

Introduction

Ellen L. Lutz and Caitlin Reiger

In September 1985, nine members of Argentina’s military junta, whose successive regimes covered the period in Argentine history known as the “dirty war,” walked into a courtroom in downtown Buenos Aires. Until that day, they had absented themselves from their trial, which had already gone on for months and during which hundreds of witnesses testified about their torture, the disappearance of loved ones, arbitrary arrest, cruel detention, and even crueler methods of extrajudicial execution. The city was mesmerized by the trial. Long lines for seats in the observation gallery formed days in advance of each court session. By eight in the morning, all the copies of *El Diario del Juicio*, the unofficial newspaper report of the testimony of the previous day, were sold out.

Entering the courtroom, some of the generals and admirals were stone-faced. Others whispered among themselves. None displayed any signs of remorse, and only one, Lieutenant General Lami Dozo (who later was acquitted), appeared agitated. The two most notorious of the accused made the greatest impression on the gallery. Admiral Emilio Eduardo Massera, an imposing figure who had been head of the navy – which ran the Navy Mechanics School where some five thousand disappeared persons were held between 1976 and 1979 – appeared in court in full navy dress regalia. By contrast, his army co-junta member, General Jorge Videla, appeared in court in civilian clothes and refused to appoint counsel for his defense (a court-appointed defender represented him). He buried his nose in a book while the prosecutor read out the indictment and described the evidence against him. Some thought it was a Bible; others suggested it was a mystery novel. Whichever it was, Videla made clear his contempt for the proceedings that ultimately condemned him and became the springboard for the global transitional justice movement.

Fast forward to October 2006: Saddam Hussein, whose reign of terror spanned nearly a quarter century, shuffled into a Bagdad courtroom to learn his fate. Although he might have been put on trial for waging aggressive wars

against Iran and Kuwait, for using chemical weapons against both Iranians and tens of thousands of Iraqi Kurds, or for murdering countless Iraqi Shiites, this trial focused on a single set allegations relating to the attacks against 148 Shiite men and boys from the town of Dujail in the 1980s in retaliation for an alleged assassination attempt on his life. A five-judge Iraqi judicial panel of a tribunal that was funded and heavily influenced by the United States had found Hussein and his codefendants responsible for crimes against humanity for the attack on the Dujail villagers.

As Hussein sank into his seat, presiding judge Ra'uf Rashid Abd al-Rahman commanded, "Make him stand up!" Six guards hustled the ex-dictator to his feet and held his arms behind him while the judge read out his sentence of death. Hussein shouted defiance in reply: "Go to hell! You and the court! You don't decide anything, you are servants of occupiers and lackeys!" The judge shouted back, "Take him out!" As he was led away, Hussein bellowed, "Long live the Kurds! Long live the Arabs!"¹

Before 1990, only a handful of former or current heads of state or government had ever been indicted for serious human rights violations or other abuses of authority while in power. As a rule, former chief executives who had committed crimes, like those who had fallen from political favor, went into exile or in some cases were summarily executed. Since then, no fewer than sixty-seven heads of state or government from around the globe have been, at a minimum, criminally charged for their misconduct while in office.

This book is an effort to understand what changed, and why. Has humanity indeed entered an era in which heads of state and other senior government officials are as vulnerable as common criminals to arrest, trial, and punishment for their crimes? Is this a global phenomenon, or one of selective application? If the latter, which leaders are "at risk" and which are likely to escape with impunity?

The book builds on the body of work that examines criminal trials as a means of achieving accountability for serious violations of international human rights or humanitarian law. It also builds on work that explores the creation and development of the various international criminal tribunals over the past decade, as well as the contemporary willingness of some states to exercise "universal jurisdiction" for the most heinous of such crimes. It considers the interface between domestic decision making regarding criminal prosecutions and international interest in trying government leaders, including the establishment of international tribunals with jurisdiction to do so. In addition, it examines the international movement against political corruption that began to gain traction during the same time period. It explores the extent to which these trends have influenced sovereign states to create the political space for independent

domestic courts to try senior officials for human rights and economic crimes. Ultimately, this book considers the significance of pursuing these leaders for their victims and for the societies they once ruled.

Hundreds of government and military officials around the globe have now been indicted for the kinds of crimes covered in this book. We limited our study to heads of state or government so that we could examine a complete data set without the need for statistical sampling. Although indictments and trials of heads of state or government are inevitably more politicized than those of their underlings, there is no other global subset of perpetrators who are similarly situated that we could have selected.

In addition to the cases we examine here, there have been many more in which a former head of state or government has been the subject of some sort of criminal investigation. For example, after Belgium enacted its universal jurisdiction law in 1993, victim complaints flooded in against former dictators and even sitting heads of state, including Mauritanian president Maaouya Ould Sid'Ahmed Taya, Iraqi president Saddam Hussein, Israeli prime minister Ariel Sharon, Ivory Coast president Laurent Gbagbo, Rwandan president Paul Kagame, Cuban president Fidel Castro, Central African Republic president Ange-Felix Patassé, Republic of Congo president Denis Sassou Nguesso, Palestinian Authority president Yasir Arafat, former Chadian president Hissène Habré, former Chilean president General Augusto Pinochet, and former Iranian president Ali Akbar Hashemi-Rafsanjani.² Official investigations into these cases were opened, but most never progressed beyond this exploratory phase. We limited our analysis to those instances in which a leader was the subject of some level of formal charges or was indicted, depending on the requirements of the particular legal system, to ensure that we were addressing only those cases for which there was official intent to prosecute the accused.

Because of the high publicity value of prosecutions of top political figures, the news media carries more information about criminal prosecutions of heads of state or government than it does for prosecutions of lower-ranking officials. In terms of responsibility, heads of state or government are at the top of the chain of command. In cases of corruption crimes, which are usually committed for personal gain, these leaders most likely were directly involved in the criminal acts. In cases of human rights crimes, even if they did not directly order them or carry them out, they often were in positions to know what was going on, even if they deliberately insulated themselves from knowledge of the facts. Finally, at a symbolic level, these cases often represent far more than the individuals on trial. Especially in situations in which the prosecutions have followed a political transition or the end of a regime, pursuing the highest individual

in the hierarchy is also about marking a break with the past and sometimes condemning an entire system that facilitated the commission of serious crimes in the name of the state.

FROM AMNESTIES TO ADJUDICATION: NATIONAL RESPONSES TO HUMAN RIGHTS CRIMES

Since the trial of the nine junta members in Argentina during the 1980s, the subject of trying senior governmental officials for serious violations of human rights has riveted the attention of the international human rights movement. Before then, aside from hesitant efforts in Western Europe to punish those responsible for atrocities committed during World War II and Greece's trial of the leaders of its authoritarian regime, which fell in 1974, the world gave little thought to what consequences should be brought to bear against dictators and others who were responsible for egregious wrongs. The transitions from dictatorship to democracy that took place in Latin America throughout the 1980s, and particularly Argentina's conviction and sentencing of five of the former junta members to lengthy prison terms, changed that. Overnight, the human rights movement embraced the aim of ensuring that leaders who perpetrated human rights abuses faced justice. The issue was no longer whether there should be accountability, but how much and what kind of accountability, as well as what compromises were acceptable to keep the peace or prevent a return to authoritarian rule.

In 1988, the Aspen Institute's Justice and Society Program hosted a groundbreaking conference to explore the dimensions of meaningful accountability for gross violations of human rights. The participants, mostly scholars and human rights advocates, agreed that accountability minimally requires a successor government to investigate and establish the facts so that the truth is known and acknowledged as a part of the nation's history. Although there was disagreement about acceptable trade-offs, there was consensus that meaningful accountability requires individuals who perpetrated the abuses to be held responsible. The participants also recognized that accountability, by itself, is neither sufficient nor possible absent other functioning democratic institutions, including an independent judiciary, the removal of impediments to a flourishing civil society, and a commitment to the rule of law.³

Over the next few years, the subject of accountability continued to gain traction. With the end of the Cold War, many Eastern European countries were compelled to confront what to do about those who had committed human rights abuses during decades of Communist rule. Their responses varied widely. Some states opted for nonjudicial accountability solutions such as

“lustration,” or banishment from political life. Romania summarily executed its former dictator Nicolae Ceausescu and his wife Elena, although the generals who had taken charge of the country claimed that they had first convicted them in a military trial. Others filed charges against ex-leaders – some for financial and others for human rights crimes. A fuller analysis of the newly democratic governments’ responses to Cold War–era crimes can be found in Chapter 2.

In South Africa, the negotiated end of apartheid created a similar quandary. In coming to terms with the necessity of compromising to achieve peace, both the ruling National Party and the African National Congress (ANC) embraced international human rights discourse and norms as the best means to achieve common ground, write a constitution, and craft a power-sharing agreement.⁴ Yet as is so often the case in negotiated ends to long-standing conflicts,⁵ throughout the process the topic of how to deal with criminal violations of human rights during the apartheid era was shelved until all other contentious issues were resolved and the parties had agreed on a draft constitution text. Only then did National Party and ANC negotiators, in a secret process, craft the language of “National Unity and Reconciliation” that laid the groundwork for South Africa’s 1994 interim constitution and the subsequent enactment of legislation that mandated the establishment of the Truth and Reconciliation Commission (TRC).⁶ An integral part of the agreement was the provision of a conditional amnesty that enabled perpetrators of past violations to apply to swap criminal and civil liability for testimony before the TRC’s Amnesty Committee. Amnesty would only be granted upon satisfaction of various conditions, including disclosure of all known aspects of their crimes that were related to “a political objective,” including the names of those higher up in the chain of command. Somewhat counterintuitively, remorse was not among the determinative criteria for amnesty.⁷ Despite the fact that the “amnesty for truth” deal was predicated on the basis that prosecutions would follow for those who did not submit to the process or were refused amnesty, with the exception of the 1996 conviction of former Vlakplaas commander Eugene de Kock, South Africa’s apartheid-era leaders all managed to escape indictment.⁸ While the South African TRC amnesty arrangements were much lauded at the time, the question of prosecution for those who escaped the process continues to be a live one, and it is questionable whether such a compromise would be acceptable under international law today.⁹

In Latin America, sensing the turning tide toward greater accountability, authoritarian leaders of countries transitioning to democracy went to great lengths to issue decrees, pass laws, and even hold national referenda to immunize themselves from prosecution. These “self-amnesties” became

topics of interest for the Organization of American States' (OAS) human rights machinery.¹⁰ Indeed, the rulings of the Inter-American Commission and Court both reflected and helped to stimulate the global attitude shift toward greater accountability. Thus, in its 1985–86 Annual Report, the Inter-American Commission on Human Rights adopted the measured view that it was up to the appropriate democratic institutions of the state concerned to determine whether and to what extent amnesty was to be granted.¹¹ Yet even then the commission took the view that amnesties should not be used as a shield to prevent victims from obtaining information about human rights abuses.

As more and more American states passed amnesty laws in the late 1980s, the commission found itself inundated with petitions from human rights victims alleging that amnesty laws violated their right to judicial protection. In its 1992 Annual Report regarding a massacre by security forces of seventy-four people in El Salvador, the commission concluded that the Salvadoran government had a duty to investigate and punish the perpetrators, notwithstanding an El Salvadoran Supreme Court ruling that those who carried out the massacre were protected from prosecution by that country's amnesty laws.¹² In the same report, in recommendations concerning amnesty laws in two other countries – Uruguay and Argentina, the commission reemphasized that regardless of whether amnesty laws had been adopted, states had a duty under the American Convention on Human Rights to clarify the facts and identify those responsible for human rights abuses.¹³ In September 2006, in a case involving Chile, the Inter-American Court of Human Rights ended this legal ambiguity by holding that amnesties for those responsible for crimes against humanity violated the American Convention on Human Rights.¹⁴

As these national developments were slowly taking form in Latin America, there was a parallel development in national courts in Europe that helped continue the momentum for change during the late 1990s. Victims, human rights advocates, and investigating magistrates creatively used universal jurisdiction laws that were on the books in Spain, Belgium, and other European countries. These are discussed further in Chapter 2 of this volume.

THE RAPID EVOLUTION OF INTERNATIONAL CRIMINAL TRIBUNALS

By 1993, just five years after the Aspen Institute conference, accountability became the subject of debate at the pinnacle of global political power. The international community was under pressure to forge an effective response to what was becoming a bloody and intractable conflict in the former Yugoslavia,

yet it was reluctant to send in troops. In July 1992, Human Rights Watch had issued a report concluding that the war was an international armed conflict to which the Geneva Conventions applied – including the requirement that war criminals be tried.¹⁵ Around the same time, journalist Roy Gutman published an article in *Newsday* exposing, for the first time, the Bosnian Serb death camps.¹⁶ In response, the Security Council commissioned a panel of experts to investigate, and two major human rights funders – the Soros Foundation and the MacArthur Foundation – ensured that the commission was adequately funded.¹⁷ Meanwhile, the administration of U.S. President George H. W. Bush, having lost a tough election battle, began to worry about its legacy if it did not take positive action to stop the violence that was tearing Bosnia apart. At a December 1992 conference in London, U.S. acting Secretary of State Lawrence Eagleburger called for a war crimes tribunal for the former Yugoslavia. The incoming Clinton administration endorsed Eagleburger's proposal.¹⁸

In the spring of 1993, the United Nations Security Council established the Ad Hoc Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) in response to the continuing widespread and systematic murder, rape, and ethnic cleansing of civilians in Bosnia.¹⁹ In doing so, the Security Council asserted that massive human rights abuses were a threat to international peace and security and judicial accountability for perpetrators was a prerequisite for ensuring that peace and the protection of human rights are guaranteed in the future.²⁰ Although the establishment of the ICTY did not bring about peace in the region, its existence did alter the playing field.

In 1999, at the height of the war in Kosovo, that tribunal became the first international court to announce that it had indicted a sitting head of state – Slobodan Milošević – for war crimes and crimes against humanity in connection with the deportation and murder of Kosovo Albanians. These charges were later expanded to include genocide and crimes against humanity and to cover the earlier conflicts in Bosnia and Croatia. Even though Milošević was ousted from power six months later, Serbia took almost two years before it turned him over to the ICTY for trial. A detailed analysis of the Milošević trial before the ICTY and its implications for the former Yugoslavia and international justice can be found in Chapter 9.

Eighteen months after the establishment of the ICTY, the Security Council, again pressed to respond to an international crisis to which it was reluctant to send troops, established a similar court to prosecute genocide and other systematic, widespread violations of international humanitarian law in Rwanda.²¹

The Rwanda Tribunal faced the challenge of coordinating its efforts with those of domestic courts in Rwanda that also had jurisdiction and a powerful interest in trying those responsible for the genocide. Tensions arose between the two systems over resources, jurisdiction, and punishment, and for a while the tribunal was plagued with scandal and inefficiency. However, the tribunal also issued the first-ever decision that a former head of government was guilty of genocide. On May 1, 1998, at his initial appearance before the ICTR, Jean Kambanda, who was prime minister of Rwanda from April 8 to July 17, 1994, pleaded guilty to charges of genocide, crimes against humanity, and related crimes.²² He was sentenced to life imprisonment.

In subsequent years the international community has established an assortment of other ad hoc judicial processes, including hybrid domestic-international courts like the Special Panels for Serious Crimes in East Timor, the Special Court for Sierra Leone, a specialized war crimes chamber in Bosnia, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon.²³ These courts either have already faced or will face similar challenges in tackling high-level leaders, as shown by the current proceedings against Liberia's Charles Taylor and Cambodia's Khieu Samphan.

The creation of the Yugoslav and Rwandan tribunals in the mid-1990s also stimulated international efforts to establish a permanent international criminal court. The United Nations sponsored an international diplomatic conference in Rome in 1998 where the statute of the International Criminal Court (ICC) was adopted. Today the ICC is a fully functioning court. Judges and prosecutors have been selected, and, notwithstanding U.S. government efforts to undermine it, 106 states have committed themselves, and their financial wherewithal, to making the ICC a meaningful institution. The new court has the benefit of the jurisprudence and the experience of the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as the hybrid tribunals. At this writing, three cases are under investigation: Uganda and the Democratic Republic of the Congo (DRC), which were referred by those states parties, and the Darfur region of Sudan, which was referred by the UN Security Council. Three defendants from the DRC and Jean-Pierre Bemba Gombo from the Central African Republic, Thomas Lubanga Dyilo, Germain Katanga, and Mathieu Ngudjolo Chuiof, have been arrested and surrendered to the court in the Hague.

DOMESTIC CORRUPTION PROSECUTIONS

The institutionalization of international criminal judicial processes coincided with a less-heralded phenomenon in national courts: the rise in indictments,

prosecutions, and convictions of often high-level public officials for corruption crimes including bribery, extortion, misappropriation of public or private funds, and other acts that involved using public power for private gain. Corruption is as old as war, and in many cases nearly as devastating. The World Bank estimated that in 2006 the global cost of corruption reached \$1 trillion. Yet until the end of the Cold War, prosecution of top public officials for corruption was no more common than their prosecution for human rights or humanitarian law violations.

The shift owes its origin, in part, to the Watergate scandal at the end of the Vietnam War. In its aftermath, the U.S. Congress uncovered slush funds used by U.S. multinational corporations to finance U.S. elections, as well as to bribe foreign government officials. In the same reform-driven mind-set that led to the first federal laws governing U.S. foreign policy with respect to countries engaged in violations of human rights, the Congress unanimously passed the Foreign Corrupt Practices Act (FCPA) in 1977, which was aimed at curbing corrupt business practices by U.S. corporations overseas.²⁴

However, it quickly became apparent that the United States' good intentions were undermining the competitive position of U.S. businesses in the international marketplace. In 1988, the Congress amended the FCPA. Proclaiming the need for a global response to foreign bribery, the Congress called on the president to pursue the negotiation of an international agreement, "among the largest possible number of countries," to govern acts now prohibited under FCPA.²⁵

Meanwhile, in Europe during the 1990s, a string of corruption scandals touching senior officials, including heads of state and government, was creating embarrassment. Allegations of corruption cost some leaders their public offices, including President Felipe González of Spain and Helmut Kohl of Germany, both of whom were voted out of office in the wake of corruption scandals.²⁶ In Italy, long a haven for official corruption, a group of Milanese prosecutors and magistrates initiated a campaign in 1992, called *Mani Pulite* (Clean Hands), to undercut institutionalized corruption that transcended political parties and allegedly was linked to the Mafia. Several prime ministers, including Silvio Berlusconi, found themselves in the dock for corruption, as is detailed in Chapter 2.

By the turn of the millennium, what began as an American housecleaning exercise had become a global movement. First the Americas (1996), then Europe (1999) adopted treaties criminalizing corruption.²⁷ The 1997 treaty of the intergovernmental Organization for Economic Cooperation and Development (OECD), the thirty member countries of which are home to the majority of the world's multinational corporations, requires members to enact

laws prohibiting corporate bribery and extortion. It entered into force in 1999.²⁸ Africa followed in 2003, and in the interim, Asia, the Pacific Island states, and the Middle East declared interest in creating regional instruments or structures to impede corruption. Meanwhile, the United Nations promulgated the UN Convention against Corruption (UNCAC), which entered into force on December 14, 2005.²⁹ As of February 4, 2008, 107 countries had ratified it, and 140 had signed it.

Although UNCAC does not define “corruption,” it does require, among other means to curb corruption, states to criminalize intentional bribery of national or foreign public officials, and intentional embezzlement, misappropriation, or other diversion for private gain by a public official of any property, funds, or anything else entrusted to the official by virtue of his or her position. It also requires states to criminalize influence trading and calls on them to “consider adopting legislation” to criminalize other official abuse of functions and illicit enrichment. Responding to a spate of cases in which public officials used legal maneuvers to evade the administration of justice, UNCAC calls on states to establish long statutes of limitations for corruption or adequate suspensions of existing statutes, to ensure that those accused of corruption cannot outrun the clock.

Corruption is a complex issue. It necessarily involves multiple actors and can take place on many levels. Official corruption is often seen as a victimless crime, because it usually is hard to measure the costs to individual members of the public. Depending on the corrupt activity, the cost to the public at large can range from modest to monumental, but is often outweighed by the expense of investigating it, particularly when the parties control all the relevant evidence and have no incentive to cooperate with investigators.

Although the coincidence of the trends to prosecute perpetrators of human rights abuses and government officials who engage in corruption has been largely unremarked by the international justice movement, its significance is worth exploring, particularly on account of the avenue that corruption cases have opened for holding heads of state or government accountable for at least some of the excesses of their regimes, as several of the cases in this volume demonstrate.

A NEW KIND OF POLITICAL TRIAL

Those in possession of power have long used courts to humiliate or distract their political opponents. In 1964, Judith N. Shklar defined a political trial as “a trial in which the prosecuting party, usually the regime in power aided by a cooperative judiciary, tries to eliminate its political enemies. It pursues

a very specific policy: the destruction, or at least the disgrace or disrepute, of a political opponent.”³⁰ These types of cases remain a feature of political life around the globe but increasingly are becoming a small minority of the overall number of judicial processes against heads of state or government.

Although still highly politicized, the kinds of trials that have been occurring since the fall of the Berlin Wall are less often vehicles for grabbing or retaining power, or for bullying opponents. Instead, they appear to be responses to public pressure for accountability for official misconduct while in office. More and more, prosecutions are occurring before randomly chosen judges serving in judiciaries that are relatively independent of the politicians or political forces holding power. Some of these recent indictments of heads of state are for serious human rights violations.³¹ Others involve corruption charges. Sometimes corruption charges are brought as surrogates for rights-violation charges that are too politically sensitive to prosecute. In other circumstances, misappropriation of state funds is itself the rationale for the indictment. In many of these cases, graft may have facilitated the abuse of human rights, in that it impeded the country from meeting the immediate economic, social, and cultural rights needs of its population, or had longer-term consequences, such as increasing the country’s debt burden or ability to attract new development aid, or causing social unrest or political instability. In other cases, corruption may have been one of the key means leaders used to finance the mechanisms through which human rights crimes occurred, such as the procurement of weapons or the funding of death squads or militias.

Indictments and trials are occurring notwithstanding the existence of the same complex countervailing pressures that were often used as a justification against pursuing accountability in the past. This is particularly true for countries transitioning to democracy after an extended period of violent conflict, or authoritarian or totalitarian rule. Perpetrators may have been active participants in settlement negotiations or are participating now in democratically elected governments. Trying perpetrators may have to compete with other democratic transition priorities such as maintaining order, placating a restive military or other armed fighters (especially those loyal to a potential defendant), demobilizing and reintegrating ex-combatants, or staving off economic collapse. Sometimes the infrastructure and capacity to stage complex, high-profile trials is lacking. This can also affect decisions on when, where, or how to proceed. Even under the worst circumstances, however, lip service is usually paid to the importance of trying those leaders most responsible for serious human rights and financial crimes.

Other challenges, such as legal or procedural immunities, statutes of limitations, or the principle against retroactive application of the law, have interfered

with trials or have restricted the scope of prosecution to a handful of narrowly defined or time-limited charges. In many countries, the public seems to have a high tolerance for what it perceives as the eccentricities of the legal process, provided that ex-leaders who are popularly accused of crimes face judgment for at least some their misdeeds. At times, the perception of progress may not translate into concrete results. Recognizing that justice must at least be seen to be done, many governments have investigated or indicted former heads of state for crimes committed while in office, only to allow the process to bog down, sometimes for years, in the courts. Others have seen judicial processes through to conclusion but have quietly arranged for ex-leaders to serve their sentences under comfortable house arrest or while retaining other publicly provided benefits. In cases in which ex-leaders have gone into exile, some governments have made a big show of seeking their extradition, without following through on the legal or political steps necessary to obtain the return of the accused. Nonetheless, momentum to try former leaders for their human rights or corruption crimes is spreading around the globe.

SIXTY-SEVEN CASES

Between January 1990 and May 2008, sixty-seven heads of state or government from forty-three countries around the globe had been formally charged or indicted with serious criminal offenses: there have been thirty-two defendants from Latin America, sixteen from Africa, ten from Europe, seven from Asia, and two from the Middle East. Additionally, Figure 1.1 shows the percentage of defendants from each of the world's five regions. Some faced a single charge or set of charges, whereas others were indicted multiple times over a period of years. The cases are about evenly divided between human rights and corruption crimes, although in Asia only two countries, South Korea and Cambodia, have indicted their former leaders for human rights crimes. Some leaders faced both human rights and corruption crimes. Only a handful of cases, ranging from sodomy to treason, were not related to human rights or economic crimes. The breakdown of the types of charges is contained in Figure 1.2. A full list of all of these cases is contained in the Appendix at the end of this book. As noted earlier, although there may have been other types of proceedings against heads of state or government during this time, such as constitutional challenges or impeachment efforts, these have not been included for the purposes of this study, nor have those criminal complaints that may have been filed but that were never formally pursued.

Although our purpose is not to attempt a detailed statistical analysis, some observations are worth noting. Of the sixty-seven heads of state or government

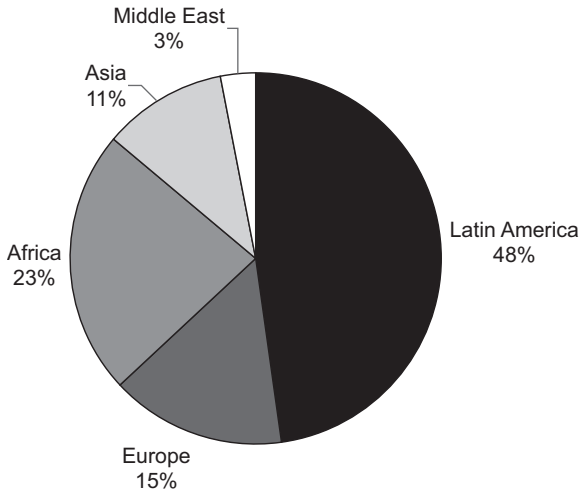


FIGURE 1.1. Prosecutions of heads of state or government by region.

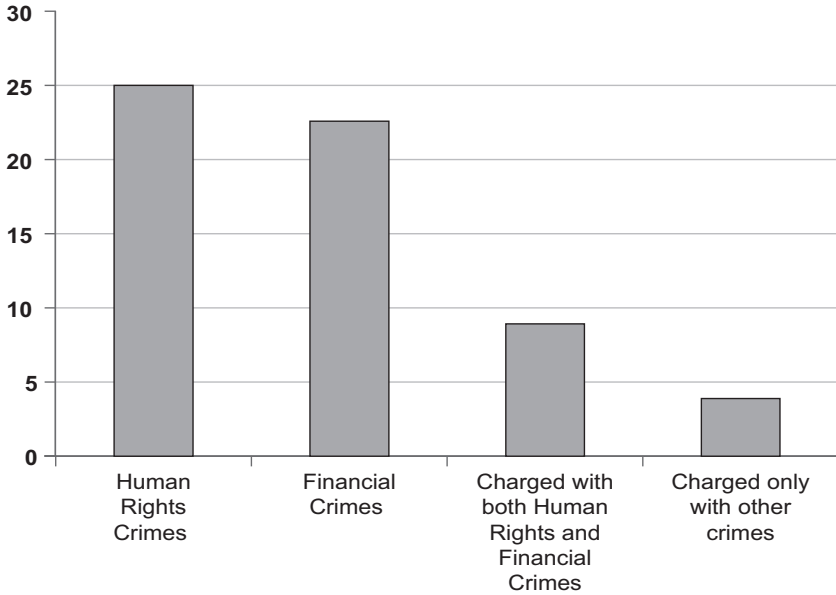


FIGURE 1.2. Breakdown of types of charges against heads of state or government.

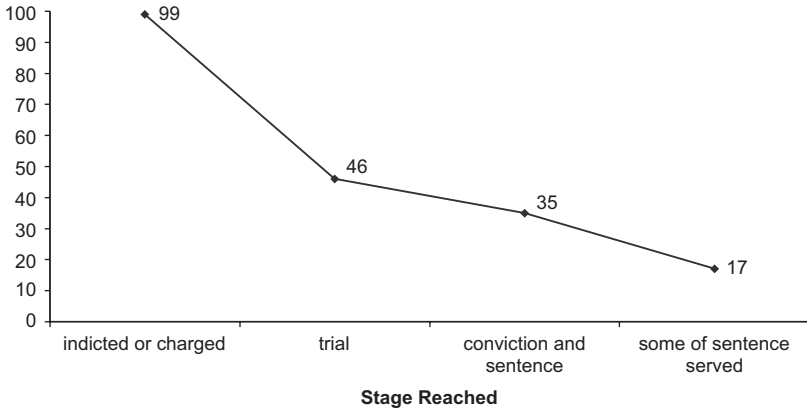


FIGURE 1.3. Progress of 99 indictments against 67 heads of state or government as of July 2008.

charged in criminal cases since 1990, most indictments and trials were concentrated in the period between 1995 and 2002, after which the number of new cases in most parts of the world decreased. The period between 1995 and 2002 coincides with the headiest days of international justice institution building, with the United Kingdom's arrest and extradition proceedings of Augusto Pinochet and the Belgian and Spanish universal jurisdiction laws.³² The reduction in new cases coincides with the international "war on terror," which has arguably heightened popular acceptance of strong leaders and strong-armed tactics to maintain security. It is worth noting that in Latin America, the one region that (aside from Colombia) has been relatively free of terrorist activity in the past decade, the number of new indictments of heads of state did not lessen after 2002.³³

The percentage of those sixty-seven individuals who were formally charged who subsequently were tried, convicted, and served some form of sentence, as illustrated by Figure 1.3, highlights the ambiguous nature of the trend. Roughly half of the 99 separate criminal proceedings examined proceeded to trial. Almost half of all heads of state or government whose trials have been completed were convicted, but only half of these served some form of sentence. Only one, Saddam Hussein, was executed. The rest were sentenced to either fines or house arrest, the terms of which varied widely. Many benefited from policies prevalent in Latin America and Europe allowing anyone over the age of seventy who is convicted of a crime to serve his or her sentence at home. One former head of state, Nicaragua's Arnaldo Alemán, who was convicted of embezzling and laundering \$100 million from the public coffers of his deeply

impoverished country, had his twenty-year sentence reduced to five years of “Nicaraguan arrest,” meaning that he was not allowed to leave the country. Alemán was permitted to campaign for his party in the spring 2007 elections.³⁴ Although there may be increasing resolve to commence prosecutions against former leaders, this resolve still seems to wane as the process progresses.

CASE STUDIES OF PROSECUTIONS OF HEADS OF STATE

We begin this book by surveying the historical rise of judicial accountability for heads of state and government for human rights and corruption crimes in the two regions where accountability has been most salient: Europe and Latin America. In Europe, the trend toward holding heads of state responsible for their actions coincided with post–World War II political transformations that led the region to embrace democracy and restructure itself as a federated union of states. In Western Europe, most countries have not had to deal with rights-violating regimes (at least not domestically) since World War II, although in recent years the region has confronted the challenge of what to do about the surviving Nazi war criminals before they, or their direct victims, pass away. For countries that were governed by dictatorial regimes, the record is mixed: in 1974, Greece chose to try the colonels who carried out a military coup and used torture as a tactic of social control; Spain, in contrast, chose to sweep crimes committed by Franco’s regime under the rug after his death in 1975.

Since the end of the Cold War, the former Soviet bloc European states have similarly had a mixed record with respect to the legacy of human rights violations during the Soviet era. In some cases this involved political sanctions, but in others, particularly the former East Germany, it involved criminal trials for past rights abuses. With the exception of the countries that were part of the former Yugoslavia, most governments’ desire to be accepted as part of the European Community has outweighed any contemporary repressive inclinations.

Nevertheless, many European countries are still struggling with accountability for financial or ethical crimes that embroil political leaders, although the countries of the region have enthusiastically embraced international and regional anticorruption treaties. On a regional basis, Europe is also the world leader in ratifying international human rights and humanitarian law treaties and in embracing international judicial processes for persons accused of the most egregious human rights and humanitarian law crimes. In addition, Europe is leading the world in its willingness to extend the jurisdiction of domestic courts to try criminals whose human rights crimes happened elsewhere in the world.

Like Europe, Latin America's interest in accountability for heads of state predates the end of the Cold War. Both Europe and Latin America established extensive human rights machinery at the regional level to address violations of regionally accepted human rights norms. Although the European system advanced and became institutionalized more rapidly, the cases brought before it tended to be less egregious than those that the Inter-American human rights system faced. Thus, many international juridical pronouncements relating to accountability were first articulated by the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights. However, national systems of justice also were confronted with what to do about criminal leaders and occasionally explored trials as a solution. For example, in 1963, Venezuela persuaded the United States to extradite former president Marcos Pérez Jiménez to stand trial for financial crimes committed while he was in office, including "peculation, malversation, and related felonies."³⁵ Five years later, a closely divided Venezuelan Supreme Court convicted him of the minor crime of continuous profit from public office (*lucro de funcionarios*) and sentenced him to four years, one month, and fifteen days in prison. Because he had already served that amount of time, he went directly from his sentencing hearing to exile in Spain.³⁶

In the intervening years, most countries in Latin America had military dictatorships that were engaging in human rights and corruption crimes. In that era, it was dangerous to talk about the return to democracy, let alone trials. The Argentine junta trials changed all that, raising hopes among human rights and pro-democracy advocates that justice might indeed become an international value. Within a couple of years, however, Argentina backtracked by blocking further prosecutions of perpetrators of "dirty war" crimes, and in 1990, president Carlos Menem pardoned the junta members who had been convicted.

Trials of political leaders further suffered a black eye when the United States captured Manuel Noriega, military dictator of Panama, after it invaded that country in 1989. Although he was technically a prisoner of war, the United States carted him to Miami to stand trial for drug trafficking, racketeering, and money laundering in a U.S. federal court. Noriega was sentenced under U.S. federal law to forty (later reduced to thirty) years in prison; the U.S. invasion, which cost the lives of at least two hundred Panamanians and twenty-three U.S. troops, was globally condemned. The Organization of American States passed a resolution deploring the invasion and calling for the withdrawal of U.S. troops. A similar measure in the UN Security Council died only after it was vetoed by the United States, France, and the United Kingdom.³⁷

For a time, many assumed the accountability movement had hit a brick wall. However, as Roht-Arriaza describes in Chapters 3 and 4 and in her book

The Pinochet Effect,³⁸ the untiring efforts of human rights activists who were determined to see justice done turned the tide. In the past decade, criminal investigations or judicial proceedings against former senior officials have occurred in Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Paraguay, Peru, Uruguay, and Venezuela. In Argentina, President Néstor Kirchner dissolved the amnesty laws. New cases, as well as revised cases against those previously given amnesty, are progressing through the courts. Roht-Arriaza cautions in her chapters, however, that legal and political obstacles to trials are strewn across the Latin American landscape, and the two often are so interlaced that it is difficult to determine in which domain they lie. This is the circumstance of former Peruvian president Alberto Fujimori, whose case Ronald Gamarra describes in Chapter 5. In 2005, the sixty-nine-year-old former president attempted to make a victorious return to Peru to run again for the presidency. Instead he found himself in custody in Chile, from where he was later extradited to Peru to stand trial for human rights, financial, and abuse of authority crimes. On December 11, 2007, the Supreme Court of Peru sentenced him to six years in prison for ordering an illegal search. A separate trial on charges of ordering two infamous massacres as well as the torture and unlawful detention of a journalist could each result in additional sentences of fifteen or more years.

In Asia, it is increasingly commonplace for states to try senior officials for corruption and other financial crimes that occurred during their incumbency. South Korea, India, Pakistan, Nepal, the Philippines, and Indonesia have done so. However, there is little demonstrated political interest in trying senior officials for human rights crimes. For example, the Indonesian government indicted former president Suharto for embezzling \$570 million from several charities that had been under his charge but not for the massive human rights abuses that occurred during his thirty-year reign. That indictment was quashed by the courts. In Cambodia, Khmer Rouge former head of state Khieu Samphan is now in pretrial detention, but it has taken almost thirty years and an internationally assisted court to bring him there.

As Abby Wood discusses in Chapter 6, after President Ferdinand Marcos's 1986 ouster and exile to Hawaii, no criminal indictment against him was issued on the technical grounds that while he was not on Philippine soil, he was beyond the reach of the law. The government of Corazon Aquino, however, refused to permit Marcos to return to the Philippines, even after he expressed willingness to face a Philippine jury. The closest Marcos came to prosecution was a civil suit filed against him in the United States for torture, disappearance, and extrajudicial execution during his dictatorship. Although the victims eventually won a \$1.2 billion judgment, Marcos died long before the lawsuit was tried. Since that time, the international climate has changed,

trials of former heads of state have occurred in neighboring countries, other senior political officials have been indicted and tried in the Philippines, and the Philippines has ratified the ICC Statute. But no senior official from Marcos's administration or any subsequent one has faced criminal charges for human rights violations. Former president Joseph Estrada was convicted on corruption charges in 2007 and then pardoned by President Gloria Macapagal Arroyo. He never faced charges for human rights crimes, even though his administration engaged in a military campaign against Muslim separatists that led to the internal displacement of some 400,000 civilians and reports of human rights violations including extrajudicial executions, disappearances, and torture.³⁹

Given the extent of atrocities that have occurred in Rwanda, Liberia, Sierra Leone, Sudan, the Democratic Republic of the Congo, and many other African countries, and the international judicial response to each of these crises, one might expect to see evidence of a "justice cascade" in Africa. In fact, the opposite is true. Certainly there have been bona fide trials, such as the trial of former Zambian president Frederick Chiluba, who was arrested and charged with corruption and theft of \$40 million while in office. As Paul Lewis demonstrates in Chapter 7, Chiluba's prosecution was a home-grown anomaly in a region where most countries have shunned legitimate trials for senior officials unless pushed into them by powerful international actors.

There have also been political show trials aimed at eliminating threats to the political power of those holding office. Lars Waldorf illustrates this in Chapter 8 with a case study on the Pasteur Bizimungu prosecution in Rwanda. For nearly a decade, international attention focused on justice in Rwanda, including an international criminal tribunal, massive international assistance to revitalize the country's judicial system, and an alternative justice mechanism called *gacaca* that was based on traditional dispute resolution mechanisms and constructed to deal with all but the most responsible participants in Rwanda's genocide. Despite that attention, Bizimungu's trial was Rwandan president Paul Kagame's way of demonstrating that political dissent would not be tolerated, ethnic discourse would be criminalized, and the international community would not, and could not, protect political dissidents and human rights defenders.

Three of the heads of state or government whose indictments took place since the end of the Cold War – Jean Kambanda (Rwanda), Slobodan Milošević (the former Yugoslavia), and Charles Taylor (Liberia) – were brought before international or special hybrid national-international tribunals. In all three cases, the United Nations Security Council took the view that the worst of the crimes committed during these conflicts could not or should not

be tried by domestic courts. In each case, the international community had committed international troops to quell conflicts, crimes against humanity, and alleged genocide and therefore had its own vested interest in seeing justice done. Although domestic and international human rights advocates had called for prosecution of all three of these defendants as well as the establishment of the institutions that facilitated their prosecution, ultimately it was the creation of impartial, professional tribunals and the appointment of independent prosecutors and judges who were free from domestic political concerns that ensured these former leaders faced justice.

As Miranda Sissons and Marieke Wierda show in Chapter 11, a similar scenario occurred with respect to the trial of Saddam Hussein in Iraq, although there the relationship was one between the occupying power and the postoccupation Iraqi leadership notwithstanding the fact that international human rights groups had been campaigning for justice for the victims of the Ba'athist regime for many years. After the U.S. invasion of Iraq, human rights advocates also called for an international or hybrid court. This was rejected by the Bush administration which, despite the political chaos and lack of experienced judicial personnel, wanted an Iraqi-led special court over which it would have substantial influence.

These cases illustrate the complex web of geopolitics within countries, regions, and farther afield that involved the waxing and waning of international support for leaders who finally were held accountable for their crimes. Other politicians whose cases are surveyed in this book also faced international political ups and downs, but what distinguished Slobodan Milošević, Charles Taylor, and Saddam Hussein was their willingness to wage war on their own people and their neighbors, and the cruelty and corruption associated with their doing so. When international politics turned against them, the response was the same as it was in Nuremberg.

Yet in all three cases, politics continued to overshadow the judicial proceedings to varying degrees. As Abdul Tejan-Cole highlights in Chapter 10, the same states that promised Charles Taylor safe exile in Nigeria for relinquishing power in Liberia later pressured Nigeria to turn him over to the Special Court for Sierra Leone. Once he got there, those states further exerted pressure to remove his trial from the region, citing fears of regional instability that could result from holding the trial so close to his continued support base in Liberia. Furthermore, the accusations he faces before the court relate to the impact of his activities on the conflict in Sierra Leone, not to crimes he committed in Liberia.

In Chapter 9, Emir Suljagić highlights a similar scenario that played itself out in the former Yugoslavia. In 1995, Milošević was hailed by the West as a peacemaker for bringing about and participating in the Dayton Peace Accords

that brought about an end to the war in Bosnia. It was only after he turned his nationalist fervor against ethnic Albanians in Kosovo that the international community showed any appetite for his arrest. Even after power transferred to a new president, Vojislav Koštunica, Serbia continued to protect Milošević from trial by the ICTY. At a point when international pressure was mounting, Koštunica and Milošević cut a deal allowing for his arrest and domestic trial on corruption charges in Serbia in exchange for Koštunica's promise never to send him to the ICTY. Again, however, international pressure intervened, and this promise was broken.

Taylor, Milošević, and Hussein were all charismatic leaders who continued fighting long after the international community assumed that facing justice would render them submissive. All three did their best to use their trials (or in Taylor's case, the proceedings leading up to trial) to their political advantage. To a degree, they succeeded. Milošević, acting as his own attorney, used his trial in the Hague as a political platform for an audience back home while dragging out the proceedings so long that they concluded with his death rather than a verdict. Hussein tried the same tactic but was thwarted by a judicial process that was fundamentally compromised by extensive political interference. His trial focused on only a limited example of the many crimes of which he was accused, and to outsiders unused to the brevity of Iraqi trials, it appeared to have been ramrodded through. The political authorities ensured that the process was brought to an end with Hussein's hasty execution, presumably to prevent him from doing further political damage from the dock. The mockery he faced at his execution further diminished the legitimacy of the judicial proceedings against him.

FINAL QUESTIONS

Although this book focuses on contemporary efforts to prosecute heads of state, it also is an inquiry into the broader impact of justice. The authors of the case studies explore whether trials of heads of state relieve victim or societal suffering and anger produced when officials violate human rights or raid the state treasury. They also examine the impact of restraints on achieving justice imposed by legal or procedural rules. For example, can justice be realized if the accused is tried only for a limited number of crimes that occurred after a certain date, when more serious crimes are proscribed on account of amnesties or statutes of limitations? Can justice be achieved if the accused is charged only with financial crimes when he is also responsible for massive human rights crimes? Do procedural protections for the accused undermine the public's need for truth or victims' needs to have their day in court and a judgment

at the end? What is the impact on victims and the public when indicted or convicted heads of state enjoy disproportionately favorable conditions of confinement (e.g., house arrest or luxurious detention on military bases) or when a state is unable to recover the assets they stole or wasted?

The chapters in this book also explore the ways in which states juggle competing interests when crimes are committed by powerful politicians in a highly charged political environment. Is there a significant difference in the way states make decisions about whether to indict heads of state for corruption or other financial crimes, and the way they make decisions about whether to prosecute heads of state for human rights crimes? When there is an overlap between financial and human rights crimes, what makes some crimes more palatable to try than others? When there is an extended series of crimes, what makes certain crimes indictable and others off-limits? Under what circumstances are trials intended as serious efforts to achieve retribution, deterrence, reparation, or some other legitimate justice goal? Alternatively, under what circumstances are they “political trials,” as defined by Shklar?

The chapters in this book also explore the interrelationship between international pressures and domestic interests when it comes to criminal trials of former heads of state. The intensity of international involvement in trials varies widely. In some cases, like those of Estrada and Chiluba, international influences were minimal. In others, including Pinochet, Fujimori, Bizimungu, and Hussein, transnational or international pressures strongly influenced the milieu in which the decision to try a former leader was made. In still others, such as Taylor and Milošević, the international community created the judicial tribunal and then pressured the states harboring the defendants to turn them over for trial. In Rwanda, international interests relating to trials competed directly with domestic interests. Elsewhere, such as in the nations of the former Yugoslavia, they compromised justice by limiting the range of options or meddling in domestic processes. However, international interests have also contributed to strengthening domestic judicial processes. For example, the ICC’s requirement that states adapt their domestic law to conform to their obligations under the ICC Statute forced many states to improve the domestic legal laws and procedures for trying human rights crimes.

Finally, the chapters in this book explore the relationship between criminal accountability and future human rights protection. There is no perfect correlation between trials and justice. If anything, the connection between trials and the prevention of violence or rights abuses is even less certain, and certainly less well understood. Nevertheless, in countries that conducted relatively just trials of heads of state for human rights violations or corruption, only one – Iraq, where the trial of Saddam Hussein was among the least just of all of

the trials examined in these pages – experienced subsequent diminutions in human rights protections or destabilizing political violence. The correlation, however, cannot be ascertained because the causes of the escalating violence in Iraq may have been similar to the causes that provoked the political interference in Hussein’s trial, rather than one influencing the other. History will tell whether just trials – or the political will to pursue accountability – are indicators for democratic consolidation, solidification of the rule of law, or the independence of the judiciary, or whether it is these factors that make just trials possible. It is our hope that this book will significantly advance the inquiry.

NOTES

1. Ellen Knickmeyer, “Hussein Sentenced to Death by Hanging,” *Washington Post*, November 6, 2006, p. 1.
2. See, for example, “Belgium: Questions and Answers on the ‘Anti-Atrocity’ Law,” Human Rights Watch, Revised, June 2003. <http://www.hrw.org/campaigns/icc/belgium-qna.pdf>.
3. The Justice and Society Program of the Aspen Institute, “State Crimes: Punishment or Pardon,” papers and report of the conference, November 4–6, Wye, MD: The Aspen Institute (1989).
4. Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge: Cambridge University Press, 2001, 8–9.
5. See Christine Bell, *Peace Agreements and Human Rights*, Oxford: Oxford University Press, 2000.
6. *The Promotion of National Unity and Reconciliation Act*, no. 34 of 1995.
7. Wilson, *Politics of Truth and Reconciliation*, 23.
8. One of the witnesses the TRC did try to depose was former South African president P. W. Botha. After he ignored three subpoenas and publicly called the TRC a “circus,” the TRC referred the matter to a South African court. Although Botha was found guilty, the judge cited the ex-strongman’s ill health at age eighty-two as the reason for imposing only a 10,000 rand (about \$1,600) fine and a suspended twelve-month prison sentence. That sentence was later overturned on appeal on the technical grounds that TRC’s mandate had expired when the subpoena was issued. Wilson, *Politics of Truth and Reconciliation*, 72.
9. For a comprehensive evaluation of the failure of post-TRC prosecutions in South Africa, see Harvard Law School International Human Rights Clinic and Institute for Justice and Reconciliation, *Prosecuting Apartheid-Era Crimes? A South African Dialogue on Justice* (2008).
10. This machinery derives from the *American Convention on Human Rights* (1978) O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123.
11. Robert K. Goldman, “Amnesty Laws, International Law and the American Convention on Human Rights,” *The Law Group Docket* 6, no. 1 (1989).
12. *Massacre Las Hojas v. El Salvador*, Case 10.287, Report No. 26/92 (24 Sept. 1992), IACHR Annual Report 1992–1993, 83.

13. IACHR Annual Report 1992–1993, 41 Report No. 28/02 (Argentina); and 154 Report No. 29/92, (Uruguay).
14. *Almonacid Arellano et al. vs. Chile*, Judgment of November 26, 2006, Inter-Am Ct. H.R. Ser. C No. 154 (2006).
15. Human Rights Watch, *War Crimes in Bosnia-Herzegovina* (Volume I), August 1, 1992.
16. Roy Gutman, “Tales of Hunger, Torture at Camp in Northern Bosnia,” *Newsday*, July 19, 1992, p. 7.
17. S.C. Res. 780, October 6, 1992, U.N. Doc. S/RES/780 (1992).
18. Interview with Aryeh Neier, President, Open Society Institute, January 4, 2008; see also, Samantha Power, “*A Problem from Hell*”: *America and the Age of Genocide*, New York: Basic Books, 2003, 290–296, 481–485.
19. S.C. Res. 827, May 29, 1993, U.N. Doc. S/RES/827 (1993).
20. Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704, May 3, 1993.
21. S.C. Res. 955, November 8, 1994, U.N. Doc. S/RES/955 (1994).
22. *The Prosecutor v. Jean Kambanda*, ICTR 97-23-S, Judgment and Sentence, September 4, 1998.
23. (Cambodia) Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, June 6, 2003; (Sierra Leone) Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002; (East Timor) Regulation on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, June 6, 2000, UNTAET/REG/2000/15; (Lebanon) S.C. Res. 1757, May 30, 2007, U.N. Doc. S/RES/1757(2007); (Bosnia) Law on the Court of Bosnia and Herzegovina, *Sluzbeni glasnik Bosne I Hercegovine* No. 29/00, 15/02, 16/02, 24/02, 3/03, 37/03, 61/04. For a close look at the East Timor Serious Crimes Unit, see Caitlin Reiger and Marieke Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect*, International Center for Transitional Justice, March 2006; for a close look at the Bosnian War Crimes Chamber, see Human Rights Watch, *Narrowing the Impunity Gap: Trials before Bosnia’s War Crimes Chamber*, February 2007.
24. *Foreign Corrupt Practices Act*, U.S. Code, Title 15, Chapter 2B, sec. 78dd-1-3 (1977).
25. *Omnibus Trade and Competitiveness Act of 1988*, U.S. Code, Title 19, Chapter 17, sec. 2901.
26. Arnauld Miguet, “Political Corruption and Party Funding in Western Europe,” April 2004, prepared following the Transparency International Western Europe group meeting, Athens, Greece, September 13–15, 2002.
27. Inter-American Convention against Corruption, OAS (1996), signed March 29, 1996, entered into force March 6, 1997; Criminal Law Convention on Corruption, CETS no. 173 (1999), signed January 27, 1999, entered into force July 1, 2002.
28. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 37 ILM 1 (1988), signed 17 December 1997, entered into force February 15, 1999. See generally, Ethan S. Burger and Mary S. Holland, “Why the Private Sector Is Likely to Lead the Next Stage in the

- Global Fight against Corruption,” *Fordham International Law Journal* 30, no. 45 (December 2006).
29. United Nations Convention against Corruption, signed October 31, 2003, entered into force December 14, 2005.
 30. Judith N. Shklar, *Legalism: Law, Morals and Political Trials*, Cambridge: Harvard University Press, 1964, 1986.
 31. For the purposes of this study “serious human rights violations” includes acts that would be crimes under the Rome Statute of the International Criminal Court, as well as other serious violations of rights protected by the International Covenant on Civil and Political Rights and related international human rights treaties that attract criminal liability under domestic or international law.
 32. See generally Naomi Roht-Arriaza, *The Pinochet Effect: Transitional Justice in the Age of Human Rights*, Philadelphia: University of Pennsylvania Press, 2005.
 33. In an article surveying all human rights trials in all countries of the world since 1979, Kathryn Sikkink and Carrie Booth Walling similarly find a decrease in the number of trials after 2002. “Errors about Trials: The Emergence and Impact of the Justice Cascade,” presented at the Princeton International Relations Faculty Colloquium, February 13, 2006 (on file with authors).
 34. Tim Rogers, “Why Nicaragua’s Caged Bird Sings,” *Time* in partnership with CNN, May 2, 2007, www.time.com/time/world/article/0,8599,1616952,00.html.
 35. Judith Ewell, *The Indictment of a Dictator: The Extradition and Trial of Marcos Pérez Jiménez*, College Station: Texas A&M University Press, 1981, 123. *Black’s Law Dictionary* gives the following definitions for these crimes: Peculation – “embezzlement, especially by a public official.” *Blacks Law Dictionary*, Abridged 7th ed., s.v. “peculation”; Malversation – “[French “ill-behavior”] Official corruption . . . especially by someone exercising an office.” *Blacks Law Dictionary*, Abridged 7th ed., s.v. “malversation.”
 36. Ewell, *Indictment*, 141.
 37. Paul Lewis, “Fighting in Panama: United Nations; Security Council Condemnation of Invasion Vetoed,” *New York Times*, December 24, 1989.
 38. Roht-Arriaza, *The Pinochet Effect*.
 39. Amnesty International, *Philippines: Torture Persists: Appearance and Reality within the Criminal Justice System*, ASA 35/001/2003, January 24, 2003.