IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

Case Nos. 07-22459 & 08-21063 (JORDAN/MCALILEY)

ELOY ROJAS MAMANI, *et al.*,

Plaintiffs,

v.

GONZALO SÁNCHEZ DE LOZADA SÁNCHEZ BUSTAMANTE,

Defendant,

JOSÉ CARLOS SÁNCHEZ BERZAÍN,

Defendant.

DEFENDANTS' REPLY IN SUPPORT OF JOINT MOTION TO DISMISS

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INTRODUCTION

Plaintiffs ignore the complaint they filed and defend one they did not, and could never, bring. They do not dispute that this Court must dismiss a case challenging the Bolivian Government's response to a violent uprising that: held hostage a city (Sorata), forced the Defense Minister to flee for safety, confronted escorted hostages as they headed to shelter, starved the capital (La Paz) of supplies, precipitated a state of national emergency, confronted escorted supply trucks, and unseated a democratically-elected government. Opposition ("Opp."), *passim*. Plaintiffs are therefore forced to proclaim that the "case does not require this Court to sit in judgment on unintended collateral killings or a government's legitimate use of force to restore order." *Id*. at 1. But these listed events are plainly set forth in the Amended Consolidated Complaint ("ACC" or "Complaint") and present the very non-justiciable issues plaintiffs now claim do not exist.

Faced with this insurmountable hurdle, plaintiffs assert that this case is instead only about the "targeted killings of peaceful, unarmed civilians." Opp., *passim.* But—except for recently added, conclusory language in the first paragraph—their Complaint contradicts this position as well. In contrast to their Opposition, plaintiffs' ACC does not and could not allege that the decedents died on uneventful, peaceful days. It does not allege that two country leaders happened to decide to round up and execute civilians in the public square, begin ethnic cleansing, or engage in a series of murders for sport. Instead, plaintiffs sue first for the death of one girl who, along with a member of the military and two others, ACC ¶ 41, was killed on September 20, 2003, as fighting ensued during the rescue mission of the trapped tourists from Sorata, after protestors forced the Minister of Defense to flee Sorata, as protestors confronted the convoy leaving with the rescued tourists, and in the area where the convoy was then traveling. ACC ¶¶ 29–30, 40, 43, 47. They allege the remaining eight deaths they sue over occurred over the two day period in October when the country was in a "state of emergency," after military and police worked to open roads into a starving La Paz, in the area where protestors confronted those military and police, and shortly before the violent uprising toppled the democratically-elected government. Plaintiffs ask the Court to just ignore this context. But this context not only frames their claims, it contradicts the last-minute and conclusory allegation, upon which the entire Opposition now rests, that defendants somehow intentionally ordered killings of civilians.

The law is plain that plaintiffs' suit cannot proceed for a host of reasons that the Opposition does nothing to contradict. Plaintiffs' response to the political question and act-of

state doctrines is to ignore the relevant jurisdictional facts. The jurisdictional facts establish that dismissal is appropriate because the U.S. has already addressed the propriety of the Bolivian Government's and rioters' actions, and that the U.S. Government's assessment of and response to the uprising are a key part of current Bolivian-U.S. foreign relations. Plaintiffs' retort—that the State Department did not ratify the killing of "innocent" civilians—is a non-sequitur. The State Department found no evidence that civilians were targeted and concluded that the Bolivian response, which included the unfortunate deaths of innocents, was commensurate with the threat. And, as to the impact of this litigation, plaintiffs fail to inform the Court that the mere filing of Defendants' Joint Motion to Dismiss ("JMD"), with its revelation that Minister Berzaín received asylum, led to violent attacks on the U.S. Embassy in Bolivia, the recall of the U.S. Ambassador, and a round of diplomatic talks to begin the day after this Reply is filed. Moreover, defendants have immunity. Plaintiffs' argument that it disappeared when they were forced from office is contrary to law, and a purported waiver from the people that led their ouster is ineffective.

Even were the Court to exercise jurisdiction, it should dismiss the suit because plaintiffs have not stated any cause of action. Plaintiffs' contention that they do not challenge the proportionality of the government's response simply ignores the realities of the Complaint they had to file. Plaintiffs' extrajudicial killing claim is contradicted by their allegations. Next, while plaintiffs assert that there were widespread and systematic attacks sufficient to allege a crime against humanity, the ACC alleges that the shootings were "targeted," not widespread; and "indiscriminate," not systematic. Plaintiffs' claim that there is a recognized norm of a right to life, liberty, security of person, association, and assembly is unsupported. Plaintiffs do not dispute that secondary liability cannot apply where, as here, there are no primary violations. Their defense of the state law claims contains similar deficiencies.

As becomes plain, plaintiffs' vigorous defense of a complaint they could never file and their attempt to force a public trial in this matter confirm that the Court should grant defendants' Joint Motion to Dismiss.

I. PLAINTIFFS' OPPOSITION IS CONTRADICTED BY THEIR COMPLAINT.

To support arguments central to their Opposition, plaintiffs characterize their Complaint in a manner not supported by the allegations they cite and contradicted by the ones they ignore.

Plaintiffs argue that "[t]he two Defendants devised, directed and/or carried out a plan to target and intimidate Bolivian citizens from protesting against the Lozada government." Opp. at

2 (*citing* ACC ¶¶ 30, 34, 36, 47, 48). But the paragraphs they cite allege no such thing. Instead, they allege only that defendants devised a plan to save the Sorata hostages and escort fuel into La Paz during a state of emergency. *See* ACC ¶ 30 (defendants ordered joint mobilization force to "rescue" the travelers in Sorata); ¶ 34 (the convoy arrived in Sorata and protestors forced Minister Berzaín out of town); ¶ 36 (defendants authorized a task force to use "necessary force" to "restore public order"); ¶ 47 (defendants signed an executive decree establishing a "state of emergency" and "declaring transport of gas to La Paz a national priority"); ¶ 48 (anticipating that forces would use violence, clause in decree offered indemnification for damages). Plaintiffs' spin is well-taken only if what they mean by "protesting" is, as the ACC alleges, holding tourists hostage in a town and also starving the capital such that supplies could not enter; what they mean by "targeting and deliberately intimidating" is, as the ACC alleges, stopping such civil unrest by freeing the hostages or opening up the town; and what they mean by "devising a plan" is, as the ACC alleges, to authorize the escort of tourists out of Sorata and fuel into La Paz.

Plaintiffs state in their Opposition that the decedents were killed even though they were far removed from the protests. Opp. at 2. Here, both the ACC ***and*** the Opposition are to the contrary. Although plaintiffs try to allege that some decedents were not in the center of the protests, the ACC and Opposition both demonstrate that they were near the actual fighting. The specific allegations of the ACC allege that the decedents died on the day and in the area of, and while actually watching, listening to, or running from, clashes between protestors and security forces. ACC ¶¶ 40, 51, 54, 56–58, 69–70, 72. (El Alto is a suburb of La Paz; the main road to La Paz travels through it and thus the blockades of La Paz occurred in and around El Alto.) And the Opposition expressly admits that decedents were "***within a zone of risk***." Opp. at 50.

Plaintiffs argue that "Defendants ordered sharpshooters into the outskirts of La Paz to kill civilians in order to deter others from participating in public places." Opp. at 2 (*citing* ACC ¶¶ 1, 23, 26–28, 39). Other than the conclusory language in paragraph 1, which is discussed below, not a single allegation they cite supports this charge. ACC ¶ 23 (addressing the events of January and February 2003); ¶¶ 26–28 (alleging widespread protest and a general civil strike); ¶ 39 (alleging sharpshooters attacked civilians in Warisata, the city through which hostages were led out of Sorata, but not that they killed, or were ordered by defendants to kill, innocent civilians). Even paragraph 1 does not allege that persons were ordered killed to deter others from protesting.

Plaintiffs' argument—and indeed their entire Opposition—therefore relies exclusively on conclusory language found in paragraph 1. This language has some history. Plaintiffs originally alleged—also in insufficient, conclusory fashion—that defendants "ordered Bolivian security forces . . . to use deadly force ***to suppress popular protests*** against government policies." Case No. 07-22459, D.E. 1, ¶ 1 (emphasis added). After receiving the first motion to dismiss, plaintiffs amended the Complaint. Plaintiffs dropped the allegation that the government acted to suppress popular protests. They inserted in its place the allegation that the "defendants' response to the protests of September and October 2003 was to order Bolivian security forces . . . to attack and kill scores of unarmed civilians, many of whom—including the victims on whose behalf plaintiffs are suing—were not involved in the protests at all, and who were not even in the vicinity of the protests." ACC ¶ 1. Plaintiffs present no facts to indicate that this is anything other than speculative, and their specific allegations contradict this newly-minted allegation.[1]

The rest of the Complaint alleges that deaths occurred ***only*** in the midst of, and ***only*** as a result of, the terrorizing of the entire town of Sorata and the subsequent state of emergency in La Paz. According to the ACC, protestors initiated civil disorder in September 2003 by trapping tourists in Sorata for almost a week. ACC ¶¶ 27–30. They allege that in response defendants ordered police and military to rescue the hostages in Sorata. *Id.* ¶ 30. When they arrived, "[p]rotesting local villagers forced Defendant Sánchez Berzaín out of town." *Id.* ¶ 34 (The Court can reasonably infer that the "protestors" did not politely ask him to leave.) As the convoy attempted to leave Sorata with the rescued tourists, protestors blocked the road out of town, *id.* ¶ 35, thereby necessarily trapping the tourists in buses on a road. The government thereafter issued a decree authorizing the use of "necessary force" to restore public order in this area. *Id.* ¶ 36. (The decree says nothing about authorizing deadly force against innocent civilians; plaintiffs' argument that it should nonetheless be read that way is Orwellian.) Villagers confronted the convoy as it traveled through Warisata. *Id.* ¶ 37. The first represented decedent died in the midst of the conflict in Warisata, where she lived. *Id.* ¶ 39.

As to La Paz, for weeks after Sorata, protests continued to spread throughout the region.

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[1] *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1965, 1966 n.5 (2007), requires that plaintiffs' "factual allegations must be enough to raise a right to relief above the speculative level." Those allegations must cross the threshold from "conclusory" to "factual," and from the "factually neutral" to the "factually suggestive." *Id.* at 1966 n.5. They must be "plausible" and not merely "conceivable." *Id.* at 1965 & n.5; *Davis v. Coca-Cola*, 516 F.3d 955, 974 n.43 (11th Cir. 2008).

Protestors initiated a general civil strike and blocked all roads into La Paz, causing President Lozada, with the full backing of his Cabinet, to declare in Supreme Decree 27209 "a state of emergency in the country, declaring the transport of gas to La Paz a national priority." ACC ¶ 47. Like Directive 27/03, Decree 27209 says absolutely nothing about killing innocent civilians.[2] The other deaths at issue here occurred on October 12 and 13, when protestors clashed with the military and police who were called to escort fuel into La Paz through the roadblocks pursuant to the Decree. Plaintiffs allege Minister Berzaín was in a helicopter flying overhead, but do not allege that he directed military officials to aim at persons outside the protest areas or innocent civilians. These deaths occurred during the state of emergency, the days before and of a nationally-televised address by President Lozada announcing an attempted *coup*, and four days before the elected government was toppled. ACC ¶ 60, 74.

Clearly, things were not calm in Bolivia when the decedents died. Plaintiffs no doubt allege that in the midst of a hostage situation and state of emergency, civilians were killed—though it bears noting that plaintiffs can only allege "on information and belief" that sharpshooters killed civilians, which does not forestall dismissal.[3] The fact that persons died under such circumstances does not "factually suggest" that it is "plausible" that the defendants ordered military personnel on the ground intentionally to kill innocent civilians. To the contrary, the factual allegations are quintessential official functions of the President and Defense Minister. That they were undertaken in the circumstances alleged does not give rise to the inference that defendants were involved in a plan to target civilians. Plaintiffs have done nothing more than juxtapose defendants' official actions as senior governmental officials with the regrettable outcome of the clash on the ground between protesters and government security forces. The Court may not infer intent to kill from the exercise of legitimate authority.

The case of Teodosia Mamani is a prime example. Plaintiffs allege that she lived in the area of protests during the state of emergency, and that she was shot when "a bullet, fired by the

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[2] Plaintiffs argue that the Court should infer an order to kill because the decree provided compensation to victims for material and personal losses. Opp. at 38. The Court is not required to accept the unreasonable inference that a government that ordered the murder of civilians simultaneously concerned itself with compensating them. *See Twombly*, 127 S. Ct. at 1965.

[3] *Twombly* dismissed claims made "upon information and belief" as insufficient. 127 S. Ct. at 1962–63. Courts have since dismissed suits based on "information and belief" and where plaintiffs set "forth no further information to 'factually suggest'" that the conduct is "plausible." *See, e.g., 316, Inc. v. Md. Cas..*, No. 07cv528, 2008 WL 2157084, *4 (N.D. Fla. May 21, 2008).

military, blasted through the wall of the house she was in." ACC ¶ 57. A military sniper, no matter how skilled, does not have x-ray vision sufficient to aim through a wall. The plausible inference is that she was shot by a stray bullet. While the other eight deaths at issue are not as clear, to the extent the ACC supplies information, the ACC indicates that each appears similarly to involve people either peering from terraces or windows or actually on the ground amidst the gunfire and chaos, *id.* ¶¶ 54, 72; that military were also killed, *id.* ¶ 41; and that the military shot in the air to disperse crowds, not into them to kill them, *id.* ¶ 53. The ACC moreover contains no allegation that either President Lozada or Minister Berzaín had any particular connection to the decedents. It certainly does not allege that defendants ordered anyone to intentionally kill them. To the contrary, other than in the conclusory and unsupported first paragraph, plaintiffs never use the active voice to refer to any orders or commands of President Lozada or Minister Berzaín (as in "President Lozada ordered the troops to . . ."), but refer solely to "forces under the Defendants command," Opp. at 1, 12, in the sense that all U.S. forces in Iraq, Afghanistan, or anywhere else are "under the command" of President Bush. The allegation that forces were under the defendants' command is ***not*** an allegation that defendants ordered them to take certain actions.

Ultimately, the only specific allegations about President Lozada are that he issued decrees calling out the equivalent of the National Guard to Sorata and La Paz. It is difficult to imagine what less a President should do in such a situation. As to Minister Berzaín, the specific allegations are that he helped implement the decrees and directed personnel in a helicopter flying over protests (but not that he ordered innocent civilians shot then). These allegations do not support the conclusory charge that they ordered the deaths of innocent civilians.

Plaintiffs also argue that the defendants continued to authorize military and police to address the public riots even though they had secondhand knowledge that civilians were being targeted. Opp. at 31. Their factual allegation states only: "images of violence perpetrated by the government forces were repeatedly shown on the major Bolivian television stations and in major newspapers. Furthermore, community and human rights leaders met with [defendants], . . . to discuss the violence that was taking place." ACC ¶ 87; *see also* ¶ 86 (stating only in conclusory fashion that defendants "knew or should have known" of targeted deaths). Glaringly, there is ***no*** allegation that either the media reports or community leaders informed defendants that military and police were indiscriminately killing innocent civilians, as opposed to responding to the riot situations they were trying to resolve. And there is ***no*** allegation that the starvation of La Paz

had ceased or that those responsible for the violent uprising had ceased their use of deadly force.

II. PLAINTIFFS' POLITICAL QUESTION ANALYSIS IGNORES THE STATE DEPARTMENT'S ACTIONS TO DATE AND MISSTATES THE LAW.

Plaintiffs seek to avoid the plain bar of the political question doctrine here by proclaiming that the Court will not be asked to second-guess conclusions already reached by the Executive branch. Opp. at 8. The claim mischaracterizes what has happened to date and its importance to U.S. foreign policy. It is also flatly contradicted by plaintiffs' own Motion to Strike which, among other things, claims that conclusions reached by the American Ambassador concerning the events were "rife with bias and rumor." Mot. to Strike at 5. The Executive, not the Judiciary, has the task of assessing how the United States will conduct its foreign affairs in light of actions taken by other governments. JMD at 15–19. The State Department undertook that role here, investigating how the Bolivian government responded to the 2003 riots, pronouncing that response to be appropriate, and recommending to Congress that Bolivia continue to receive U.S. funding. Additionally, in granting Minister Berzaín asylum,[4] the U.S. Executive found that he could not return to Bolivia because of "persecution on account of . . . political opinion." JMD at 17. Further, the Executive's findings do more than contravene plaintiffs' general themes, contradicting many of the exact allegations in the ACC. For example:

- The ACC alleges that "[t]he military chased the unarmed villagers" and fired live ammunition during the hostage situation. ACC ¶ 35. But according to State, military forces were ambushed with "small arms fire" upon leaving Sorata, and they pursued their attackers using only "teargas and rubber bullets." JMD Ex. 10 at FOIA-027–028.
- The ACC alleges solely on "information and belief" that a sharpshooter killed decedent Marlene Rojas. ACC ¶ 40. But according to State, Ms. Rojas was "shot in [the] chest by [a] stray bullet as she looked out a window." JMD Ex. 20 at FOIA-028.
- The ACC alleges that Teodosia Mamani was killed by a military individual who—

[4] Plaintiffs do not dispute Minister Berzaín's status as a political asylee, nor do they dispute that at the time he was granted asylum the U.S. Executive was cognizant of what had transpired in Bolivia. Instead, plaintiffs assert that he was not forthcoming in his asylum application with respect to criminal charges allegedly pending against him in Bolivia. Opp. at 6. Plaintiffs lob this reckless charge by relying on rogatory letters Bolivia sent to the State Department to deliver to Minister Berzaín. Opp. at 6, Ex. C. These letters were intended to notify him of the charges being brought against him, s*ee id.*, but, as ***plaintiffs affirmatively plead***, and on this point they are right, the State Department never served these letters on Minister Berzaín, nor did they serve on President Lozada similar letters addressed to him. ACC ¶ 76. Plaintiffs' attachment of the Letters Rogatory does not support their point, but the State Department's to serve the Letters raises the implication that it considered the Letters' allegations to be politically motivated.

> inexplicably—was able to see and aim "through the wall of the house she was in." ACC ¶ 57. But according to State, at the time and place of her death, protestors brought "dynamite and guns to bear" and "danger of misdirected fire coming through windows or walls [wa]s a real threat for even those who stay[ed] home." JMD Ex. 10 at FOIA-043.

Moreover, the State Department's conclusions and reaction is currently a key component in U.S.-Bolivia relations. Upon the filing of the Joint Motion to Dismiss, for example, and the disclosure therein that State had granted asylum to Minister Berzaín (President Lozada did not request asylum), thousands of demonstrators marched on the U.S. Embassy in "violent protests." Opp. Ex. E; *see also* Declaration of Beth A. Stewart; Exhibit ("Ex.") 42 (State Department Press Statement). The Bolivian police were forced to use tear gas to protect the Embassy when "crowds tried to push through a police line." Opp. Ex. E. The current Bolivian government then refused to pledge to defend the Embassy in the future, leading the U.S. to recall its Ambassador to Washington. *See* Ex. 42. While the Bolivian government and plaintiffs now represent that this case will not "cause any disruption or change in the diplomatic relations between Bolivia and the United States," Opp. Ex. D, these dramatic events prove just the opposite to be true.

Trying to ignore or sidestep what the State Department has repeatedly concluded and its importance in U.S. foreign relations, plaintiffs contend that the State Department did not ratify "targeted killings of peaceful, unarmed civilians." Opp. at 8. That assertion is grossly misleading. The State Department did not ratify any such killings because it found no evidence that they occurred. The State Department investigated and found to the contrary that the government's response was "commensurate" to the threat posed. JMD Ex. 2.

No matter how they characterize their allegations, plaintiffs ultimately ask this Court to draw the exact opposite conclusion than did the State Department—that the defendants' response was ***not*** commensurate, but rather disproportionate; that they did not act to protect Bolivian citizens, but rather to kill them; and that the military and police further inflamed, rather than sought to quell, the civil unrest. If there were any doubt on this score, it was laid to rest by plaintiffs' Motion to Strike, which argues that the Court must ignore the State Department's conclusions because, plaintiffs claim, State personnel were biased and transmitted to D.C. unreliable second-hand information they received without question from the Lozada government. *See* Mot. to Strike at 5. (This accusation is verifiably wrong. Opp. to Mot. Strike at II.A.2.) The political question doctrine prevents precisely this type of judicial second-guessing.

Ignoring what happened last month, plaintiffs cite to an *amicus* brief the United States

filed 28 years ago for the proposition that Alien Tort Statute ("ATS") cases do not implicate foreign relations. Opp. at 8–9. The Executive's view there was only that torture could be actionable in U.S. courts. It limited its position, stating "[t]his does not mean that [the ATS] appoints the United States courts as Commissions to evaluate the human rights performance of foreign nations." *Amicus* Brief Supporting Appellants in *Filartiga v. Pena-Irala*, 1980 WL 340146, at *22 (2d Cir. 1980). As discussed, ***this*** suit has already indisputably affected relations between the U.S. and Bolivia.

Plaintiffs do not dispute that only one *Baker* factor need apply for the political question doctrine to bar their suit. They argue that none apply, but the ACC implicates every one.

As to the first factor, "a textually demonstrable constitutional commitment of the issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), plaintiffs do not dispute that the handling of foreign affairs is left to the Executive.[5] Instead, they counter that assessing human rights abuses is best left to the Judiciary, citing *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995), and *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996). Both cases are inapposite. *Kadic* did not involve foreign government action at all but rather the actions of a Bosnian-Serb warring military faction that was not a recognized state. *See* 70 F.3d at 237. And *Abebe-Jira* involved allegations that the equivalent of a city councilman in Ethiopia personally tortured the plaintiffs. *See* 72 F.3d at 845. Neither case challenged prior official U.S. pronouncements on actions taken by a foreign government—pronouncements that are at the heart of current foreign relations—nor made any specific pronouncements concerning the plaintiffs' allegations. Plaintiffs also cite *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1235 (11th Cir. 2004), for the proposition that not all foreign relation issues raise political questions. Opp. at 9. But there the defendant was a corporation and a treaty expressly contemplated court action. Moreover, the court ***dismissed*** the case on comity grounds. *Id.* at 1237–40.

[5] In the face of defendants' overwhelming collection of State Department reports and statements evidencing that this litigation must be dismissed on political question grounds, plaintiffs cite to an off-the-cuff comment made by the current Ambassador that asylum is a judicial, not political, issue. Opp. at 14; *see also* Ex. 49 (*Wash. Times*, June 11, 2008); 50 (*LatinNews Daily*, June 12, 2008). His comment only confirms that this litigation cannot proceed. It was made contemporaneous with the attempted storming of the Embassy, which resulted from this litigation. And while the Ambassador was correct that administrative law judges can review *denials* of asylum, the ultimate decision rests with the Department of Homeland Security or Attorney General.

Plaintiffs next claim that "an expression of executive branch support for Defendants' actions would not transform this tort suit into a nonjusticiable political question." Opp. at 10. That statement is flatly contradicted by the statement in *McMahon v. Presidential Airways, Inc.*, a case cited by plaintiffs,[6] that reexamination of Executive decisions does raise a nonjusticiable political question. *See* 502 F.3d 1331, 1358 (11th Cir. 2007). And the proposition is found nowhere in *Linder v. Portocarrero*, 963 F.2d 332 (11th Cir. 1992), the only case plaintiffs cite in support. There, certain defendants were low-level *contra* military officials who, while in Florida, planned the torture and execution of a specific individual. *Id.* at 333, 335. While the United States supported the *contras* in general, *id.* at 335, nowhere did the Executive address the specific events underlying the complaint. Even so, the Eleventh Circuit concluded that the district court ***appropriately*** dismissed on political question grounds "the broad allegations of the claims in the amended complaint against the defendant organizations," which included the *contras*. *Id.* at 337. Here, the United States cannot speak with one voice if courts permit charges to go forward at the same time the State Department has publicly addressed—based on its review of the facts and foreign policy implications—the very subject of the lawsuit.

As to the second factor, whether the case presents "a lack of judicially discoverable and manageable standards for resolving" the dispute, *Baker*, 369 U.S. at 217, plaintiffs again rely on *Linder*. But there, the "substantial tortious conduct took place in the Southern District of Florida" and the court highlighted that "***[t]his is not a case where the tortious conduct occurred wholly or even principally outside of the United States.***" *Linder*, 963 F.2d at 336 (emphasis added). The case could proceed against certain individuals because "the complaint is narrowly focused on the lawfulness of the defendants' conduct in a single incident." *Id.* at 337. In other words, *Linder* bears no relation at all to the allegations in plaintiffs' ACC.

Plaintiffs also claim that the instant case only presents a question of whether innocent civilians were targeted and that such "damages claims 'are particularly judicially manageable.'" Opp. at 11. Plaintiffs here allege one town taken hostage; a necessary government rescue met with violence; widespread protests that led to military casualties and an attack on a Government cabinet official; the blockade of a capital; and a "state of emergency." ACC ¶¶ 28–30, 41, 47.

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[6] *McMahon* held that defendants could move for political question dismissal again on remand by presenting evidence outside the pleadings. 502 F.3d at 1337–38, 1365 n.36. On remand, defendants have stated their intention to file a renewed political question motion to dismiss. *See McMahon v. Presidential Airways, Inc.*, No. 05-1002 (M.D. Fla. May 1, 2008), D.E. 145.

State Department reports portray a state of siege replete with armed rioters using rifles, dynamite, and roadblocks in an armed struggle against the government. JMD Ex. 2 at FOIA-011; JMD Ex. 10 at FOIA-027, 032, 033, 042. Plaintiffs, in sum, do not present a run-of-the-mill damages claim. Assessing damages in the context of a government's response to the type of civil disorder at issue here is not judicially manageable. *See* JMD at 17–18.

Plaintiffs' response to the third *Baker* factor, "an initial policy determination of a kind clearly for nonjudicial discretion," 369 U.S. at 217, is equally misguided. Plaintiffs make the groundless argument that Congress, in enacting the ATS in 1789 to address piracy, *see Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004), made a policy determination that a U.S. court should hear a case by Bolivians against Bolivians about violent civil unrest in Bolivia. Opp. at 11. In support of their assertion that this was the type of case for which Congress passed the ATS 219 years ago, plaintiffs cite only *Kadic*, in which the Second Circuit held in general terms (pre-*Sosa*) that some international norms can provide judicially manageable standards for ATS suits. 70 F.3d at 249. It does not bear on whether the Judiciary is in the best position to make an "initial" policy determination regarding how the Bolivian government should have responded to armed riots in 2003 given that the Executive has already made such a determination.

As to *Baker* factors four, five, and six, plaintiffs contend that this litigation would not result in multifarious pronouncements because the State Department has not ratified defendants' actions (which plaintiffs characterize as the "targeting of peaceful, unarmed civilians"). Opp. at 11. As detailed above, the State Department did not ratify the intentional murder of "peaceful, unarmed civilians" because it concluded that no such activity occurred; it instead ratified the Bolivian government's response to the uprising, recognizing that the response resulted in the unfortunate deaths of certain civilians, including some of the specific decedents at issue here. And based on an unrelated State Department statement that there may have been human rights abuses in Bolivia during 2003, plaintiffs argue that the State Department's specific findings with regard to what happened in Sorata and La Paz are irrelevant. Opp. at 4 n.4. This argument is without merit. The State Department statement noted that "many of the human rights abuses in the past occurred within the justice system," JMD Ex. 2 at FOIA-007, which does not implicate the allegations in the ACC. The State Department also noted that "[t]here were reports that military conscripts were mistreated . . . and of arbitrary arrest and detention. Prison conditions are harsh, and violence in prisons was a problem. . . . Other problems include pervasive domestic

violence and discrimination against women . . . ." Opp. Ex. A at FOIA-072. Not one of these concerns—which the State Department has included in every Bolivian Country Report from 1999 to 2007, *see* http://www.state.gov/g/drl/rls/hrrpt—casts any doubt on the Executive's considered judgment, and public pronouncements, on the events of 2003.

Plaintiffs also argue that even if the State Department has ratified the defendants' actions, political question dismissal is improper because the doctrine is limited to contexts where "such contradiction would seriously interfere with important governmental interests." Opp. at 12 (*quoting Kadic*, 70 F.3d at 249). Even if that were an accurate recitation of the law in this Circuit (it is not, *see McMahon*, 502 F.3d at 165 (discussing whether case implicates political question)), the standard is more than met here. As demonstrated above, *see supra*, p. 8, this case already has had negative effects on U.S.-Bolivian relations. *Cf. Matar v. Dichter*, 500 F. Supp. 2d 284, 295 (S.D.N.Y. 2007) (dismissing on political question and stating that "[t]his Court cannot ignore the potential impact of this litigation on the Middle East's delicate diplomacy").

Plaintiffs conclude by attempting to distinguish cases cited by defendants on the grounds that some of those cases involved the "conduct of the U.S. government and its highest ranking officials." Opp. at 13. Although the Court is not required under the facts here to so find, the conduct of the U.S. government and its officials is very much at issue here, as shown by the statements and actions of the State Department, the National Security Advisor, and the U.S. Ambassador to Bolivia, who supported the Lozada government during the events in question. JMD at 11–13. Plaintiffs also attempt to distinguish other cases by arguing that they involve only the Arab-Israeli conflict. Opp. at 13; JMD at 18–19. This position is makeweight. The political question doctrine is not limited to conflicts between Arabs and Israel. The issue raised in those cases, and by the one at bar, is whether Executive support for U.S. allies should be questioned by the Judiciary. The answer is uniformly no.

To our knowledge, no ATS or TVPA complaint has ever successfully asked a court to adjudicate claims that so clearly contradict foreign policy judgments made by the Executive.

III. PLAINTIFFS' OPPOSITION CONFIRMS THAT THE ACT-OF-STATE DOCTRINE APPLIES HERE.

This litigation concerns innumerable official acts performed within Bolivian, many of them documented in the Complaint, *see, e.g.*, ACC ¶¶ 30, 47, and would require this Court to repudiate all of them. Plaintiffs concede that defendants were acting in their capacities as the Bolivian President and Minister of Defense when they ordered or directed the military and police

action at issue in this litigation. *See, e.g.*, ACC ¶¶ 7, 30, 47, 79. Plaintiffs assert, however, that certain "*jus cogens*" human rights violations are so egregious that they can never be official actions because no sovereign could ever authorize them. This circular argument is routinely advanced—and routinely rejected—in ATS cases. Indeed, every Circuit other than the Ninth[7] to consider the issue has ruled against plaintiffs' position. *See Belhas v. Ya'alon*, 515 F.3d 1279, 1286–88 (D.C. Cir. 2008) (affirming immunity notwithstanding allegations of *jus cogens* violations); *Ye v. Zemin*, 383 F.3d 620, 626 (7th Cir. 2004) (same); *Yousuf v. Samantar*, No. 1:04cv1360, 2007 WL 2220579, at *13–15 (E.D. Va. Aug. 1, 2007) (same); *Matar*, 500 F. Supp. 2d at 292–93 (S.D.N.Y.) (same); *Doe I v. Israel*, 400 F. Supp. 2d 86, 105 (D.D.C. 2005) (same).[8]

As previously discussed, plaintiffs' allegations require the unsupported and implausible inference that in seeking to rescue hostages and reopen the capital, defendants ordered the killing of civilians; yet the only facts alleged involved unambiguously official acts. *See* JMD at 19–21. According to plaintiffs, the defendants employed the military and police to "'rescue' the group of travelers in Sorata," ACC ¶ 30, "to reestablish public order," *id.* ¶ 36, and to "establish[ ] a state of emergency" to bring vital supplies into La Paz, *id.*¶ 47. Plaintiffs do not dispute that they challenge these official acts, but instead contend that Bolivia has repudiated them. Opp. Ex. D. But these acts do not become any less official under U.S. law because the current Bolivian Government—headed by the person who helped unseat defendants, JMD Ex. 10 at FOIA-029, 034–035—now claims they were unofficial. That repudiation has no bearing on whether actions were official when taken or are official under American law.

The cases cited by plaintiffs are each inapposite. *Jimenez v. Aristeguieta*, 311 F.2d 547, 557–58 (5th Cir. 1962), involved the treaty-based extradition of a former head-of-state charged with "financial crimes." In *Kadic*, there could be no official action because the defendant did not lead any "foreign sovereign" recognized by the United States and, in any event, the act-of-state issue was not preserved below. 70 F.3d at 250. *Hilao v. Marcos*, 25 F.3d 1467, 1468–69 (9th Cir. 1994), and *Philippines v. Marcos*, 862 F.2d 1355, 1361 (9th Cir. 1988), involved claims that

[7] *See In re Estate of Ferdinand Marcos*, 25 F.3d 1467, 1469–72 (9th Cir. 1994).

[8] Plaintiffs' citation to a Senate Report that states the act-of-state doctrine should not apply to claims of torture, Opp. at 15, has no bearing on whether it applies to official acts aimed at restoring order, even where those acts led to civilian deaths. In any event, the TVPA nowhere limits the doctrine as indicated in the Report, and courts have dismissed TVPA claims on act-of-state grounds. *See Corrie*, 403 F. Supp. 2d at 1032; *Doe*, 400 F. Supp. 2d at 113-14.

Ferdinand Marcos, over the course of fifteen years, tortured, executed, and "disappeared" thousands of individuals and otherwise embezzled substantial sums from the government. In *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 713, 719 (9th Cir. 1992), the Ninth Circuit affirmed sovereign immunity though the case involved claims of prolonged torture of a Jewish plaintiff by an anti-Semitic military junta. And *Paul v. Avril*, 812 F. Supp. 207 (S.D. Fla. 1993), involved allegations of torture over a two year period by a former military ruler. Plaintiffs have not cited any case in which actions to quell violent uprisings—no matter how abusive those actions were alleged to have been—were held to be unofficial acts.

Because plaintiffs ask this Court to repudiate official acts, the act-of-state doctrine should bar plaintiffs' suit pursuant to the three *Sabbatino* factors. First, there is ***no*** consensus as to whether defendants' actions violated customary international law. *See* Ex. 43 (Rebuttal Declaration of Eric Posner, Kenneth Anderson, Julian Ku ("Rebuttal Decl.")) at ¶ 11. Second, this case has substantial implications for the conduct of U.S. foreign affairs, as evidenced by the massive protests following the disclosure of Minister Berzaín's asylum status. *See supra* p. 8.

As to the final *Sabbatino* factor, plaintiffs argue that the Court cannot give less weight to positions taken by the current Morales government because "such an assessment entails an inquiry [that] would require the court to examine exactly the kind of sensitive foreign political and diplomatic issues that the act of state doctrine is designed to avoid." Opp. at 16 n.10. Defendants agree, which is further justification to dismiss. Defendants' contention that they defended an "attack against the democracy and constitutional order in Bolivia," JMD Ex. 25, will require this Court also to judge the ***current*** President of Bolivia, *i.e.*, the person who led the violent uprising, JMD Ex. 10 at FOIA-029, 034–035. As plaintiffs argue, the act-of-state doctrine was designed to avoid entangling courts in these kinds of sensitive political and diplomatic issues.

IV. DEFENDANTS ARE IMMUNE FROM SUIT.

Plaintiffs assert that defendants' immunity disappeared the instant they were forced out of office. This argument has been rejected by numerous courts. JMD at 22. Notwithstanding the overwhelming weight of authority, plaintiffs argue that the Supreme Court's decision regarding corporations in *Dole Food v. Patrickson*, 538 U.S. 468 (2003), supports their view that immunity

does not attach to individual former officials. Opp. at 19–20.[9] The D.C. Circuit, in a case argued by plaintiffs' counsel, recently declined to extend *Dole* in precisely the manner plaintiffs suggest. That court held: "[t]o allow the resignation of an official involved in the adoption of policies underlying a decision or in the implementation of such decision to repeal his immunity would destroy, not enhance that comity." *Belhas*, 515 F.3d at 1286; *see also In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765, 789 (S.D.N.Y. 2005) (declining to extend *Dole* to former officials).

Additionally, plaintiffs submit a letter that purports to be from the Bolivian Minister of Justice and purports to waive any immunity asserted by President Lozada and Minister Berzaín. Opp. Ex. D. This Court should not rely on the purported waiver. As an initial matter, this Court should not even consider the waiver letter for any purposes unless it is submitted by the State Department, following proper authorization by the signatory.[10] If the Court accepts plaintiffs' view that the State Department's acceptance is irrelevant, *see* Opp. at 18–19, the Court still should disregard the purported waiver on these facts. Evo Morales illegally and violently toppled a democratically-elected government to ultimately (and necessarily wrongfully) secure power. JMD Ex. 10 at FOIA-029, 034–035. His Government now purports to waive the immunity of those who were charged with restoring public order during the violent riots he spear-headed. For the Court to recognize this waiver would be to condone the unlawful and violent toppling of a legitimate government and condemn those whom the immunity doctrine was designed to protect. It would also have the opposite effect that plaintiffs intend. Recognizing waiver here would signal that, if faced with unlawful protests, leaders should keep power at all costs, lest the protestors take power and waive their immunity. Where, as here, the Executive has granted political asylum to one defendant and has made specific findings that defendants' actions were reasonable, this Court should disregard the waiver letter.

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[9] The Eleventh Circuit cases cited at Opp. 21 do not discuss FSIA, much less whether it applied.

[10] Nowhere does the letter assert that the Minister of Justice has the authority to waive immunity. *See* FED. R. EVID. 902(3) (requiring for self-authentication that the signer be "authorized by the laws of a foreign country to make the execution or attestation"). In *In re Doe*, the court accepted waiver when the U.S. and Philippines had entered into a cooperation agreement, State explicitly requested the letter, and the U.S. submitted it. 860 F.2d 40, 43–45 (2d Cir. 1988). In *Paul v. Avril*, the court accepted a letter from a government that waived whatever immunity shielded a military dictator who took power in a *coup*. 812 F. Supp. at 210–11.

V. PLAINTIFFS DO NOT SUPPORT THEIR ATS OR TVPA CLAIMS.

Neither the ATS[11] nor the Torture Victim Protection Act ("TVPA") provide any basis for hearing a complaint that alleges a government disproportionately responded to an armed uprising. Plaintiffs do not dispute this. Instead, plaintiffs claim that defendants' argument is based on a "fanciful" rendition of the facts and is "disconnected" from the actual allegations in the ACC. Opp. at 1. Yet defendants' motion to dismiss relied on the ACC as a whole, not only on the one conclusory allegation that plaintiffs recently added and then cherry-picked as the linchpin for their Opposition. The ACC as a whole asks this Court to second-guess the Bolivian government's efforts to restore order in the face of massive and dangerous civil unrest. The law is firmly established that plaintiffs cannot support such a claim under either the ATS or the TVPA. JMD at 26–31. Moreover, as detailed above, the paragraph of the Complaint on which plaintiffs' entire Opposition rests is not supported by any other "factual suggestion" that makes the allegation "plausible." *See supra*, Part I.

Seeking international norms for propositions about which none exist, plaintiffs submit an expert declaration to address their view of the state of international law. Even without a rebuttal expert declaration, the existing case law well demonstrates that plaintiffs' declaration is not persuasive. But in fact, defendants' rebuttal expert declaration, submitted herewith, confirms that plaintiffs' declaration cannot be credited. Plaintiffs' declaration draws conclusions by citing sources that do not set international law norms and, in many instances, do not even stand for the propositions for which they are cited. *See* Rebuttal Decl., *passim*.

A. Plaintiffs Allege A Disproportionate Force Claim.

Plaintiffs have tacitly conceded a dispositive legal issue in this case: that this court cannot "sit in judgment on unintended collateral killings or a government's legitimate use of force to restore order." Opp. at 1. Each of plaintiffs' claims impermissibly requires the Court to determine whether police and military overreacted to the crises they addressed. *See* Rebuttal Decl. ¶ 67. But neither plaintiffs nor their experts identify any internationally recognized norm that survives "vigilant doorkeeping" by which this Court can make this determination. Indeed,

[11] Plaintiffs' contention that subject matter jurisdiction exists over an ATS claim so long as it is not "wholly insubstantial and frivolous," the 28 U.S.C. § 1331 standard, cannot be squared with the "vigilant doorkeeping" required under § 1350. *Sosa*, 542 U.S. at 729. In the pre-*Sosa* case plaintiffs cite in support, the plaintiff sought dismissal and disclaimed reliance on the ATS. *See Herero v. Deutsche Bank*, 370 F.3d 1192 (D.C. Cir. 2004).

U.S. law expressly bars civil suits attacking a government's suppression of a riot. JMD at 26–29.[12] Deaths that occurred as a result of that riot are not actionable in tort in the U.S., further proof that there is no internationally-recognized norm that applies here. *Id.* at 26.

Rather than argue otherwise, plaintiffs contend that the rule of proportionality applies only to "armed conflict," which they contend was not present in Bolivia. Opp. at 28. This is nonresponsive. The question is whether any norm exists pursuant to which this Court could resolve claims addressing the use of force to quell violent uprisings. Plaintiffs do not identify any such standard, and, indeed, there is none. Rebuttal Decl. ¶ 52. Instead, plaintiffs argue that ***if*** the law of armed conflict applied (they contend it does not), the principle of distinction applies to their claims. The only case they cite that addresses this principle alleged the deaths of thousands of civilians at the hands of terrorists organizations—a situation far removed from the ACC. Opp. at 28–29 (*citing Almog v. Arab Bank*, 471 F. Supp. 2d 257, 278 (E.D.N.Y. 2007)). Even assuming the law of armed conflict and principle of distinction apply, the principle is not implicated because plaintiffs have failed properly to plead, and the ACC belies, that defendants ordered the military intentionally to kill peaceful unarmed civilians. *See supra*, Part I.

B. Plaintiffs Do Not Allege Extrajudicial Killings Under the ATS or TVPA.

Plaintiffs do not provide any support for their contention that the international law norm prohibiting extrajudicial killings applies to deaths that occurred in the midst of a government's response to civil disorder.[13] "Although there may arguably be a general customary international law norm against summary executions of political opponents or suspected criminals taken into custody, that norm does not prohibit the actions alleged in the Complaint. There is no international consensus regarding the rules that ought to govern law enforcement operations to restore civil order." Rebuttal Decl. ¶ 24. Neither the plaintiffs nor their experts have cited a single case supporting their groundless contention. *See id.* ¶¶ 26–45.

The cases plaintiffs cite in their Opposition are all inapposite. *Almog*, 471 F. Supp. 2d at 260, involved an alleged *intifada* characterized by systematic and widespread terror campaigns designed to kill Jews and Israelis, in a case alleging genocide and crimes against humanity but

[12] The ACC pleads allegations that constitute a riot. JMD at 28 n.19.

[13] Plaintiffs do not dispute that under either the ATS or TVPA, their extrajudicial killing claim must rest on a well-defined international law standard. Opp. at 26.

not alleging extrajudicial killings. *Doe v. Saravia*, 348 F. Supp. 2d 1112, 1153–54 (E.D. Cal. 2004), involved the alleged coordination and planning of the assassination of an Archbishop while he was delivering mass. As to *Cabello v. Fernández-Larios*, 402 F.3d 1148 (11th Cir. 2005), in that case a military *junta* "embarked upon the 'Caravan of Death'" over a five year period to torture and kill individuals who were incarcerated due to their alleged opposition to the military junta. In each international case they cite, "the government ordered military or security personnel to undertake clandestine missions to detain and execute . . . victims who were targeted because of their role in guerilla movements or political opposition. . . . [T]hese decisions may reflect a norm against programs to systematically capture and summarily execute political opponents. They do not show state consent to a norm against civilian killings, even deliberate civilian killings, in the course of an overt, short-term military and law enforcement action to quell a temporary civil disturbance . . . ." Rebuttal Decl. ¶ 40. Indeed, just since 2006, episodes involving civil unrest and resulting in civilian deaths have occurred in Mexico, Israeli-occupied territory, Congo, Egypt, Nepal, Venezuela, Turkey, China, Libya, Bolivia, Pakistan, Georgia, Kenya, India, and—involving UN security personnel—Kosovo. *See* Rebuttal Decl. ¶ 51. Governments in those cases have not acknowledged that they have, or might have, violated an international norm against extrajudicial killings (or crimes against humanity). *Id.* ¶ 63. There is thus no state practice condemning extrajudicial killing in the context of a response to civil unrest.

As well, as discussed at length above, even in the manner that plaintiffs attempt to define the norm, plaintiffs' Complaint does not sufficiently allege that the defendants ordered any such extrajudicial killings. *See supra*, Part I. Moreover, under the TVPA, plaintiffs concede they must plead that the killings were deliberated. Opp. at 27. As discussed, plaintiffs have failed to plead such deliberation and the ACC in fact belies its existence. And there is no international norm governing a government's treatment of persons who are not in State custody but are located in the midst of civil disorder and the response thereto. *See* Rebuttal Decl. ¶¶ 24, 52.

C. Plaintiffs Mischaracterize Payments Received to Date and Fail To Disclose That They Are To Receive Additional Compensation.

Plaintiffs' TVPA claim fails at the outset because plaintiffs have already been compensated by the Bolivian government for the decedents' deaths.[14] JMD at 35–36. Tellingly,

[14] Although the 11th Circuit has held that no exhaustion applies to the ATS, the Supreme Court has stated it would consider it "in an appropriate case." *Sosa*, 542 U.S. at 733 n.21.

plaintiffs do not deny that they have received compensation from the Bolivian government; in light of that concession and defendants' ample evidence concerning the compensation, defendants have established that plaintiffs cannot seek relief again here. Plaintiffs attempt to dismiss the compensation as mere "emergency relief," but their efforts are unavailing. First, the Agreement itself expressly provides 5,000 Bolivianos in "emergency and funeral assistance," and, "furthermore," an ***additional*** 55,000 Bolivianos in "compensation." JMD Ex. 36. Second, the cases demonstrate that the characterization of the compensation does not undercut the significance of plaintiffs having received it. *See Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019, 1025 (W.D. Wash. 2005) ("A foreign remedy is adequate even if not identical to remedies available in the United States."), *aff'd on other grounds*, 503 F.3d 974 (9th Cir. 2007). Third, the sums were quite significant—seven times the average per capita annual income in Bolivia, *see* Ex. 44 (2004 Background Note) at 1—and refute or render meaningless the characterization that the payments were simply "emergency relief."

Moreover, plaintiffs are pursuing ***additional*** compensation from the Bolivian government. On April 29, 2008, two of the plaintiffs, in their capacity as the president and vice-president of the "Association of Fallen Family Members Killed in the Gas War in September and October of 2003," signed a consent agreement with the Bolivian government regarding legislation to provide additional compensation. *See* Ex. 45 ("Meeting of Agreement Minutes"). A draft of the bill discussed in that agreement was then submitted to the President of Bolivia's National Congress on June 11, 2008—prior to plaintiffs filing their Opposition. *See* Ex. 46 (Letter Enclosing Draft Bill). The bill already has passed the lower Chamber, Ex. 47 (*La Razón*, July 13, 2008), and two weeks ago was transmitted to the Senate, Ex. 48 (Bill No. 1005/2008) at Art. 6(a). The introduction to the draft bill states that "[t]he purpose of this law is to grant a one-time payment benefit, academic support and public recognition for the victims of the events of February, September, and October 2003." *Id.* Art. 1. With this Law plaintiffs will receive more than USD $18,000, which yields a total compensation to plaintiffs of between 25 and 30 years of the average annual Bolivian income. This Court cannot hear a TVPA claim in which plaintiffs have already been compensated ***and*** are seeking even more. *See* 28 U.S.C. § 1350 note §2(b).

Plaintiffs would have the Court ignore all of these efforts taken by the Bolivian government to compensate them because they were undertaken by that country's Congress, rather than a court. Opp. at 43. This novel argument is unsupported by the plain language of the

TVPA itself, which states that "a court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred." 28 U.S.C. § 1350 note § 2(b). The statute says absolutely nothing about the necessity of a court judgment, and plaintiffs cite no U.S. case so interpreting the legislation. The Senate Report plaintiffs rely on addresses only whether a final judgment against the plaintiff, not an administrative remedy in general for the plaintiff, will require dismissal of a TVPA claim. Opp. at 43.[15] And the House Report explains that the purpose of the exhaustion requirement is to "avoid exposing U.S. courts to unnecessary burdens" and "can be expected to encourage the development of meaningful remedies in other countries." H.R. Rep. No. 102-367. Plaintiffs' proposed limitation makes no sense, as it would expose U.S. courts to unnecessary burdens where the country's legislative branch provided "meaningful remedies."

The cases plaintiffs cite also do not support their argument. In each case, the claimants had obtained ***no*** relief, and the question was whether they had at least exhausted the remedies available to them. *See Jean v. Dorelien*, 431 F.3d 776, 781 (11th Cir. 2005) (plaintiff could not enforce judgment after defendant freed from prison and restored to power); *Velásquez Rodríguez* (student detained and tortured and three writs of habeas corpus brought did not produce results); *Feirén Garbi and Solís Corrales* (government would not assist in search for disappeared individuals). None of the cases support the untenable argument that a U.S. court must burden itself with providing a remedy that plaintiffs have already received in their own country because the remedy was granted by the Legislature, as opposed to the Judiciary.[16]

D. Plaintiffs Do Not Allege Crimes Against Humanity.

The norms governing crimes against humanity "do not reach the allegations of the Complaint. Operations to restore order, such as those alleged in the Complaint, fall well outside the core, widely-accepted meaning of crimes against humanity." Rebuttal Decl. ¶ 53. A survey of instances in international state practice in which crimes against humanity have been found, such as the Holocaust and the Rwanda genocide, establishes that plaintiffs have not pleaded "the level of orchestration and savagery" necessary. *Id.* ¶ 64.

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[15] *Corrie*, 403 F. Supp. 2d at 1025-26, did not hold that only courts provide meaningful remedies.

[16] Nor do plaintiffs cite any TVPA case to support their argument that the remedies received here are insufficient because they did not address defendants' liability. Opp. at 44.

Plaintiffs argue that the Lozada government's response to the protests was ***widespread*** because it was "conducted on a large scale against many people." Opp. at 30. As an initial matter, plaintiffs purport to satisfy this high standard by relying on the alleged 67 deaths (including members of the military and police) and over 400 injuries. ACC ¶¶ 1, 75. Yet plaintiffs dissociate themselves from every casualty other than their nine relatives' in rebutting defendants' contention that the ACC effectively pleads the disproportionate use of force. Plaintiffs cannot simultaneously claim this litigation is, and is not, about the casualties that occurred during the government's overall response to the 2003 crises. In any event, the cases plaintiffs cite make plain that their allegations fall far short of a widespread attack. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 226 F.R.D. 456, 479–80 (S.D.N.Y. 2005), involved the ethnic cleansing of 114,000 to 250,000 persons in southern Sudan. *Prosecutor v. Tadic*, Case No. IT-94-1-T, *available at* 1997 WL 33774656 (May 7, 1997), addressed ethnic cleansing of Muslims by defendants who personally engaged in torture, rape, and other atrocities in a concentration camp during the Balkan conflict. In *Prosecutor v. Kordic/Cerkez*, Case No. IT-9514-2-T, *available at* 2001 WL 34712270 (Feb. 26, 2001), defendants followed a preconceived plan of shelling houses and then sending soldiers from house to house, killing and wounding many of the inhabitants, and setting fire to the houses; detainees were then used as human shields.[17] In *Mujica*, the court held only that crimes against humanity are generally actionable under *Sosa*, 381 F. Supp.2d at 1180; the Court ultimately ***dismissed***, however, on the political question doctrine, *id.* at 1194. Finally, in *Hurtado* a unit of the Peruvian military allegedly packed villagers into a house and set it on fire with grenades, an incident that occurred amidst a twenty year civil war during which plaintiffs alleged the army "carried out massacres, disappearances, and torture in the Andean highlands." *Lizarbe v. Hurtado*, Case No. 07-21783, D.E. 1 (July 11, 2007) at ¶ 14.

Plaintiffs also fail to defend their argument that the decedents died as a result of ***systematic*** attacks. They state that the ACC "explains in great detail that [the government's actions] were methodically orchestrated by the defendants." Opp. at 31. Plaintiffs argue this because, as they concede, they must allege "a high degree of orchestration and methodical planning." *Id.* (quoting authorities). Yet not a single allegation alleges in any detail, much less

[17] *Cabello's* inapplicability is explained above. *See supra* at p.18.

"great detail," how the defendants allegedly orchestrated, methodically, decedents' deaths. Plaintiffs allege only in conclusory fashion that defendants orchestrated attacks on protestors. ACC ¶ 81. But their Complaint makes plain that the deaths were the byproduct of the crises in Sorata and La Paz. Indeed, the allegations plaintiffs make with respect to defendants' planning involve their official decrees (a Directive and Supreme Decree) to restore order. *See supra*, p.13.

Finally, individuals "targeted based on the individualized suspicion of engaging in certain behavior" are not victims of a crime against humanity. JMD at 37–38 (citing cases). "The victims of the [armed forces] were targeted because they were oil protesters, or because they were associated with oil protesters . . . . Though the evidence indicates that the [armed forces] were not particularly selective in choosing their targets, the victims . . . were not targeted . . . simply because they were civilians." *Bowoto v. Chevron Corp.*, No. C 99-02506, 2007 WL 2349343 *10 (N.D. Cal. Aug. 14, 2007) (discussing multiple ICTY cases). Customary international law finds a crime against humanity when persons are indiscriminately tortured and killed. *Id.* at *6. It is not a crime against humanity for individuals to be specifically targeted, as plaintiffs allege in Count III, to deter persons from joining violent uprisings such as those in Sorata and La Paz. *Id.*; Rebuttal Decl. ¶ 62.

E. Plaintiffs' Count for the Violation of the Rights to Life, Liberty, Security of Person, Association, and Assembly Must Be Dismissed.

Plaintiffs do not cite to a single post-*Sosa* case in which a court has held that a violation of the right to life, liberty, security of person, association, and assembly is sufficiently defined under international law to support an ATS claim. Instead, plaintiffs cite only pre-*Sosa* decisions that relied on reasoning that the Supreme Court has expressly rejected. In *Estate of Rodriquez v. Drummond Co.*, 256 F. Supp. 2d 1250, 1264 (N.D. Ala. 2003), the court "reluctantly" found a right to associate and organize by holding that the ATS was the "implementing legislation" for non-self-executing treaties. *See also Estate of Cabello v. Fernández-Larios*, 157 F. Supp. 2d 1345, 1359–60 (S.D. Fla. 2001) (same). But *Sosa* later rejected the conclusion that non-self-executing treaties could alone support an ATS claim. *See Sosa*, 542 U.S. at 734–35. In *Xuncax v. Gramajo*, 886 F. Supp. 162, 179 (D. Mass. 1995), the court held that the ATS "yields both a jurisdictional grant and a private right to sue for tortious violations of international law (or a treaty of the United States). . . ." *Sosa* rejected that conclusion as well. *See Sosa*, 542 U.S. at 713–14. And in *Wiwa v. Dutch Petroleum*, 2002 WL 319887, *7 (S.D.N.Y. Feb. 28, 2002), the court recognized a claim for arbitrary detention, *i.e.*¸ the very claim that *Sosa* later rejected as

insufficiently defined. Plaintiffs also attempt to support this claim through their experts. That attempt wholly fails for reasons explained by the rebuttal. *See* Rebuttal Decl. at ¶¶ 65–78.[18] Plaintiffs finally argue that though the full extent of these alleged rights are not cognizable under *Sosa*, melding them together somehow suffices to state a cognizable international norm. Opp. at 34. Nowhere do plaintiffs define the elements or contour of such a hodgepodge norm. This failure is all the proof this Court needs that this right is not an accepted norm sufficient under *Sosa*. *See Bowoto v. Chevron*, No. C 99-02506, 2008 WL 2271600, *11–12 (N.D. Cal. May 30, 2008) (holding claims identical to the ones plaintiffs assert are "not actionable under the ATS").

Even so, plaintiffs' experts explain that there is an exception for "exigent circumstances as might apply to police officials in line of duty in defense of themselves or of other innocent persons." Pl. Ex. F ¶ 28; *see* JMD at 40. Such exigencies are evident on the face of the ACC: government forces acted to "'rescue' the group of travelers in Sorata," ACC ¶ 30, and to alleviate "a state of emergency . . ., declaring the transport of gas to La Paz a national priority," *id.* ¶ 47.

F. The Presumption Against Extraterritoriality Bars Plaintiffs' Action.

Plaintiffs argue that this presumption does not apply to ATS claims. Yet none of the Circuit cases cited by plaintiffs, Opp. at 35, so provide. Plaintiffs lift out of context and thus pervert "*Sosa*'s statement that 'modern international law is very much concerned with' limits on foreign government's treatment of its own citizens," *id.*[19] This was in a paragraph that emphasized the "high bar" for ATS claims, that counseled ***against*** "consider[ing] suits under rules that would go so far as to claim a limit on the power of foreign governments over their own

[18] Plaintiffs do not meaningfully distinguish cases that reject these rights. Opp. at 34. *Flores* did not limit its rejection of a "right to life" to the environmental context, and in fact rejected two of the very sources on which plaintiffs heavily rely for these various rights. *Compare* Opp. Ex. F ¶¶ 41, 54, *with Flores*, 414 F.3d at 254–55. Further, that this Court rejected a right to life claim in *Saperstein v. Palestinian Authority*, No. 1:04-cv-20225, 2006 WL 3804718 (S.D. Fla. Dec. 22, 2006), in the context of war crimes and terrorism only militates against such a right here; if such a right does not apply in that context, it cannot apply to a government's response to violent riots.

[19] Plaintiffs' contention, Opp. at n.24, that defendants mischaracterize *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989), is wrong. *Compare Amerada Hess*, 488 U.S. at 439 (FSIA provides the sole basis for obtaining jurisdiction over a foreign state) *with* JMD at 41 ("[T]he ATS cannot be applied to suits against foreign states."). Plaintiffs also do not address that in an analogous case, the Supreme Court applied "[t]he canon of construction which teaches that legislation of Congress, unless contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Amerada Hess*, 488 U.S. at 441.

citizens, and to hold that a foreign government or its agent has transgressed those limits," and noted that they "should be undertaken, ***if at all***, with great caution." *Sosa*, 542 U.S. at 727–28.

G. Secondary Liability Does Not Attach.

Plaintiffs cannot maintain secondary liability because, as discussed above, they have not established any primary liability. Plaintiffs' secondary liability claims suffer from other infirmities. As to aiding and abetting liability, plaintiffs do not sufficiently allege that defendants knew and intended that their orders would substantially assist the military in targeting innocent civilians far from protests in order to subvert further protests. *See supra* Part I. As to command responsibility, that doctrine is limited to armed conflicts, *see Estate of Ford v. Garcia*, 289 F.3d 1283, 1288 (11th Cir. 2002), which plaintiffs contend this was not, Opp. at 28. Plaintiffs claim *Ford* upheld the doctrine outside the context of armed conflict, Opp. at 39, but in fact it upheld it in the context of a "civil war." *Ford*, 289 F.3d at 1286. Their other citations are equally without merit. *See, e.g.*, *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006) (only issue on appeal was equitable tolling of statute of limitations); *Paul v. Avril*, 901 F. Supp. 330 (S.D. Fla. 1994) (pre-*Sosa* opinion resting liability on unspecified agency theory of alleged torturers who were members of the defendant's personal security detail). As to conspiracy, the Eleventh Circuit's *Cabello* decision permitting conspiracy liability for all customary international law violations has been vitiated by *Hamdan*. JMD at 46. Glaringly, plaintiffs' expert declaration argues in favor of several forms of secondary liability and shows familiarity with *Hamdan*, Opp. Ex. F at 4, 15–22, but does not offer any view on the continuing viability of conspiracy liability. That silence speaks volumes.[20] *See also* Rebuttal Decl. ¶¶ 79–85.

H. Plaintiffs' State Law Claims Must Also Be Dismissed.

All state claims against President Lozada are time-barred. Without citation, plaintiffs assert that "[t]he *Van Dusen* principle is inapplicable to claims alleged for the first time in the transferee court." Opp. at 45. Not so. *See, e.g.*, *Brown v. Hearst Corp.*, 54 F.3d 21, 24 (1st Cir. 1995). Moreover, though plaintiffs attempt to limit *Van Dusen* to diversity cases rather than supplemental jurisdiction cases, the case law is to the contrary. *See, e.g.*, *Shaw Family Archives, Ltd. v. CMG Worldwide, Inc.*, 434 F. Supp. 2d 203, 207–08 (S.D.N.Y. 2006). Plaintiffs reliance on *Boardman Petrol. v. Federated Mut. Ins. Co.*, 135 F.3d 750 (11th Cir. 1998), is inapposite.

[20] Plaintiffs also fail to allege a "plausible" conspiracy under *Twombly*. JMD at 45–47.

There, after transfer, the court had to apply one state's choice-of-law principles because it was faced with one plaintiff, one defendant, and one contract. Plaintiffs also suggest that *Van Dusen* is inapplicable because President Lozada moved for transfer, Opp. 45, but the Supreme Court has flatly rejected this argument. *See Ferens v. John Deere Co*., 494 U.S. 516, 531 (1990).

Plaintiffs also assert that Maryland courts would apply the substantive limitations period of Bolivia. That only may be true if the foreign statute of limitations extinguishes the underlying right as well as the remedy, which occurs only in two narrow situations inapplicable here. *Sokolowski v. Flanzer*, 769 F.2d 975, 978 (4th Cir. 1985). First, the statute creating the right must contain a "built-in" limitations period. *Id.* But the single limitations period plaintiffs cite is set forth in a stand-alone provision apart from the many torts to which it applies. Opp. 46. The second situation, a limitations period that "is specifically directed to the statutorily-created liability," *Sokolowski*, 769 F.2d at 978, also does not apply because the cited provision *addresses* none of the statutes plaintiffs claim were violated. That the Bolivian courts may consider its limitations period to be substantive, Opp. 46, is immaterial because it is Maryland's characterization that matters, not Bolivia's. *Id.*

As to Florida substantive law, plaintiffs rely on the transitory tort doctrine to assert Florida tort claims. Their citation to a malfunctioning soda bottle cap case does not support this reliance. Opp. at 47 (*citing White v. Pepsico, Inc.*, 568 So. 2d 886 (Fla. 1990)). Plaintiffs further contend their state claims survive *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003) because state tort statutes are neutrally applicable; this Circuit, however, has applied *Garamendi* to such statutes. *See Ungaro-Benages*, 379 F.3d at 1233. Plaintiffs imply there is no conflict between their claims and the Executive's foreign relations power. There plainly is. *See supra*, Part II. Plaintiffs defend Count V by arguing that they have pled "deliberate" and "targeted" killings. They do not. *See supra*, Part I. They defend Counts IV, VI and VII by arguing that defendants owed decedents a duty of care because plaintiffs were "bystanders" within a "zone of risk," Opp. at 50; this position confirms that their newly-added paragraph 1, in which they claim decedents were far from the protests, is untenable. The claims fail because they pled only discretionary exercises of authority by legally permissible means, which are protected under the discretionary function and public duty doctrines. JMD at 49–50.

Respectfully submitted,

By: /s/ Eliot Pedrosa

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Dated: July 21, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 21, 2008, I electronically filed the foregoing reply with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on Ira J. Kurzban, a member of the bar of this Court, on this day via transmission of Notices of Electronic Filing generated by CM/ECF and on the other counsel listed on the attached Service List by electronic mail (in pdf format).

_____/s/ Eliot Pedrosa_____

Eliot Pedrosa

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

Case Nos. 07-22459 & 08-21063 (JORDAN/MCALILEY)

ELOY ROJAS MAMANI, *et al.*,

Plaintiffs,

v.

GONZALO SÁNCHEZ DE LOZADA SÁNCHEZ BUSTAMANTE,

Defendant,

JOSÉ CARLOS SÁNCHEZ BERZAÍN,

Defendant.

DECLARATION OF BETH ALISON STEWART IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF JOINT MOTION TO DISMISS

I, BETH ALISON STEWART, the undersigned, declare:

1. I am an attorney admitted in the District of Columbia and the Commonwealth of Virginia. I am an associate in the law firm of Williams & Connolly LLP, counsel in this action for the defendants, Bolivia's former President Gonzalo Sánchez de Lozada and former Minister of Defense José Carlos Sánchez Berzaín. I make this declaration in support of the Defendants' Reply in Support of Joint Motion to Dismiss. I have personal knowledge of the following facts and could competently testify to them.

2. Attached hereto as Exhibit 42 is a true and correct copy of a State Department Press Statement, "U.S. Ambassador to Bolivia Returns to Washington for Consultations," issued on June 16, 2008.

3. Attached hereto as Exhibit 43 is the Rebuttal Declaration of Professors Eric

Posner, Kenneth Anderson, and Julian Ku, dated July 21, 2008.

4. Attached hereto as Exhibit 44 is a true and correct copy of "Background Note: Bolivia," released by the State Department's Bureau of Western Hemisphere Affairs in August 2004.

5. Attached hereto as Exhibit 45 is a true and correct copy of ["Meeting of Agreement Minutes"], signed by representatives of the Bolivian government and two plaintiffs in this case on April 29, 2008, and a true and correct translation of same.

6. Attached hereto as Exhibit 46 is a true and correct copy of a letter to the President of the National Congress on June 11, 2008 enclosing a draft bill to provide compensation to the families of the decedents, and a true and correct translation of same.

7. Attached hereto as Exhibit 47 is a true and correct copy of an article appearing in the July 13, 2008 edition of *La Razón*, entitled ["Law for the Victims of October 2003 Approved"], and a true and correct translation of the same.

8. Attached hereto as Exhibit 48 is a true and correct copy of Bill No. 1005/2008 in the Bolivian Congress entitled ["The Law for the Victims of the Events of February, September, and October, 2003"], as well as a letter submitting the bill to the President of the National Senate on July 9, 2008, and a true and correct translation of both.

9. Attached hereto as Exhibit 49 is a true and correct copy of an article appearing in the June 11, 2008 edition of the Washington Times, entitled "Bolivia Angry."

10. Attached hereto as Exhibit 50 is a true and correct copy of an article appearing in the June 12, 2008 edition of LatinNews Daily, entitled "Washington Watch."

Attached to this Declaration are Affidavits of Accuracy of Translations verifying translations of documents from Spanish to English. I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on July 21, 2008, in Washington, D.C.

Beth Alison Stewart

ATTACHMENTS TO DECLARATION

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AFFIDAVIT OF ACCURACY OF TRANSLATIONS

I, Nancy Cox, hereby certify that the attached Exhibits containing translations from Spanish to English are, to the best of my knowledge and belief, true and accurate translations of the corresponding documents.

Nancy C. Cox
29 9th St., NE
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July 20, 2008
Date

M.A., Translation and Interpretation, Monterey Institute of International Studies
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AFFIDAVIT OF ACCURACY

I, Tyler Mickelson, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the accompanying articles from Spanish into English.

Tyler Mickelson
TransPerfect Translations, Inc.
601 Thirteenth Street, NW
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Sworn to before me this
21st day of July 2008

Signature, Notary Public

Lisa Chan
Notary Public, District of Columbia
My Commission Expires 1/1/2013

Stamp, Notary Public

District of Columbia

EXHIBIT 42

Press Statement
Gonzalo Gallegos, Director of Press Relations
Washington, DC
June 16, 2008

U.S. Ambassador to Bolivia Returns to Washington for Consultations

U.S. Ambassador to Bolivia Philip S. Goldberg will return to Washington for consultations on Embassy security in the wake of violent protests in La Paz on Monday, June 9. The Ambassador's consultations will provide an opportunity to explore measures to enhance security cooperation with the Government of Bolivia.

We appreciate the efforts of the Bolivian National Police to protect our Embassy and our personnel. At the same time, we are concerned by the recent statements of some Bolivian government officials that cast doubt on Bolivia's commitment to fulfill its Vienna Convention obligations to protect diplomatic staff and facilities in the future. Failure to fulfill these responsibilities would endanger both American citizens and the hundreds of Bolivians who work in the Embassy or make daily use of Embassy consular and other diplomatic facilities. We expect the Bolivian government to continue to meet its international obligations under the 1961 Vienna Convention on Diplomatic Relations.

2008/494

Released on June 16, 2008

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Published by the U.S. Department of State Website at http://www.state.gov maintained by the Bureau of Public Affairs.

EXHIBIT 43

REBUTTAL DECLARATION

Introduction

1. We have been asked to provide our opinion on the questions referred to in para. 10 below, in the form of a Declaration, to Williams & Connolly LLP, Attorneys at Law acting on behalf of Gonzalo Sánchez de Lozada and José Carlos Sánchez Berzaín, who are defendants in a proceeding brought by Eloy Rojas Mamani, et al.

Qualifications and Experience

2. We are professors of international law with many years of experience in teaching, writing, and research in this field. Professor Eric Posner is Kirkland & Ellis Professor of Law at the University of Chicago Law School and formerly served in the Office of Legal Counsel at the Department of Justice. Professor Kenneth Anderson teaches at American University's Washington College of Law, and currently serves as a Research Fellow at the Hoover Institution on War, Revolution and Peace at Stanford University. He previously served as the Director of the Human Rights Watch Arms Division, where he had obligations for human rights issues related to arms and weapons use, laws of armed conflict, and monitoring of human rights in various armed conflicts. Julian Ku is an Associate Professor of Law at Hofstra University Law School, and previously worked in the International Disputes Resolution Group at Debevoise & Plimpton LLP. Each of us is widely published in the field of international law. Our curricula vitae are annexed.

Background

3. Our understanding on the basis of allegations in the Amended Corrected Consolidated Complaint is as follows. Plaintiffs are Bolivian citizens whose family members were killed during civil disturbances in Bolivia on three particular dates in September and October 2003, allegedly by Bolivian military or law enforcement personnel acting under the command of defendants.

4. Defendant Lozada was the democratically elected President of Bolivia from 1993 to 1997 and from 2002 to 2003; defendant Sánchez Berzaín was Minister of the Interior during President Lozada's first term and Minister of Defense during relevant times in the second term. Compl. paras. 18-19.

5. During President Lozada's second term, President Lozada allegedly adopted policies that were unpopular with segments of the public and civil disturbances occurred, including strikes, demonstrations, "massive popular protests," and marches. *Id.*, para. 23. In September 2003, protests involving thousands of civilians occurred in and around El Alto; there were "widespread street protests," a "general civil strike," blockages of major highways, and road closures. *Id.*, paras. 26-29.

6. On September 19, defendants ordered "the mobilization of a joint police and military operation" that was intended to rescue travelers trapped in the town of Sorata. *Id.*, para. 30. On

the morning of September 20, the military confronted protestors in the village of Warisata. The military shot tear gas and bullets and allegedly assaulted one villager. *Id.*, paras. 31-33. A military convoy then arrived in Sorata to pick up the travelers who were trapped in that town, presumably because protestors had seized control of the roads. Defendant Sánchez Berzaín, the Minister of Defense, was "forced" out of town. As the convoy of buses carrying the travelers made its way out of town, villagers blocked roads and the military responded with force, allegedly killing one man. *Id.*, paras. 34-35. Later, President Lozada authorized a task force to use "necessary force" to "reestablish public order." *Id.*, para. 36. The military returned to Warisata, and there was more violence, including the tragic killings of the child of one of the plaintiffs, and of a soldier. *Id.*, para. 40.

7. Beginning on October 1, further civil disturbances broke out, including "blocked roads," strikes that "spread through the highlands and countryside," an indefinite general strike, and street protests. *Id.*, para. 42-45. On October 9, "two more civilians were killed;" it is not alleged that they were killed by government personnel. Others were injured the next day.

8. On October 11, the actions of those participating in the civil disturbances sufficiently blocked the transportation links to La Paz so as to cause defendants to declare a state of emergency in order to ensure "transport of gas to La Paz," and security forces allegedly killed three civilians in the violence. *Id.*, paras. 46-47. On October 12, during a day of civil disturbances, including protests, in and around the city of El Alto, military and police personnel allegedly killed 30 civilians, including relatives of several plaintiffs. *Id.*, paras. 51-58. On the following day, more violence occurred, including the deaths of relatives of several plaintiffs. *Id.*, paras. 59 et seq. The Complaint alleges that at all relevant times defendant Lozada, as President and Captain General of the Armed Forces of Bolivia, and defendant Sánchez Berzaín, as the Minister of Defense, exercised command and control over the armed forces and the police. *Id.*, para. 79.

9. It is clear from the allegations of the Complaint that serious civil disorder occurred in the areas in question, including violations of the law. All of the decedents for whom the plaintiffs bring suit were killed during this period of unrest. Marches, protests, and strikes, even when lawful, always carry with them a high risk of violence and civil disorder that all responsible legal authorities will attempt to contain. Blocking roads, trapping "travelers," and "forcing" a high-level government official to leave a town violate the law, and put people at risk. A soldier was killed and the Complaint does not allege that all the civilian deaths were the result of government action.

The Question

10. We have been asked to answer the following question. Does the killing of civilians by government personnel in the course of an operation to restore civil order:

(i) violate an international legal norm against extrajudicial killings?

(ii) constitute a crime against humanity in violation of international law?

(iii) violate international legal "rights to life, liberty, and security of person," including rights that prohibit "disproportionate" force?

(iv) violate international legal norms that protect "freedom of assembly and association"?

(v) violate the norms discussed above, based on theories of aiding and abetting, command responsibility, or conspiracy?

Summary of Opinion

11. We are of the opinion that none of the acts described in paras. 3-9, as alleged in the Complaint, violate customary international law. After providing a legal background that explains how the norms of international law are determined, we take in turn each of the foregoing questions.

Legal Background

12. International law comes from two main sources: treaties and customary international law. A treaty is "an international agreement concluded between States in written form and governed by international law." Vienna Convention on the Law of Treaties, art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331. Customary international law "results from a general and consistent practice of states followed by them from a sense of legal obligation." Restatement (Third) of the Foreign Relations Law of the United States § 102(2) (1987) [hereinafter "Restatement"]. Customary international law thus has two elements: "state practice" and what is usually called "opinio juris," that is, the sense of legal obligation or the states' consent to be legally bound by a norm.

13. *State practice* refers to the actual practices of states. With limited and controversial exceptions that are not relevant here, a norm of customary international law can exist only if states comply with it. Perfect compliance is not necessary. A state can, on occasion, violate a norm of customary international law without at the same time undermining the existence of the norm. But noncompliance must be sporadic. If states frequently fail to comply with an asserted norm of customary international law, that norm cannot be said to exist.

14. Some commentators claim that the state practice requirement is satisfied if states incorporate a purported international legal norm in military or law enforcement manuals even though they are ignored by state agents. This view is controversial and has been rejected by the United States government. Letter from John G. Bellinger III, Legal Advisor, U.S. Dept. of State, to Jakob Kellenberger, President, International Committee of the Red Cross (Nov. 3, 2006) (on file with the U.S. Dept. of State). [hereinafter "State Department Letter"].[1] The U.S. Supreme

[1] In responding to a study of customary international law by the International Committee of the Red Cross, the State Department Legal Advisor commented:

> [T]he Study places too much emphasis on written materials, such as military manuals and other guidelines published by States, as opposed to actual operational practice by States during armed

Court has also rejected this view: "that a rule as stated is as far from full realization as the one [the plaintiff] urges is evidence against its status as binding law." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 738 n.29 (2004). "State practice" means that a state's agents and institutions act in compliance with the norm.

15. *Opinio juris* (or *state consent*) refers to the attitude of the states. A state may comply with an asserted norm of customary international law for political reasons, or for reasons of comity, but if not out of a sense of legal obligation, then the norm does not exist. In addition, the sense of legal obligation must be general; the state must consider itself obligated to all states. If a state acts in a certain way because of a treaty, then its sense of obligation is only with respect to other treaty partners, and it does not have the general sense of legal obligation necessary for establishing a norm of customary international law. Diplomatic, judicial, and other official statements may provide evidence as to whether a state acts out of a sense of legal obligation or for some other reason.

16. Some commentators claim that state consent can be inferred from practice, at least when practice is sufficiently "dense." On this view, state consent can be found even in the absence of official declarations from governments that they treat a purported norm of international law as legally binding. This view is controversial, and has been rejected by the United States government. *See* State Department Letter ("we do not agree that *opinio juris* simply can be inferred from practice.") It also is inconsistent with the jurisprudence of the International Court of Justice, which is the judicial organ of the United Nations:

> Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. . . . The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol, which are performed almost invariably, but which are motivated by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.

North Sea Continental Shelf Cases, 1969 I.C.J. 3, 44 (Judgment of Feb. 20).

17. The best evidence of customary international law consists of official policy statements that declare that a state action is being taken out of a sense of legal obligation. *See* Restatement § 103 cmt. a. A multilateral treaty can also serve as evidence of customary international law.

> conflict. Although manuals may provide important indications of State behavior and *opinio juris*, they cannot be a replacement for a meaningful assessment of operational State practice in connection with actual military operations. We also are troubled by the extent to which the Study relies on non-binding resolutions of the General Assembly, given that States may lend their support to a particular resolution, or determine not to break consensus in regard to such a resolution, for reasons having nothing to do with a belief that the propositions in it reflect customary international law.

State Department Letter.

"However, a treaty will only constitute *sufficient proof* of a norm of customary international law if an overwhelming majority of States have ratified the treaty, *and* those States uniformly and consistently act in accordance with its principles." *Flores v. S. Peru Copper Corp.*, 343 F.3d 140, 162-63 (2d Cir. 2003). General principles of law, decisions of courts interpreting international law, and the writings of scholars may also provide evidence of customary international law. *See* ICJ Statute, June 26, 1945, art. 38, 59 Stat. 1055, 1060, U.S.T.S. 993.

18. Most international legal obligations bind states, not individuals or private entities. For example, if a government orders security personnel to spy on a diplomat in violation of the international law governing the treatment of diplomats, then the legal violation was committed by the state, not by the people who gave and carried out the orders to spy. The injured state would have a remedy against the wrongdoing state (such as reparations), not against the individuals, who could not be held criminally or civilly liable for their actions under international law. There are a few exceptions to this rule, however. Prior to World War II, the main exceptions were piracy and war crimes.

19. After World War II, the number of international crimes recognized by customary international law increased. This development began with the Nuremberg Trials of Major War Criminals. The German defendants were prosecuted for war crimes and crimes against humanity, and held individually liable for these acts. Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945—1 October 1946. The next step was the Universal Declaration of Human Rights, which, although not legally binding, indicated that states believed that the protection of human rights was a matter of international concern. Universal Declaration of Human Rights, G.A. Res. 217A, UN Doc. A/810 (Dec. 12, 1948). Over the next several decades, most states signed and ratified a series of legally binding human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, [2] the International Covenant on Civil and Political Rights, [3] and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[4] However, these treaties generally bound states, not individuals. For example, if a state ratifies the second optional protocol of the ICCPR, which prohibits capital punishment, and then subsequently enacts a death penalty statute and executes convicted prisoners, then the state violates international law. The legislators who voted for the death penalty statute, the judge who sentenced the criminal defendant to death, and the executioner would not be considered violators of international law.

20. Some treaties do create individual liability. For example, the Genocide Convention, art. 1, declares that genocide is a crime. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter, "Genocide Convention"]. The Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter "Rome Statute"], purports to create international criminal liability for individuals who commit certain crimes identified in that statute. However, because most treaties do not create individual liability or private rights of action against individuals who have violated international law, plaintiffs bringing cases under the Alien Tort Statute have generally not argued that their cause of action is

[2] Mar. 7, 1966, 660 U.N.T.S. 212.
[3] G.A. Res. 2200A (XXI), UN Doc. A/6316 (Dec. 16, 1966) [hereinafter "ICCPR"].
[4] Dec. 10, 1984, 108 Stat. 382, 85 U.N.T.S. 1465.

based on a treaty, but on a norm of customary international law. Treaties and other international agreements are relied on mainly as "evidence of an emerging norm of customary international law . . ." *Filártiga v. Peña-Irala*, 630 F.2d 876, 880 n.7 (2d Cir. 1980); *Kadic v. Karadžić*, 70 F.3d 232, 238 n.1 (2d Cir. 1995).

21. Identification of customary international law norms that create individual liability continues to require satisfaction of both elements of the definition of customary international law: state practice and *opinio juris*. Thus, under international legal reasoning, customary international law prohibits individuals from engaging in certain behavior only if states both express a sense of legal obligation to uphold an international criminal prohibition of this behavior and actually prohibit or attempt to prohibit the behavior by holding individuals criminally or civilly liable for engaging in it on account of its international illegality.

22. In *Sosa*, the Supreme Court further clarified the means by which norms of customary international law are to be identified for the purpose of the Alien Tort Statute. The Court said that "federal courts should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when § 1350 [the Alien Tort Statute] was enacted." *Sosa*, 542 U.S. at 732. The Court offered the example of piracy and found that the asserted norm in the *Sosa* case—against arbitrary arrest—was not in fact a norm of customary international law of sufficient definiteness and acceptance. The plaintiff's two main sources—the Universal Declaration of Human Rights and the International Covenant for Civil and Political Rights, two sources also relied upon by the plaintiffs' experts here—did not suffice to establish a norm of customary international law against arbitrary arrest. In addition, the Court did not accept the plaintiff's attempt to establish a norm by piling up sources, such as hortatory documents, that might seem impressive in aggregate but individually provide little or no evidence of state consent or practice. *See Sosa*, 542 U.S. at 734-38.

23. It is not sufficient, under *Sosa*'s approach, for a court to believe that, on balance, international law appears to prohibit the defendants' conduct, or that international law contains a universally recognized general principle that arguably extends to the defendants' conduct. Rather, the inquiry is whether international law contains an undisputed rule defined specifically and uncontroversially to include the defendants' conduct.

LEGAL ANALYSIS

I. Extrajudicial Killings

24. The Complaint alleges the killing of civilians in the course of a police and military effort to restore civil disorder in the face of massive protests, strikes, and road blockades. Such conduct violates no norm of international law as defined by *Sosa*. Although there may arguably be a general customary international law norm against summary executions of political opponents or suspected criminals taken into custody, that norm does not prohibit the actions alleged in the Complaint. There is no international consensus regarding the rules that ought to govern law enforcement operations to restore civil order. None of the sources cited in the plaintiff's

Declaration of International Law Scholars [hereinafter "Cleveland Declaration"] suggest otherwise.

25. There is no clearly established international legal norm satisfying the requirements of *Sosa* that flatly prohibits extrajudicial killings. International law prohibits *some* extrajudicial killings. For example, international law prohibits extrajudicial killings that occur during a genocide and certain types of extrajudicial killings that constitute crimes against humanity. But international law does not prohibit "ordinary" murder, which remains a domestic crime only. There is, moreover, no clearly established international law prohibiting justified police shootings or killings on the battlefield that do not otherwise violate the laws of war. Nor does international law require that internal law enforcement actions satisfy a principle of "proportionality."

26. The ICCPR, art. 6(1), provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Art. 6(1) creates an obligation that binds *states* to enact laws that protect the right to life and to refrain from arbitrarily depriving people of their lives. It does not by its terms create criminal or civil liability for individuals who take the lives of others. Thus, it does not create a norm against extrajudicial killing that binds individuals. Further, art. 6(1) is far too ambiguous to create norms of international law that meet the *Sosa* standard. The term "inherent right to life" is not defined, and taken at face value would appear to ban ordinary law enforcement activities, such as the use of lethal force for self-defense and to defend others. The phrase "protected by law" is also not defined, and does not on its face exclude a presidential order to use force to quell a civil disturbance, even if the order resulted in the deliberate killing of civilians. And the term "arbitrarily" is not defined.

27. In an effort to show that other international legal sources supply the definiteness that the ICCPR lacks, the Cleveland Declaration cites the decisions and activities of numerous international bodies and the provisions of other international treaties. Although the number of references is large, their sheer quantity cannot make up for their weakness. They either lack the authority to establish a norm of international law or reflect norms that were not violated by defendants.

28. *Human Rights Committee Communications*. The Human Rights Committee was established by the ICCPR. It is not a judicial body, and it has no authority to issue legally binding judgments. It monitors the human rights practices of parties and issues reports, and it has the authority to make "communications" regarding specific complaints of human rights abuses by individuals against their governments in states that have ratified the first optional protocol of the ICCPR. Optional Protocol to the International Covenant on Civil and Political Rights, art. 1, G.A. Res. 2200A (XXI), 21 UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (Dec. 16, 1966). The Committee only has the authority to "consider" (*id.*, arts. 1, 5) complaints and "forward its views" to the parties (*id.*, art. 5); so while in practice the Committee may hold that a state party has violated the ICCPR, it does not have the authority to issue a legally binding judgment. (The United States has not ratified the optional protocol; Bolivia has.) Because the Human Rights Committee does not have the power to issue legally binding judgments, its contribution to the development of customary international law must be correspondingly limited.

29. The Cleveland Declaration cites one of the Committee's communications (para. 19). In *Vicente et al. v. Colombia*, Comm. No. 612/1995, the Committee declared that the state of Colombia was responsible under Article 6 of the ICCPR for the abduction and killing of suspected guerillas by military personnel. There is no indication from the facts as described in the communication that the Colombian government's action was an attempt to quell a civil disturbance of the type described in the Complaint. In *Vicente*, the military personnel seized, took into custody, and murdered the victims in the context of a long-running insurgency. The victims were singled out because of their roles in the insurgency; the actions taken against them were part of a wider, systematic effort to eliminate political opponents. The communication does not address the case where security personnel use force, even involving the deliberate killing of civilians, in order to suppress a civil disturbance. Hence, even if the communication were an authoritative interpretation of the law, it would not provide evidence of state consent to a norm against the killing of civilians in the course of an operation to restore civil order.

30. *General Assembly Resolutions*. The General Assembly has no power to make law or issue binding interpretations of the law. Further, the General Assembly resolutions cited by the Cleveland Declaration (para. 19) condemn "summary" and "arbitrary" executions—that is, executions of people in the custody of government forces without due process. They do not mention, or comment on, the use of force to restore civil order. *See* G.A. Res. 36/22 (Nov. 9, 1981); G.A. Res. 40/143 (Dec. 4, 1986); G.A. Res. 41/144 (Dec. 7, 1987); G.A. Res. 43/151 (Dec. 7, 1989).[5] For these reasons, the General Assembly resolutions do not provide evidence of state consent to a norm against the killing of civilians during an operation to restore civil order.

31. *UN Economic and Social Council Documents*. The UN Economic and Social Council is an advisory and coordinating body of the United Nations. It has the power to sponsor studies, make reports, and issue recommendations. It does not have the power to make law or issue binding interpretations of law. *See* UN Charter, arts. 61-66. Accordingly, its relevance for establishing norms of customary international law is questionable. The Cleveland Declaration cites the Council's Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, which states that governments shall outlaw "all extra-legal, arbitrary and summary executions." E.S.C. Res. 1989/65, annex, 1989 UN ESCOR Supp. No. 1 at 52, UN Doc. E/1989/89 (May 24, 1989). By their own terms, the Principles advance general "principles," not specific rules and not laws. "Principles," by contrast to rules, provide general guidance only and lack the definiteness necessary for customary international law. The Principles concern arbitrary and summary executions, not the use of force to quell a civil disturbance, even deliberate killings, but in any event are too vague to provide evidence of state consent to a norm of international law.

32. *Reports of Special Rapporteurs to the UN Commission on Human Rights*. The Cleveland Declaration cites two such reports (para. 21).[6] The Human Rights Commission, not to be confused with the Human Rights Committee (*see* para. 28, above), was a body established under the authority of the UN to monitor governments' human rights activities. The Commission had no authority to issue binding legal judgments or legal interpretations, and therefore its relevance

[5] These references are taken from the citations of the article referenced by the Cleveland Declaration, para. 19. *See* David Weissbrodt, Principles Against Execution, 13 Hamline L. Rev. 579, 582 & n.15 (1990).
[6] The Cleveland Declaration lists three reports but cites one of the documents twice.

for establishing customary international law norms is minimal. It was recently disbanded because its membership was dominated by human-rights abusing nations such as Libya and Sudan, and it lost the confidence of the international community. The two reports cited by the Cleveland Declaration discuss human rights violations in various countries and "communications" to governments seeking a response.

33. The two reports do not provide evidence of state consent to a purported norm against extrajudicial killings. The paragraphs referred to in the Cleveland Declaration merely cite the language and provisions of the treaties and other documents described above. *See* Report by the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, paras. 54-67, UN Doc. E/CN.4/1993/46 (Dec. 23, 1992) (describing legal framework in very general terms); Report by the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, para. 9, UN Doc. E/CN.4/2005/7 (Dec. 22, 2004) (citing the United Nations Charter, the ICCPR, and other treaties for its legal framework). The discussions in the reports do not clarify the meaning of the purported norm against extrajudicial killings. The special rapporteurs have no authority to issue legally binding judgments. For these reasons, these reports do not provide evidence of state consent to a norm against extrajudicial killings that take place during an operation to restore civil order.

34. *Regional Human Rights Treaties*. The Cleveland Declaration (paras. 23-25) cites several regional human rights treaties.[7] The regional human rights treaties are treaties among states within particular regions; these treaties are similar to other human rights treaties and in some cases provide greater specificity about human rights norms. However, by the same token, human rights treaties provide evidence of regional norms rather than universal norms of customary international law.

35. Of the three treaties cited by the Cleveland Declaration, the language of two of them is redundant with, and no more specific than, that of the ICCPR. *See* American Convention, art. 4(1) (right to life "shall be protected by law;" "[n]o one shall be arbitrarily deprived of his life"); African Charter, art. 4 ("Every human being shall be entitled to respect for his life . . . No one may be arbitrarily deprived of this right"). As in the case of the ICCPR (*see* para. 26, *supra*), the provisions are either ambiguous ("arbitrarily" is not defined) or, if read literally, would bar widespread practices such as the use of force in self-defense and to protect others. Therefore, they provide no evidence of state consent to a specific norm against extrajudicial killings in the course of restoring civil order.

36. The European Convention has somewhat more specific language, but is binding only as to signatory states. Moreover, the language dealing with the right to life contains significant qualifications making it a problematic source for the norm against extrajudicial killing alleged in this case:

[7] African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 [hereinafter "African Charter"]; Anerican Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 *entered into force* July 18, 1978 [hereinafter "American Convention"]; The European Convention on Human Rights, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos. 3, 5, 8, and 11 *which entered into force* Sept 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998, *respectively* [hereinafter "European Convention"].

> Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: [a] in defence of any person from unlawful violence; [b] in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; [c] in action lawfully taken for the purpose of quelling a riot or insurrection.

European Convention, art. 2(2). Given the ambiguity of the other regional conventions, the European Convention can at best give evidence of a regional, rather than universal norm; and, in any event, the European Convention on its face permits the use of force to uphold public order.

37. *Decisions of Regional Human Rights Bodies*. The three regional human rights treaties cited above established human rights bodies that monitor member states, issue reports, and in some instances hear disputes between states and complaints from individuals. The Cleveland Declaration cites several decisions of the human rights bodies (paras. 22-25). None of these decisions bear on the question at hand.

38. In *Free Legal Assistance Group and Others v. Zaire, African Commission on Human and Peoples' Rights*, Comm. No. 25/89, 47/90, 56/91, 100/93 (1995), complainants allege that the government of Zaire engaged in extrajudicial killings among other abuses. However, the facts about these killings are not described, and so the Commission's conclusion that extrajudicial killings violate Article 4 of the African Charter does not clarify any putative norm. The Commission's finding is not a legal judgment but a communication to the government of Zaire, which did not participate in the hearing, and thus is of minimal value for establishing a norm of customary international law.

39. The Inter-American Court of Human Rights does have the authority to issue judgments that legally bind the parties that appear before it.[8] However, none of the cases cited by the Cleveland Declaration establish a legal norm against the use of force in actions to suppress civil disturbances such as the one described in the Complaint. In *Case of Myrna Mack Chang*, 2003 Inter-Am. Ct. H.R. (Ser. C) No. 101 (Nov. 25, 2003), the Court found that Guatemala violated the right to life incorporated in Article 4 of the American Convention. The Court emphasized that the government singled out the victim for her political opposition and ordered the military to conduct a clandestine mission to execute her; and that this execution was one of many that occurred as a result of the government's effort to suppress political opposition. In *Bamaca-Velasquez v. Guatemala*, 2000 Inter-Am. Ct. H.R. (Ser. C) No. 70 (Nov. 25, 2000), the Court held that Guatemala violated Article 4 by capturing a suspected guerilla leader in a confrontation with military forces and then causing him to "disappear," presumably killing him. In *Velásquez-Rodríguez v. Honduras*, 1988 Inter-Am. Ct. H.R. (Ser. C) No. 4 (July 29, 1988), the victim was detained by government security forces and "disappeared," presumably executed, after a mission that was part of a larger pattern of extrajudicial detentions and disappearances. *See also Barrios Altos Case*, 2001 Inter-Am. Ct. H.R. (Ser. C) No. 75 (March 14, 2001) (military hit squad assassinates civilians as reprisal against Shining Path terrorist organization).

[8] The United States, although a party to the treaty regime that this Court adjudicates, has refused to submit to the jurisdiction of the Court.

40. In all three cases, the government ordered military or security personnel to undertake clandestine missions to detain and execute (or "disappear") victims who were targeted because of their role in guerilla movements or political opposition. The executions took place while the victims were in the custody of the security personnel. The executions were part of a larger pattern of secret military violence against political opponents of the regimes. The victims were usually tortured and mistreated as well as killed. They were singled out because of their special role. In sum, these decisions may reflect a norm against programs to systematically capture and summarily execute political opponents. They do not show state consent to a norm against civilian killings, even deliberate civilian killings, in the course of an overt, short-term military and law enforcement action to quell a temporary civil disturbance characterized by strikes, protests, road blockages, and the like.

41. Similarly, the European Court of Human Rights cases cited by the Cleveland Declaration have no relevance to the facts alleged in the Complaint. *Khashiyev and Akayeva v. Russia*, [2005] E.C.H.R. 132, involved allegations that Russian troops in Grozny murdered innocent civilians. *Estamirov and Others v. Russia*, [2006] E.C.H.R. 860, involved the summary execution of civilians by Russian forces during military operations in Grozny. Neither of these cases can be fairly characterized as law enforcement operations to suppress a civil disturbance; they occurred in the context of a civil war. *See also McCann and Others v United Kingdom*, E.C.H.R., App. No. 18984/9 (1995) (finding violation of the European Convention of Human Rights when law enforcement officials killed unarmed suspected terrorists believed to be dangerous).

42. *Other Instruments*. The Cleveland Declaration (para. 45) cites the United Nations Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, annex, 34 UN GAOR Supp. (No. 46), at 186, UN Doc. A/34/46 (1979) [hereinafter "Code of Conduct"], and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990) [hereinafter "Basic Principles"].

43. Neither the Code of Conduct nor the Basic Principles is a treaty, and neither has the force of law. The Code of Conduct was adopted by the General Assembly in Res. 34/169. The General Assembly, unlike the Security Council, does not have the power to make international law or issue binding interpretations of international law. Indeed, Res. 34/169 merely "decides to transmit [the Code of Conduct] to Governments with the recommendation that favorable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials." *Id.*, para. (e). Even by diplomatic standards, this language is weak. It does not claim that the Code of Conduct reflects customary international law or an authoritative interpretation of international treaties. The Basic Principles were adopted by an advisory body, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which did not have any legal authority, and consist of a series of recommendations to the General Assembly. The General Assembly never adopted the Basic Principles, although they have been relied on, from time to time, by various international bodies and agents, such as the special rapporteurs to the Human Rights Commission (*see* para. 32, *supra*). In addition, the Basic Principles use the same general hortatory and advisory language ("should be taken into account and respected by Governments") as the Code

of Conduct uses (p. 112).[9] Both documents appear to have been intended as means for sharing information about law enforcement practices, so that interested states would have a fund of knowledge on which to draw should they decide to modify their existing law enforcement practices, and not as a constraint on how states could behave as a matter of international law. It is therefore doubtful that these documents "reflect the universal consensus regarding the use of force by law enforcement officers" (Cleveland Declaration, para. 45), or in any other respect provide evidence of state consent to a legal norm.[10]

44. Even putting aside their weakness as evidence of state consent, neither the Code of Conduct nor the Basic Principles purport to prohibit extrajudicial killings during actions to restore civil order. Both documents recognize that extrajudicial killings can be justified. Article 3 of the Code of Conduct provides: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The Commentary to art. 3 adds that "every effort should be made to exclude the use of firearms." Code of Conduct, art. 3, comm. (c). These statements clearly recognize that the use of firearms may be justified, and neither describes with specificity the conditions under which they may and may not be used. Articles 4, 5, and 9 of the Basic Principles similarly recognize that government use of lethal force may be justified:

> 4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. *They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result*.
>
> 5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
>
> (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
>
> (b) Minimize damage and injury, and respect and preserve human life;
>
> (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
>
> (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. . . .

[9] *See* United Nations, Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, Part D, p. 3 ("The Basic Principles ... contain pragmatic suggestions for the day-to-day operation of the legal profession…."); and p. 5 ("Adopts the Code of Conduct for Law set forth in the annex to the present resolution and decides to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.")

[10] For discussion of the non-legal status of the documents, *see* Roger S. Clark, United Nations Standards and Norms in Crime Prevention and Criminal Justice, 5 Transn'l L. & Contemp. Probs. 287, 298-300 (1995).

> 9. Law enforcement officials shall not use firearms against persons *except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives*. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Basic Principles, Arts. 4, 5, 9 (emphasis added). These provisions do limit the use of firearms, but the limitations are not described with specificity and would permit the use of firearms against civilians in order to secure the release hostages and to prevent or suppress serious forms of civil disorder such as riots, as described in the Complaint.

45. In sum, the Code of Conduct and the Basic Principles do not have legal status; they do not represent authoritative legal interpretations of international law. In addition, they establish only ambiguous principles regulating the use of force by law enforcement officials, rather than setting out specific rules, and the government action alleged in the Complaint do not violate these principles.

46. *Restatement (Third) of Foreign Relations Law*. The Restatement is a statement of a private organization and does not have any legal status of its own. Moreover, the language relied upon in the Cleveland Declaration is bounded by significant qualifications. Section 702 of the Restatement provides: "A state violates international law if, as a matter of state policy, it practices, encourages, or condones . . . (c) the murder or causing the disappearance of individuals." The commentary states:

> Under this section, it is a violation of international law for a state to kill an individual other than as lawful punishment pursuant to conviction in accordance with due process of law, *or as necessary under exigent circumstances, for example by police officials in line of duty in defense of themselves or of other innocent persons, or to prevent serious crime*.

Restatement, § 702, comm. f (emphasis added). The italicized words qualify the prohibition on killing. The exception for "exigent circumstances" is ambiguous and not given a definition. The exceptions for police officers acting in self-defense, defense of others, or to prevent serious crimes are offered as illustrations of exigent circumstances and so cannot be considered exhaustive. The dictionary definition of "exigent" is "requiring immediate action," and clearly a breakdown in civil order as occurred in Bolivia would require immediate action.

47. The notes for this section do not explain the source of this norm of customary international law; the only reference to murder is as a type of crime against humanity. However, as discussed below (paras. 53 et seq.), murder is a crime against humanity only when widespread or systematic, and other elements are satisfied, and therefore murder as a crime against humanity is more limited than the norm against extrajudicial killing that the Plaintiffs attempt to establish. Therefore, the Restatement provides either weak or no evidence of state consent to a legal norm,

and even if it did, it does not describe a norm that prohibits the use of force to quell a civil disturbance.

48. *The Law of Armed Conflict*. The plaintiffs argue that the law of armed conflict (also called the law of war and humanitarian law) does not apply to the facts alleged in the Complaint. Plaintiffs' Opposition to Defendants' Joint Motion To Dismiss [hereinafter "Opposition"], p. 28. The law of armed conflict, including the prohibition on the intentional targeting of civilians, applies only to "armed conflicts"—interstate wars or, within states, civil wars or insurgencies. With respect to civil wars and insurgencies, Common Article 3 of the Geneva Conventions provides that the law of armed conflict applies in "armed conflicts not of an international character." Geneva Convention Relative to the Treatment of Prisoners of War art 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135. The quoted phrase was understood at the time to exclude riots and local civil disturbances.[11] Article 1 of Protocol II of the Geneva Protocols of 1977 provides that the law of armed conflict, including the prohibition on the intentional targeting of civilians, applies to armed conflicts

> which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
>
> 2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, art. 1.[12]

49. The plaintiffs argue that events alleged in the Complaint did not constitute an armed conflict or take place within an armed conflict. Therefore, there is no reason to discuss the laws of armed conflict. Yet all of the cased cited by the Cleveland Declaration, para. 26, arose out of events that occurred in a civil war in Rwanda and civil and inter-state wars that took place as Yugoslavia disintegrated. *See Prosecutor v. Krstic*, Case No. IT-98-33-T, Judgment (Aug. 2, 2001). *Prosecutor v. Delalic*, Case No. IT-96-21-T, Judgment (Nov. 16, 1998). *Prosecutor v. Brdanin*, Case No. IT-99-36-T, Judgment (Sept. 1, 2004). *Prosecutor v. Kordic*, Case No. IT-95-

[11] *See* Leslie C. Green, The Contemporary Law of Armed Conflict 56 (2nd ed. 2000) ("acts of violence committed by private individuals or groups which are regarded as acts of terrorism, brigandage, or riots which are of a purely sporadic character are outside the scope of such regulation [the laws of armed conflict]….") (footnote omitted). In *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2795-96 (2006), the Supreme Court interpreted "armed conflicts not of an international character" to encompass cross-border conflicts including the conflict between the United States and al Qaida, but it did not challenge the received wisdom that Common Article 3 does not apply to an internal civil disturbance such as that alleged in the Complaint, which took place entirely on Bolivian territory among Bolivian citizens.

[12] The United States has not ratified this Protocol but the distinction it makes between armed conflicts and civil disturbances appears to reflect the U.S. government's position as well.

14/2-A, Judgment (Dec. 17, 2004). *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

50. *State Practice*. The sources discussed so far are those that are relevant for ascertaining *opinio juris*—states' consent to be legally bound to a particular norm, here, against extrajudicial killing that takes place during an operation to restore civil order. It is our opinion that they do not establish *opinio juris* for or state consent to a norm that prohibits states from using force to restore civil order. But even if they did, a further inquiry would be necessary before one could conclude that there exists an international customary norm against such behavior. One would need to establish that state practice is consistent with such a norm.

51. States frequently use force to suppress civil disturbances, and these efforts often result in the death of civilians. Just since 2006, episodes have occurred in Mexico, Israeli occupied territory, Congo, Egypt, Nepal, Venezuela, Turkey, China, Libya, Bolivia, Pakistan, Georgia, Kenya, India, and—involving UN security personnel—Kosovo.[13] In many of these cases, there is violence on both sides, but often it is unclear; yet, to our knowledge, governments in these cases have not acknowledged that they have, or might have, violated an international legal norm against extrajudicial killings. For the most part, foreign governments and international bodies have not accused these governments of violating international law by using violence against protestors, or claimed that the individuals responsible for these actions, including presidents and ministers, are individually liable for having violated international criminal law, or sought investigations to determine whether international legal violations had occurred.[14] The limited nature of such state action strongly suggests that it is not widely accepted that civilian killings that occur during an operation to restore civil order violate international law. Accordingly, the state practice requirement for finding a customary international law norm is not satisfied.

52. *Conclusion*. At the beginning of Part II of the Cleveland Declaration, its authors state flatly that "[c]learly defined and widely accepted customary law norms prohibit extrajudicial killing" (para. 15), but by the end of the relevant section of the Declaration, the prohibition has been qualified: "'it is a violation of international law for a state to kill an individual other than as

[13] *See* Marc Lacey, 3 Killed in Mexican Protest, N.Y. Times, Oct. 29, 2006, at sec. 1, p. 4; James C. McKinley, Jr., Violent Civil Unrest Tightens Hold on a Mexican City, N.Y. Times, Aug. 24, 2006, atA3; Greg Myre & Jad Mouawad, Israeli Buildup at Lebanese Line as Fight Rages, N.Y. Times, July 22, 2006, atA1; Lydia Polgreen, Congo Nears Historic Election, Praying for Peace, N.Y. Times, July 1, 2006, atA1; Michael Slackman & Mona El-Naggar, Police Beat Crowds Backing Egypt's Judges, N.Y. Times, May 12, 2006, atA3; Somini Sengupta, Embattled King of Nepal Offers Gesture to Protesters, N.Y. Times, Apr. 21, 2006 at A6; Jens Erik Gould, Venezuela: Protests Follow a String of Killings, N.Y. Times, Apr. 7, 2006, at A10; Ian Fisher, Clashes Steer Kurds and Turkey Back on a Rocky Path, N.Y. Times, Apr. 6, 2006, at A3; Jim Yardley, China Unveils Plan to Aid Farmers but Avoids Land Issue, N.Y. Times, Feb. 23, 2006, at A3; Michael Slackman & Hassan M. Fattah, Furor Over Cartoons Pits Muslim Against Muslim, N.Y. Times, Feb. 22, 2006, A1; Simon Romero, Protesters Seek More Autonomy from Bolivia's Capital, N.Y. Times, Dec. 16, 2007 at sec. 1, p. 4; Mark Bendeich, Pakistan Cities Wake from Bhutto Crisis, Reuters, Dec. 31, 2007; Michael Schwirtz & Andrew E. Kramer, Georgian Leader Says Emergency Rule to Last as Needed, N.Y. Times, Nov. 11, 2007 at sec. 1, p. 3; Jeffrey Gettleman & Kennedy Abwao, Protesters Clash with Police in Kenya and Loot Train, N.Y. Times, Jan. 18, 2008 at A9; 14 Die in Clashes Between Police and Protesters in Western India, N.Y. Times, May 30, 2007, at A4; Craig S. Smith and Nicholas Wood, Tensions Rise as Kosovo Awaits Word on Its Future, N.Y. Times, June 25, 2007, at A3.

[14] However, the U.S. State Department has expressed concerns about the excessive use of force in law enforcement operations directed against civil disturbances such as peaceful protests. *See* United States Department of State, Human Rights, http://www.state.gov/g/drl/rls/hrrpt/ (compiling country reports).

lawful punishment pursuant to conviction in accordance with due process of law' *except under exigent circumstances* as might apply to police officials in line of duty in defense of themselves or other innocent persons." Cleveland Declaration, para. 28, quoting Restatement, § 702, comm. f (emphasis added). There is thus no clearly established international law against extrajudicial killing per se. Nor do the sources cited by the Cleveland Declaration establish that there is a norm of international law that prohibits the use of force in the course of quelling a civil disturbance, even when the use of force involves the killing of civilians. There may well be a categorical norm against summary execution of detainees held in secret and singled out for their political opposition to the government; but if so, the Cleveland Declaration fails in its effort to convert this discrete norm into a sliding scale that disfavors any use of violence in law enforcement. Law enforcement activities that might violate the domestic law of the United States and other countries do not necessarily violate international law. To show that they do, one must establish a widely accepted and specific norm of international law that prohibits such activities. The Cleveland Declaration fails to do so.

II. Crimes Against Humanity

53. Plaintiffs also assert crimes against humanity. Although certain types of acts constitute crimes against humanity and are a violation of international law, including massacres of civilians during wartime and the systematic and widespread seizure and execution of political opponents, these norms do not reach the allegations of the Complaint. Operations to restore order, such as those alleged in the Complaint, fall well outside the core, widely-accepted meaning of crimes against humanity.

54. The modern concept of the crime against humanity originated in the Charter of the International Military Tribunal at Nuremberg. The Charter defined crimes against humanity as:

> murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, art. 6(c), Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. The authors of the Charter had in mind the uniquely heinous acts of the Nazis: the International Military Tribunal had jurisdiction only over crimes committed by the governments of Germany and the other Axis powers. The Charter did not apply to any other governments or countries, and it was signed only by the United States, the Soviet Union, France, and Britain. *Id.* at art. 1. Although the Charter may have signaled an emerging sense among some nations that crimes against humanity ought to be condemned, it did not by itself establish new norms of customary international law.

55. Although specific types of crimes against humanity—including genocide and torture—were subsequently prohibited by treaty, crimes against humanity as a general category of international criminal liability were not subsequently established by a multilateral treaty that received widespread consent. The Rome Statute of 1998, which created the International

Criminal Court and gave it jurisdiction over crimes against humanity, did not receive widespread consent. Indeed, it was not even ratified by the United States. Nor was it ratified by other major nations such as China, Russia, and India.

56. Before the Rome Statute was drafted, the United Nations Security Council established two tribunals with jurisdiction over crimes against humanity—the International Criminal Tribunal for the Former Yugoslavia[15] (established in 1993) and the International Criminal Tribunal for Rwanda[16] (established in 1994). Like the Nuremberg tribunal, these tribunals were established for the purpose of trying individuals who had participated in specific conflicts whose brutality shocked the international community. The tribunals did not have jurisdiction over the acts of people who were not involved in these conflicts; thus, the statutes of the tribunals could not, by themselves, establish general norms of international law. Like the Nuremberg tribunal, the Yugoslavia and Rwanda tribunals showed that nations could agree on criminal liability for crimes against humanity in specific conflicts, but not on a general definition that could be applied in different settings.

57. It is important to bear in mind that the Yugoslavia and Rwanda conflicts that give rise to the two tribunals were exceptionally brutal, and the conviction that crimes against humanity had occurred in those countries was reflected in the decision of the Security Council to give those tribunals jurisdiction over crimes against humanity. *See* ICTY Statute, art. 1; ICTR Statute, art. 1. The relevant phase of the Yugoslavia war lasted from 1991 to 1995, involved the breakup of Yugoslavia into several new states, and featured violent conflict both between the new states and civil war within the states, involving both regular armies and paramilitary groups. All sides engaged in ethnic cleansing, which included the destruction of towns, the deportation of civilians through force and intimidation, and massacres of civilians. Concentration camps were set up, prisoners were tortured and executed. More than one hundred thousand people were killed. In Rwanda, a meticulously planned and savagely executed genocide took place in the midst of civil war, resulting in the massacre of 800,000 civilians over three months. The scale and savagery of both conflicts place them at a great distance from the type of civil disturbance and government response that occurred in Bolivia.

58. Although there appears to be an academic consensus that crimes against humanity have entered customary international law, there is no scholarly or international agreement concerning the contours of these crimes. There remains controversy over the difference between an "ordinary" crime like murder and even mass murder, and a murder that counts as a "crime against humanity."

59. The legal authorities suggest several grounds for distinction. First, the activities that constitute crimes against humanity must be "committed as part of a widespread or systematic attack directed against any civilian population," in the words of the Rome Statute, art. 7(1). "[D]efining crimes against humanity in practice is difficult, and is highly dependent on particular factual contexts. There is no precise means of determining what is 'widespread' or 'systematic,'

[15] Statute of the International Tribunal**,** 32 I.L.M. 1192 [hereinafter "ICTY Statute"], adopted by S.C. Res. 827, UN SCOR, 48th Sess., 3217th mtg. at 6, UN Doc. S/RES/827 (1993), 32 I.L.M. 1203.

[16] International Tribunal for Rwanda, 33 I.L.M. 1602 [hereinafter "ICTR Statute"], adopted by S.C. Res. 955, UN SCOR, 49th Sess., 3453d mtg. at 3, UN Doc. S/RES/955 (1994), 33 I.L.M. 1600.

either in numerical, geographical or temporal terms." Payam Akhavan, Contributions of the International Criminal Tribunals for the Former Yugoslavia and Rwanda to Developments of Definitions of Crimes Against Humanity and Genocide, 94 Am. Soc'y Int'l L. Proc. 279, 280 (2000) (citation omitted). In the absence of a specific definition, one must look at how states have dealt with particular cases.

60. It is universally agreed that the Nazis, the warring factions in the former Yugoslavia, and the Hutus in Rwanda committed crimes against humanity; the atrocities in these cases were systematic in the sense that they were carefully planned and supervised by hierarchical authorities, carried out by numerous subordinates or citizens responding to orders or exhortation, and directed at large groups of people. The Nazis killed many millions of people. In the Rwanda genocide, approximately 800,000 people were killed. In the Yugoslavia conflict, more than 100,000 people were killed and ethnic cleansing occurred. The Statute of the Iraqi Special Tribunal (Dec. 10, 2003), available at http://hrcr.law.columbia.edu/hottopics/statute/, established by the Iraqi Governing Council, and given jurisdiction over crimes against humanity, was intended to bring to justice Saddam Hussein and members of his government responsible for wiping out entire villages with poison gas attacks and entire populations and ethnic groups that opposed his rule.[17] In the four countries in which the International Criminal Court has opened investigations—in Uganda, the Democratic Republic of Congo, the Central African Republic, and Sudan—the prosecutor has focused on crimes of unspeakable viciousness at a mass scale, including massacres, mass rape, and mutilation of civilians; slavery; the conscription of child soldiers; and genocide.[18]

61. The Cleveland Declaration cites two cases from the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (para. 37). In *Prosecutor v. Tadic*, Case No. IT-94-1-T (1997), the defendant had participated in the ethnic cleansing of Muslims from a town and had personally engaged in torture, rape, and other atrocities in a concentration camp. It was with this behavior before it, within the context of the brutal Yugoslav civil war, that the Court found the type of widespread or systematic behavior that is necessary for crimes against humanity. *Id.* para. 660. In *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgment and Sentence (Dec. 6, 1999), the defendant led and participated in the killings of numerous civilians in the course of the Rwandan genocide and shared the goal of eliminating an entire ethnic group. Neither of these cases can be compared to the conduct of Bolivian security personnel alleged in the Complaint. Even if security personnel deliberately killed civilians in order to restore civil order, such behavior would not be "widespread or systematic" in the sense reflected in the international legal precedents. Therefore, one cannot conclude that states have widely consented to a category of crimes against humanity that encompasses violent but limited police responses to routine civil disturbances.

62. Second, ICTY jurisprudence holds that the requirement that the crimes be "directed against any civilian population," ICTY Statute, art. 5, excludes "from the realm of crimes against

[17] A small number of other tribunals with jurisdiction over crimes against humanity have been created, such as the Special Tribunal for Sierra Leone—in all cases, to adjudicate crimes that occurred during civil wars or periods of exceptional disorder involving widespread atrocities committed against thousands of people.

[18] *See, e.g.*, Marlise Simons, Lydia Polgreen, and Jeffrey Gettleman, Arrest Is Sought of Sudan Leader in Genocide Case, N.Y. Times, July 15, 2008, at p. A1.

humanity the perpetration of crimes against a limited and randomly selected number of individuals." *Prosecutor v. Limaj*, Judgment, No. ICTY-03-66-T (Nov. 30, 2005), para. 218. In *Limaj*, members of the Kosovo Liberation Army abducted civilians who were suspected of collaborating with Serbian authorities. Because the targets of the attacks were collaborators, the attacks were not directed against a "civilian population as such," and hence did not qualify as crimes against humanity. *Id.*, para. 211. In the case at hand, the plaintiffs allege that Bolivian security personnel targeted civilians involved in protests or civilians who were in the areas or towns where the protests took place while those protests were occurring. Because the alleged targets of the attacks were protestors and their associates, the attacks were not directed against a civilian population as such, and thus crimes against humanity could not have occurred.

63. Nor can one find evidence for a broad definition of crimes against humanity in state practice. As noted in para. 51, *supra*, governments frequently use force when addressing serious civil disturbances and, unfortunately, the deaths of civilians often result. As far as we are aware, in none of the cases described in that paragraph has a government or authoritative international body described these law enforcement and military actions that resulted in the deaths of civilians as crimes against humanity. Indeed, many of the states—including Georgia, Kenya, and Venezuela—are parties to the Rome Statute for the International Criminal Court. If the states did commit crimes against humanity, and if the governments refused to acknowledge them as such and launch good-faith prosecutions, then the ICC prosecutor would have an obligation to investigate. Yet, to our knowledge, it has not done so in any of the cases described above, suggesting that the ICC prosecutor does not believe that crimes against humanity have been committed.[19]

64. In sum, the allegations in the Complaint do not describe widespread or systematic attacks directed against a civilian population. The alleged law enforcement operations did not feature the level of orchestration and savagery that the cited precedents involve. Accordingly, the Complaint fails to allege conduct that amounts to crimes against humanity.

III. Life, Liberty, the Security of Person; and the Disproportionate Use of Force

65. The Cleveland Declaration argues that "[t]here are clearly defined and widely accepted customary law norms which protect the right to life, liberty, and security of person and limit the use of force by law enforcement and military officials." Cleveland Declaration, para. 39. Recognizing such broad norms would, in effect, convert huge swathes of domestic law into international law. "Security of person," for example, is undefined, and could conceivably be understood to mean any state action anywhere that harms anyone, or even fails to protect individuals from other individuals. No such norms exist in international law.

66. The Cleveland Declaration's argument that such norms exist is largely redundant with, and relies on mainly the same sources as, the Declaration's argument that there exists a norm against extrajudicial killing, which we criticize in Part I, *supra*. For the reasons given there, it is also our opinion that there is no clearly defined and widely accept customary international law norm that protects rights of life, liberty, and security of the person against government efforts to restore civil order, even when they lead to civilian deaths.

[19] The ICC prosecutor does have some discretion, however, as well as limited resources.

67. The Complaint (para. 81) and Opposition (p. 28) appear to interpret these rights more narrowly to be rights not to be subject to disproportionate force, and to argue that defendants violated an international legal norm that requires that force used to restore civil order not be disproportionate. According to the Cleveland Declaration, para. 52:

> the use of unnecessary or disproportionate force, the use of firearms where not strictly necessary to protect life, and the planning of law enforcement operations without adequately ensuring that these first two requirements will be respected all violate clearly defined and widely accepted norms of international law protecting the right of life, liberty, and security of person.

However, there is no such international norm.

68. The Cleveland Declaration does not identify sources that indicate a clearly established norm of international law that requires that governments use proportionate force when addressing civil disorder. It does cite the principle of proportionality[20] that exists in the laws of armed conflict, but the laws of armed conflict apply only to armed conflicts, and plaintiffs argue that an armed conflict did not exist in Bolivia at the time of the events alleged in the Complaint. *See* Opposition, p. 28, and paras. 48-49, *supra*.

69. With respect to sources that would apply outside of an armed conflict, the Cleveland Declaration draws on the sources that we discussed in Part I, *supra*, including the ICCPR, the decisions of Human Rights bodies, regional human rights treaties, the Restatement and the Basic Principles.

70. As we discussed in paras. 26-45, *supra*, these sources are weak evidence of customary international law. The ICCPR and the human rights treaties state broad aspirations such as the right to life but do not address the use of force to restore civil order. The Restatement does not cite its source in international law aside from crimes against humanity. And the Basic Principles and the Code of Conduct consist of general recommendations and guidance, not rules or interpretations of international law, and were not issued by a body that had the authority to make or interpret international law.

71. In addition, the sources that do address the use of force by government personnel either concern different types of behavior such as summary execution (the human rights decisions) or do not provide clear limits on government use of force that were violated by the defendants if the allegations of the Complaint are true. *See* paras. 26-45, *supra*.

IV. Assembly and Association

72. The Cleveland Declaration states that "[t]he rights to peaceful assembly and expression free from violent dispersal are clearly defined and widely accepted norms of customary international law." Cleveland Declaration para. 53. However, the sources cited by the

[20] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, art. 51, 1125 U.N.T.S. 3.

Declaration merely establish at an aspirational level that the international community agrees that assembly and association are important values; they also recognize that governments may use force to break up assemblies that are associated with civil disturbances. Thus, any possible norm of customary international law regarding association and assembly would not prohibit the actions alleged in the Complaint.

73. The sources cited by the Cleveland Declaration do not establish a specific and widespread norm protecting "assembly and expression free from violent dispersal." The Universal Declaration of Human Rights, for example, is not legally binding but hortatory. *See Sosa*, 542 U.S. at 734-35. Its statement that "[e]veryone has the right to freedom of peaceful assembly and association" is vague; none of the terms are defined. The ICCPR also states that there is a "right of peaceful assembly" (art. 21) and a right to share information (art. 19), but both rights are qualified:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> …
>
> (b) *For the protection of national security or of public order* (ordre public), or of public health or morals.

ICCPR, art. 19(3) (emphasis added).

> No restrictions may be placed on the exercise of [the right to freedom of peaceful assembly and association] other than those imposed in conformity with the law and which are necessary in a democratic society *in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*.

ICCPR, art. 21 (emphasis added). Accordingly, the ICCPR recognizes that the right of assembly does not prohibit the government from upholding public order, while providing no specificity about the degree of force that the government may use to uphold public order.

74. Similarly, while the American Declaration of the Rights and Duties of Man recognizes rights to assembly and association (arts. 21-22), it also provides that "[t]he rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy" (art. 28). The European Convention for the Protection of Human Rights and Fundamental Freedoms qualifies the freedom of association and assembly with this statement: "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others" (art. 11(2)). And the same with the African Charter on Human and Peoples' Rights: "The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others" (art. 11).

75. Similarly, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 5, 12, G.A. Res. 43/144, annex, 53 UN GAOR Supp., UN Doc. A/RES/53/144 (1999), while reaffirming the right to assembly, also reaffirms:

> In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, *shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public orde*r and the general welfare in a democratic society.

Art. 17 (emphasis added).[21] Thus, all of the sources recognize extremely broad and ill-defined limitations on the freedom to associate and assemble—limitations that recognize that authorities may use force to uphold public order.[22]

76. The Cleveland Declaration also cites UN Sec. Council Res. 123, UN Doc. S/RES/134 (April 1, 1960), which stated that the Security Council "*Deplores* that the recent disturbances in the Union of South Africa should have led to the loss of life of so many Africans … [and] *Deplores* the policies and actions of the Union of South Africa which have given rise to the present situation." The resolution was a reaction to the Sharpeville Massacre, where the police opened fire on a peaceful protest against Apartheid laws, killing several dozen people. Although the Security Council has the authority to make and interpret international law, it did not in this instance declare that South Africa had violated an international legal norm, nor that individual police or commanders had committed international crimes. It is also clear from the resolution that the Security Council objected mainly to the existence of Apartheid laws in South Africa, and found the violence deplorable because it was used to uphold an unjust, racially discriminatory system. The Cleveland Declaration cites no other Security Council resolution, though many hundreds of clashes between police and demonstrators resulting in civilian deaths have occurred over the years.

77. Finally, it is important to recognize that even if the treaties described above establish that an international legal norm protects freedom of assembly and association, they do not establish *individual liability* for violation of that norm. The Cleveland Declaration does not cite a single source that states that it is an international crime to violate the right of assembly or association, or that individuals are otherwise liable under international law for violating the right of assembly or association, and we are not aware of any source that does. By contrast, the Genocide Convention explicitly recognizes that genocide is an international crime that can be

[21] The Cleveland Declaration also cites the International Covenant on Economic, Social and Cultural Rights, art. 1(2), which, however, makes no reference to a freedom of assembly or association. *See id.* ("All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.").

[22] To the same effect are principles 12-14 of the Basic Principles, which recognize that the freedom to assemble does not prohibit the government from using force when assemblies are unlawful or violent. On the problematic legal status of the Basic Principles, *see* paras. 42-45, *supra*.

committed by individuals. Genocide Convention, Arts. 1, 4. The Rome Statute purports to create criminal liability as well, and numerous sections refer to the rights of individuals who are subject to trial and punishment. Because no source establishes international criminal (or civil) liability for individuals who violate rights of association and assembly, ATS liability cannot exist.

78. From the sources, it is clear that there is no widely accepted and specific norm of international law that guarantees a right of assembly and association against the use of law enforcement methods to quell civil disturbances.

V. Aiding and Abetting; Command Responsibility; Conspiracy

79. Customary international law recognizes secondary or indirect liability, where a defendant is held liable for the actions of another, in limited circumstances. Although some members of the international community seek to extend it more broadly, today the authoritative sources and state practice establish norms of secondary or indirect liability only in the context of armed conflict, and thus not in the law enforcement setting alleged in the Complaint. Customary international law does not recognize the crime of conspiracy outside genocide and crimes against peace.

80. *Aiding and Abetting*. International law recognizes aiding and abetting liability in limited circumstances. The sources cited by the Cleveland Declaration—the Nuremberg cases, the ICTY statute, and the ICTR statute—address aiding and abetting in a *criminal* context, for instance, war crimes. The ICTY and the ICTR statutes were created with the understanding that they would be applied only to armed conflicts in the former Yugoslavia and in Rwanda. Because plaintiffs argue that an armed conflict did not exist in Bolivia at the time of the events described in the Complaint, these sources do not establish that aiding and abetting liability could attach to the defendants, even if an international law violation did occur.

81. The Rome Statute, art. 25, does recognize aiding and abetting liability for certain international crimes that can occur outside an armed conflict, such as crimes against humanity. But, as noted in para. 55, because the Rome Statute remains controversial and has not been ratified by the United States, it cannot be a reliable source of customary international law. The Genocide Convention, art. 3(e), recognizes complicity in genocide as an international crime and requires no armed conflict. But the plaintiffs do not allege that a genocide occurred in this case.

82. *Command Responsibility*. Similarly, command responsibility is traditionally a concept of the law of armed conflict. All of the cases cited by the Cleveland Declaration (paras. 79-80) involved crimes that occurred in the course of an armed conflict. *See Prosecutor v. Blaskic,* Case No. IT-95-13-PT, Apr. 4, 1997; *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-PT, Mar. 2, 1999; *Prosecutor v. Krajisnik,* Case No. IT-00-39-PT, Sept. 22, 2000; *Prosecutor v. Delalic et al.,* Case No. IT-96-21-A, Feb. 20, 2001. Similarly, the crimes prosecuted by the ICTR all occurred in the course of an (internal) armed conflict. *See Prosecutor v. Kambanda*, Case No. 97-23-S, Sept. 4, 1998; Prosecutor v. Musema, Case No. 06-13-T, Jan. 27, 2000; *Prosecutor v. Serushago*, Case No. 98-39-S, Feb. 5, 1999; *Prosecutor v. Kayishema and Ruzindan*a, No. 95-1-T, May 21, 1999. Accordingly, these sources do not establish that command responsibility exists in customary international law outside of armed conflicts.

83. The Rome Statute, art. 28, does recognize command responsibility for certain international crimes that can occur outside an armed conflict, such as crimes against humanity. But, as noted in para. 55, because the Rome Statute remains controversial and has not been ratified by the United States, it cannot be a reliable source of customary international law.

84. *Conspiracy*. The Complaint, para. 89, alleges conspiracy to engage in extrajudicial killings, crimes against humanity, and violation of other rights such as the right to life and the right to assembly. International law does not recognize conspiracy except conspiracy to commit genocide.[23] Genocide Convention, art. III(b). Conspiracy to commit crimes against humanity was rejected at Nuremberg. *See* Stanislaw Pomorski, Conspiracy and Criminal Organizations, in The Nuremberg Trial and International Law 213, 233-35 (George Ginsburgs & V.N. Kudriavtsev eds. 1990). The term does not appear in the Rome Statute, and only conspiracy to commit genocide appears as a crime in the ICTY and ICTR statutes. Therefore, conspiracy to violate any of the legal norms mentioned in the Complaint does not exist in international law.[24]

85. *State practice*. As far as we are aware, no government or international legal body has accused government or military leaders of committing international crimes, on the basis of aiding and abetting liability, command responsibility, or a theory of conspiracy, in any of the cases described in para. 51, where civilian killings occurred during operations to restore civil order.

[23] The Nuremberg cases also recognized conspiracy for crimes against peace, that is, the invasion of a foreign country.

[24] Plaintiffs also argue that defendants could be liable as participants in a "joint criminal enterprise," Opposition, p. 41 n.34, a concept that has been developed in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia. However, this theory has not been expressly adopted in contexts outside the armed conflict over which that tribunal had jurisdiction.

I declare under penalty of perjury that the foregoing is true and correct.

Signed: _____ Dated: 7/21/08

Eric A. Posner

I declare under penalty of perjury that the foregoing is true and correct.

Signed: _____ Dated: 21 July 2008
Kenneth Anderson

I declare under penalty of perjury that the foregoing is true and correct.

Signed: _____ Dated: 7/16/2008

Julian G. Ku

APPENDIX

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Books:

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Diplomacy, Arbitration, and International Courts, in The Role of International Courts (Carl Baudenbacher & Erhard Busek eds., German Law Publishers, 2008)

Work in Progress:

State Justices Project (with Stephen Choi and Mitu Gulati)

Treaties, State Size, and Development (with Tom Miles)

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Member, Editorial Board, Law & Social Inquiry (2000-2001)

Member, Board of Directors, American Law and Economics Association (2000-2003)

Member, Board of University Publications, University of Chicago (2001-2004)

Member, Editorial Board, Review of Law and Economics (2004-)

Member, Oxford University Press Legal Education Advisory Board (2006-)

Short-Term Consultant, World Bank (2007)

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Visiting associate professor, Harvard Law School (2000) (teaching The Laws of War).

John Harvey Gregory Lecturer on World Organization, Harvard Law School (1993-95) (teaching International Human Rights and the Laws of War).

Lecturer, Columbia Law School (1993-95) (teaching the Laws of War).

Lecturer, Fordham Law School (1988-95) (teaching tax, business associations, human rights and international law).

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General Counsel, The Open Society Institute-Soros Foundations, 1994-96; special counsel, 1996-2002.

Director, Human Rights Watch Arms Division, 1992-94.

Tax associate, Chadbourne & Parke, 1991-92.

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Kenneth Anderson Publications

Reports, Scholarly Papers, and Small Monographs:

Financial Self-Sustainability of Development Finance Institutions, Report to the Media Development Loan Fund, October 2004.

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O'Connell, *Ride of the Second Horseman: The Birth and Death of War*; S. Roberts and J. Williams, *After the Guns Fall Silent: The Enduring Legacy of Landmines*) March 15, 1996.

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"Our Natural Selves," *Times Literary Supplement* (London) (reviewing L. Ferry, *The New Ecological Order*; M. Zimmerman, *Contesting Earth's Future: Radical Ecology and Postmodernity*) September 8, 1995.

"Hubris at Waco," *Times Literary Supplement* (London) (reviewing Reavis, *The Ashes of Waco*) September 1, 1995.

"The Magi of the Great Salt Lake," *Times Literary Supplement* (London) (reviewing J. Brooke, *The Refiner's Fire: The Making of Mormon Cosmology*) March 24, 1995.

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"Do We Have a Foreign Policy: A Roundtable Discussion," *Harper's Magazine* (with J. Elshtain, J. Hitt, K. Holmes, P. McCloskey, A. Neier, W. Marshall) January 1994.

"Fighting Mad," *Times Literary Supplement* (London) (reviewing Pick, *War Machine: The Rationalisation of Slaughter in the Modern Age*< *6, August*>

"Why Keep Yugoslavia One Country?" New York Times (with Jeri Laber)(opinion page) November 10, 1990.

"Guatemala Democracy is an Army in Disguise," Los Angeles Times (with Jean-Marie Simon)(opinion page) May 29, 1988.

"In El Salvador, a War Against Civilians That They Will Not Forget," Boston Globe (opinion page) October 1, 1984.

"Is Los Angeles Right to Buy Arizona Project's Nuclear Power?" Los Angeles Times (with L.H. Lovins) (opinion) August 10, 1982.

"Terrorism: The End of Limits," *Newthink Quarterly* (Fall 1978).

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  - International Trade
  - Business Organizations,
  - Law and International Economic Development.

8/06-1/07 — *Visiting Assistant Professor of Law*, College of William and Mary Marshall-Wythe School of Law, Williamsburg, VA

10/00- 8/02 — *Associate*, International Disputes Resolution Group, Debevoise & Plimpton, New York, NY
- Practice areas include general commercial law, mergers and acquisitions law, securities law, and international commercial arbitration, and public international law.

9/99-8/00 — *Lecturer in Law and Olin Fellow*, University of Virginia School of Law, Charlottesville, VA

9/98-9/99 — *Judicial Clerk* , The Hon. Jerry E. Smith, U.S. Court of Appeals, Fifth Circuit, Houston, TX

PUBLICATIONS

Law Reviews:

Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?, 84 WASH.U. LAW REV. *(forthcoming 2007)*

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Weblog:

Opinio Juris, A Weblog Dedicated to Reports, Commentary, and Debate on Current Developments and Scholarship in the Fields of International Law and Politics, at www.opiniojuris.org

PRESENTATIONS

3/07	"Customary International Law in the United States", Annual Meeting of the American Society of International Law, Washington D.C.
1/07	"Globalization and the U.S. Constitution", Globalization Comes Home Conference, University of California at Berkeley, Berkeley, CA
11/06	"The Bush Administration and the War on Terrorism", American Civil Liberties Union, Virginia Chapter, Virginia Beach, VA
8/06	"Roundtable on International Tribunals," American Political Science Association Annual Meeting, Philadelphia, PA.
3/06	"Gubernatorial Foreign Policy," Symposium on Executive Power, Yale Law School, New Haven, CT
2/06	"Gubernatorial Foreign Policy," Lewis and Clark Law School, Portland, OR
2/06	"The President and the Interpretation of Customary International Law," Outsourcing of American Law, American Enterprise Institute, Washington D.C.
1/06	"International Human Rights Treaties and Constitutional Interpretation," Barnes Symposium on Western and Non Western Views of Human Rights, University of South Carolina Law School, Columbia, SC
11/05	"The President's Power to Interpret Customary International Law and the Alien Tort Statute", Symposium on the 20th Anniversary of Filartiga v. Pena-Irala, Rutgers-Camden School of Law, Camden, NJ
10/05	"Torture and the War on Terror," Symposium on the War on Terrorism,

Case Western Reserve University School of Law, Cleveland, OH

9/05 "International Delegations," University of San Diego School of Law, San Diego, CA

1/05 "Structural Tensions in Judicial Interpretation of Customary International Law," Santa Clara University School of Law, Santa Clara, CA.

1/05 "Delegation and the New World Court Order," International Legal Studies Conference, University of California at Berkeley, Boalt Hall, Berkeley CA

10/04 "The Third Wave," Alien Tort Claims after *Sosa v. Alvarez Machain*, Emory University School of Law, Atlanta, GA.

5/04 Supreme Court in American Politics, "International Human Rights Law in American Courts," Program in Law and Public Affairs, Princeton University, Princeton, NJ.

12/03 "Treaties as Laws," American Society of International Law Section, International Law in Domestic Courts Workshop, University of Maryland School of Law, Baltimore, MD

12/02 "The State of New York Does Exist," American Society of International Law Section, International Law in Domestic Courts Workshop, Fordham University, New York, NY

MEMBERSHIPS

New York Bar (2001),
Executive Committee, American Association of Law Schools Section on International Law.

EXHIBIT 44

U.S. DEPARTMENT of STATE

Bolivia (08/04)

For the most current version of this Note, see Background Notes A-Z.

PROFILE

OFFICIAL NAME:
Republic of Bolivia

Geography
Area: 1.1 million sq. km. (425,000 sq. mi.); about the size of Texas and California combined.
Cities: *Capital*--La Paz (administrative--pop. 793,290); Sucre (constitutional--215,770). *Other major cities*--Santa Cruz (1,135,530), Cochabamba (517,020), El Alto (649,960).
Terrain: High plateau (altiplano), temperate and semitropical valleys, and the tropical lowlands.
Climate: Varies with altitude--from humid and tropical to semiarid and cold.

People
Nationality: *Noun and adjective*--Bolivian(s).
Population (2002.): 8.5 million.
Annual population growth rate: 2.5%.
Ethnic groups: 62% indigenous (primarily Aymara, Quechua, Guarani), 38% European and mixed.
Religions: Predominantly Roman Catholic; minority Protestant.
Languages: Spanish (official); Quechua, Aymara, Guarani.
Education: *Years compulsory*--ages 7-14. *Literacy*--85.5%. Health (2000): *Infant mortality rate*--57.5.
Work force (2.9 million): *Nonagricultural employment*--1.26 million; *services, including government*--70%; *industry and commerce*--30%.

Government
Type: Republic.
Independence: August 6, 1825.
Constitution: 1967; revised 1994.
Branches: *Executive*--president and cabinet. *Legislative*--bicameral Congress. *Judicial*--five levels of jurisdiction, headed by Supreme Court.
Subdivisions: Nine departments.
Major political parties: Nationalist Revolutionary Movement (MNR), Movement of the Revolutionary Left (MIR), Movement Towards Socialism (MAS), New Republican Force (NFR).
Suffrage: Universal adult, obligatory.

Economy (2002)
GDP: $7.9 billion.
Annual growth rate: 2.5%.
Per capita income: $953.
Natural resources: Hydrocarbons (natural gas, petroleum); mining (zinc, tungsten, antimony, silver, lead, gold, and iron).
Agriculture (15% of GDP): *Major products*--Soybeans, cotton, potatoes, corn, sugarcane, rice, wheat, coffee, beef, barley, and quinine. *Arable land*--27%.
Industry: *Types*--Mineral and hydrocarbon extraction, manufacturing, commerce, textiles, food processing, chemicals, plastics, mineral smelting, and petroleum refining.
Trade: *Exports*--$1.32 billion. *Major export products*--natural gas, tin, zinc, coffee, silver, tungsten, wood, gold, jewelry,

soybeans, and byproducts. Major export markets--U.S. (13%), Brazil (22%), Colombia (18%), U.K. (16%), Argentina (5%), Peru (5%). *Imports*--$1.7 billion. *Major products*--machinery and transportation equipment, consumer products, construction and mining equipment. *Major suppliers*--U.S. (16%), Argentina (17%), Brazil (16%), Chile (8%), Peru (6%).

PEOPLE

Bolivia's ethnic distribution is estimated to be 56%-70% indigenous people, and 30%-42% European and mixed. The largest of the approximately three-dozen indigenous groups are the Quechua (2.5 million), Aymara (2 million), Chiquitano (180,000), and Guarani (125,000). There are small German, former Yugoslav, Asian, Middle Eastern, and other minorities, many of whose members descend from families that have lived in Bolivia for several generations.

Bolivia is one of the least-developed countries in South America. Almost two-thirds of its people, many of whom are subsistence farmers, live in poverty. Population density ranges from less than one person per square kilometer in the southeastern plains to about 10 per square kilometer. (25 per sq. mi.) in the central highlands. The annual population growth rate is about 2.74% (2002).

La Paz is at the highest elevation of the world's capital cities--3,600 meters (11,800 ft.) above sea level. The adjacent city of El Alto, at 4,200 meters above sea level, is one of the fastest-growing in the hemisphere. Santa Cruz, the commercial and industrial hub of the eastern lowlands, also is experiencing rapid population and economic growth.

The great majority of Bolivians are Roman Catholic (the official religion), although Protestant denominations are expanding strongly. Many indigenous communities interweave pre-Columbian and Christian symbols in their religious practices. About half of the people speak Spanish as their first language. Approximately 90% of the children attend primary school but often for a year or less. The literacy rate is low in many rural areas.
The cultural development of what is present-day Bolivia is divided into three distinct periods: pre-Columbian, colonial, and republican. Important archaeological ruins, gold and silver ornaments, stone monuments, ceramics, and weavings remain from several important pre-Columbian cultures. Major ruins include Tiwanaku, Samaipata, Incallajta, and Iskanwaya. The country abounds in other sites that are difficult to reach and have seen little archaeological exploration.

The Spanish brought their own tradition of religious art which, in the hands of local indigenous and mestizo builders and artisans, developed into a rich and distinctive style of architecture, painting, and sculpture known as "Mestizo Baroque." The colonial period produced not only the paintings of Perez de Holguin, Flores, Bitti, and others but also the works of skilled but unknown stonecutters, woodcarvers, goldsmiths, and silversmiths. An important body of native baroque religious music of the colonial period was recovered in recent years and has been performed internationally to wide acclaim since 1994.

Bolivian artists of stature in the 20th century include, among others, Guzman de Rojas, Arturo Borda, Maria Luisa Pacheco, and Marina Nunez del Prado. Bolivia has rich folklore. Its regional folk music is distinctive and varied. The "devil dances" at the annual carnival of Oruro are one of the great folkloric events of South America, as is the lesser known carnival at Tarabuco.

HISTORY

The Andean region probably has been inhabited for some 20,000 years. Beginning about the 2d century B.C., the Tiwanakan culture developed at the southern end of Lake Titicaca. This culture, centered around and named for the great city of Tiwanaku, developed advanced architectural and agricultural techniques before it disappeared around 1200 A.D., probably because of extended drought. Roughly contemporaneous with the Tiwanakan culture, the Moxos in the eastern lowlands and the Mollos north of present-day La Paz also developed advanced agricultural societies that had dissipated by the 13th century of our era. In about 1450, the Quechua-speaking Incas entered the area of modern highland Bolivia and added it to their empire. They controlled the area until the Spanish conquest in 1525.

During most of the Spanish colonial period, this territory was called "Upper Peru" or "Charcas" and was under the authority of the Viceroy of Lima. Local government came from the Audiencia de Charcas located in Chuquisaca (La Plata--modern Sucre). Bolivian silver mines produced much of the Spanish empire's wealth, and Potosi, site of the famed Cerro Rico--"Rich Mountain"--was, for many years, the largest city in the Western Hemisphere. As Spanish royal authority weakened during the Napoleonic wars, sentiment against colonial rule grew. Independence was proclaimed in 1809, but 16 years of struggle followed before the establishment of the republic, named for Simon Bolivar, on August 6, 1825.

Independence did not bring stability. For nearly 60 years, coups and short-lived constitutions dominated Bolivian politics. Bolivia's weakness was demonstrated during the War of the Pacific (1879-83), when it lost its seacoast and the adjoining rich nitrate fields to Chile.

An increase in the world price of silver brought Bolivia a measure of relative prosperity and political stability in the late 1800s. During the early part of the 20th century, tin replaced silver as the country's most important source of wealth. A

succession of governments controlled by the economic and social elites followed laissez-faire capitalist policies through the first third of the century.

Living conditions of the indigenous peoples, who constituted most of the population, remained deplorable. Forced to work under primitive conditions in the mines and in nearly feudal status on large estates, they were denied access to education, economic opportunity, or political participation. Bolivia's defeat by Paraguay in the Chaco War (1932-35) marked a turning point. Great loss of life and territory discredited the traditional ruling classes, while service in the army produced stirrings of political awareness among the indigenous people. From the end of the Chaco War until the 1952 revolution, the emergence of contending ideologies and the demands of new groups convulsed Bolivian politics.

The Nationalist Revolutionary Movement (MNR) emerged as a broadly based party. Denied its victory in the 1951 presidential elections, the MNR led the successful 1952 revolution. Under President Victor Paz Estenssoro, the MNR introduced universal adult suffrage, carried out a sweeping land reform, promoted rural education, and nationalized the country's largest tin mines.

Twelve years of tumultuous rule left the MNR divided. In 1964, a military junta overthrew President Paz Estenssoro at the outset of his third term. The 1969 death of President Rene Barrientos, a former member of the junta elected President in 1966, led to a succession of weak governments. Alarmed by public disorder, the military, the MNR, and others installed Col. (later General) Hugo Banzer Suarez as President in 1971. Banzer ruled with MNR support from 1971 to 1974. Then, impatient with schisms in the coalition, he replaced civilians with members of the armed forces and suspended political activities. The economy grew impressively during most of Banzer's presidency, but human rights violations and eventual fiscal crises undercut his support. He was forced to call elections in 1978, and Bolivia again entered a period of political turmoil.

Elections in 1978, 1979, and 1980 were inconclusive and marked by fraud. There were coups, counter-coups, and caretaker governments. In 1980, Gen. Luis Garcia Meza carried out a ruthless and violent coup. His government was notorious for human rights abuses, narcotics trafficking, and economic mismanagement. Later convicted in absentia for crimes, including murder, Garcia Meza was extradited from Brazil and began serving a 30-year sentence in 1995.

After a military rebellion forced out Garcia Meza in 1981, three other military governments in 14 months struggled with Bolivia's growing problems. Unrest forced the military to convoke the Congress elected in 1980 and allow it to choose a new chief executive. In October 1982--22 years after the end of his first term of office (1956-60)--Hernan Siles Zuazo again became President. Severe social tension, exacerbated by economic mismanagement and weak leadership, forced him to call early elections and relinquish power a year before the end of his constitutional term.

In the 1985 elections, the Nationalist Democratic Action Party (ADN) of Gen. Banzer won a plurality of the popular vote (33%), followed by former President Paz Estenssoro's MNR (30%) and former Vice President Jaime Paz Zamora's Movement of the Revolutionary Left (MIR, at 10%). But in the congressional run-off, the MIR sided with MNR, and Paz Estenssoro was chosen for the fourth time as president. When he took office in 1985, he faced a staggering economic crisis. Economic output and exports had been declining for several years. Hyperinflation had reached an annual rate of 24,000%. Social unrest, chronic strikes, and unchecked drug trafficking were widespread.

In 4 years, Paz Estenssoro's administration achieved economic and social stability. The military stayed out of politics, and all major political parties publicly and institutionally committed themselves to democracy. Human rights violations, which badly tainted some governments earlier in the decade, were not a problem. However, Paz Estenssoro's remarkable accomplishments were not won without sacrifice. The collapse of tin prices in October 1985, coming just as the government was moving to reassert its control of the mismanaged state mining enterprise, forced the government to lay off over 20,000 miners. The highly successful shock treatment that restored Bolivia's financial system also led to some unrest and temporary social dislocation.

Although the MNR list headed by Gonzalo Sanchez de Lozada finished first in the 1989 elections (23%), no candidate received a majority of popular votes and so in accordance with the constitution, a congressional vote determined who would be president. The Patriotic Accord (AP) coalition between Gen. Banzer's ADN and Jaime Paz Zamora's MIR, the second- and third-place finishers (at 22.7% and 19.6%, respectively), won out. Paz Zamora assumed the presidency and the MIR took half the ministries. Banzer's center-right ADN took control of the National Political Council (CONAP) and the other ministries.

Paz Zamora was a moderate, center-left president whose political pragmatism in office outweighed his Marxist origins. Having seen the destructive hyperinflation of the Siles Zuazo Administration, he continued the neoliberal economic reforms begun by Paz Estenssoro. Paz Zamora took a fairly hard line against domestic terrorism, personally ordering the December 1990 attack on terrorists of the Nestor Paz Zamora Committee (CNPZ--named after his brother who died in the 1970 Teoponte insurgency) and authorizing the early 1992 crackdown against the Tupac Katari Guerrilla Army (EGTK).

Paz Zamora's government was less decisive against narcotics trafficking. It had a mixed record in confronting narco-traffickers and made little progress in confronting illegal coca cultivation. In the mid-1990s, Paz Zamora and his government were investigated by the Bolivian Congress for ties to narco-traffickers. The 1993 elections continued the tradition of open, honest elections and peaceful democratic transitions of power. The MNR defeated the ADN/MIR coalition by a 33% to 20% margin, and the MNR's Gonzalo "Goni" Sanchez de Lozada was selected as president by an MNR/MBL/UCS coalition in the Congress.

Sanchez de Lozada pursued an aggressive economic and social reform agenda. He relied heavily on successful entrepreneurs-turned-politicians like himself and on fellow veterans of the Paz Estenssoro administration (during which Sanchez de Lozada was Minister for Planning). The most dramatic change undertaken by the Sanchez de Lozada government was the "capitalization" program, under which investors, typically foreign, acquired 50% ownership and management control of public enterprises, such as the state oil corporation, telecommunications system, airlines, railroads, and electric utilities in return for agreed upon capital investments. The reforms and economic restructuring were strongly opposed by certain segments of society, which instigated frequent and sometimes violent protests, particularly in La Paz and the Chapare coca-growing region, from 1994 through 1996. The Sanchez de Lozada government pursued a policy of offering monetary compensation for voluntary eradication of illegal coca by its growers in the Chapare region. The policy produced little net reduction in coca, and in the mid-1990s Bolivia accounted for about one-third of the world's coca going into cocaine.

In the 1997 elections, Gen. Hugo Banzer, leader of the ADN, won 22% of the vote, while the MNR candidate won 18%. Gen. Banzer formed a coalition of the ADN, MIR, UCS, and CONDEPA parties which held a majority of seats in the Bolivian Congress. The Congress elected him as president and he was inaugurated on August 6, 1997.

The Banzer government basically continued the free market and privatization policies of its predecessor, and the relatively robust economic growth of the mid-1990s continued until about the third year of its term in office. After that, regional, global and domestic factors contributed to a decline in economic growth. Job creation remained limited throughout this period and the public perceived a significant amount of public sector corruption. Both factors contributed to increasing social protests during the second half of Banzer's term.

At the outset of his government, President Banzer launched a policy of using special police units to physically eradicate the illegal coca of the Chapare region. The policy produced a sudden and dramatic 4-year decline in Bolivia's illegal coca crop, to the point that Bolivia became a relatively small supplier of coca for cocaine. The MIR of Jaime Paz Zamora remained a coalition partner throughout the Banzer government, supporting this policy (called the Dignity Plan).

On August 6, 2001, Banzer resigned from office after being diagnosed with cancer. He died less than a year later. Banzer's U.S.-educated Vice President, Jorge Quiroga, completed the final year of the term. Quiroga was constitutionally prohibited from running for national office in 2002 but could do so in 2007.

In the June 2002 national elections, former President Gonzalo Sanchez de Lozada (MNR) placed first with 22.5% of the vote, followed by illegal-coca agitator Evo Morales (Movement Toward Socialism, MAS) with 20.9%. Morales edged out populist candidate Manfred Reyes Villa of the New Republican Force (NFR) by just 700 votes nationwide, earning a spot in the congressional run-off against Sanchez de Lozada on August 4, 2002.

A July agreement between the MNR and the fourth-place MIR, which had again been led in the election by former president Paz Zamora, virtually ensured the election of Sanchez de Lozada in the congressional run-off, and on August 6 he was sworn in for the second time. The MNR platform featured three overarching objectives: economic reactivation (and job creation), anti-corruption, and social inclusion.

A 4-year economic recession, tight fiscal situation, and longstanding ethnic tensions created in February 2003 a police revolt that nearly toppled the government of President Sanchez de Lozada; several days of unrest left more than 30 persons dead. The government stayed in power but remained unpopular. Wide-spread protests broke out in October and revealed deep dissatisfaction with the government. Approximately 80 persons died during the demonstrations which led the President Sanchez de Lozada to resign from office on October 17. In a constitutional transfer of power, Vice President Carlos Mesa assumed the Presidency and promised to hold a binding referendum on the export of Bolivian natural gas. The referendum took place on July 18, and Bolivians voted overwhelmingly in favor of development of the nation’s hydrocarbons resources. Mesa will detail the government’s development plans in legislation to be introduced to Congress. Mesa enjoys popularity with the Bolivian public, but he faces the same difficulties-social divisions, an anti-democratic, radical opposition, and an ongoing fiscal deficit-as the previous administration.

GOVERNMENT AND POLITICAL CONDITIONS

The 1967 constitution, revised in 1994, provides for balanced executive, legislative, and judicial powers. The traditionally strong executive, however, tends to overshadow the Congress, whose role is generally limited to debating and approving

legislation initiated by the executive. The judiciary, consisting of the Supreme Court and departmental and lower courts, has long been riddled with corruption and inefficiency. Through revisions to the constitution in 1994, and subsequent laws, the government has initiated potentially far-reaching reforms in the judicial system and processes.

Bolivia's nine departments received greater autonomy under the Administrative Decentralization law of 1995, although principal departmental officials are still appointed by the central government. Bolivian cities and towns are governed by directly elected mayors and councils. Municipal elections are slated for December 2004, with councils elected to 5-year terms. The Popular Participation Law of April 1994, which distributes a significant portion of national revenues to municipalities for discretionary use, has enabled previously neglected communities to make striking improvements in their facilities and services.

Principal Government Officials
President-Carlos MESA Gisbert
Vice President--Vacant
Minister of Foreign Affairs-Juan Ignacio SILES del Valle
Ambassador to the U.S.-Jaime APARICIO Otero
Ambassador to the UN-Erwin ORTIZ Gandarillas
Ambassador to the OAS-Maria Tamayo
Bolivia maintains an embassy in the United States at 3014 Massachusetts Ave., NW, Washington, DC 20008 (tel. 202-483-4410); consulates in Los Angeles, San Francisco, Miami, New Orleans, and New York; and honorary consulates in Atlanta, Chicago, Cincinnati, Houston, Mobile, Seattle, St. Louis, and San Juan.

ECONOMY
Bolivia's 2002 gross domestic product (GDP) totaled $7.9 billion. Economic growth is about 2.5% a year and inflation expected to be between 3% and 4% in 2002 (it was under 1% in 2001).

Since 1985, the Government of Bolivia has implemented a far-reaching program of macroeconomic stabilization and structural reform aimed at maintaining price stability, creating conditions for sustained growth, and alleviating poverty. A major reform of the customs service in recent years has significantly improved transparency in this area. The most important structural changes in the Bolivian economy have involved the capitalization of numerous public sector enterprises. (Capitalization in the Bolivian context is a form of privatization where investors acquire a 50% share and management control of public enterprises by agreeing to invest directly into the enterprise over several years rather than paying cash to the government).

Parallel legislative reforms have locked into place market-oriented policies, especially in the hydrocarbon and telecommunication sectors, that have encouraged private investment. Foreign investors are accorded national treatment, and foreign ownership of companies enjoys virtually no restrictions in Bolivia. While the capitalization program was successful in vastly boosting foreign direct investment (FDI) in Bolivia ($1.7 billion in stock during 1996-2002), FDI flows have subsided in recent years as investors complete their capitalization contract obligations.

In 1996, three units of the Bolivian state oil corporation (YPFB) involved in hydrocarbon exploration, production, and transportation were capitalized, facilitating the construction of a gas pipeline to Brazil. The government has a long-term sales agreement to sell natural gas to Brazil through 2019. The Brazil pipeline carried about 12 million cubic meters per day (cmd) in 2002. Bolivia has the second-largest natural gas reserves in South America, and its current domestic use and exports to Brazil account for just a small portion of its potential production. The government expects to hold a binding referendum in 2004 on plans to export natural gas. Wide-spread opposition to exporting gas through Chile touched off protests that led to the resignation of President Sanchez de Lozada in October 2003.

In April 2000, violent protests over plans to privatize the water utility in the city of Cochabamba led to nationwide disturbances. The government eventually cancelled the contract without compensation to the investors, returning the utility to public control. The foreign investors in this project continue to pursue an investment dispute case against Bolivia for its actions.

Bolivian exports were $1.3 billion in 2002, from a low of $652 million in 1991. Imports were $1.7 billion in 2002. Bolivian tariffs are a uniformly low 10%, with capital equipment charged only 5%. Bolivia's trade deficit was $460 million in 2002.

Bolivia's trade with neighboring countries is growing, in part because of several regional preferential trade agreements it has negotiated. Bolivia is a member of the Andean Community and enjoys nominally free trade with other member countries (Peru, Ecuador, Colombia, and Venezuela). Bolivia began to implement an association agreement with MERCOSUR (Southern Cone Common Market) in March 1997. The agreement provides for the gradual creation of a free trade area covering at least 80% of the trade between the parties over a 10-year period, though economic crises in the region have derailed progress at integration. The U.S. Andean Trade Preference and Drug Enforcement Act (ATPDEA)

allows numerous Bolivian products to enter the United States free of duty on a unilateral basis, including alpaca and llama products and, subject to a quota, cotton textiles.

The United States remains Bolivia's largest trading partner. In 2002, the United States exported $283 million of merchandise to Bolivia and imported $162 million. Bolivia's major exports to the United States are tin, gold, jewelry, and wood products. Its major imports from the United States are computers, vehicles, wheat, and machinery. A Bilateral Investment Treaty between the United States and Bolivia came into effect in 2001.
Agriculture accounts for roughly 15% of Bolivia's GDP. The amount of land cultivated by modern farming techniques is increasing rapidly in the Santa Cruz area, where weather allows for two crops a year. Soybeans are the major cash crop, sold into the Andean Community market. The extraction of minerals and hydrocarbons accounts for another 10% of GDP and manufacturing less than 17%.

The Government of Bolivia remains heavily dependent on foreign assistance to finance development projects. At the end of 2002, the government owed $4.5 billion to its foreign creditors, with $1.6 billion of this amount owed to other governments and most of the balance owed to multilateral development banks. Most payments to other governments have been rescheduled on several occasions since 1987 through the Paris Club mechanism. External creditors have been willing to do this because the Bolivian Government has generally achieved the monetary and fiscal targets set by IMF programs since 1987, though economic crises in recent years have undercut Bolivia's normally good track record. Rescheduling agreements granted by the Paris Club have allowed the individual creditor countries to apply very soft terms to the rescheduled debt. As a result, some countries have forgiven substantial amounts of Bolivia's bilateral debt. The U.S. Government reached an agreement at the Paris Club meeting in December 1995 that reduced by 67% Bolivia's existing debt stock. The Bolivian Government continues to pay its debts to the multilateral development banks on time Bolivia is a beneficiary of the Heavily Indebted Poor Countries (HIPC) and Enhanced HIPC debt relief programs, which by agreement restricts Bolivia's access to new soft loans. Bolivia was one of three countries in the Western Hemisphere selected for eligibility for the Millennium Challenge Account and is participating as an observer in FTA negotiations.

FOREIGN RELATIONS
Bolivia traditionally has maintained normal diplomatic relations with all hemispheric states except Chile. Relations with Chile, strained since Bolivia's defeat in the War of the Pacific (1879-83) and its loss of the coastal province of Atacama, were severed from 1962 to 1975 in a dispute over the use of the waters of the Lauca River. Relations were resumed in 1975 but broken again in 1978 over the inability of the two countries to reach an agreement that might have granted Bolivia sovereign access to the sea. They are maintained today at below the ambassadorial level. In the 1960s, relations with Cuba were broken following Castro's rise to power but resumed under the Paz Estenssoro administration in 1985.

Bolivia pursues a foreign policy with a heavy economic component. Bolivia has become more active in the Organization of American States (OAS), the Rio Group, and in MERCOSUR, with which it signed an association agreement in 1996. Bolivia promotes its policies on sustainable development and the empowerment of indigenous people.

Bolivia is a member of the UN and some of its specialized agencies and related programs, OAS, Andean Community, INTELSAT, Non-Aligned Movement, International Parliamentary Union, Latin American Integration Association (ALADI), World Trade Organization; Rio Treaty, Rio Group, Amazon Pact, and MERCOSUR. As an outgrowth of the 1994 Summit of the Americas, Bolivia hosted a hemispheric summit conference on sustainable development in December 1996.

U.S.-BOLIVIAN RELATIONS
Relations between the United States and Bolivia are cordial and cooperative. Development assistance from the United States to Bolivia dates from the 1940s, and the U.S. remains a major partner for economic development , improved health, democracy, and the environment. In 1991, the U.S. Government forgave all of the debt owed by Bolivia to the U.S. Agency for International Development ($341 million) as well as 80% (or $31 million) of the amount owed to the Department of Agriculture for food assistance. The United States also has been a strong supporter of forgiveness of Bolivia's multilateral debt under the Heavily Indebted Poor Countries (HIPC) initiatives.

The control of illegal narcotics is a major issue in the bilateral relationship. For centuries, Bolivian coca leaf has been chewed and used in traditional rituals, but in the 1970s and 1980s the emergence of the drug trade led to a rapid expansion of coca cultivation used to make cocaine, particularly in the tropical Chapare region in the Department of Cochabamba (not a traditional coca growing area). In 1988, a new law explicitly recognized that coca grown in the Chapare was not required to meet traditional demand for chewing or for tea, and the law called for the eradication, over time, of all "excess" coca. To accomplish that goal, successive Bolivian

Governments instituted programs offering cash compensation to coca farmers who eradicated voluntarily, and the government began developing and promoting suitable alternative crops for the peasants to grow. Beginning in 1997, the government launched a more effective policy of physically uprooting the illegal coca plants, and Bolivia's illegal coca production fell over the next 4 years by as much as 90%. The "forced" eradication remains controversial, however, with well-organized coca growers unions blocking roads, harassing police eradicators, and occasionally using lethal violence to

protest the policy. Government security forces have used lethal force on several occasions in response to the protests, raising human rights concerns. The United States also heavily supports parallel efforts to interdict the smuggling of coca leaves, cocaine, and precursor chemicals. The U.S. Government has, in large measure, financed the alternative development program and the police effort.

In 1996, the United States and Bolivia ratified a more effective extradition treaty that made it easier for both nations to more effectively prosecute drug traffickers and other criminals. President Mesa has continued counter-narcotics programs.

U.S. Embassy Functions
In addition to working closely with Bolivian Government officials to strengthen our bilateral relationship, the U.S. Embassy provides a wide range of services to U.S. citizens and business. Political and economic officers deal directly with the Bolivian Government in advancing U.S. interests, but also are available to provide information to American citizens on general conditions in the country. Commercial officers work closely with dozens of U.S. companies that operate direct subsidiaries in the country. These officers provide information on Bolivian trade and industry regulations and administer several programs intended to aid U.S. companies starting or maintaining business ventures in Bolivia.

The consular section of the embassy provides vital services to the estimated 17,000-20,000 American citizens resident in Bolivia. Among other services, the consular section assists Americans who wish to participate in U.S. elections while abroad and provides U.S. tax information. Some 40,000 U.S. citizens visit annually. The consular section offers passport and emergency services to these tourists as needed during their stay in Bolivia.

Principal U.S. Embassy Officials
Ambassador--David Greenlee
Deputy Chief of Mission--David Robinson
Management Counselor--Vacant
Political/Economic/Commercial Officer—Todd Chapman
Director, Narcotics Affairs-Carol Fuller
Public Affairs Officer--Thomas Genton
Consular Chief--David Dreher
Defense Attaché--Col. Edward Holland
Commander, U.S. Military Group--Col. Daniel Barreto
Director, USAID Mission--Liliana Ayalde
DEA Country Attaché--Thomas Telles
Peace Corps Director--Howard Lyon

The U.S. Embassy is located at Avenida Arce #2780, La Paz (tel.591-2-2430251). There are consular agents in the cities of Santa Cruz (tel. 591-3 -3-330725) and Cochabamba (tel. 591-4 4256714).

Other Contact Information
U.S. Department of Commerce
International Trade Administration
Trade Information Center
14th and Constitution Avenue, NW
Washington, DC 20230
Tel: 800-USA-TRADE
Home Page: http://www.ita.doc.gov

American Chamber of Commerce in Bolivia
Edificio Hilda, Oficina 3
Avenida 6 de Agosto
Apartado Postal 8268
La Paz, Bolivia
Tel: (591) 2-43-25-73
Fax: (591) 2-43-24-72

For the most current version of this Note, see Background Notes A-Z.

BACK TO TOP

EXHIBIT 45

MEETING OF AGREEMENT
MINUTES

At 5:00 p.m. on April 29, 2008, a meeting was held in the library at the Government Palace in the city of La Paz with representatives from the following institutions:

1. The Asociación de Familiares de Fallecidos y Caídos en Septiembre y Octubre de 2003 por la Defensa del Gas [Association of Fallen Family Members Killed in the Gas War in September and October of 2003] (ASOFAC-DG)
2. The Asociación de Heridos y Afectados de Septiembre y Octubre de 2003 por los Recursos Naturales [Association of [Persons] Wounded and Affected by the Gas War] (AHASOC-RN)
3. The Comité Impulsor del Juicio de Responsabilidades a Gonzalo Sánchez de Lozada y sus Colaboradores [Committee Behind the Trial for Misfeasance in Office of Gonzalo Sánchez de Lozada and his Collaborators]
4. The Deputy Minister of Coordination with Social Movements and Civil Society of the Ministry of the Presidency
5. A representative of the Ministry of Justice
6. A representative of the Ministry of Health
7. A representative of the Ministry of Education
8. A representative of the Office of the Ombudsman

Deputy Minister of Coordination with Social Movements and Civil Society, Dr. Sacha Llorenti, chaired the meeting. He took the floor to read the Draft Bill for the Victims of the Events of September and October 2003, which was the result of several work meetings.

A consensus regarding the Draft Bill for the Victims of the Events of September and October 2003 has now been reached with the associations representing the victims of the events of September and October of 2003; this demonstrates the Government's willingness to expedite enactment of this law, in the interest of the victims.

After the draft bill had been read, representatives of the Associations, Justino Antonio Quispe (President of AHASOC-RN) and Juan Patricio Quispe (President of ASOFAC-DG) took the floor, and, having reviewed the draft bill, expressed their agreement with and approval of each one of its articles.

The Draft Bill for the Victims of the Events of September and October 2003 was analyzed extensively and consensus was reached among the participating associations and the representatives of the Executive Branch. An agreement was reached regarding the core content of this draft bill and the meeting was adjourned.

The draft bill shall be put through the proper channels, as required by law.

The representatives of the Associations and the representatives of the Executive Branch have signed below as a sign of agreement.

[Signature]
Dr. Sacha Llorenti
DEPUTY MINISTER, VCMSSC

[Signature]
Juan Patricio Quispe
President, ASOFAC-DG

[Signature]
Eloy Rojas
Vice President, ASOFAC-DG

[Signature]
Juana Valencia
Grassroots Representative
ASOFAC-DG

[Signature]
Patricia Arriata
Grassroots Representative
ASOFAC-DG

[Signature]
Jesús Soliz
COMMITTEE BEHIND THE TRIAL
FOR MISFEASANCE IN OFFICE

[Signature]
Dr. Pamela Delgadillo
COMMITTEE BEHIND THE TRIAL
FOR MISFEASANCE IN OFFICE

[Signature]
Justino A. Quispe
President, AHASOC-RN

[Signature]
Germán Guachalla
Grassroots Representative
AHASOC-RN

[Signature]
Elana Cullagua
Vice President, AHASOC-RN

[Signature]
Fernando Nina
Grassroots Representative
AHASOC-RN

[Signature]
Oswaldo Freddy Ávalos
Legal Advisor, AHASOC-RN

[Signature]
Dr. Fanny Segurondo
Representative, Min. of Education and Culture

[Signature]
Dr. Claudia Gutiérrez
Representative, Office of the Ombudsman

[Signature]
Dr. Victor Lima
Representative, Min. of Justice

[Signature]
Dr. Juan Carlos Meneses
Representative, Min. of Health

ACTA DE REUNIÓN DE CONFORMIDAD

En la ciudad de La Paz, del dia 29 de abril de 2008, en las instalaciones de la Biblioteca del Palacio de Gobierno, a horas 17:00 de la tarde, se realizó la reunión con los representantes de las siguientes instituciones:

1. Asociación de Familiares de Fallecidos y Caídos en Septiembre y Octubre de 2003, por la Defensa del Gas. (ASOFAC-DG)
2. Asociación de Heridos y Afectados de Septiembre y Octubre de 2003, por los Recursos Naturales (AHASOC-RN).
3. Comité Impulsor del Juicio de Responsabilidades a Gonzalo Sánchez de Lozada y sus Colaboradores.
4. Viceministro de Coordinación con Movimientos Sociales y Sociedad Civil del Ministerio de la Presidencia.
5. Representante del Ministerio de Justicia,
6. Representante del Ministerio de Salud,
7. Representante del Ministerio de Educación
8. Representante del Defensor del Pueblo.

La reunión estuvo presidida por el Viceministro de Coordinación con Movimientos Sociales y Sociedad Civil Dr. Sacha Llorenti, quien tomó la Palabra para dar lectura del **anteproyecto de Ley para las Victimas de los Sucesos de Septiembre y Octubre 2003**, producto de varias reuniones de trabajo.

A la fecha, el **anteproyecto de Ley para las Victimas de los Sucesos de Septiembre y Octubre 2003**, se ha consensuado con las Asociaciones de Victimas de los sucesos de Septiembre y Octubre de 2003, demostrando la voluntad que tiene el Gobierno de agilizar la promulgación de esta ley en beneficio de las víctimas.

Concluida la lectura del anteproyecto de Ley, los representantes de las Asociaciones Justino Antonio Quispe (Presidente de AHASOC-RN), Juan Patricio Quispe (Presidente de ASOFAC-DG) tomaron la palabra y tras un análisis del anteproyecto de Ley manifestaron su acuerdo y conformidad con cada uno de los artículos del mencionado anteproyecto.

El Anteproyecto de Ley para las Víctimas de los Sucesos de Septiembre y Octubre 2003, fue analizado ampliamente, y consensuado entre las asociaciones participantes y los representantes del Poder Ejecutivo, **llegando a un acuerdo en cuanto al contenido central del citado anteproyecto de ley,** con lo que terminó la reunión.

El anteproyecto de ley pasará por distintas instancias previstas por la norma.

Firmando al pie los representantes de las Asociaciones y los representantes del Poder Ejecutivo, en señal de conformidad.

Dr. Sacha Llorenti
VICEMINISTRO VCMSSC

Juan Patricio Quispe
Presidente ASOFAC-DG

Eloy Rojas
Vicepresidente ASOFAC-DG

Juana Valencia
Representantes de Base
ASOFAC-DG

Patricia Arratia
Representantes de Base ASOFAC-DG

Jesús Soliz
COMITÉ IMPULSOR DEL JUICIO DE RESPONSABILIDADES.

Dra. Pamela Delgadillo
COMITÉ IMPULSOR DEL JUICIO DE RESPONSABILIDADES.

Justino A. Quispe
Presidente AHASOC-RN

Germán Guachalla
Representante de Base
AHASOC-RN

Elena Cullagua
Vicepresidenta AHASOC-RN

Fernando Nina
Representante de Base
AHASOC-RN

Oswaldo Freddy Ávalos
Asesor Legal AHASOC-RN

Dra. Fanny Segurondo
Representante del Min. Educación y Culturas

Dra. Claudia Gutiérrez
Representante Defensor del Pueblo

Dr. Víctor Lima
Representante Min. de Justicia

Dr. Juan Carlos Meneses
Representante Min. de Salud

EXHIBIT 46

[Seal]
Bolivia
Office of the President of the Republic

La Paz, June 11, 2008
M.P.R. – D.G.G. Pl. No. 117/2008

[Receipt Stamp:
Office of the President of the National Congress
Office of the Vice President of the Republic
June 11, 2008
Correspondence
[Illegible]

To the Honorable Álvaro García Linera
President of the National Congress
City.-

Dear Mr. President [of the National Congress],

In accordance with the powers granted [to the legislature] by Article 59(1) of the National Constitution, I hereby send you the "Draft Law for Victims of the Events of February, September and October of 2003."

I would request that the Honorable National Representatives approve the aforementioned Draft Law in keeping with their constitutional responsibilities so it may enter into force.

I avail myself of this opportunity to renew to you, Mr. President of the Honorable National Congress, my most distinguished considerations.

[Signature]

OCA/pma
Attached: The aforementioned

Palacio Quemado

Palace of Government – Telephone/fax 2282321 – P.O. Box 5278 – La Paz – Bolivia
Web page: www.presidencia.gov.bo - e-mail : correo@presidencia.gov.bo

BOLIVIA
PRESIDENCIA DE LA REPUBLICA

La Paz, junio 11 de 2008
M.P.R. - D.G.G.Pl. No. 117/2008

PRESIDENCIA DEL H. CONGRESO NACIONAL
VICEPRESIDENCIA DE LA REPUBLICA
11 JUN 2008
CORRESPONDENCIA
HORA 2220 FOJAS 3 ANEXO

Al H. Señor
Dn. Álvaro García Linera
PRESIDENTE DEL H. CONGRESO NACIONAL
Presente.-

H. Señor Presidente:

En cumplimiento al artículo 59, atribución 1ra de la Constitución Política del Estado, remito a usted el **"PROYECTO DE LEY PARA LAS VÍCTIMAS DE LOS SUCESOS DE FEBRERO, SEPTIEMBRE Y OCTUBRE DE 2003".**

Para que el citado Proyecto de Ley, tenga plena vigencia solicito a los Honorables Representantes Nacionales, la aprobación constitucional pertinente.

Hago propicia la ocasión, para reiterar al Señor Presidente del Honorable Congreso Nacional, las consideraciones más distinguidas.

OCA/pmm
Adjunto citado.

PALACIO QUEMADO

EXHIBIT 47

La Razón

LA RAZÓN – Digital Edition—Sunday, July 13, 2008 - Section: Security

Law for October 2003 Victims Passed

DEPUTIES

Victims of the events of September and October 2003 will receive compensation of up to 144,375 bolivianos (Bs) if they are either the children or parents of those who were killed, according to a bill approved unanimously by [Bolivia's] Chamber of Deputies (lower house).

In El Alto, President Evo Morales asked the Senate to streamline passage of that law.

The bill passed provides for a single payment, in addition to educational support and public recognition in the cities and towns where the violent events took place.

The amounts to be paid will vary: 250 national minimum wage units (Bs 144,375) for the relatives of those killed; between 111 and 220 minimum wage units (Bs 64,102.50 and Bs 127,050) for those who suffered critical injuries; and between 5 and 110 minimum wage units (Bs 2,887.50 and Bs 63,525) for those who suffered serious or minor injuries.

In the case of those who were killed or injured who were or are currently members of the Armed Forces or National Police, up to the amount necessary to include what is provided for by regulation shall be covered, based on the degree of disability determined. ANF

Aprueban ley para víctimas de octubre del 2003

Las víctimas de los hechos de septiembre y octubre del 2003 recibirán una indemnización de hasta Bs 144.375 en el caso de los hijos y padres de los fallecidos, según el proyecto de ley que la Cámara de Diputados aprobó por unanimidad.

En El Alto, el presidente Evo Morales pidió al Senado agilizar la aprobación de dicha ley.

El proyecto aprobado establece que se dará un pago único además de apoyo académico y reconocimiento público en los municipios donde se produjeron los violentos hechos.

Los montos que se pagarán serán variados: 250 salarios mínimos nacionales (Bs 144.375) para los herederos de los fallecidos; entre 111 y 220 salarios (Bs 64.102,50 y 127.050) para los heridos gravísimos; y para los graves y leves entre 5 y 110 salarios mínimos (Bs 2.887,50 y 63.525).

En el caso de los fallecidos y heridos que hayan sido o son parte de las Fuerzas Armadas y la Policía Nacional, se cubrirá el monto que falte hasta llegar a lo que estipula la norma en función del grado de incapacidad calificada. ANF

cerrar

EXHIBIT 48

[seal:]
THE REPUBLIC OF BOLIVIA
THE HONORABLE HOUSE OF REPRESENTATIVES

[stamp:]
THE HONORABLE NATIONAL SENATE
RECEIVED
15 JULY 2008
[handwritten:] *3:19*
SIGNATURE
SPECIAL WINDOW
[signature]
[handwritten:] *12:45*

P-2108/2008
La Paz, July 9th, 2008

Dear Sir:
Oscar Ortiz Antelo
PRESIDENT OF THE HONORABLE NATIONAL SENATE
Delivered by hand.-

Mister President:

I hereby present Bill No. 1005/2008, which grants the benefit of a single payment as well as academic assistance and public recognition of the victims of the events of February, September, and October, 2003, before the Honorable National Senate for purposes of constitutional review pursuant with the provisions of Article 72 of the Political Constitution of the State.

On this occasion I send you my most distinguished regards.

[signature]
Edmundo Novillo Aguilar
PRESIDENT
THE HONORABLE HOUSE OF REPRESENTATIVES

Mefn/wsc

[seal]
THE REPUBLIC OF BOLIVIA
THE HONORABLE HOUSE OF REPRESENTATIVES

BILL No. 1005/2008

THE HONORABLE NATIONAL CONGRESS,

HEREBY ENACTS:

THE LAW FOR THE VICTIMS OF THE EVENTS OF FEBRUARY, SEPTEMBER, AND OCTOBER, 2003

ARTICLE 1 (Purpose). The purpose of this Law is to grant the benefit of a single payment, as well as academic assistance and public acknowledgment of the victims of the events of February, September, and October, 2003.

ARTICLE 2 (Scope of the Single Payment).

I. The benefit of the single payment applies to those persons with very severe, severe, and minor injuries, as well as the heirs [and family members] up to the first level of consanguinity (children, spouse, and parents) of individuals deceased in the events of February, September, and October, 2003.

II. In the event that the deceased or injured individuals were or are members of the Armed Forces or of the National Police and have received indemnity less than that established in this Law, the remaining amount shall be paid up to the amount that corresponds to them in terms of the level of qualified disability.

ARTICLE 3 (Release of Academic Expenses). Those individuals that were injured, and the heirs of those deceased, in the events of February, September, and October, 2003, are hereby released from paying tuition and the corresponding amounts to obtain a Bachelor's Degree in Public Universities, and likewise, they shall receive a meal allowance for as long as their studies last in the event that they are regular students of these institutions.

ARTICLE 4 (Public Acknowledgment).

I. Commemorative activities shall be carried out in the Municipalities where any victims resulted from the events of February, September, and October, 2003, such as the construction of public squares and naming streets, schools, etc. in honor of the victims.

II. The Ministry of Education and Culture shall include the events of February, September, and October, 2003 in the civic studies program starting from the 2009 school year.

[seal]
THE REPUBLIC OF BOLIVIA
THE HONORABLE HOUSE OF REPRESENTATIVES

ARTICLE 5 (Exclusions). The benefits indicated herein do not in any way release those individuals who have been identified as perpetrators or persons responsible in proceedings held before Bolivian or foreign authorities or before International Tribunals from liability for criminal, civil, or any other nature of responsibility for the events referred to in Article 1 herein liability.

ARTICLE 6 (Scale of the Single Payment). The Bolivian State agrees to make a single payment to the victims of the events of February, September, and October, 2003 according to the following classification:

a) A single payment equivalent to two hundred fifty national minimum salaries to the heirs of the deceased.

b) A single payment equivalent to between one hundred eleven to two hundred twenty national minimum salaries to those with very severe injuries.

c) A single payment equivalent to between five to one hundred ten national minimum salaries to those with severe and minor injuries.

ARTICLE 7 (Requirements). The beneficiaries of the single payment must present the original or a certified copy of the following documentation:

Deceased Individuals:

a) Identity must be accredited by means of an Identification Card, The National Sole Registry [of Taxpayers], Military Identification Card, or Passport.

b) Sworn Statement of Heirs pursuant to hereditary succession.

c) Death Certificate.

d) Autopsy Records or Forensic Medical Certificate in the event that the Death Certificate does not establish the cause of death.

Injured Individuals:

a) Identity must be accredited by means of an Identification Card, The National Sole Registry [of Taxpayers], Military Identification Card, or Passport.

b) Forensic Medical Certificate from the date of the events.

c) Medical Certificate or Hospital Records and Medical Report.

ARTICLE 8 (Free Process). The qualification process provided for herein is totally free of charge.

[seal]
THE REPUBLIC OF BOLIVIA
THE HONORABLE HOUSE OF REPRESENTATIVES

ARTICLE 9 (Term of Presentation).

I. The beneficiaries of this law must carry out the corresponding process by presenting the documentation indicated in Articles 7 and 10 herein, either in person or through notarized power of attorney, within a term not greater than thirty (30) days starting from the establishment of the Qualification Commission.

II. In the event that evidence of criminal acts is discovered in the review of the documentation presented by potential beneficiaries, said event shall be referred to the Public Prosecutor's Office for investigation purposes.

ARTICLE 10 (Disability Qualification Process).

I. The Health and Sports Ministry shall be responsible for the disability qualification process, and likewise, it shall establish the Commissions indicated in subsections a) and d) of Paragraph III of this Article.

II. In order to establish the days of disability and the disabilities of those persons with very severe, severe, and minor injuries, the documents indicated in Article 7 are established as the basis for the qualification, in addition to those other documents that the applicant considers appropriate in order to establish his or her standing as a victim of the events of February, September, and October, 2003.

III. The qualification process is the following:

a) For the purpose of qualifying the injuries of those persons with very severe injuries, a new medical evaluation shall be carried out by a Commission comprised by the Health and Sports Ministry and the National Occupational Health Institute – *INSO*, which shall determine the degree of disability in accordance with the hospital records and medical reports indicated herein, as well as an updated supplementary medical evaluation.

b) For the purposes of the single payment established herein, the evaluation of the level of disability shall take the technical criteria indicated in subsection a) of the Permanent Partial Disability clause from Appendix No. 1 and lists A and B of Appendix No. 2 of the Social Security Code (Disability Evaluation List) and the applicable parts of subsections 2), 3), and 4) of Article 270 of the Criminal Code as a reference.

c) For the purpose of evaluating those persons with very severe injuries, a preliminary list shall be prepared that shall indicate the level of disability of each one of the victims.

d) In the event that a person with very severe injuries declare his or her disagreement with the assigned level of disability, he or she may make a written request that includes the grounds and evidence that he or she considers necessary for its reconsideration, before a medical board which shall

[include] a representative of the Occupational Health Institute – *INSO*, and a representative of the Medical College.

e) Those people with severe or minor injuries shall not require a new medical evaluation and shall be subject to the provisions of Paragraph II herein. The Commission comprised by the Health and Sports Ministry and the National Occupational Health Institute – *INSO*, shall be responsible for evaluating the documentation presented.

f) For the purposes of qualifying the victims, those people with severe and minor injuries shall be considered those who are disabled for one (1) to one hundred eighty (180) days.

g) After completing the evaluation of the documents presented by those people with severe or minor injuries, a preliminary list shall be prepared in which the degree of disability shall be registered.

h) In the event that the person with severe or minor injuries declares his or her disagreement with the assigned level of disability, he or she may make a written petition, which includes the grounds and evidence for its reconsideration, before the institution indicated in subsection d) of this Section.

i) Once the evaluation of those people with very severe, severe, or minor injuries has been completed, the Ministry of Health and Sports shall prepare the Technical Report for each injured person in which it qualifies the level of disability of each beneficiary for the assigned single payment, and finally, it shall send said documentation to the Ministry of Justice.

j) All requests for reconsideration of the assigned qualification shall have a term of five (5) business days starting from the publication of the preliminary lists.

ARTICLE 11 (Official Registration).

I. The Official Registration shall be carried out by the Ministry of Justice under the following procedure:

a) The Ministry of Justice may issue a consultation, clarification, or observation of the reports issued by the Ministry of Health and Sports, both to this Ministry or to the Commissions referred to in the foregoing Article, for the purpose of verifying that the indicated procedure has been complied with.

b) In coordination with other public institutions and with civil organizations, the Ministry of Justice shall compile all of the documentation available to it in order to establish the victim's status alleged by the applicants due to the events that occurred in February, September, and October, 2003.

c) Through Ministerial Resolution, the Ministry of Justice shall prepare and issue the official list of the beneficiaries of the deceased and those people with very severe, severe, or minor injuries, assigning each beneficiary the amount of the

single payment. The Ministerial Resolution issued does not provide for further appeal, whereby the administrative route is thereby exhausted.

d) The Ministry of Justice shall publish the official list of beneficiaries through the means of communications available to it.

II. The beneficiaries may appear before the Ministry of Justice to request a copy of the corresponding Ministerial Resolution.

ARTICLE 12 (Regarding Payment). Based on the Ministerial Resolution issued by the Ministry of Justice, the Social Management Support Unit of the Executive Branch [the Ministry of the Presidency] shall make the single payment to the beneficiaries in accordance with the provisions of this law.

ARTICLE 13 (Financing). The State must grant the financial resources to cover the single payment allocations arising from this Law charged to the resources of the Direct Hydrocarbons Tax – *IDH*, which shall be deducted prior to the distribution provided for in Law No. 3058 and Regulatory Supreme Decrees.

ARTICLE 13 (Authorization). The Ministry of Finance is hereby authorized to assign a budget to the Social Management Support Unit of the Executive Branch based on the total amount established in the Ministerial Resolution issued by the Ministry of Justice in order to make the single payment to the family members of the deceased individuals and to those people injured in the events of February, September, and October, 2003.

TEMPORARY PROVISION

FIRST TEMPORARY PROVISION (REGULATION). By Supreme Decree, the Executive Branch shall issue the regulations of this Law within a term not greater than thirty (30) days counted from its enactment.

Let it be presented to the Honorable National Senate for revision purposes.

Granted in the main session room of the Honorable House of Representatives on the ninth day of the month of July, two thousand eight.

[signature]
Edmundo Novillo Aguilar
PRESIDENT
THE HONORABLE HOUSE OF REPRESENTATIVES

[signature]
SECRETARY OF THE SENATE

REPÚBLICA DE BOLIVIA
H. CÁMARA DE DIPUTADOS

2108/2008
La Paz, 9 de julio de 2008

Señor
Oscar Ortiz Antelo
PRESIDENTE DEL H. SENADO NACIONAL
Presente.-

Señor Presidente:

Para fines constitucionales de revisión y de conformidad con lo establecido por el Artículo 72 de la Constitución Política del Estado, remito al H. Senado Nacional el Proyecto de Ley N° 1005/2008, que otorga el beneficio de un pago único, así como apoyo académico y reconocimiento público a las víctimas de los sucesos de febrero, septiembre y octubre de 2003.

Con este motivo, saludo a usted con las consideraciones más distinguidas.

Edmundo Novillo Aguilar
PRESIDENTE
H. CÁMARA DE DIPUTADOS

Mefh/wsc

REPÚBLICA DE BOLIVIA
H. CÁMARA DE DIPUTADOS

PROYECTO DE LEY Nº 1005/2008

EL HONORABLE CONGRESO NACIONAL,

DECRETA:

LEY PARA LAS VÍCTIMAS DE LOS SUCESOS DE FEBRERO SEPTIEMBRE Y OCTUBRE DE 2003

ARTÍCULO 1 (Objeto). La presente Ley tiene por objeto otorgar el beneficio de un pago único, así como apoyo académico y reconocimiento público a las víctimas de los sucesos de febrero, septiembre y octubre de 2003.

ARTÍCULO 2 (Alcances del Pago Único).

I. El beneficio de pago por única vez alcanza a los heridos gravísimos, graves y leves; así como a los familiares herederos hasta el primer grado de consanguinidad (hijos, cónyuge y padres) de los fallecidos en los sucesos de febrero, septiembre y octubre de 2003.

II. En caso de que los fallecidos o los heridos hayan sido o sean miembros de las Fuerzas Armadas o de la Policía Nacional y hayan recibido una indemnización inferior a la establecida en la presente Ley, se procederá a cubrir el monto restante hasta alcanzar el monto que le correspondiere, en función al grado de incapacidad calificada.

ARTÍCULO 3 (Liberación de Gastos Académicos). Los heridos y los herederos de los fallecidos en los sucesos de febrero, septiembre y octubre de 2003, quedan liberados del pago de matrícula y de los valores para la obtención del título de bachiller en las Universidades Públicas; asimismo, serán beneficiados con una beca comedor en caso de ser alumnos regulares de estas instancias, mientras duren sus estudios.

ARTÍCULO 4 (Reconocimiento Público).

I. En los municipios donde se hubiere producido alguna víctima por los sucesos de febrero, septiembre y octubre de 2003, se realizarán actividades conmemorativas, como la construcción de plazas y nombramiento de calles, escuelas y otros, en honor a las víctimas.

II. El Ministerio de Educación y Culturas incluirá a partir de la gestión 2009, en el programa de estudios de la materia de cívica, los acontecimientos de febrero, septiembre y octubre de 2003.

ARTÍCULO 5 (Exclusiones). Los beneficios señalados en esta Ley no exoneran en ninguna medida la responsabilidad penal, civil o de otra índole de las personas que hubieran sido identificadas como autores y responsables en los procesos que se sustanciaren ante las autoridades bolivianas, del extranjero o ante Tribunales Internacionales, por los sucesos referidos en el Artículo 1 de la presente Ley.

ARTÍCULO 6 (Escala del Pago Único). El Estado boliviano se obliga a efectuar un pago único a las víctimas de los sucesos de febrero, septiembre y octubre de 2003, de acuerdo a la siguiente calificación:

a) A los herederos del fallecido, corresponde el pago único equivalente a doscientos cincuenta salarios mínimos nacionales.

b) A los heridos gravísimos, corresponde el pago único equivalente entre ciento once a doscientos veinte salarios mínimos nacionales.

c) A los heridos graves y heridos leves, corresponde el pago único equivalente entre cinco a ciento diez salarios mínimos nacionales.

ARTÍCULO 7 (Requisitos). Los beneficiarios del pago único deberán presentar, en original o copia legalizada, la siguiente documentación:

Fallecidos:

a) Acreditar identidad mediante Cédula de Identidad, Registro Único Nacional, Libreta Militar o Pasaporte.

b) Testimonio de Declaratoria de Herederos, conforme a la sucesión hereditaria.

c) Certificado de Defunción.

d) Protocolo de Autopsia o Certificado Médico Forense, en caso de que el Certificado de Defunción no establezca la causa de la muerte.

Heridos:

a) Acreditar identidad mediante Cédula de Identidad, Registro Único Nacional, Libreta Militar o Pasaporte.

b) Certificado Médico Forense de la fecha de los sucesos.

c) Certificado Médico o Historiales Clínicos e Informe Médico

ARTÍCULO 8 (Gratuidad del Proceso). El proceso de calificación dispuesto en la presente Ley es totalmente gratuito.

ARTÍCULO 9 (Plazo de Presentación).

I. Los beneficiarios de la presente Ley, deberán realizar el trámite correspondiente, presentando la documentación señalada en los Artículos 7 y 10 de esta norma, de manera personal o través de poder notariado, en un plazo no mayor a treinta (30) días a partir de la conformación de la Comisión Calificadora.

II. En caso de que en la revisión de la documentación presentada por los potenciales beneficiarios se hallaren indicios de un hecho delictivo, se remitirán dichos antecedentes al Ministerio Público para fines de investigación.

ARTÍCULO 10 (Proceso de Calificación de Incapacidad).

I. El Ministerio de Salud y Deportes tendrá a su cargo el proceso de calificación de incapacidad; asimismo, conformará las Comisiones señaladas en los incisos a) y d) del Parágrafo III del presente Artículo.

II. Para establecer los días de impedimento y las incapacidades de los heridos gravísimos, graves y leves, se constituyen fundamento de calificación los documentos señalados en el Artículo 7, además de otros documentos que el solicitante considere pertinente, para establecer su calidad de víctima en los sucesos de febrero, septiembre y octubre de 2003.

III. El proceso de calificación es el siguiente:

a) Para fines de calificación de lesiones de los heridos gravísimos, se efectuará una nueva valoración médica a cargo de una Comisión conformada por el Ministerio de Salud y Deportes y el Instituto Nacional de Salud Ocupacional – INSO, quienes determinarán el porcentaje de incapacidad, en conformidad a los antecedentes clínicos, informes médicos señalados en la presente Ley y a una valoración médica complementaria actualizada.

b) La valoración del grado de incapacidad, para efectos del pago único establecido en la presente Ley, tomará como referencia los criterios técnicos señalados en el inciso a) del acápite Incapacidad Permanente Parcial del Anexo Nº 1 y las listas A y B del Anexo Nº 2 del Código de Seguridad Social (Lista Valorativa de Incapacidades) y los numerales 2), 3) y 4) del Artículo 270 del Código Penal, en lo que corresponda.

c) Al final de la valoración de los heridos gravísimos, se elaborará una lista preliminar que señalará el grado de incapacidad de cada una de las víctimas.

d) En caso de que el herido gravísimo manifieste su desacuerdo con el grado de incapacidad asignada, podrá solicitar por escrito con los fundamentos y elementos de prueba que considere necesario, la reconsideración del mismo ante una junta médica, la cual estará conformada por un representante del Ministerio de Salud y Deportes,

un representante del Instituto Nacional de Salud Ocupacional - INSO y un representante del Colegio Médico.

e) Los heridos graves y leves no requerirán nueva valoración médica y se sujetarán a lo señalado en el Parágrafo II del presente Artículo. La Comisión conformada por el Ministerio de Salud y Deportes y el Instituto Nacional de Salud Ocupacional - INSO, estará a cargo de la evaluación de la documentación presentada.

f) Para fines de calificación de las víctimas se consideran lesiones graves y leves a la incapacidad de un (1) a ciento ochenta (180) días.

g) Al final de la evaluación de los documentos presentados por los heridos graves y leves se elaborará una lista preliminar en la cual se registrará el grado de incapacidad.

h) En caso de que el herido grave o leve manifieste su desacuerdo con el grado de incapacidad asignada, podrá solicitar por escrito con los fundamentos y elementos de prueba la reconsideración del mismo, ante la instancia señalada en el inciso d) del presente Parágrafo.

i) Una vez culminada la valoración de los heridos gravísimos, graves y leves, el Ministerio de Salud y Deportes, elaborará el Informe Técnico correspondiente a cada herido, en el que procederá a calificar el grado de incapacidad a cada beneficiario para el pago único asignado, finalmente remitirá dicha documentación al Ministerio de Justicia.

j) Toda solicitud de reconsideración de la calificación asignada tendrá el plazo de cinco (5) días hábiles a partir de la publicación de las listas preliminares.

ARTÍCULO 11 (Registro Oficial).

I. El Registro Oficial será realizado por el Ministerio de Justicia, con el siguiente procedimiento:

a) El Ministerio de Justicia podrá remitir en consulta, aclaración u observación de los informes emitidos por el Ministerio de Salud y Deportes, tanto a este Ministerio o a las Comisiones referidas en el Artículo precedente, con el fin de verificar que se haya cumplido el procedimiento señalado.

b) El Ministerio de Justicia recabará en coordinación con otras instituciones publicas y con organizaciones de la sociedad civil, toda la documentación a su alcance para establecer la condición de víctima, alegada por los solicitantes, por los sucesos acaecidos en febrero, septiembre y octubre de 2003.

c) El Ministerio de Justicia, mediante Resolución Ministerial, elaborará y emitirá la lista oficial de los beneficiarios de los fallecidos, heridos gravísimos, graves y leves, asignando a cada beneficiario el monto del

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pago único. La Resolución Ministerial emitida no admite recurso ulterior, por lo que se agota la vía administrativa.

d) El Ministerio de Justicia difundirá por los medios de comunicación a su alcance la lista oficial de beneficiarios.

II. Los beneficiarios podrán apersonarse al Ministerio de Justicia para solicitar una copia de la Resolución Ministerial correspondiente.

ARTÍCULO 12 (Del Pago). La Unidad de Apoyo a la Gestión Social del Ministerio de la Presidencia, en base a la Resolución Ministerial emitida por el Ministerio de Justicia, realizará el pago único a los beneficiarios, en conformidad a lo señalado en la presente Ley.

ARTÍCULO 13 (Financiamiento). El Estado deberá otorgar recursos económicos para cubrir las asignaciones del pago único emergente de la presente Ley, con cargo a los recursos del Impuesto Directo a los Hidrocarburos – IDH, que serán deducidos antes de la distribución prevista en la Ley No. 3058 y Decretos Supremos Reglamentarios.

ARTÍCULO 14 (Autorización). Se autoriza al Ministerio de Hacienda asignar el presupuesto a la Unidad de Apoyo a la Gestión Social del Ministerio de la Presidencia, en base al monto total establecido en la Resolución Ministerial emitida por el Ministerio de Justicia, para realizar el pago único a los familiares de los fallecidos y a los heridos de los sucesos de febrero, septiembre y octubre de 2003.

DISPOSICIÓN TRANSITORIA

DISPOSICIÓN TRANSITORIA PRIMERA (REGLAMENTO). Mediante Decreto Supremo el Poder Ejecutivo emitirá la reglamentación a la presente Ley, en un plazo no mayor a treinta (30) días computables a partir de su promulgación.

Remítase al H. Senado Nacional, para fines de revisión.

Es dado en la Sala de Sesiones de la Honorable Cámara de Diputados, a los nueve días del mes de julio de dos mil ocho años.

Edmundo Novillo Aguilar
PRESIDENTE
H. CÁMARA DE DIPUTADOS

DIPUTADO SECRETARIO

Dip. Heriberto Lázaro Barcaya
PRIMER SECRETARIO
H. CAMARA DE DIPUTADOS

Hds/wsc

EXHIBIT 49

The Washington Times June 11, 2008 Wednesday

The Washington Times

June 11, 2008 Wednesday

SECTION: WORLD; EMBASSY ROW; A20

LENGTH: 588 words

BYLINE: By James Morrison, THE WASHINGTON TIMES

BODY:

CALMING CANADA

The U.S. ambassador to Canada is trying to reassure Canadian leaders that the next American president will continue promoting the close ties that have made the relationship between the two countries one of the strongest in the world.

Ambassador David H. Wilkins said the U.S. presidential election was among the issues he discussed with officials recently at the Western Premiers' Conference in Prince Albert, Saskatchewan.

"I assured these leaders that no matter who wins the next election, I remain confident the next occupant of the White House will understand and appreciate the deep ties of trade, commerce and friendship that bind our countries together and will act accordingly to protect and grow this partnership," he said on his blog, "Ambassador's Journal," on the U.S. Embassy's Web site (http://canada.usembassy.gov).

Some Canadian officials have been nervous about comments by Sen. Barack Obama. The presumptive Democratic presidential candidate has pledged to withdraw the United States from the North American Free Trade Agreement unless the treaty is renegotiated to include stronger protection for U.S. workers.

Sen. John McCain, his Republican rival, supports NAFTA and other free-trade agreements.

The United States and Canada have the world's most lucrative cross-border trade with more than $1 billion in business a day. Canada also is the largest export market for 39 states, and more than 200 million Americans and Canadians cross the border every year, mostly for business and vacations.

BOLIVIA ANGRY

The Bolivian ambassador Tuesday demanded to know whether the United States granted political asylum to a former defense minister Bolivia accuses of ordering a violent assault against opponents of the previous government five years ago.

Ambassador Gustavo Guzman told Reuters news agency he sent a diplomatic note to the State Department after Carlos Sanchez Berzain, now living in Miami, told a Bolivian radio station last week that a U.S. court granted his asylum request.

"This type of incident obviously complicates relations between Bolivia and the U.S.," Mr. Guzman said. "It darkens them. It's not what we seek."

Diplomatic relations between the two countries have been tense since President Evo Morales took office two years ago and aligned himself with Hugo Chavez, the anti-American president of Venezuela.

Mr. Sanchez Berzain's claim of asylum sparked violent demonstrations Monday in the Bolivian capital, La Paz. Thousands of protesters tried to storm the U.S. Embassy, but police repulsed them with tear gas.

In his radio interview, the former defense minister said he appealed for asylum because he feared he would not get a fair trial in Bolivia. He also accused Mr. Morales of having links to cocaine smugglers.

In La Paz, U.S. Ambassador Philip S. Goldberg told reporters that Bolivia had not filed an extradition request. He would not comment on whether Mr. Sanchez Berzain had received asylum.

"It's not a political matter. It's a judicial matter, and we have to respect the independent judicial branch of the United States, he said.

Mr. Sanchez Berzain and the former president, Gonzalo Sanchez de Lozada, fled to the United States in 2003 during a time of political upheaval.

The Bolivian government also accuses Mr. Sanchez de Lozada of unleashing the military against anti-government demonstrators in an assault that caused the deaths of 60 protesters and injuries to hundreds of others.

* Call Embassy Row at 202/636-3297, fax 202/832-7278 or e-mail jmorrison @washingtontimes.com.

EXHIBIT 50

1 of 1 DOCUMENT

Latinnews Daily

June 12, 2008 Thursday

LENGTH: 667 words

HEADLINE: Washington Watch

BODY:

Bolivia: Several thousand protestors surrounded the US embassy in La Paz on 9 June, demanding that the US extradite former President Gonzalo Sánchez de Lozada and his defence minister, Carlos Sánchez Berzaín. The protest, one of the biggest in recent months, signals further tensions in US-Bolivia relations and follow comments made by Sánchez Berzaín last week who told a local radio station that a US court had granted him political asylum over a year ago. The protesters blame the former defence minister and ex president, who also lives in the US, for ordering an army clampdown on anti-government protests in 2003 which resulted in 65 dead and more than 400 injured. The US has yet to officially confirm whether Sánchez Berzaín has been granted political asylum. The US envoy to Bolivia Philip Goldberg declared that it was a "judicial" rather than a political matter". Following Sánchez Berzaín's comments, foreign minister David Choquehuanca announced on 6 June that he would be presenting a formal complaint before the US government which he accused of protecting human rights violators.

Colombia: A leading Colombian magazine, 'Cambio' claimed that the US is about to establish a permanent base in the centre of Colombia. This is not the first time that this story has emerged. In May 2008 Venezuela's president, Hugo Chávez, responded furiously to speculation that the US was about to establish a base in the northeastern department of La Guajira which borders Venezuela. At the time, Colombia's defence minister, Juan Manuel Santos, denied point blank that the US would establish a base in Colombia, but weekly magazine 'Cambio' believes that a deal is almost done. According to 'Cambio', the US wants to shift the base it currently runs in Manta (in Ecuador) to the air base at Palanquero, in the central Colombian department of Cundinamarca. Ecuador's President Rafael Correa has refused to renew the US's presence at Manta when the current operating contract expires in 2009.

Ecuador: Ecuador's foreign ministry announced on 9 June that it had begun talks with the US over the possibility of establishing a "constructive bilateral agenda". The announcement follows a recent visit to Quito by US State Department representative, Andrew Bowen. Relations between the two countries have been strained in recent years, after negotiations over a Free Trade Agreement halted in 2006. President Rafael Correa, who took office at the beginning of 2007, said during his campaign for presidency in 2006, that he would not to sign an FTA with the US if he considered it harmful to the country. Correa has also said that he will not renew the agreement with the US to lease Manta air base, in the west of Ecuador. Last month Correa accused the CIA of infiltrating the Ecuadorian armed forces.

Mexico: On 10 June the House of Representatives voted by 311 to 106 to adopt H.R. 6028, legislation which authorises further funding of the Iniciativa Mérida from 2009 to 2011. This is an advance on what the House agreed in May. Then both chambers of the US Congress approved initial funding of the initiative in their separate versions of a pending budget supplemental. President George W Bush recommended $500USm in aid in the first year of the three year scheme, but the Senate approved $400USm and the House $350USm. Both houses have to reconcile their legislation before final passage into law. Besides offering less money than President Bush wanted, both houses also set conditions. In the Senate's version of the aid proposal, the US is to demand changes in Mexican human rights legislation. A meeting of congressmen from both Mexico and the US in Monterrey on 7 and 8 June led some US senators and congressmen to say that they would review the conditions attached to the military aid that is being offered under the Iniciativa Mérida. Senator Patrick Leahy, (D Vermont), however, said that he wants to keep the human rights conditions. Leahy chairs the Senate Subcommittee on State and Foreign Operations.

LOAD-DATE: June 12, 2008