," worked to establish a United Nations Commission for the Investigation of War Crimes (commonly known as the United Nations War Crimes Commission—UNWCC).¹ Once established, the Commission, meeting in London in 1944, assembled lists of war criminals and planned for the creation of special war crimes tribunals. As is now well-known, the special trial of major Nazi leaders began in November 1945, a little more than three months after victorious allied powers authorized proceedings in their London Charter of August 8, 1945.

Today, shocked by evidence of Iraqi atrocities against civilians² and combatants of diverse nationalities, a victorious coalition should soon begin preparations for what amounts to "another Nuremberg." Animated by the original trials for crimes of war,³ crimes against peace and crimes against humanity,⁴ and by the associated ancient principle of *nullum crimen sine*

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1. B. SMITH, *THE ROAD TO NUREMBERG* 10 (1981).

2. Pursuant to the 1949 Geneva Convention, Article 3, civilians are "[p]ersons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause . . ." Convention Relative to the Protection of Civilian Persons in the Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

3. Today, the laws of war, the rules of *jus in bello*, comprise: (1) laws on weapons; (2) laws on warfare; and (3) humanitarian rules. Codified primarily at the Hague and Geneva Conventions, and known thereby as the law of the Hague and the law of Geneva, these rules attempt to bring discrimination, proportionality and military necessity into belligerent calculations. On the main corpus of *jus in bello*, see Convention No. IV Respecting the Laws and Customs of War on Land, With Annex of Regulations, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 1 Bevans 631 (known commonly as the "Hague Regulations"); Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 2.

4. It is important to note here that the Genocide Convention proscribes conduct that is juristically distinct from other forms of prohibited wartime killing. Killing involves acts constituting crimes of war and crimes against humanity. Although crimes against humanity are linked to wartime actions, the crime of genocide can be committed in peacetime or during a war. According to Article 1 of the Genocide Convention: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Convention on the Prevention and

poena (no crime without a punishment), this coalition too would have to make some difficult judgments. Among these decisions are important legal questions of precedent, jurisdiction, and scope (just how broadly among the Iraqi armed forces and political leadership should the prosecutorial net of criminal indictments be cast), not to mention enormously complex questions of custody and criminal procedure.

How should the coalition begin? Led by the United States, which was also the dominant national force in Nuremberg, the partners must now create a specially constituted agency endowed with organizational form, centralized direction and expert legal counsel.⁵ Resembling the war-crimes planning group fashioned in the War Department after allied defeat of the Third Reich, this agency would be charged with the tasks of drafting basic documents, framing pertinent criminal indictments, and preparing courtroom prosecutions.

With coalition forces fully absent from Iraq, identification would be overwhelmingly difficult and custody will require formal extradition requests to Baghdad and possibly other Arab capitals. Needless to say, such requests are unlikely to be honored.⁶

As of late September 1991, there was considerable talk of a return of coalition military forces to Iraq. Although the rationale of such a return would be to ensure Iraqi compliance with authoritative cease-fire expectations—especially as they concern disarming Baghdad of weapons of mass

Punishment of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (*entered into force* for the United States Feb. 23, 1989).

5. From the point of view of the United States, the Nuremberg obligations to bring major Iraqi criminals to trial are, in a sense, doubly binding. This is because these obligations represent not only current obligations under international law, but also the higher-law obligations found in the American political tradition. By their codification of the principle that basic human rights in war and in peace are now peremptory, the Nuremberg obligations reflect perfect convergence between international law and the enduring foundation of our American Republic.

6. In the late nineteenth century, a principle of granting asylum to those whose crimes were political was established in Europe and in Latin America. This principle is known as the *political offense exception to extradition*. Under current international law, however, genocide and genocide-type crimes are specifically excluded from the realm of the political, and it is illegal to grant asylum to alleged perpetrators of such crimes. It follows that states that might grant Saddam Hussein asylum (possible candidates are Algeria, Tunisia, Yemen, Sudan and Mauritania) would be in grievous violation of binding international rules. See Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 4 art. 7; Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes Against Humanity, art. 3, G.A. Res. 2392, U.N. Doc. A/7342, (1968); Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, art. 4 and 7, G.A. Res. 3074, U.N. Doc. A.9326, (1973); Declaration on Territorial Asylum, art. 1(2), G.A. Res. 2312, 22 U.N. GAOR Supp. (No. 16) 81, U.N. Doc. A/6716 (1968); International Convention on the Suppression and Punishment of the Crime of Apartheid, art. 4(b), G.A. Res. 30687, U.N. Doc. A/9233/ADD1-3, (1973); and the four Geneva Conventions of 1949, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *supra* note 3, art. 49 and 50; Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 2 art. 129; Convention Relative to the Treatment of Prisoners of War, *supra* note 3, art. 146. The provisions of the four Geneva Conventions stem from the maxim *aut dedere aut punire*, i.e., either a State must extradite or make sure that a criminal is punished in its own municipal court proceedings.

destruction—a reinserted multinational force (or even a U.S. military force under U.N. auspices) could be used to identify and apprehend alleged Iraqi criminals. From a jurisprudential perspective, of course, it would be entirely proper to reintroduce appropriate military forces for the sole purpose of such identification and apprehension (subject, of course, to the norms of *jus in bello*), but this is unlikely for both tactical and political reasons.

Ideally, apprehension of Saddam Hussein and his military leaders would be made possible via the established mechanisms of extradition or prosecution and the associated means of “indirect enforcement” (prosecution within authoritative municipal courts in the absence of a permanently-constituted international criminal court or ad hoc, Nuremberg-style tribunal), but these prospects are extremely remote. Other possibilities include *in absentia* trials and custody via abduction.

Regarding *in absentia* trials, the terms of the Charter of the International Military Tribunal, annexed to the London Agreement, are valid: “The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter [crimes against peace; war crimes and crimes against humanity⁷] in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.”⁸

Regarding custody by *abduction*, two discrete issues present themselves: (1) seizure of *hostes humani generis* (common enemy of mankind) when custody cannot be obtained via extradition; and (2) seizure of *hostes humani generis* who is a sitting head of state. On the first issue, we may consider that President Reagan, in 1986, authorized procedures for the forcible

7. Crimes of War, Crimes Against Peace and Crimes Against Humanity are defined in The Charter of the International Military Tribunal, August 8, 1945, 59 Stat.1544, E.A.S. No. 472, 82. U.N.T.S. 279 defines Crimes Against Peace, War Crimes and Crimes Against Humanity at art. 6(a), (b) and (c) as follows:

(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

8. See Charter of the International Military Tribunal, *supra* note 7, art. 12., 59 Stat. 1544, 82 U.N.T.S. 279.

abduction of suspected terrorists from other states for trial in U.S. courts.⁹ The statutory authority for President Reagan's posture, however, was contingent upon the terrorist acts being involved with taking U.S. citizens hostage—acts that are subject to the jurisdiction of U.S. courts under the Act on the Prevention and Punishment of the Crime of Hostage-Taking.¹⁰ In 1987, in international waters, the F.B.I. lured a Lebanese national named Fawaz Younis onto a yacht and transported him by force to the U.S. for trial. His abduction was based upon his suspected involvement in a 1985 hijacking of Jordanian airliner at a Beirut airport in which U.S. nationals had been held hostage.¹¹

On the second issue, under international law there is normally a very substantial difference between abduction of a terrorist or other *hostes humani generis* and abduction of any head of state. Indeed, there is almost always a presumption of sovereign immunity, a binding rule that exempts each state and its high officials from the judicial jurisdiction of another state. Although the rule of sovereign immunity is certainly not absolute in the post-Nuremberg world order, the right of one state to seize a high official from another state is exceedingly limited. In an 1812 case before the Supreme Court of the United States,¹² Chief Justice Marshall went even further, arguing for "the exemption of the person of the sovereign from arrest or detention within a foreign territory."¹³ Nevertheless, where the alleged crimes in question are of a Nuremberg-category and no other means exist whereby to gain custody of the pertinent head of state, the expectations of *nullum crimen sine poena* (no crime without a punishment) may override those of sovereign immunity.

Exactly what kinds of Iraqi crimes are involved? Judging from persistent and well-documented reports of horrendous crimes,¹⁴ crimes so terrible in law that they mandate universal cooperation in apprehension and punishment¹⁵ (what the lawyers call *crimen contra omnes*, crimes against all), they

9. See Walcott & Pasztor, *Reagan Ruling to Let CIA Kidnap Terrorists Overseas is Disclosed*, *The Wall Street Journal*, Feb. 20, 1987, at 1, col. 6.

10. See 18 U.S.C. § 1203 (1984).

11. See Schuetz, *Apprehending Terrorists Overseas Under United States and International Law: A Case Study of the Fawaz Younis Arrest*, 29 HARV. INT'L L.J. 499, 501 (1988).

12. *The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812).

13. *Id.* at 137.

14. *A Letter from Kuwait*, *New York Times*, Jan. 14, 1991, at A17, col. 1; and Human Rights Abuses in Kuwait and Iraq, Hearings, Before the House Committee on Foreign Affairs, 102nd Cong., 1st Sess. Jan 8, 1991.

15. The principle of universality is founded upon the presumption of solidarity between States in the fight against crimes. It is mentioned in the *Corpus Juris Civilis*; in H. Grotius' *De jure belli ac pacis* Book II, Chapter XX (1625); and in E. Vattel's *Le droit des gens* Book I, Chapter XIX (1758). The case for universal jurisdiction (which is strengthened wherever extradition is difficult or impossible to obtain) is also built into the four Geneva Conventions of August 12, 1949, which unambiguously impose upon the High Contracting Parties the obligation to punish certain grave breaches of their rules, regardless of where the infraction was committed or the nationality of the authors of the crimes, *See* art. 49; art. 50; art. 129; and art. 146. In further support of universality for certain international crimes *see* M.C. BASSIOUNI, 2 INTERNATIONAL

concern (1) barbarous and inhuman assaults against the people of Kuwait and other nationals in Kuwait; (2) barbarous and inhuman treatment of coalition prisoners of war in Iraq and Kuwait; and (3) aggression and crimes of war against noncombatant populations in Israel and Saudi Arabia. All of these violations under international law,¹⁶ of course, are in addition to the original crimes against peace committed against Kuwait on August 2, 1990.¹⁷

Washington and its allies must also decide on how broadly they wish to prosecute Iraqi crimes. In this respect, the special post World War II war crimes planning group had a somewhat easier task, focusing primarily on particular Nazi groups that were defined as inherently criminal (e.g., the SS and the Gestapo). Following the defeat of Saddam Hussein, however, it

EXTRADITION IN U.S. LAW AND PRACTICE Chapter 6 (1983). See also Restatement of the Foreign Relations Law of the United States, Tentative Draft No. 2, (1984), §§ 402-404, 443 (1984) and 18 U.S.C. § 6(c) (1948).

16. It has been argued that the rationale for protection of human rights violations under international law is that "certain forms of depredations become matters of international concern when committed under the aegis of state policy because of the presumed international impact of such behavior." See Bassiouni, *The Proscribing Function of International Law in the Processes of International Protection of Human Rights*, 9 YALE J. WORLD PUB. ORDER 193, 194 (1982). In my view, however, this rationale is independent of international implications whenever the depredations in question outrage the conscience of humankind. International law now concedes that limits to the omnipotence of each State are determined not only by the requirements of international comity, but by the *inherent* rights of each individual person to claims of human life and dignity. The jurisprudential bases of this concession may be found in all of the sources of international law identified at Statute of the International Court of Justice, Oct. 24, 1945, art. 38, 59 stat. 1031, T.S. No. 993, 3 Bevans 1153, 1976 Y.B.U.N 1052.

17. For crimes against peace, or waging aggressive war, see Resolution of the Definition of Aggression, G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1975), reprinted in 13 I.L.M. 710 (1974). For pertinent codifications of the criminalization of aggression, see also The 1928 Kellogg-Briand Pact known generally as the "Pact of Paris" Treaty Providing for the Renunciation of War as an Instrument of National Policy, (Pact of Paris) Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796, 94 U.N.T.S. 57; U.N. Charter art. 2(4), Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. No. 993, 2 Bevans 1153, 1976 Y.B.U.N. 1043; the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6014 (1966), reprinted in 5 I.L.M. 374 (1966); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1971); Declaration on the Non-use of Force in International Relations and Permanent Prohibition on the Use of Nuclear Weapons, G.A. Res. 2936, 27 U.N. GAOR Supp. (No. 30) at 5, U.N. Doc. A/8730 (1972); and the Charter of the International Military Tribunal, *supra* note 7. Resolution Affirming the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal, G.A. Res. 95(I), U.N. Doc. A/236, at 1144 (1946). See also Convention on the Rights and Duties of States, Dec. 26, 1933, arts. 8, 10-11, 49 Stat. 3097, T.S. No. 881, 165 L.N.T.S. 19 (known generally as the "Montevideo Convention"); Pact of the League of Arab States, Mar. 22, 1945, art. 5, 70 U.N.T.S. 237, 39 A.J.I.L. Supp. 266; Charter of the Organization of American States, Chs. II, IV, V, Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 and Protocol of Amendment, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847721 U.N.T.S. (known generally as the "Protocol of Buenos Aires"); Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, T.I.A.S. No. 1838 4 Bevans 559 21 U.N.T.S., (known generally as the "Rio Pact"); the American Treaty on Pacific Settlement, April 30, 1948, 30 U.N.T.S. 55 U.S. not a party rule 19.25 (b) (known generally as the "Pact of Bogota"); and the Charter of the Organization of the African Unity, May 25, 1963, arts. II, III, 479 U.N.T.S. 39, reprinted in 2 I.L.M. 766 (1963).

appears that most of the crimes against humanity committed by Iraq were unplanned and individually-conceived atrocities.¹⁸ This means that the coalition lists of suspected war criminals could become so large as to be altogether unusable. Alternatively, coalition prosecution could focus essentially or even entirely on Saddam Hussein and his leadership elite, a judicial strategy that would permit many or all rank-and-file Iraqi criminals to avoid punishment, but would at least stand some chance of far-reaching and practical success.¹⁹

18. This does not mean, however, that if these crimes were planned and directed by Iraqi military authorities, individual soldiers could plead "superior orders" in their defense. With respect to the issue of superior orders, the classical writers on international law had long rejected that doctrine as a proper defense against the charge of war crimes. The German Code of Military Law operative during the war provided that a soldier must execute all orders undeterred by the fear of legal consequences, but it added that this would not excuse him in cases where he must have known with certainty that the order was illegal. This view was upheld in an important decision of the German Supreme Court in Leipzig in 1921. According to the Court, a subordinate who obeyed the order of a superior officer was liable to punishment if it were known to him that such an order involved a contravention of international law.

The London Charter, *supra* note 7, which established jurisdiction and authority for the Nuremberg Tribunal, observed in articles 7 and 8 that "superior orders" were not to be considered by the Tribunal as freeing defendants from responsibility:

The very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual States. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law.

These principles of international law were recognized by the Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal. G.A. Res. 95(I), U.N. Doc. A/236 at 1144 (1946). This was followed by General Assembly Resolution 177 (II), which directed the U.N. International Law Commission to "(a) Formulate the principles of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal, and (b) Prepare a draft code of offenses against the peace and security of mankind. . . ." G.A. Res. 177 (II), U.N. Doc. A/519 at 112. (1946). The principles formulated are known as the Principles of International Law Recognized in the Charter and Judgment of the Nuremberg Tribunal. Report of the International Law Commission, 2nd session, 1950, U.N. GAOR 5th session, Supp. No. 12, A/1316, p. 11. According to Principle IV: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law."

19. The liability of Saddam Hussein and his ruling associates for crimes committed under international law is well established in the principle of *respondeat superior*. Literally "Let the master answer," this principle is the converse of the doctrine of "superior orders," and is designed to ensure that obedience to authority by subordinates entails no criminal consequences. Moreover, the superior's responsibility extends to situations even where no affirmative orders to commit crimes have been given. Paragraph 501 of the U.S. Field Manual 27-10, Department of the Army, Department of the Army Field Manual 27-10: The Law of Land Warfare § 501 and § 510 (1956), based on the judgment over Japanese General Tomayuki Yamashita—stipulates that any commander who had actual knowledge, or should have had knowledge, that troops or other persons under his control were complicit in war crimes and failed to take necessary steps to protect the laws of war *was guilty of a war crime*. Paragraph 510 denies the defense of "act of state" to such alleged criminals by providing that though a person who committed an act constituting an international crime may have acted as head of state or as a responsible government official, he is not relieved, thereby, from responsibility for that act. This paragraph, of course, is drawn from Principle III of Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (1946; known commonly as "The Nuremberg Principles") and in the formulation of these principles by the

The United States has slowly backed off from President Bush's intra-war plans for trials of Saddam Hussein and his military leadership.²⁰ The principle reason for this diminished enthusiasm lies in geopolitical factors, especially the fear that the U.S.-led prosecution would not play well in the Arab world. In the U.S. Congress, certain individual members have argued for appropriate trials.²¹

Finally, it should be noted that a coalition agency charged with creating "another Nuremberg" could adopt the solution favored by the United States, the Soviet Union, Great Britain, and France in 1945. Here, a specially-created tribunal would be established for the trial of major criminals (that is, Saddam Hussein and the surviving members of his Revolutionary Council) while the domestic courts of individual coalition countries would provide the venue for trials of "minor" criminals (that is, of ordinary soldiers and their civilian collaborators). As in the distinction employed to prosecute Nazi offenses, the separation of *major* and *minor* criminals concerns matters of rank or position, and would have nothing to do with the seriousness or horror of particular transgressions. Moreover, because the Iraqi crimes make their perpetrators "common enemies of mankind" under international law, every country now has the legal right to prosecute these crimes in its own courtrooms.²²

The crimes committed by Iraq are reminiscent of Nazi crimes of an earlier

International Law Commission (1950), *supra* note 18.

20. See Barrett, *U.S. Backs Off Iraqi War Crimes Trials Due to Logistic, Political Considerations*, *The Wall Street Journal*, Mar. 25, 1991, at 13, 14.

21. In a letter from Tom Lantos to Louis Rene Beres, May 15, 1991, discussing Iraqi War Crimes, Representative Tom Lantos of California stated: "I feel strongly that Saddam should be brought before an international tribunal to answer for his brutal crimes against the civilized world." Similarly, Representative Lee H. Hamilton of Indiana, wrote "There is considerable interest in the U.S. Congress regarding the issue of Iraqi war crimes and how Saddam Hussein and others in his regime may be made to account for their actions in the Persian Gulf War. As long as Saddam Hussein remains in power in Baghdad, the international community has few options short of another invasion of Iraq for bringing him and his officers to justice. Nevertheless, it is my expectation that Saddam's days in power will be numbered and the issue of prosecution for war crimes will be with us for some time to come." Letter from Lee H. Hamilton to Louis René Beres (August 7, 1991) (discussing Iraqi War Crimes).

22. A contemporary example is that of Israel. Recognizing that genociders are common enemies of mankind and that no authoritative central institutions exist to apprehend such outlaws or to judge them as a penal tribunal, Israel sought to uphold the antigencide norms of international law in its trial of Adolf Eichmann, a Nazi functionary of German or Austrian nationality. Indicted under Israel's Nazi Collaborators Punishment Law, Eichmann was convicted and executed after the judgment was confirmed by the Supreme Court of Israel on appeal in 1962. See 36 INT'L L. REP. 5 (Israel, Dist. Ct. Jerusalem 1961). Affirmed Israel Supreme Court, 36 INT'L L. REP. 277, 342 (1962). Genocide is a crime against humanity with precise jurisprudential meaning. It identifies as criminal any of a series of stipulated acts "committed with intent to destroy, in whole or part, a national, ethnic, racial, or religious group as such . . ." Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 3, art. II.

era, and warrant similar forms of trial and punishment.²³ Now is the time for the U.S. and its partners to establish the necessary legal machinery.

23. In terms of the possibility of using domestic courts to uphold international law, the example of the United States may be of particular interest. Since its founding, the United States has reserved the right to enforce international law within its own courts. Article I, Section I, Clause 10 of the American Constitution confers on Congress the power "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." Pursuant to this constitutional prerogative, the first Congress, in 1789, passed the Alien Tort Statute. This statute authorizes United States federal courts to hear those civil claims by aliens alleging acts committed "in violation of the law of nations or a treaty of the United States" when the alleged wrongdoers can be found in the United States. At that time, of course, the particular target of this legislation was piracy on the high seas. Over the years, United States federal courts have rarely invoked the "law of nations," and then only in such cases where the acts in question had already been proscribed by treaties or conventions. In 1979, a case seeking damages for foreign acts of torture was filed in the federal courts. In a complaint filed jointly with his daughter, Dolly, Dr. Joel Filartiga, a well-known Paraguayan physician and artist and an opponent of President Alfredo Stroessner's repressive regime, alleged that members of that regime's police force had tortured and murdered his son, Joelito. On June 30, 1980, the Court of Appeals for the Second Circuit found that since an international consensus condemning torture had crystallized, torture violates the "law of nations" for purposes of the Alien Tort Statute. United States courts, it was held, therefore have jurisdiction under the statute to hear civil suits by the victims of foreign torture, if the alleged international outlaws are found in the United States. See The Alien Tort Claims Act 28 U.S.C. § 1350 (1982). The statute was enacted as part of the first Judiciary Act of 1789, 1 Stat. 73, 77 (1848). See also the 1980 U.S. federal appellate case of *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). There is an ironic dichotomy in U.S. law here. In *Filartiga v. Pena-Irala*, the second circuit held that the Alien Tort Claims Act provides a basis for aliens to bring actions in U.S. federal courts for torts committed in violation of the law of nations. Yet, a district court's holding in another recent case, *Handel v. Artukovic*, means that U.S. citizens lack the private right to sue for violations of the law of nations. Thus, U.S. federal courts appear to have jurisdiction to hear the claims of aliens more readily than they do the claims of U.S. citizens. See *Handel v. Artukovic*, 601 F. Supp. 1421 (C.D.Cal. 1985). In this case, plaintiffs, U.S. citizens, brought a class action seeking compensatory and punitive damages against defendants for his alleged involvement in the deprivations of life and property suffered by Jews in occupied Yugoslavia during World War II.