

Kissinger Watch

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About This Issue

Dear readers,

In this issue we publish articles and interviews from non-English speaking newspapers in Europe. Below, we provide translations or summaries in English. We encourage you to send articles to us in whatever language. If you could provide your own English language summary or translation, even better. The translations in this issue were done by volunteers and not by professional translators, so please forgive any errors.

The first article was published in the Danish national daily "Dagbladet Information", the interview with Rene Schneider and the article on the new German Universal Jurisdiction law are from the German weekly "Der Spiegel". This law was passed to conform Germany's jurisdiction to the Statute of Rome - the legal basis of International Criminal Court (ICC). It is an astonishing development that the Kissinger case is mentioned along with Karadzic/Mladic and other rogues in what is probably Germany's most important weekly. Kissinger is a highly-regarded as something of a honorary member of the German establishment. He is friends with conservative, as well as social democratic, journalists and politicians.

We welcome the establishment of the ICC, however, we are concerned about the efforts of the US government to dismantle or cripple much international legal architecture. The resignation of Mary Robinson and the sacking of the Secretary General of the chemical weapons convention can be attributed to these efforts. The "compromise" on the immunity of peacekeeping troops in Bosnia and the bilateral negotiation of Article 98 agreements (non-extradition pacts) with countries worldwide, can only undermine the International Criminal Court.

As for Henry Kissinger: Talks and exchanges with human rights professionals, academics and journalists in

1. The past catches up with Henry Kissinger The world is experiencing more and more lawsuits against alleged political wire pullers for mass murder and other crimes against humanity

Dagbladet Information 6.8.2002

By Bente Bunsgaard

In the play, "Aunt Dan and Lemon" by the American Author Wallace Shawn, the charismatic Aunt Dan tells her younger niece and protégé Lemon about her infatuation with Henry Kissinger. The peak of her life seems to be when she once glimpsed the big man in a restaurant in Washington. "How dare they criticise such a man, just because of a bunch of peasants," she extorts in anger against those who don't share her fascination.

But the Vietnamese and the Cambodian peasants, whose lives were ended suddenly by American bombers back in the Sixties, may end up getting the last word in Henry Kissinger's life story.

As a mega-documentary broadcast on TV2 showed yesterday, the sins of the past are busy catching up with Kissinger, the former national security advisor and foreign secretary under Nixon and Ford, later the international statesman par excellence and the whole time an unequalled womaniser.- Aunt Dan certainly wasn't alone.

These days Kissinger doesn't like to travel abroad unless friendly souls in the department of state have checked that there isn't some or another lawsuit lying in wait when he arrives at his destination. Gradually, lawyers have tried to drag him into court. In most cases not because he has had legal proceedings taken against him. He has just been a witness, for example, to the period around the other 11th September, namely the 11th September 1973, when there was a coup d'etat by Augusto Pinochet against the then Chilean President Salvador Allende.

For example, last year a French examining magistrate wanted so very much like to talk to Kissinger during a visit to Paris that he sent a formal invitation to his hotel room delivered by men in uniform. Thereafter, Kissinger left the room, as well as the hotel, the city and the whole country, with great speed. Ironically it will be at home in the States that Kissinger will stand before a judge. Legal proceedings have been filed against him there. The descendants of the Chilean officer, René Schneider, have filed a civil lawsuit (as opposed to a criminal prosecution where you can be

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sentenced to prison) against Kissinger and the others in the Nixon government for having ordered somebody to kill Schneider. Schneider, as the leader of the Chilean armed forces, opposed American plans to overthrow Allende and therefore he had to be removed, the descendants claim. However, a judgment against Kissinger is in no way certain. "Power relations in the world are so that it will be very, very difficult to get him convicted," says Michael Schmitt, coordinator of the organisation ICAI – International Campaign Against Impunity – in Brussels.

"And it is unlikely that he will ever end up in prison," Michael Schmitt told Information.

Perhaps Kissinger will end up like Pinochet, another high profile wire puller, who has had proceedings brought against him without success, but whose name has been dragged through the mud so much that it will not occupy any positive in the history books. However, the Pinochet case, in which a Spanish examining magistrate tried to get

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may parts of the world, indicate a growing awareness of the gravity of his crimes. We are convinced more than ever of the need to prosecute him. However difficult and unlikely this might be, human rights activists continue to explore this possibility and commit themselves to the fight against impunity.

Thanks for your readership.

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Kissinger Watch

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the old Chilean dictator extradited from London, has had great importance in bringing old political wire pullers in front of the courts of justice. And the tendency seems to be that it will get easier, not more difficult, to prosecute political decision makers. Indeed, national trials are not unknown; they existed, even before the Pinochet case. Examples of foreign courts passing sentence on, for example, breaches of human rights include, a Danish court in 1994 sentencing Refik Saric, a Bosnian Muslim accused of torture in Bosnia, to eight years in prison.

However, the Pinochet case, has to a great extent, confirmed the idea that it is possible to use national courts to proceed against serious crimes abroad. You can almost say that the Pinochet case was a trendsetter amongst lawyers and legislators.

Today for example, Belgium and Germany have introduced rules, which make it specifically clear that national courts are able to proceed against mass murder, no matter where the crime was committed or by whom. Last year, a Belgium court of justice sentenced four Rwandans for committing genocide.

The next example could be the former dictator of Chad, Hissène Habré. At the moment, a Belgian examining magistrate is researching the case against Habré, who lives in exile in Senegal. Add to this, the international court of justice on the former Yugoslavia, where the ex head of state, Slobodan Milosovic, now stands accused; and the equivalent international court of justice for Rwanda. And finally, the permanent International Criminal Court which will commence now that a sufficient amount of countries have ratified it. There are interesting dynamics between the International Criminal Court of Justice and the national level. Countries all over the world, which have endorsed the court are in the process of taking a closer look at their own legislation, says Brigitte Suhr who is the leader of the legal programme for Human Rights Watch. "It doesn't mean that everybody will use it. But the legislation is after all the first step," she told Information.

2. Chile: Complaint against Kissinger

Der Spiegel, 22.7.2002

Rene Schneider (60), Programme director of the Chilean public television station TVN is the son of the Chilean army general who was killed in 1970 with the support of the CIA. Last September he filed a civil suit against Kissinger for the murder of his father.

Spiegel: The new International Criminal Court has just been set up in The Hague; could Kissinger be tried there?

Schneider: I believe Kissinger and the US Government have to explain a lot of things that happened in the late sixties and in the seventies in countries such as Vietnam, Cambodia and Chile – before this court or any other court. Kissinger's position, of course, is different: He thinks he acted for the good of the US to defend the security and the values of his country. This was understood as permission to

act in foreign countries as deemed necessary.

Spiegel: The assassination of your father was planned to induce the military to stage a coup d'Etat against the detested Allende.

Schneider: It is not acceptable that my father "was to be removed" in the interest of the USA, as Kissinger said more or less literally according to a tape. My father, like many other soldiers from Latin America, attended training courses in the US and was not anti-American. He merely defended the Constitution of his country.

Spiegel: What do you want to achieve with your lawsuit, 32 years after the murder?

Schneider: First, I want to make clear that it is a civil suit and not criminal proceedings. Our aim is to open a trial. It would also be of great importance for a judge to rule that Kissinger bears individual responsibility for his acts. This important step was taken by the courts with respect to Pinochet, who could not hide behind his official position. The court proceedings were only abandoned due to health reasons.

Spiegel: Why has the process against Kissinger stalled?

Schneider: Kissinger's defence lawyers claim that the State -and not the individual- was responsible for the actions. Since these were political decisions, Congress has to decide on this, not the courts. The defence has presented this position - now we are waiting for the judges' statement.

3. World Politics in State Courts

Please find below a summary of an article on the new German UJ law (Voelkerstrafgesetzbuch). The article is attached below the summary. The text of the law (several different languages) which was passed a few weeks ago - coinciding with the establishment of the ICC - can be found at: http://www.iuscrim.mpg.de/forsch/online_pub.html#legaltext.

On June 30 the new UJ law entered into force and allows German public prosecutors to investigate war crimes, genocide and crimes against humanity, regardless of who, where, or against whom these crimes were committed. "The law should also serve as a model for other countries" states the ministry expert in charge of international law.

The law might become a nuisance to the US. Already before this law was passed, the article continues, US Embassy officials contacted the ministry before every visit of Henry Kissinger - to find out whether something was in the pipeline. "Until now the questions were answered in the negative. But this might change. Legal experts in Daubler-Gmelin's ministry [of justice] do not doubt that the possibility of a trial against Henry Kissinger could be verified".

The article also mentions the NATO Bombing of a radio station in Belgrade and the case of Ariel Sharon. German diplomats fear diplomatic disputes. But since the courts are independent, the government won't be able to interfere.

One reason why the Government pressed to pass the law before the first of July, according to the article, was to enable German courts to try German soldiers who commit crimes abroad. And in this way avoid the ICC.

Four photos are attached to the article: one of the ICC building in the Hague, one of Daubler-Gmelin (minister of justice), one of a "Mladic/Karadzic Wanted" poster and one of Kissinger meeting Pinochet.

VÖLKERRECHT Weltpolitik im Landgericht

08. Juli 2002

<http://www.spiegel.de/spiegel/0,1518,204993,00.html>

Kriegsverbrechen, Völkermord und Verbrechen gegen die Menschlichkeit in aller Welt sind nun auch Fälle für die deutsche Justiz - ein neues Gesetz macht's möglich.

Es ist nur noch eine Frage von Tagen, bis die ersten Schriftsätze bei deutschen Landgerichten vorliegen - vielleicht sind sie sogar schon im Posteingang: Strafanzeigen gegen die Vereinigten Staaten von Amerika.

Seit Montag vergangener Woche kann alles, was sich US-amerikanische Militärs und Politiker bei Anti-Terror-Einsätzen in Afghanistan oder bei Friedensmissionen auf dem Balkan zu Schulden kommen lassen, von deutschen Staatsanwälten gegen sie verwendet werden. Denn am 30. Juni ist das deutsche "Völkerstrafgesetzbuch" in Kraft getreten.

Während die Weltmacht mit allen Mitteln im Uno-Sicherheitsrat in New York dagegen kämpft, ihre Militärs der Weltjustiz des Internationalen Strafgerichtshofs (IStGH) in Den Haag unterstellen zu müssen, haben die Deutschen ein Regelwerk von nur 14 Paragrafen in Kraft gesetzt. Die Essenz: Alles, was der IStGH kann, können hiesige Gerichte künftig auch. Kriegsverbrechen, Völkermord, Verbrechen gegen die Menschlichkeit, egal von wem und wo begangen, egal ob Bundesbürger dabei waren oder nicht, dürfen von jedem Staatsanwalt ermittelt und angeklagt werden.

Die USA haben sich die deutsche Gesetzgebung bislang kommentarlos angeschaut. Dabei haben die Fachleute im Hause der Justizministerin Herta Däubler-Gmelin (SPD) ihr Werk sogar in sechs Sprachen übersetzen lassen und ins Internet gestellt. "Das Gesetz soll auch ein

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Vorbild für andere Staaten sein”, sagt Peter Wilkitzki, der für das Völkerstrafrecht zuständige Abteilungsleiter. Weltweit gibt es noch kein vergleichbares Paragrafenwerk.

Wenn wirklich mal ein Ermittler zulandt und - ähnlich wie vor vier Jahren der spanische Untersuchungsrichter Baltasar Garzón mit dem Haftbefehl gegen Chiles Ex-Diktator Augusto Pinochet - einen durchreisenden US-Militär etwa wegen des Bombardements afghanischer Zivilisten in U-Haft nehmen lässt, wäre das, so Wilkitzki, “sicher für die USA der Casus Belli”.

Ein Kriegsfall im Wortsinne: Hat doch Washington das Gesetz schon fast fertig, das den US-Präsidenten ermächtigen soll, notfalls mit militärischer Gewalt inhaftierte US-Soldaten aus der Haft der Weltjustiz zu befreien.

Schon wurde das Horrorszenario einer US-Invasion an der niederländischen Küste entworfen, da ja Den Haag für das Völkerrechtsgefängnis verantwortlich zeichnet, in das der Internationale Strafgerichtshof seine Delinquenten werfen soll. Rein rechtlich, heißt es im Justizministerium, könnte auch Deutschland Opfer einer Befreiungsaktion werden.

Dass die deutsche Justiz dem Nato-Partner USA Ärger zu bereiten im Stande wäre, treibt offenbar auch Washington um. Wann immer etwa der reisefreudige einstige Außenminister Henry Kissinger plant, einen Fuß auf deutschen Boden zu setzen, erscheint im Berliner Justizministerium eine Abgesandte der US-Botschaft, um rein vorsorglich zu fragen, ob etwas gegen den Mann vorliege. Bis jetzt wurde das stets verneint.

Doch das könnte sich ändern. Intern lassen die Gesetzmacher im Hause Däubler-Gmelin wenig Zweifel, dass ein Verfahren gegen Kissinger wegen Völkermord (Paragraf 6) zumindest zu prüfen wäre: Die bis heute nicht geahndeten Verstrickungen des US-Politikers in den gewaltsamen Sturz der Regierung Salvador Allendes in Chile sind ein typischer Fall fürs Völkerstrafrecht.

Geradezu ein Paradefall wäre auch der Nato-Angriff auf das Gebäude des serbischen Regierungssenders RTS in Belgrad während des Kosovo-Einsatzes der Allianz im April 1999 gewesen. Angriffe auf zivile Einrichtungen können als Kriegsverbrechen (Paragraf 11) gelten.

Der Aufarbeitung der Vergangenheit vor den deutschen Landgerichten sind allerdings Grenzen gesetzt. Unter dem Wust der denkbaren Straftaten kann nur der Völkermord rückwirkend verfolgt werden.

Vom neuen Weltenrecht ließen sich etwa die blutigen Auseinandersetzungen im Nahen Osten erfassen. Die Deutschen sehen schon Verfahren auf sich zukommen, die nicht weniger heikel sind als jene um mutmaßliche Kriegsverbrechen bei gemeinsamen Nato-Einsätzen. Die Siedlungspolitik des Ministerpräsidenten Ariel Scharon fällt nach Berliner Lesart ebenfalls unters hiesige Völkerstrafrecht.

Mit mutmaßlichen Verbrechen des israelischen Regierungschefs hat sich schon die belgische Justiz

beschäftigt. Vor wenigen Tagen allerdings stoppte dort ein Gericht ein Strafverfahren gegen Scharon mit dem Argument, niemand könne angeklagt werden, der sich gar nicht in Belgien aufhalte.

In Berlin, wo solche Einschränkungen nicht gelten, fürchten die Rechtskundigen nun diplomatische Verwicklungen. Sollte das Außenministerium Druck machen, von politisch missliebigen Verfahren die Finger zu lassen, könnte Däubler-Gmelins Mannschaft, selbst wenn sie es wollen würde, wenig bewegen. Unabhängige Landgerichte hören nicht auf eine Berliner Ministerin.

Die Detailvorschriften für das neue Regelwerk sahen ursprünglich vor, dass für die brisanten internationalen Verfahren der an Berliner Weisungen gebundene Generalbundesanwalt zuständig sein sollte. Doch die spezielle Order wurde wegen interner Querelen mit den Ländern nicht rechtzeitig fertig. So gelten bis auf weiteres dieselben Zuständigkeiten wie für jeden rückfälligen Eierdieb - jeder Staatsanwalt kann sich der Fälle annehmen.

Das ganze heikle Gesetzeswerk deshalb erst mal zu verschieben schien den Berliner Juristen nicht opportun. “Das Gesetz sollte am selben Tag in Kraft treten, an dem der IStGH in Den Haag seine Arbeit aufnimmt”, sagt Wilkitzki, “als ein Signal: Wir sind auch da und können solche Verbrechen sehr gut selber verfolgen.” Das ist sicher nachvollziehbar, denn das IStGH-Statut legt es allen Unterzeichner-Staaten nahe, für die Weltrechtspflege etwas zu tun.

Die deutsche Betriebsamkeit hat darüber hinaus aber noch einen anderen - und wichtigeren - Grund. Eine Klausel im Internationalen Statut stellt die Soldaten jener Länder von der Verfolgung durch den IStGH frei, deren Heimatstaaten willens und in der Lage sind, die Ahndung eventueller Verbrechen selbst zu übernehmen.

Nach dieser Regel könnten sich auch die USA die gefürchteten Verfahren vor dem IStGH vom Leibe halten. “Die haben in ihrem nationalen Strafrecht alle wesentlichen Vorschriften”, sagt Wilkitzki, “um selber solche Verbrechen zu bestrafen.” Doch bei den mächtigen Freunden, so der Berliner Beobachter, sei es wohl eher “eine Frage des politischen Willens”.

Die Deutschen hingegen wollten Zeichen setzen. Die Kriegs-Rechtler des Verteidigungsministers Rudolf Scharping machten bei den Kollegen von der Justiz Druck: Es müsse sichergestellt sein, dass das deutsche Recht dem internationalen ganz schnell angeglichen werde, damit gegen

Bundeswehrsoldaten gegebenenfalls daheim verhandelt werden kann.

Das hat geklappt - und zumindest darüber, sagt ein Ministerialer, seien die Amerikaner “ziemlich muffig”. Den deutschen Juristen ist bereits still gelungen, worum die Weltmacht noch mit viel Getöse kämpft: Keiner von den eigenen Soldaten muss jemals vor die Schranken des Weltgerichts.

THOMAS DARNSTÄDT