Testimony of

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February 5, 2007

United States Senate
Committee on the Judiciary
Subcommittee on Human Rights and the Law

Hearing on Genocide and the Rule of Law
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Mr. Chairman, Ranking Member Coburn, and distinguished members of this Subcommittee, thank you for the opportunity to appear before you. It is an honor to testify at this historic session--the first hearing of a Senate body established to address the role of U.S. law in advancing the deepest interests of humanity and of our nation. This hearing could not be more timely, coming at a time when the need for action to prevent further atrocities in Darfur is urgent.

In larger perspective, it is fitting that this subcommittee has chosen to devote its inaugural hearing to genocide and the rule of law. Raphael Lemkin, the Polish scholar who devised the word genocide to capture the ghastly essence of crimes aimed at obliterating a human group and who campaigned relentlessly for a treaty on genocide, would have been gratified by the premise of this hearing. In Lemkin's view, it was essential to confront genocide through law--not just a code of conscience, although Lemkin was a man of surpassing conscience, but an enforceable law of humanity. No matter how often history and humanity gave cause to shatter Lemkin's faith, he passionately believed in the power of law to compel us to do better the next time we learned that a human group faced grave peril.

Lemkin's tireless crusade culminated in 1948, when the fledgling United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. As its title suggests, the treaty imposes two core obligations: First, States parties undertake to prevent genocide and, failing that, to mount effective action to halt its further sweep. Second, they commit to punish genocide as well as several related acts, such as attempting to commit genocide.

In 1988, Congress enacted legislation to bring U.S. law into conformity with the Genocide Convention, paving the way for U.S. ratification later that year. My testimony this afternoon will address the question of how the United States can more effectively implement its obligations as a party to the Genocide Convention. In brief, I commend for this subcommittee's consideration the following legislative action:

? Amending the Comprehensive Peace in Sudan Act of 2004 and the Darfur Peace and Accountability Act of 2006 to make clear that, in passing the sanctions provisions of these laws, Congress did not intend to pre-empt at least certain kinds of state and local initiatives aimed at ending the human rights crisis in Darfur;

? Amending the Genocide Convention Implementation Act to establish federal criminal jurisdiction over the crime of genocide wherever the crime is committed. This jurisdiction should be exercised when the alleged offender is present in the United States and he or she will not be vigorously and fairly prosecuted by another court with appropriate jurisdiction;

? Amending the same law to recognize explicitly that its criminal provisions encompass those who bear criminal responsibility for genocide in accordance with well-established doctrines of superior responsibility;

? Amending the Immigration and Nationality Act to express a preference for action that would ensure prosecution of an alien suspected of participating in genocide who can be denied admission or deported on that ground; and

? Amending the Torture Victim Protection Act, which establishes a civil cause of action against those who are legally responsible for torture or extrajudicial executions, to establish a cause of action against those responsible for genocide and to remove any doubt that potential defendants include juridical as well as natural persons.

Before I explain the bases for these suggestions, it may be helpful first to summarize the basic obligations that the United States assumed when it ratified the Genocide Convention. Article I of the convention affirms in clarion terms the two core obligations that I mentioned earlier: "The Contracting Parties confirm that genocide . . . is a crime under international law which they undertake to prevent and to punish."

Article II sets forth what has become the authoritative definition of genocide under international law, defining genocide as one of five enumerated acts when they are committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. The acts that constitute genocide when committed with this very specific intent are:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction;
(d) Imposing measures intended to prevent births within the group; and
(e) Forcibly transferring children of the group to another group.

To constitute genocide, these acts must be undertaken with the aim of destroying the targeted group--or a substantial part of that group--as such. Article III of the convention provides that, in addition to genocide itself, the following conduct "shall be punishable": conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

Other provisions set forth measures that parties to the Genocide Convention must or may undertake to give effect to their core duties of prevention and punishment. Because of its primacy, I want to turn first to the duty to prevent genocide.

The Duty to Prevent Genocide

By requiring treaty parties to prevent genocide, Article I enacts into law the vow of conscience, "never again." The Genocide Convention speaks explicitly of prevention in only one other provision, Article VIII, though the duty to prevent genocide infuses the entire treaty.

Article VIII provides: "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III"--a reference to the provision that makes conduct such as attempting to commit genocide "punishable."

It has sometimes been noted that Article VIII is framed in permissive terms: States parties "may" call on competent UN organs to take appropriate action to prevent and suppress genocide. But it would deform the meaning of Article VIII to suggest that effective action to prevent genocide is optional. Instead, as the negotiating history of the Genocide Convention makes clear, the phrasing of Article III reflects the drafters' awareness that, when collective action to prevent or repress genocide is warranted, the most effective approach will vary depending on the imperatives of a particular situation. (Thus, other negotiating States resisted the Soviet delegation's efforts to assign exclusive UN competence to take action against genocide to the Security Council, where the Soviet Union could exercise veto power.)

Just as important, this provision's reference to competent UN organs underscores the global reach of the duty to prevent genocide and the drafters' belief that collective action would at times be necessary. States must, of course, do all they can to prevent genocide in their own territory. But States' duty to prevent genocide does not stop at their own borders. Wherever genocide occurs, it engages other countries' responsibility to act.

In short, the Genocide Convention alludes to a range of possible action States may take to discharge a duty they must not shirk. Simply put, the convention charges States parties to take effective action to prevent genocide or, when prevention has failed, to bring its murderous violence to a swift and certain end.

The United Nations General Assembly reaffirmed the principle of prevention in its 2005 World Summit Outcome document. Affirming that each State "has the responsibility to protect its populations from genocide" as well as "war crimes, ethnic cleansing and crimes against humanity" and that this duty entails preventing such crimes, the General Assembly recognized that, when governments fail to protect their own citizens, the responsibility falls to the international community.

All too often, governments have failed to meet their obligation to prevent and suppress genocide, with ruinous results. At times, one ground for hesitation has been doubt about whether the

narrow definition of genocide set forth in the Genocide Convention can accurately be applied to the situation at hand.

And so it is important to emphasize that governments do not face the same definitional challenges when they act to prevent genocide that a prosecutor must meet to secure a genocide conviction. To the contrary, for a State to wait until it is legally certain that genocide has occurred before it mounts effective action is to wait too long to prevent genocide. (And, it should be emphasized, the responsibility to protect humanity is also engaged by mass atrocities that do not constitute genocide.) Of course invoking the word genocide hardly assures that effective action will be taken to end a campaign of extermination. More than two years have passed since the United States government forthrightly described the violence in Darfur as a genocide, yet the carnage there continues to rage.

Recognizing the need for more concerted action, a growing roster of American states and cities have adopted or are considering divestment laws relating to Sudan with the aim of pressuring the Sudanese government to bring an end to atrocities in Darfur. These initiatives cannot by themselves bring the carnage in Darfur to an end, but they bolster and amplify initiatives taken by the Administration, Congress and others to do so.

Some of these laws now face legal challenges on the asserted ground that they are pre-empted by congressional sanctions legislation addressing the situation in Darfur as well as by Executive orders imposing specific sanctions against the government of Sudan. The most important step that Congress could take in support of these state and local initiatives would be to make clear that, in taking action against Sudan, it did not intend to foreclose at least certain kinds of state and local initiatives that go farther than federal law requires.

A clear statement of Congress's intent in this regard may in fact be necessary to avert judicial nullification of state divestment laws. When the United States Supreme Court struck down Massachusetts' selective purchasing law directed against Burma in Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000), it reasoned that the Massachusetts law frustrated the intent behind federal legislation that, inter alia, imposed certain sanctions, authorized the President to impose others (and, if he did so, to terminate them), and authorized the President to pursue diplomatic strategies aimed at improving the human rights situation in Burma. A linchpin of the Court's analysis was the intent that it attributed to Congress. In the Court's view, "Congress manifestly intended to limit economic pressure against the Burmese government to a specific range," id. at 377, and the Massachusetts law exceeded that range.

U.S. courts might attribute a similar intent to Congress in relation to sanctions it has imposed or authorized against Sudan unless Congress makes it clear that it welcomes state and local divestment initiatives aimed at ending the violence in Darfur. Thus if Congress wishes to see its own Darfur sanctions initiatives amplified by state and local divestment laws, it would do well to make its intention explicit.

The Duty to Punish

After affirming that genocide is a crime under international law that treaty parties undertake to punish, the Genocide Convention sets forth several specific obligations aimed at making this

duty effective. These provisions represent minimum measures that treaty parties must take and are not meant to exclude more assertive action to ensure that those who act to destroy a human community are brought to justice. In fact, viewed through a lens of contemporary developments in international criminal law, these provisions stand out for their comparatively modest reach. I will come back to this point.

Although the Genocide Convention contemplates prosecution before an international court, it looks principally to States to ensure prosecution of genocide when committed in their own territory. Article VI provides in full:

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article V requires States parties to enact "the necessary legislation to give effect to the provisions of the . . . Convention," particularly its provisions concerning punishment. The question I would like to address in my remaining time is whether the United States has satisfactorily fulfilled this duty.

The Genocide Convention Implementation Act of 1987, or "Proxmire Act," is the key U.S. law implementing the Genocide Convention. When read together with other provisions of the federal criminal code concerning conspiracy and complicity, the Proxmire Act for the most part fulfills the explicit obligation set forth in Article VI concerning prosecution of genocide and related criminal acts in courts of the State where genocide occurs. The law goes one step farther, making it a federal crime for a U.S. national to commit genocide anywhere.

This is entirely consistent with the drafters' intent. As noted in the Senate Foreign Relations Committee Report concerning U.S. adherence to the Genocide Convention, "[t]he negotiating history makes it clear . . . that [the territory in which genocide occurred] is not the only place where trial may be had."

But if the Proxmire Act largely fulfilled our obligations under Article VI when it was enacted, both the Genocide Convention and U.S. implementing legislation now seem strikingly anachronistic in light of broader developments in international criminal law. More recent human rights treaties, such as the 1984 Convention against Torture and the 2006 Convention on Enforced Disappearance, require States parties to establish their jurisdiction over persons suspected of committing treaty crimes in one of several circumstances: when the crime is committed 1) in their territory, 2) by one of their nationals, 3) against one of their nationals, or 4) outside their territory when the alleged perpetrator is in their territory and he or she is not extradited for trial to another State or transferred to an international tribunal.

Many countries have adopted or enforced legislation establishing jurisdiction over certain international crimes, including genocide, wherever committed if the alleged perpetrator is in their territory and any additional requirements are satisfied. Summarizing these developments in a United Nations study that I undertook in 2004, I noted that in recent years:

[T]here has been unprecedented recourse to extraterritorial jurisdiction in respect of serious crimes under international law committed outside the context of World War II atrocities. Some States enacted legislation in the 1990s to ensure that they did not become havens for individuals responsible for crimes committed in the former Yugoslavia and Rwanda who would not likely be prosecuted before the [International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda]; in other States, the presence of alleged perpetrators from these regions provided the occasion to enforce existing laws. Thus the operation of international tribunals created an atmosphere in which States were motivated to play their own part in bringing alleged perpetrators of international crimes to justice.

As this study reflects, a new legal architecture for enforcing the law of humanity is now emerging. While the most visible emblems of this trend are several international criminal courts, these tribunals have been a catalyst for other legal innovations. Hybrid courts--courts comprising a mix of local and international judges, prosecutors and other personnel--have been established in Sierra Leone, Cambodia, Kosovo, East Timor, and Bosnia-Herzegovina. None of these courts has the capacity to prosecute more than a fraction of those who participated in grotesque forms of violence, and this has spurred many national courts to do their part to narrow the impunity gap.

While the United States has played a leading role in supporting many of the legal innovations I have mentioned, our own law has in some respects lagged behind that of many other countries, with the principal exception of legislation implementing the Torture Convention. As a party to the Torture Convention, the United States enacted legislation enabling U.S courts to exercise criminal jurisdiction when the alleged offender is a U.S. national or when he or she "is present in the United States, irrespective of the nationality of the victim or alleged perpetrator." This past December, the United States brought its first indictment under the Torture Convention Implementation law.

But the United States cannot indict someone for genocide committed outside the United States, even when the victim is an American citizen, unless the perpetrator is a U.S. national. This makes no sense. Imagine what would happen if a U.S. citizen belonging to a particular ethnic or racial group were a foreign correspondent, and traveled abroad to cover an ethnic conflict in a region like Darfur. Suppose as well that her membership in this group is sufficient to make her a target of a genocidal campaign underway in that region. If the perpetrator of this crime traveled to the United States, he could not be charged with genocide under our law.

Through legislation enacted in 2004, Congress took an important step toward addressing this issue. While expanding grounds for denying admission to and deporting aliens on human rights grounds, the legislation also directed the Attorney General, when considering appropriate legal action against aliens who are inadmissible or deportable on grounds that include their participation in genocide, to consider avenues for prosecution. Through this action, Congress addressed a longstanding concern--by deporting aliens on human rights grounds without acting to ensure their prosecution, the United States and other countries could inadvertently undermine efforts to ensure that those who violate the basic code of humanity face the bar of justice.

Yet when the Attorney General considers appropriate legal action against those believed to have committed genocide, his options are unwisely limited. As noted, under current law someone can be prosecuted for genocide only if she is a U.S. national or for conduct committed in the United States. And so the first time the United States enforced its law making participants in genocide inadmissible and deportable, it deported Enos Iragaba Kagaba, a prominent suspect in the 1994 genocide in Rwanda, to Rwanda instead of prosecuting him here. While this action had the salutary effect of denying a suspected genocidaire sanctuary in the United States, it is less clear how well it advanced the interests of justice. Although the Rwandan government is generally willing to prosecute genocidaires, its courts have been overwhelmed by staggering numbers of cases. Moreover the International Criminal Tribunal for Rwanda has so far declined to transfer any cases to Rwanda, determining that Rwanda's legal system does not yet satisfy international standards of fair process.

The Kagaba case highlights gaps in our legal framework that curtail our ability to ensure that those who commit genocide face justice, fairly administered. As this subcommittee considers how it can strengthen the United States' capacity to combat genocide, I urge you to give serious consideration to legislation that would enable U.S. courts to prosecute individuals suspected of genocide and related crimes when they are present in U.S. territory unless the United States extradites them to another State or surrenders them for trial before a competent international or hybrid tribunal.

In addition, the subcommittee should consider further strengthening 8 U.S.C. §1103(h)(3), the statutory provision directing the Attorney General to consider avenues for prosecution when determining, in consultation with relevant authorities, how to proceed against an alien who is inadmissible because she participated in genocide. That law directs the Attorney General, when "determining the appropriate legal action to take against" such an alien, to give "consideration" to:

(A) the availability of criminal prosecution under the laws of the United States for any conduct that may form the basis for removal and denaturalization; or
(B) the availability of extradition of the alien to a foreign jurisdiction that is prepared to undertake a prosecution for such conduct.

While this provision represents an important advance in U.S. efforts to ensure that those who participate in genocide do not escape justice, it may not adequately convey our country's commitment to ensure prosecution, whether in the United States or in another venue where a fair and vigorous prosecution is assured. To accomplish this, the subcommittee should consider introducing an amendment to §1103(h)(3) that would express a general policy preference for options that ensure prosecution over deportation.

This subcommittee should also consider amending the Proxmire Act to make it clear that U.S. courts can prosecute individuals who bear criminal responsibility for genocide under the doctrine of superior responsibility. Well established in U.S. law, this doctrine has played a crucial role in holding leaders responsible for international crimes committed by subordinates that they could and should have prevented or repressed. The statutes of international and hybrid criminal

tribunals established since 1993 include a provision establishing jurisdiction over persons who are criminally responsible under this doctrine for genocide and other crimes committed to the relevant court's jurisdiction. The recently-adopted Convention on Enforced Disappearance reflects this trend, requiring States parties to "take the necessary measures to hold criminally responsible" inter alia:

A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

Turning to civil actions, I encourage this subcommittee to support legislation to amend the Torture Victim Protection Act of 1991 (TVPA) to enable plaintiffs to bring civil actions against individuals who are legally responsible for genocide. The TVPA establishes a civil cause of action against persons who subject an individual to torture and/or extrajudicial killing as those terms are defined in the act. Proponents of this law, which was enacted shortly before violence constituting genocide ravaged Rwanda and consumed Srebrenica, could not have easily imagined that, in the final decade of the 20th Century, survivors of genocidal campaigns might have fresh cause to seek legal redress. Now we know that genocide can happen in our time, and we should correct the anomaly in our law that provides recourse for a single extrajudicial execution but not for a campaign of ethnic extermination.

Should this subcommittee decide to pursue such legislation, I would encourage it to make clear that Congress does not intend to exclude corporate persons from potential liability under the TVPA. Let me be clear: I am not suggesting that corporations should be liable on grounds that would not satisfy appropriate criteria of legal liability. But there should be no doubt that they can be successfully sued when they satisfy the standards of liability Congress crafted when it adopted the TVPA. Consider, for example, a situation in which a corporation provided poison gas to the Nazis knowing--and I want to emphasize the word knowing--that its deadly product would be used to exterminate Jews.

Some courts have interpreted the TVPA, which uses the word "individual" when it refers to potential defendants, to allow suits against corporate defendants when other statutory criteria are satisfied but some others have not. While further decisions may clarify this issue, Congress could helpfully resolve it either by amending the TVPA to allow suits against "an individual, either natural or juridical," who meets relevant statutory criteria or through a clear statement of its intent to include juridical persons.

Conclusion

Ten years ago, Justice Ruth Bader Ginsberg spoke these words, written by South African jurist Albie Sachs, at the U.S. Holocaust Memorial Museum: "There are some crimes so horrendous that they either hush us into silence or else hurl us into screams." Those who commit genocide count on our collective silence, committing their crimes beyond any thought of shame or account.

The Genocide Convention was intended radically to alter the depraved calculus of annihilation, transforming our enabling silence into mobilized action. By highlighting that treaty's implications for Darfur and for our country, this subcommittee has acted to ensure that the United States redeems the promise of the Genocide Convention.

1. Done at New York, Dec. 9, 1948; entered into force Jan. 12, 1951; 78 UNTS 277. Signed by the United States Dec. 11, 1948; ratified by the United States Nov. 25, 1988; entered into force for the United States Feb. 23, 1989.
2. When the United States Senate provided its consent to U.S. ratification, it did so subject to a declaration that the President would not deposit the instrument of ratification until the implementing legislation contemplated by Article V had been enacted. U.S. Reservations, Understandings, and Declarations, International Convention on the Prevention and Punishment of the Crime of Genocide, § III, 132 Cong. Rec. 2350 (1986) [hereafter "U.S. RUD's"].
3. When the United States ratified the Genocide Convention, it did so subject to an understanding that "mental harm" means "permanent impairment of mental faculties through drugs, torture or similar techniques." U.S. RUD's, supra note 2, § II(2). This restrictive interpretation is reflected in the law enacted to implement the Genocide Convention. See 18 U.S.C. § 1091(a)(3).
4. Most important, the Genocide Convention seeks to prevent genocide by ensuring punishment of those who commit this crime or who undertake certain conduct likely to cause genocide, such directly and publicly inciting others to commit genocide.
5. As the Senate Foreign Relations Committee noted in the context of U.S. ratification, "Article VIII was included to underline the fact that complaints of genocide could be brought directly to the Security Council, the General Assembly or other parts of the United Nations. Otherwise, the Convention might be interpreted as limiting complainants to the International Court of Justice." Report of the Committee on Foreign Relations, United States Senate, Genocide Convention, Sen. Exec. Rept. 99-2, 99th Cong., 1st Sess., p. 11 (1985) [hereafter "Senate Committee Report"].
6. UN Doc. A/RES/60/1, ¶¶ 138-139 (2005).
7. Codified at 18 U.S.C. §§ 1091-1093.
8. Various other provisions of U.S. law address genocide. For example, the Immigration and Nationality Act provides that "[a]ny alien who ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091 (a) of title 18, is inadmissible." 8 U.S.C. § 1182(a)(3)(E)(ii). Any such alien is also deportable. 8 U.S.C. §1227(a)(4)(D).
9. Article V of the Genocide Convention requires States parties to enact any legislation necessary to "provide effective penalties for persons guilty of genocide or any of the other acts in enumerated in article III." Those "other acts" include conspiracy to commit genocide, direct and

public incitement to commit genocide, attempt to commit genocide, and complicity in genocide." The Proxmire Act explicitly criminalizes "attempts" to commit acts constituting genocide, 18 U.S.C. § 1091(a)(6), and penalizes direct and public incitement of genocide, id., § 1091(c). While the Proxmire Act does not itself criminalize conspiracy to commit or complicity in genocide, other provisions of the federal criminal code make it a crime to conspire in or to aid and abet the commission of any federal crime. See 18 U.S.C. § 371 (conspiracy); 18 U.S.C. § 2 (aiding and abetting).

Federal law also permits the United States to transfer an individual indicted by the International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda, each of which has jurisdiction over genocide under certain conditions, to the relevant tribunal. See National Defense Authorization Act, Pub. L. No. 104-106, § 1342, 110 Stat. 486 (1996). The American Servicemembers' Protection Act of 2002 (ASPA), codified at 22 U.S.C. § 7421 et seq., permits the United States to cooperate in various ways with genocide (and other) prosecutions of non-U.S. nationals by the International Criminal Court (ICC). While 22 U.S.C. § 7423(d) bars U.S. authorities from transferring "any person" from the United States to the ICC, its implications for non-U.S. nationals are largely superseded by § 7433, which provides that no other provision of the act "shall prohibit the United States from rendering assistance to international efforts to bring to justice . . . foreign nationals accused of genocide, war crimes or crimes against humanity." The ASPA generally bars U.S. authorities from transferring or supporting the transfer of U.S. citizens and permanent resident aliens to the ICC, see § 7423(d), but even this prohibition is subject to action taken by the President in the exercise of his constitutional authority, id., § 7430(a).

10. Senate Committee Report, supra note 5, p. 9. The Senate did not believe that it was modifying the Convention but instead clarifying its meaning when it consented to ratification subject to the proviso that "nothing in Article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state." U.S. RUD's, supra note 2, § II(3).

11. The restrictive interpretation of the treaty phrase "serious . . . mental harm" set forth in the Proxmire Act, see note 3, may undermine U.S. compliance with the Genocide Convention. Although the definition of genocide set forth in the Proxmire Act tracks an "understanding" set forth in the package of U.S. RUD's, see id., the United States did not enter a reservation to the definition of genocide set forth in the convention.

12. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 5 and 7, adopted Dec. 10, 1984; entered into force June 26, 1987; 1465 UNTS 85; ratified by the United States Oct. 2, 1994; entered into force for the Untied States Nov. 20, 1994.

13. International Convention for the Protection of All Persons from Enforced Disappearance, art. 9, adopted Dec. 20, 2006, UN Doc. A/RES/61/177 (2006) (hereafter "Convention on Enforced Disappearance").

14. Independent study on best practices, including recommendations, to assist states in strengthening their domestic capacity to combat all aspects of impunity, by Professor Diane Orentlicher, UN Doc. E/CN.4/2004/88, ¶ 49 (February 27, 2004) (footnote omitted).

15. Torture Convention Implementation, codified at 18 U.S.C. §§ 2340-2340B, § 2340A(b)(2).

16. 8 U.S.C. §1103(h)(3).

17. See Statement of Justice Hassan B. Jallow, Prosecutor of the ICTR, to the UN Security Council, Dec. 15, 2006.

18. See Ford v. Garcia, 289 F. 3d 1283 (11th Cir. 2002).
19. Convention on Enforced Disappearance, supra note 13, art. 6(1)(b). Article 6 goes on to provide that this provision "is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander." Id., art. 6(1)(c).
20. Codified at 28 U.S.C. § 1350 note.
21. See, e.g., Sinaltrainal v. Coca-Cola Co., 256 F. Supp. 2d 1345 (S.D. Fla, 2003); Estate of Rodriguez v. Drummond Co., 256 F. Supp. 2d 1250 (N.D. Ala., 2003).
22. See, e.g., Bowoto v. Chevron Corp., 2006 U.S. Dist. LEXIS 63208 (N.D. Cal., 2006). Mujica v. Occidental Petroleum Corp., 381 F. Supp. 2d 1164 (C.D. Cal., 2005).