

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

SPAIN¹

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Cases — The Couso Case

- National Court. Proceedings 27/2007. Central Investigating Court No. 1. Order of 4 October 2011

As reported in the 2007, 2008, 2009 and 2010 *Yearbook of International Humanitarian Law*,² this is a Case concerning the death in Iraq on 8 April 2003 of journalist Mr José Couso Permuy.

The Order has the effect of continuing the Order of 29 July 2010, in which the Judge of the Spanish National Court, Mr Santiago Pedraz Gómez, issued a new indictment against the soldiers allegedly involved in the events.

New facts revealed by the investigation show that one of the missions entrusted to the 3rd Division of the United States Army was ‘to prevent the international media from informing about the military operations during the course of the taking of Baghdad’. For

¹ Information and commentaries by Antoni Pigrau, Professor of Public International Law at the *Rovira i Virgili University*, Tarragona, Spain.

² See antecedents in 10 *YIHL* (2007) pp. 437–438; 11 *YIHL* (2008) pp. 559–561; 12 *YIHL* (2009) p. 623, 13 *YIHL* (2010) pp. 592–594.

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this reason they attacked various media installations, and it was one of these attacks that led to the death of Mr Couso.

Although it is not relevant to the case, the Judge pointed out in his legal grounds that 'the occupation of Iraq was not lawful since there were no weapons of mass destruction, the Iraqi regime neither protected terrorists nor covered for members of Al Qaeda, and neither did it purchase nuclear material from the Republic of Niger.' However, it was relevant as far as the *jus in bello* is concerned that 'it was not lawful to attack or terrorize the civil population (journalists) to achieve the objectives of the war.'

In the Order, the Judge considered the arguments offered by the US Army to be unacceptable because they contradicted various other sources including statements made by eyewitnesses and observations made by the Judge in his personal capacity during an inspection of the scene of the incident in Baghdad in January 2011. Furthermore, specialist reports confirm there had been no shots fired before the attack, the soldiers were perfectly aware of the presence of journalists in the hotel, there was good visibility and the tank was equipped with precision instruments.

The Judge regarded that the facts could constitute

a crime against the international community, as stipulated in Article 611.1 of the Penal Code, as related to Article 608.3 Penal Code, which sets out the protected people, subsumable by the rules of International Humanitarian Law, with objective double jeopardy with a crime of homicide, as stated and punishable in Article 138 Penal Code; due to the attack on the civilian population that led to the death of Mr. Couso. What is more, there is considerable evidence to suggest that there were acts or threats of violence to intimidate the civilian population or journalists: the aim was to terrorize the journalists (and therefore the international community) so that they would not witness the way in which Baghdad was to be taken.

To support the thesis of the coordinated attack on the media, the Order pointed out:

Of particular significance are the statements made by the former sergeant of the USA, Adrienne Kinne, assigned to Military Intelligence, on 13 May 2008 on the TV programme 'Democracy Now' in which she said that she had received mail that had indicated that the Hotel Palestine was a potential military target, and that she had expressed surprise to her superior since she knew that members of the press were staying there. The response she was given was that someone at a higher level of the chain of command knows what they are doing'.

The Order mentioned all the soldiers who had previously been brought to trial:

The person who gave the direct order to shoot was Lieutenant Colonel PHILIP DE CAMP, commanding officer of Tank Regiment No. 64 of the Third Armored Infantry Division of the United States Army, who passed on the order to Captain PHILIP WOLFORD, commanding the Tank Unit of 'A' Company of Tank Regiment No. 64 of the Third Armored Infantry Division of the United States Army. He authorised Sergeant THOMAS GIBSON, a member of 'A' Company of Tank Regiment No. 64 of the Third Armored Infantry Division of the United States Army, to physically fire the shot.

For these soldiers, the Judge set bail of EUR 1 million to meet the quantum of any potential civil liability.

But in this case, two more soldiers were accused:

it is not known which higher (military or political) North-American authority planned/ordered the operation of preventing the media from informing and, therefore, the bombardments and shots directed at the media; however, given the

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chain of command, the superiors of the men brought to trial must have been involved. So the order must have come from, or at least been communicated to, the Chief of the Headquarters and the Commander of the 3rd Infantry Division Buford BLOUNT and passed on to the Commander of the 2nd Brigade of the 3rd Infantry Division, Colonel David PERKINS, who would then have transmitted it to Lieutenant Colonel Philip de Camp. Therefore, they should be charged but not prosecuted, since the argument of the chain of command is not in itself, in the absence of other facts, *prima facie* evidence of criminality.

To this end and on the basis of the right to a defence, the Judge filed a letter rogatory to inform the accused of the facts and crimes of which they are accused and to request that they give evidence to US authorities or the Spanish Judge himself.

Cases — Repression in China before the Beijing Olympic Games

- Supreme Court. Criminal Chamber, First Section. Appeal No.: 857/2011. Opining Judge: Mr. Alberto Gumersindo Jorge Barreiro. Ruling: 06/10/2011. Ruling No.: 10584/2011

On 26 February 2010, Judge Santiago Pedraz dismissed criminal proceedings against a number of Chinese leaders in relation to the period of repression of the civilian population in Tibet that began in March 2008.³ In its Order of 27 October 2010, an appeal against this decision was rejected by the Plenary Session of the Criminal Chamber of the Spanish National Court. According to the Opinion of the Plenary Session, it was impossible to continue with the investigation as Spanish law limited the application of the principle of universal jurisdiction to cases in which the victims are Spanish, those responsible for the crime are located in Spain or where there is another relevant link with Spain. The plaintiffs appealed for the annulment of this Order. However, on 16 November 2010, the Second Section of the National Court rejected this appeal.

On 28 February 2011, the appellants were successful in their appeal to the Second Chamber of the Supreme Court. This meant that the National Court was required to proceed with the appeal for annulment filed by the plaintiffs, considering that the exceptionality and importance of the issue made it reasonable for the final decision to be taken by the Supreme Court. The Chinese Embassy subsequently issued a formal protest to the Spanish government over this decision.

Nevertheless, the Criminal Chamber of the Spanish Supreme Court upheld the interpretation of the investigating Judge and of the National Court and thus confirmed that in this particular case none of the links required by the new Spanish legislation on universal jurisdiction existed. The absence of a sufficient link between the alleged acts and Spain therefore prevented the Spanish courts from investigating the crimes against humanity, torture and war crimes alleged to have been committed by Chinese authorities against people in Tibet.

Cases — Genocide in Tibet

- National Court. Central Investigating Court No. 2. Order of 30 March 2011

³ See antecedents in 13 *YIHL* (2010) pp. 594–596.

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Since January 2006, the Judge presiding over the Central Examining Magistrates' Court No. 2, Ismael Moreno, has had a case open against former Chinese president, Jiang Zemin, another six Communist leaders in Tibet and the Chinese government for the genocide allegedly committed in Tibet since 1950.⁴

On 3 September 2010, the Tibet Support Committee, on its own behalf and that of its co-plaintiffs (the Casa del Tibet Foundation and Thubten Wangchen) presented a statement requesting that the allegations reported and investigated to date also be classified as grave breaches of the *Geneva Conventions*. The provision of evidence from various witnesses has also been proposed. The arguments to justify this request are based on the legal verification of Tibet as an occupied territory, the mass transfer of population from China (the occupying State) to Tibet (the occupied State) and the existence of crimes which must be prosecuted in Spain according to international treaties and conventions, such as the grave breaches regime under the *Geneva Conventions*.

On 30 March 2011, the Judge of the National Court, Ismael Moreno, agreed to extend the lawsuit and qualify the facts as alleged war crimes. The Judge deemed that they could involve grave breaches of the *Geneva Conventions*, which have been ratified by Spain, by virtue of Articles 608 and 611.5 of the *Spanish Penal Code*. The Judge regarded that this type of crime, in accordance with the *Geneva Conventions*, should be pursued on the basis of the principle of universal jurisdiction whatever the instigator's nationality. This interpretation avoids the restriction on universal jurisdiction imposed by Organic Law 1/2009.⁵ Judge Moreno has taken evidence from various witnesses in relation to this case.

Cases — Guantánamo Bay

- National Court. Preliminary Proceedings 134/2009. Central Investigating Court No. 6. Order of 13 April 2011

The investigating Judge, Eloy Velasco, refused leave to proceed with the action brought against several advisors of President Bush in March 2009⁶ for war crimes insofar as they attempted to provide legal justification for the system of detentions and torture initiated by the US in the context of the so-called 'war on terror'. Judge Velasco had submitted a letter rogatory to the US requesting information about whether the reported facts were being investigated or pursued by US authorities. The response given by the US Department of Justice and received in 2011, confirmed that the case was indeed being investigated. The Judge deemed that none of the links required by Article 23.4 of the Organic Law on Judicial Power were present: the accused were not in Spain, proof 'had barely been given for the Spanish nationality of only two of the victims' and 'any proof of relevant links with Spain was, at most, debatable.' He also pointed out that the new wording of Article 23.4 only requires some sort of procedure to have been initiated, not necessarily a judicial one. For all these reasons, he decided to close the procedure and recognized that the jurisdiction of the US had preference.

⁴ See 9 *YIHL* (2006) p. 565.

⁵ See <<http://boe.es/boe/dias/2009/11/04/pdfs/BOE-A-2009-17492.pdf>>. See also 12 *YIHL* (2009) pp. 628–632.

⁶ See 11 *YIHL* (2009) pp. 623–624.

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This is a clear example of the impact of the restriction introduced by the Organic Law 1/2009⁷ on the practice of universal jurisdiction by Spanish courts.

Cases — Attack to the Camp of Ashraf (Iraq)

- National Court. Central Investigating Court No. 4. Order of 8 March 2011
- National Court. Central Investigating Court No. 4. Order of 17 March 2011
- National Court. Central Investigating Court No. 4. Order of 14 July 2011

On 27 December 2010, the Judge of Central Investigating Magistrates' Court No. 4 of the Spanish National Court, Fernando Andreu, gave leave to proceed in the case presented by a group of Spanish human rights lawyers representing the group *People's Mujahedin of Iran* against the Lieutenant-Colonel of the Iraqi army, Abdol Hossein Al Shemmari, whom they accuse of 11 counts of murder and 36 counts of illegal arrest (kidnappings), torture and serious injuries inflicted on approximately 500 people who were wounded in an attack carried out in July 2009 on the Ashraf refugee camp (Iraq).⁸ Located in the Iraqi city of Ashraf, the camp is for Iranian refugees, and has been under Iraqi control since 1 January 2009.

On 8 March 2011, the Judge summoned the Iraqi Lieutenant General Iraqi Abdol Hossein Al Shemmari to give evidence as the defendant for allegedly ordering the attack, and issued a letter of request to the Iraqi authorities to notify Al Shemmari of his ruling. Al Shemmari failed to appear before the Judge.

Judge Andreu is acting on the basis of the principle of universal jurisdiction. This case is not related to Spain and there are no Spanish victims, as required by the Organic Law 1/2009.⁹ However, the legislation does allow Spanish courts to try an act that constitutes a crime and which, according to international treaties and agreements, such as *Geneva Convention IV*, should be prosecuted in Spain.

On 17 March 2011, Judge Andreu extended the accusation to include two other Iraqi soldiers and two members of the Iraqi government. To this end, he submitted a letter rogatory and a summons for 31 May 2011 to Iraqi authorities requesting that they communicate the decision to the accused. The new accusations were levelled at the president and the director of the governmental committee for closing down Ashraf, Ali al-Yaseri and Sadeq Mohammad Kazem, respectively, and Lieutenant Colonel Nezar and Lieutenant Haydar Azab Mashi. The Judge also agreed to extend the charges to include the treatment of refugees since February 2010, which includes charges of submitting refugees to high levels of acoustic pollution; constant death threats; severe restrictions on medicines, medical care, food, fuel and energy; and a total restriction on movement. The summoned men also failed to appear before the Judge on the appointed date.

On 14 July 2011, Judge Andreu again agreed to amend the charges to extend to General Ali Ghaidan Majad, Lieutenant Colonel Abdol-Latif al-Anabi and Major Jasem Mohammad Aleive al Tamami. Mention was also made of Iraq's prime minister, Nuri al Maliki, who enjoys personal immunity as long as he holds this post. The Judge

⁷ See <<http://boe.es/boe/dias/2009/11/04/pdfs/BOE-A-2009-17492.pdf>>. See also 12 *YIHL* (2009) pp. 628–632.

⁸ See 12 *YIHL* (2010) pp. 597–598.

⁹ See <<http://boe.es/boe/dias/2009/11/04/pdfs/BOE-A-2009-17492.pdf>>. See also 12 *YIHL* (2009) pp. 628–632.

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requested the defendants to appear in his courtroom on 3 October 2011 and submitted a letter rogatory to the competent authorities in Iraq to this effect. This new extension took into account the new attack by Iraqi armed forces on the Ashraf Camp on 8 April 2011, which according to the plaintiffs, caused 35 deaths and hundreds of injuries.

Cases — Arrest of former Minister of Guatemala, Carlos Vielmann

- National Court. Criminal Chamber. Third Section. Order of 30 May 2011. Proceedings 45/2010. Extradition No. 19/2010. Central Investigating Court No. 1

The former Guatemalan Minister of the Interior, Carlos Roberto Vielmann Montes, was arrested in Madrid on 13 October 2010, as a result of the extradition requested by Guatemalan authorities. He was held in prison while the extradition was processed. Because of the decision by the Guatemalan Constitutional Court to suspend the extradition process against Vielmann, the deadline of 40 days to present the application for extradition passed without the necessary documentation being sent to the Spanish authorities. Vielmann was, therefore, released on bail.

The documentation arrived on 15 December 2010 and the Council of Ministers authorized the continuation of the judicial process of extradition by a decision of 30 December 2010.

The accused was arrested again on 16 December 2010, after a complaint by the International Commission Against Impunity in Guatemala (CICIG) to the Spanish Public Prosecutors' Office, by virtue of which Spanish courts are competent to prosecute crimes against humanity committed abroad by individuals — like Vielmann — who are also Spanish nationals. The prosecutors' office accused him of 'authorising and supervising' the creation of a 'parallel criminal structure' which carried out the 'extrajudicial execution' of ten prisoners in the Central American country between November 2005 and September 2006.

On 30 May 2011, the Third Section of the Criminal Chamber of the National Court agreed to extradite Carlos Vielmann to Guatemala on ten counts of murder. The extradition was denied for the crimes of illicit association and extrajudicial execution because they were not included in the Bilateral Treaty of Extradition of 7 November 1895 and its Additional Protocol of 23 February of 1897. Vielmann has always spoken out against his extradition on the grounds that, among other reasons, he also has Spanish nationality and criminal proceedings were underway against him in Spain for the same events.

In Guatemala, however, both the public prosecutor and the CICIG itself eventually decided not to carry the extradition into effect. Although the Guatemalan Judge Patricia Flores decided on 25 July 2011 that Vielmann's safety could be guaranteed if he were put on trial, the appeals filed by the public prosecutor and the CICIG were accepted by the Third Appeals Court, which ordered the First Court of High Risk to review the file on his extradition. Thus, Miguel Ángel Gálvez, the First Judge of High Risk, concluded on 23 November 2011 that Guatemala could not guarantee the trial in Guatemala and, therefore, decided that the case should continue in Spain. He ordered that the file should be transferred to Spanish authorities.

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Cases — The El Salvador 'Jesuit Massacre'

- National Court. Preliminary Proceedings 97/10 (DP 391/08). Central Investigating Court No. 6. Order of 30 May 2011

On 16 November 1989, Jesuits of Spanish origin but nationalized as Salvadorans, Ignacio Ellacuría Beascoechea, then rector of the UCA, Ignacio Martín Baró, Segundo Montes Mozo, Armando López Quintana, Juan Ramón Moreno Pardo, the Salvadoran priest, Joaquín López López, and his maid, Julia Elba Ramos, with her daughter, Celina Mariceth Ramos, were murdered by members of El Salvador's armed forces on the grounds of the José Simeón Cañas Central American University (UCA) in the country's capital. For these events, a suit was brought before the Spanish National Court on 13 November 2008.¹⁰

On 30 May 2011, in order to bring to trial those allegedly to blame for the commission of crimes against humanity, terrorism and murder in El Salvador, the Judge presiding over the Central Investigating Court of National Court No. 6, Eloy Velasco, issued an order to prosecute, an order for solitary confinement without bail and a national and international arrest warrant against twenty people of Salvadoran nationality. He also ordered the accused to post bail for the amount of EUR 3,200,000 to cover any possible civil liability.

The Judge considered that the involvement of the accused in the commission of these crimes had been sufficiently proven and deemed that the indictment of the accused did not violate the principle of *ne bis in idem*. He explained that what had taken place in El Salvador during the 1990s had been 'a mechanism to simulate the criminal procedure that ended in absolute impunity': 'the fraud (Art. 6.4 CC) detected in the trial, which has authorized the continuation of the present procedure, consisted of holding an act of judgement under the apparent cover of a formal trial, but which was so influenced and intervened that it led to results of non-justice.'

Subsequently, on 9 November 2011, the Council of Ministers took the formal decision to apply for the extradition of fifteen of the soldiers accused of murder.

The Supreme Court of El Salvador received the application on 11 January 2012. In particular, the request for extradition was for the following thirteen people, all retired members of the military: Óscar Mariano Amaya Grimaldi, corporal of the Atlacatl Battalion; Antonio Ramiro Ávalos Vargas, sergeant of the Atlacatl Battalion; Guillermo Alfredo Benavides Moreno, army colonel and director of the Military School 'Capitán General Gerardo Barrios'; Juan Rafael Bustillo Toledo, general and commander of the Salvadoran Air Force; Joaquín Arnoldo Cerna Flores, army colonel and head of the Combined General Staff of the Salvadoran Armed Forces; Francisco Elena Fuentes, head of the First Infantry Brigade of the Salvadoran Armed Forces; José Ricardo Espinoza Guerra, lieutenant of the Atlacatl Immediate Reaction Infantry Battalion; Gonzalo Guevara Cerritos, sub-lieutenant of the Atlacatl Battalion; Carlos Mauricio Guzmán Aguilar, colonel of the Salvadoran Armed Forces and director of the El Salvador National Intelligence Directorate (DNI); Rafael Humberto Larios López, head of the Combined General Staff of the Salvadoran Armed Forces; Óscar Alberto León Linares, commander of the Atlacatl Battalion; Tomás Zarpate Castillo, sergeant of the Atlacatl Battalion; Juan Orlando Zepeda Herrera, colonel and deputy minister of National Defence.

¹⁰ See 10 *YIHL* (2008) pp. 557–558; 11 *YIHL* (2009) pp. 625–626.

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A request was also made to the US for the extradition of the former army colonel and deputy minister of Public Safety in 1989, Inocente Orlando Montano Morales, and Lieutenant Héctor Ulises Cuenca Ocampo, a leading member of the National Intelligence Directorate of El Salvador.

Treaty Action — Red Crystal

- Signing *ad Referendum* of the *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*, opened for signature 8 December 2005, 2375 UNTS 237 (entered into force 14 January 2007)

On 23 November 2010, Spain ratified the *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*. The Protocol was published in the Official State Bulletin (BOE) on 18 February 2011.¹¹

The Protocol creates a distinctive emblem in addition to those already in existence, i.e. the Red Cross, the Red Crescent, and the Red Lion and the Red Sun, the visible signs of total neutrality in humanitarian missions in the various armed conflicts, thereby providing protection for these missions.

This new emblem provides an alternative for States that do not identify with any of the emblems mentioned above, or for use in contexts in which the use of another emblem could be considered to have undesired religious, cultural or political connotations.

This new emblem takes the form of a red frame standing on one corner against a white background, and its conditions for use and respect are identical to those stipulated for other signs, as they have the same status.

Treaty Action — Corruption

- Ratification of the *Additional Protocol to the Criminal Law Convention on Corruption*, opened for signature 15 May 2003, ETS No 191 (entered into force 1 February 2005)

The Spanish representative signed the *Additional Protocol to the Criminal Law Convention on Corruption*, made in Strasbourg on 15 May 2003. After receiving the prior authorisation from Parliament stipulated in Article 94.1 of the Constitution, Spain ratified the Protocol on 16 December 2010, and it was published in the Official State Bulletin (BOE) on 7 March 2011¹². The following Declaration regarding Gibraltar was included:

Should the present Additional Protocol to the Criminal Code on Corruption of 15 May 2003 be extended to Gibraltar, Spain would like to make the following declaration:

1. Gibraltar is a non-autonomous territory whose international relations come under the responsibility of the United Kingdom and which is subject to a decolonisation

¹¹ See <<http://www.boe.es/boe/dias/2011/02/18/pdfs/BOE-A-2011-3166.pdf>>.

¹² See <<http://www.boe.es/boe/dias/2011/03/07/pdfs/BOE-A-2011-4192.pdf>>.

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process in accordance with the relevant decisions and resolutions of the General Assembly of the United Nations.

2. The authorities of Gibraltar have a local character and exercise exclusively internal competences which have their origin and their foundation in a distribution and attribution of competences performed by the United Kingdom in compliance with its internal legislation, in its capacity as sovereign State on which the mentioned non-autonomous territory depends.

3. As a result, the eventual participation of the Gibraltarian authorities in the application of this Protocol will be understood as carried out exclusively as part of the internal competences of Gibraltar and cannot be considered to have produced any change with respect to the stipulations of the two preceding paragraphs.

4. The procedure provided for in the Agreed Arrangements relating to the Gibraltar authorities in the context of certain International Treaties (2007) between Spain and the United Kingdom of 19 December 2007 (together with Agreed Arrangements relating to the Gibraltar authorities in the context of EU and EC instruments and related Treaties, of 19 April 2000) applies to the present Additional Protocol to the Criminal Code on Corruption.

Treaty Action — Enforced Disappearance

- Optional Declarations on the *International Convention for the Protection of All Persons from Enforced Disappearance*, opened for signature 6 February 2007, (entered into force 23 December 2010)

In 2009, Spain ratified the *International Convention for the Protection of All Persons from Enforced Disappearance*, which was adopted by the UN General Assembly on 20 December 2006. On 28 May 2010, the Council of Ministers authorised the declarations stipulated in Articles 31 and 32 of the Convention, and referred it to Parliament for authorisation. The Convention was published in the Official State Bulletin (BOE) on 18 February 2011.¹³

Treaty Action — Terrorism

- Spanish Objection to the Reservation by the Republic of Yemen to the *International Convention for the Suppression of the Financing of Terrorism*, opened for signature 10 January 2000, 2178 UNTS 197 (entered into force 10 April 2002)

On 3 December 2010, the Council of Ministers was officially informed of Spain's objection to the reservation by the Republic of Yemen to the *International Convention for the Suppression of the Financing of Terrorism*.

The objection was published in Spain's Official State Gazette of 15 February 2011. The text was the following:

The Kingdom of Spain has examined the reservation relative to section 1b) of article 2 of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) presented by the Republic of Yemen at the moment of agreeing to the Convention.

¹³ See < <http://www.boe.es/boe/dias/2011/02/18/pdfs/BOE-A-2011-3164.pdf>>.

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The Kingdom of Spain deems that the aforementioned reservation is contrary to the object and purpose of the Convention and also violates its article 6 by virtue of which the Party States agree to adopt all necessary measures, including, when appropriate, the adoption of internal legislation to ensure that the criminal acts covered by the Convention cannot be justified in any circumstance by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Kingdom of Spain points out that on the basis of the common law norm established in the Convention of Vienna in 1969 concerning the law of treaties (article 19 c), reservations contrary to the object and the purpose of international treaties are prohibited.

Therefore, the Kingdom of Spain objects to the reservation formulated by the Republic of Yemen in section 1b) of article 2 of the Convention.

This objection does not prevent the Convention from coming into effect between the Kingdom of Spain and the Republic of Yemen.¹⁴

Treaty Action — Torture

- Spanish Objection to the reservations by Islamic Republic of Pakistan to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

The objection was published in Spain's Official State Gazette of 27 July 2011. The text was the following:

The Government of the Kingdom of Spain has examined the reservations presented by Pakistan at the moment of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, relative to articles 3, 4, 6, 12, 13 and 16 of the aforementioned international instrument.

The Government of the Kingdom of Spain deems that these articles contain essential rights and guarantees for the achievement of the object and purpose of the Convention. The reservations formulated by Pakistan, which subordinate the application of these articles of the Convention to its internal legislation on issues of extradition or to its Constitution and Sharia law — all of which are referred to in a general way without specifying any exact content — do not make evident the extent of Pakistan's commitment to the object and the purpose of the Convention. What is more, they contravene the well-established principle of International Law that a State cannot make its compliance of voluntarily-accepted international obligations conditional on the application of domestic legislation, whatever its nature may be. Such reservations, in the terms in which they are formulated, under no circumstances exempt Pakistan from the legal consequences of the obligations derived from the Convention's regulations.

Therefore, the Kingdom of Spain objects to the reservations formulated to articles 3, 4, 6, 12, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁴ <<http://www.boe.es/boe/dias/2011/02/15/pdfs/BOE-A-2011-2902.pdf>>.

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This objection does not prevent the Convention from coming into effect between the Kingdom of Spain and Pakistan.¹⁵

Spain's objection was deposited with the UN Secretary-General on 28 June 2011.

Treaty Action — Civil and Political Rights

- Spanish Objection to the reservations by Islamic Republic of Pakistan to the *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

On 3 June 2011, the Council of Ministers was officially informed of Spain's objection to the reservations by Islamic Republic of Pakistan to the *International Covenant on Civil and Political Rights*.

The objection was published in Spain's Official State Gazette of 28 July 2011. The text was the following:

The Government of the Kingdom of Spain has examined the reservations presented by Pakistan at the moment of ratifying the International Covenant on Civil and Political Rights, relative to articles 3, 6, 7, 12, 13, 18, 19, 25 and 40 of the aforementioned international instrument.

The Government of Spain deems that the mentioned reservations are incompatible with the object and purpose of the Covenant, since they aim to exclude or limit Pakistan's commitment to respecting and guaranteeing such essential rights for the achievement of the object and purpose of the Covenant as equality between men and women; the right to life and the limitations on the imposition of the death sentence; the prohibition of torture and cruel, inhuman and degrading treatment; freedom of thought, conscience and religion; freedom of expression; freedom of circulation and to choose one's place of residence; restrictions on the expulsion of foreigners who are illegally on the territory of the Party State; and the right to take part in public affairs, the right to active and passive suffrage, and the right to hold a position in the civil service in conditions of equality.

The Government of the Kingdom of Spain also deems that the reservation that does not recognize the competency of the Human Rights Commission to carry out its functions in accordance with article 40 of the Covenant is incompatible with the object and purpose of this international treaty.

The Government of Spain also believes that the aforementioned reservations formulated by Pakistan, which subordinate the application of some articles of the Covenant either to Sharia law, the national Constitution or both — all of which are referred to in a general way without specifying any exact content — under no circumstances exempt Pakistan from the legal consequences of the obligations derived from the Covenant's regulations.

Therefore, the Kingdom of Spain objects to the reservations formulated by Pakistan to articles 3, 6, 7, 12, 13, 18, 19, 25 and 40 of the International Covenant on Civil and Political Rights.

This objection does not prevent the Covenant from coming into effect between the Kingdom of Spain and Pakistan.¹⁶

¹⁵ <<http://www.boe.es/boe/dias/2011/07/27/pdfs/BOE-A-2011-12912.pdf>>.

¹⁶ See <<http://www.boe.es/boe/dias/2011/07/28/pdfs/BOE-A-2011-12963.pdf>>.

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Spain's objection was deposited with the UN Secretary-General on 9 June 2011.

Cases — Extradition to Djibouti

☛ Case of Abdourahman Mohamed Mahamoud Borreh

On 15 April 2011, the Council of Ministers agreed to continue the extradition proceedings requested by the authorities of the Republic of Djibouti of Abdourahman Mohamed Mahamoud Borreh, a citizen of Djibouti, for the crime of instigation of acts of terrorism.

Cases — Extradition to Bosnia-Herzegovina

☛ Case of Veselin Vlahovic

On 23 July 2010, the Council of Ministers approved the surrender in extradition to Bosnia-Herzegovina of Veselin Vlahovic, for crimes against persons and assets protected in armed conflicts. He was accused of terrorising the population of Grbavica (Sarajevo) during his time as a member of the Armed Forces of the Republika Srpska, persecuting the civilian population of non-Serb origin, personally killing many people, and committing looting, rape, abuse, torture and other crimes.

On 1 October 2011, the Council of Ministers approved the continuation of the proceedings for the first extension of his extradition. On 11 February 2011, the Council of Ministers approved the continuation of the proceedings for the second extension of his extradition, as requested by the authorities of Bosnia-Herzegovina. He is now suspected of having committed crimes against the civilian population in Sarajevo between April and June in 1992 with other members of the so-called 'White Angels'. The crimes include kidnapping, extortion, threats, robbery, injury, rape and murder.

The extradition took place on 25 August 2010.¹⁷

Cases — Extradition to Egypt

- ☛ Case of Hussein Kamal El Din Ibrahim Salem
- ☛ Case of Magda Salem Ismail and Khaled Salem Ismael
- ☛ Case of Youssef Raouf Boutros Ghali

There are several cases of applications from the authorities in Egypt, pertaining to people with connections to the regime of the former president Mubarak. In all of them, the Egyptian authorities support the application for extradition under the *United Nations Convention against Corruption*, ratified by Egypt on 25 February 2005 and by Spain on 19 July 2006, since there is no bilateral extradition agreement between the two countries.

First, on 8 July 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of Hussein Kamal El Din Ibrahim Salem, an Egyptian national, for the commission of crimes of bribery, undue influence, peddling and loss of public funds. The respondent is thought to have obtained various personal benefits from

¹⁷ See 12 *YIHL* (2010) pp. 606–607.

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the government in exchange for the donation of five mansions, which was camouflaged as a fictitious sale.

Second, on 2 September 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of Magda Salem Ismail and Khaled Salem Ismael, the children of Hussein Kamal el Din Ibrahim Salem. They are accused by the Egyptian authorities of taking part in a plot to withdraw some US\$2 billion which they sent from Egypt to their father's bank accounts located mainly in the United Arab Emirates, Switzerland, Spain and the US. The money was laundered between 2007 and 22 June 2011.

Finally, on 16 September 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of the former Finance minister Youssef Raouf Boutros Ghali, for the commission of crimes of embezzlement and severe damage to public funds and the assets of others. He is suspected of having unlawfully awarded a contract to a German company in March 2008 for the supply of number plates for Egyptian official vehicles for a value equivalent to EUR 25 million and of transferring 36 million Egyptian pounds (about EUR 4 million) from the Ministry of Finance to the Ministry of Information to cover the advertising expenses of the party in power between June and September 2010.

Cases — Extradition to Morocco

- Case of Tarik Sassi
- Hassan Bakir

On 10 June 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of Tarik Sassi, a citizen of Morocco, who was being sought by the authorities of that country in relation to crimes of organizing and belonging to terrorist groups.

On 30 September 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of Hassan Bakir, a Moroccan citizen, who was being sought by Moroccan authorities for crimes related to terrorist activities described in the *Spanish Criminal Code*. The respondent has been found guilty by the Moroccan legal authorities of belonging to a secret organization whose objective is to commit acts of terrorism.

Cases — Extradition to Algeria

- Case of Djamel Boudjeltia

On 7 October 2011, the Council of Ministers approved the continuation of the proceedings for the extradition of Djamel Boudjeltia, sought by the authorities of Algeria for the crime of belonging to a terrorist organization.

Cases — Extradition to Spain

Spanish authorities have also applied for the extradition of various individuals in order for them to be placed on trial in Spain. With respect to the applications for extradition

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from judicial bodies, the executive acts as an intermediary between States because, according to the Ruling by the Supreme Court of 31 May 2005, State administrations are not competent to handle active extradition requests.

Cases — Extradition from Venezuela

☛ Case of Arturo Cubillas Fontán Cubillas

The government of Spain requested the extradition of Arturo Cubillas Fontán Cubillas from Venezuela on 29 October 2010 by agreement of the Council of Ministers.

On 15 April 2011, the Council of Ministers agreed to continue the extradition proceedings against Cubillas and because of the discovery of new facts about his involvement in the training of members of the ETA to use weapons and explosives, the charges were extended from merely having a connection to the terrorist organization (the ETA), to being a leader of the organization.

Cases — Extradition from Colombia

☛ Case of Víctor Ramón Vargas Salazar

On 13 May 2011, the Council of Ministers agreed to apply to Colombia for the extradition of the Colombian citizen, Víctor Ramón Vargas Salazar, an alleged member of the FARC who is wanted by Spain for having collaborated with the ETA in a crime of conspiracy to commit terrorist murder.

Cases — Extradition from France

☛ Case of José Ramón Lete Alberdi

On 27 May 2011, the Council of Ministers agreed to apply to France for the extradition of the alleged member of the ETA, José Ramón Lete Alberdi, for crimes of murder and terrorist damage.

Cases — Extradition from Cuba

☛ Case of José Ignacio Echarte Urbieta

On 14 October 2011, the Council of Ministers agreed to apply to Cuba for the extradition of the alleged member of the ETA, José Ignacio Echarte Urbieta, accused of the criminal possession of explosives and of collaborating with a terrorist group. Echarte Urbieta has been living in Cuba for several years.

Cases — Extradition from El Salvador

☛ Case of the El Salvador 'Jesuit Massacre'

On 9 December 2011, the Council of Ministers agreed to apply for the extradition of 15 soldiers of Salvadoran nationality. A total of 13 requests were made to the authorities of

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El Salvador and 2 to the US that the accused be brought to trial in Spain on suspicion of having taken part in the murder of five Spanish Jesuit priests and three Salvadoran citizens during an attack on the Central American University in San Salvador on 16 November 1989. They are all wanted for murder, terrorism and crimes against humanity.

Government Policy — Spain's response to the Crisis in Libya

On 17 February 2011, the city of Benghazi saw the beginning of a popular uprising which was violently quashed by the Libyan armed forces. Subsequently, a National Transition Council was established in Benghazi by the forces that opposed the regime.

On 26 February 2011, the UN Security Council passed Resolution 1970 (2011) which condemned the violence, expressed concern for the situation and requested that measures be adopted to prevent arms from entering Libya, to prevent the free movement of Libyan leaders and to freeze their assets. Also, on 17 March 2011, the UN Security Council passed Resolution 1973 (2011), urging all necessary measures be taken to protect civilians and those areas populated by civilians under the threat of attack. To this end, a no-fly zone was established in Libyan airspace and necessary measures were taken to ensure the effectiveness of the arms embargo.

In response to the request of the Security Council, on 18 March 2011, the Council of Ministers passed an agreement to request authorization from Congress to deploy Spanish troops and to use foreign bases. On 19 March 2011, a meeting of the international coalition took place in Paris, which gave rise to the operation 'Odyssey Dawn', which was to implement the no-fly zone. To this end, Spain deployed four F-18 aircraft and a refuelling aircraft on the Italian base of Decimomannu.

On 22 March 2011, the Atlantic Alliance Council authorized the operation 'Unified Protector' to implement the arms embargo. Spain's contribution to the operation was an F-100 frigate, a submarine and a maritime patrol aircraft. On the same day, parliament ratified Spain's participation with an authorization to participate for one month in the no-fly zone and for three months in the arms embargo. On 25 March 2011, the Council of Ministers authorized the deployment of Spanish forces and the use of bases by foreign forces.

On 27 March 2011, the North Atlantic Council agreed that NATO should take charge of both operations: 'Odyssey Dawn' and 'Unified Protector', and on 31 March 2011, the transfer of authority from the military in the various operations to the Command Structure of the Alliance was completed.

Spain's contribution to the embargo operation was a class F-100 frigate (the Méndez Núñez), a submarine (the 'Tramontana') and a maritime patrol aircraft (CN235 VIGMA). Spain also provided the no-fly zone zone with four F-18 aircraft, and a B707 refuelling plane. Subsequently, a Hercules C-130 was added.

Once the operations had been initiated, and in light of the evolution of the situation, a new agreement by the Council of Ministers on 15 April 2011 requested authorization from Congress to extend the participation of Spanish forces assigned to the no-fly zone for two more months. On 19 April 2011, this authorization was given and the units deployed were given a new mission, namely to protect those involved in providing humanitarian aid.

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On 10 June 2011, the Council of Ministers asked Congress for authorization to extend further the participation of the Spanish forces in the operations to resolve the Libyan crisis, in application of the Security Council's Resolutions 1970 (2011) and 1973 (2011), until the conclusion of NATO's 'Unified Protector' operation. Congress again authorized the extension.

In the context of the conflict in Libya, the government has also adopted various agreements designed to provide emergency human aid.

The first two were entered into on 20 April 2011 and the aid was to be provided to the displaced population in Tunisia. In the first of the agreements, which had a cost of EUR 300,000, the aid consisted of sending emergency material to the area affected by the catastrophe to be distributed by the UNHCR. In the second, which had a cost of EUR 1 million, the aid consisted of providing logistical support to the victims of the conflict, assisting the Egyptian migrant population to return to their country and sending humanitarian aid.

A third agreement was adopted on 20 May 2011, at a cost of EUR 425,000. The aid consisted of logistical support to the victims of the conflict and assistance to facilitate the return of the migrant population of various nationalities to their countries of origin.

On 27 May 2011, two new agreements were adopted. The first had a cost of EUR 170,000 and the second of EUR 160,000. The aid consisted of the air delivery of medicines and baby foods.

The sixth agreement on emergency aid was on 24 June 2011 at a cost of EUR 500,000 and was to provide for the air and land delivery of food, medicine, ambulances and other humanitarian materials, and to maintain the humanitarian corridor.

The last of the agreements was adopted on 8 September 2011, for the amount of EUR 500,000, which was to fund the purchase and air and sea delivery of medicines.

In 2011, the total cost of aid provided to the population displaced as a result of the armed conflict in Libya was EUR 3,055,000.

Government Policy — Contributions to International Organisations

On 4 March, 29 July, 21 October and 16 December 2011, the Council of Ministers approved, among other things, various contributions to international organisations:

- EUR 4 million for the International Committee of the Red Cross (ICRC);
- EUR 60,000 for the International Criminal Court for the Trust Fund for Victims of the crimes judged in the Court;
- EUR 5,000 for the Parliamentary Forum on Small and Light Weapons;
- EUR 150,000 for the International Institute for Democracy and Electoral Assistance (IDEA), based in Stockholm. Spain held the Presidency in 2011;
- EUR 2,900,000 for the Global Facility for Disaster Reduction and Recovery (World Bank);
- EUR 90,000 for the Contact Group on Piracy off the Coast of Somalia (CGPCS);
- EUR 1 million for the International Commission Against Impunity in Guatemala (CICIG);
- EUR 20 million for the European Commission's PEGASE Mechanism for Palestine;
- EUR 25,000 for the Small Arms Control Programme in Western Africa (ECOSAP) of the Economic Community of West African States (CEDEAO);

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- EUR 15,000 for the Mauritanian Demining Programme, NATO–Mediterranean Dialogue;
- EUR 10,000 for the *Convention on the use of Certain Conventional Weapons*;
- EUR 5,000 for the International Action Network on Small Arms (IANSA);
- EUR 5,000 for the International Campaign to Ban Landmines (ICBL);
- EUR 90,000 for the United Nations Mine Action Service (UNMAS)/International Trust Fund for Demining and Mine Victims Assistance;
- EUR 70,000 for the International Trust Fund for Demining and Mine Victims Assistance (ITF) (Lebanon);
- EUR 5,000 for Geneva Call;
- Various UN bodies received contributions. The beneficiaries were:
 - Office of the United Nations High Commissioner for Refugees (UNHCR) (EUR 5 million);
 - United Nations High Commissioner for Human Rights (UNHCHR) (EUR 3 million);
 - The International Emergency Food Reserve of the United Nations' World Food Programme (EUR 30 million);
 - The World Food Programme (EUR 17 million);
 - The UN Population Fund (EUR 12 million);
 - The UN Environment Programme (EUR 2 million);
 - The UN Human Settlements Programme, UN-HABITAT (EUR 6 million);
 - The Central Emergency Response Fund (CERF) (EUR 15 million);
 - Peace Consolidation Fund of the UN's Peace Consolidation Commission (EUR 300,000);
 - The Mediation Support Unit (EUR 25,000);
 - UN Fund for the Special Team in charge of applying the UN Global Strategy against Terrorism (EUR 100,000);
 - The UN Democracy Fund (EUR 30,000);
 - The Office for Disarmament Affairs (EUR 20,000);
 - The UN Office on Drugs and Crime (EUR 40,000);
 - The Trust Fund for the International Criminal Tribunal for Rwanda (EUR 20,000);
 - The Joint UN Programme on HIV/AIDS (EUR 5 million);
 - UN Women (EUR 20 million);
 - UNICEF (EUR 22 million);
 - UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (EUR 8 million).

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