

# Kissinger Watch

issue #4 ..... April 10, 2002

## About This Issue

In this issue, we wish to draw your attention to the most recent developments in the Kissinger Case, with particular emphasis on Chile and Operation Condor. We welcome the efforts of two judges - Balthazor Garzon Spain and Sophie-Helene Chateau of France – who have requested permission from British authorities to question Kissinger regarding his knowledge of Operation Condor. Kissinger is scheduled to visit London on April 24 (see articles 1,2,3).

This week alone about a dozen articles on Garzon's efforts to question Kissinger appeared in Spanish, French, and English-speaking newspapers worldwide.

Furthermore, Chilean Judge Juan Guzman submitted a similar request, going as far as threatening to initiate extradition proceedings should Kissinger refuse to comply (article 4,5,). For further information on Kissinger's role in the establishment of the military dictatorship in Chile, we have provided articles on two lawsuits filed in Washington and Santiago de Chile (articles 6,7,)

We are also excited to announce that the International Criminal Court's 60<sup>th</sup> ratification certificate was submitted on April 11. In honor of the courts establishment, this issues includes a Nuremberg prosecutor's response to Henry  
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## 1. Kissinger faces UK questioning over dictators' network

*THE INDEPENDENT, (c) 2002 Independent Digital (UK) Ltd; 18 April 2002*

*By Elizabeth Nash in Madrid*

Investigators from France and Spain want to question Henry Kissinger, the former US secretary of state, about terrorist crimes orchestrated by Latin American dictators in the Seventies when he visits London next week.

The Spanish judge Baltazar Garzon asked British authorities on Monday for permission to question Dr Kissinger when he arrives in London next Wednesday to address a convention of company directors.

He wants to ask Dr Kissinger about his knowledge of the "Condor plan", a network of repression in which five military rulers collaborated to eliminate opponents. The request is based on principles of co-operation established by the European Convention on Judicial Co-operation in the fight against terrorism.

Joan Garces, a Spanish lawyer, said yesterday: "Judge Garzon wants to ask Dr Kissinger about his knowledge of the Condor plan, because he was among the immediate circle of those military rulers, including General Pinochet, who carried out tortures and illegal executions for which they were never punished."

Mr Garces said the request formed part of Spain's continuing case against the former Chilean dictator, Augusto Pinochet. "Anglo-Spanish judicial co-operation has always been admirable on these matters," Mr Garces said, stressing that Britain's decision to free General Pinochet on health grounds in March 2000 was "administrative, not judicial, so the case remains open".

Spain, Switzerland, Belgium and France were seeking General Pinochet's extradition at the time.

A French lawyer, William Bourdon, said France had made a parallel request to Interpol. "I asked Judge Sophie-Helene Chateau to send a rogatory commission two days ago to the authorities in Britain for Kissinger to answer questions about the Condor plan, and about Europeans who disappeared immediately after Pinochet's coup in Chile," he told The Independent.

Mr Bourdon said: "Recently declassified CIA documents and evidence from witnesses questioned by a French judge lead us to suspect that Dr Kissinger was closely informed about the Condor plan and about French and Spanish nationals who disappeared after the 1973 coup. He is a witness. He has to contribute to the truth. He

*continued on page 2*

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*UK Questions—continued from page 1*

has nothing to fear. He will not be indicted.”

Spain’s request, made through the National Court in Madrid, asks Interpol in London to confirm “without delay” the “certainty” of Dr Kissinger’s presence next Wednesday, and to “arrange questioning about matters relating to the prosecution of Augusto Pinochet and the international arrest warrant against him [Pinochet]”.

While US Secretary of State in the Seventies, Dr Kissinger sent signed documents to the US embassy in Paris informing the American ambassador that Paris was to be the Condor plan’s headquarters in Europe, Mr Bourdon said. “He knew precisely what was going on.”

Dr Kissinger faces a criminal suit in Washington for his suspected involvement in the assassination in 1970 of the Chilean armed forces chief Rene Schneider. The case is being brought by Schneider’s family.

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*This Issue—continued from page 1*

Kissinger’s desperate “tyranny of judges” warning. (see also KW #1).

Last, please tune in to our latest KissingerWatch Radio Interview, to be broadcast on KALX Berkeley California (90.7) FM’s “Amandla” program on Sunday April 21 between 5:30 p.m. and 6:30 p.m. (Pacific standard time). Alternatively you can visit <http://kalx.berkeley.edu> and listen to the program on the internet. Additionally, records of the interview with Michael Schmitt (ICAI) as well as the interview with John Miller (ETAN), broadcast last Sunday, will soon be available on KALX’s website. If you are able to arrange other interviews, please ask producers and reporters to get in touch with us.

Again, thank you for all the support you offered in recent weeks

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## **Kissinger Watch**

[www.icai-online.org/kissingerwatch](http://www.icai-online.org/kissingerwatch)

a joint project of:

East-Timor Action Network  
([www.etan.org](http://www.etan.org))

International Campaign against Impunity  
([www.icai-online.org](http://www.icai-online.org))

Instituto Cono Sur  
(<http://groups.yahoo.com/group/politicaconosur/>)

A spokeswoman for Dr Kissinger in New York said: “Dr Kissinger is out of the country at present and no one can speak in his name.”

## **2. Met asked to question Kissinger**

*THE GUARDIAN London*

*April 18, 2002*

The Spanish judge who was responsible for the arrest of General Augusto Pinochet in Britain in October 1998 is attempting to have Henry Kissinger interviewed by British police when he arrives in London next week.

Judge Baltasar Garzon has told the British authorities via Interpol that he wants the former US secretary of state questioned as a witness in his investigations into the torture, genocide and acts of terrorism allegedly committed by the Chilean dictator and other military strongmen in Latin America.

If the request was accepted, Mr Kissinger - Richard Nixon’s assistant for national security from 1969-1973 and secretary of state between 1973-1977 - would have his first ever personal encounter with international human rights law at the hands of Metropolitan police officers, who would present him with a list of questions from Judge Garzon.

Mr Kissinger has managed to avoid similar requests from courts in France and Chile in the past year.

William D Rogers, a member of Kissinger Associates in Washington, said yesterday he believed Mr Kissinger still planned to travel to London and was prepared to “provide whatever evidence his memory can generate”. But, he added, Judge Garzon ought to direct his questions to the US state department.

The document sent by Judge Garzon to Interpol on Monday said he needed to know if Mr Kissinger would be in London “in order to request that he declare before the competent authorities in relation to the case in which Augusto Pinochet has been indicted by this court”.

Any questions are likely to concentrate on Operation Condor, a secret agreement under which half a dozen Latin American military regimes allegedly agreed to eradicate leftwing opponents. Spanish prosecutors claimed that documents released recently by the CIA showed that the US knew about Operation Condor and trained many of the military officers from the death squads.

Mr Kissinger is not a suspect in the case and would simply be required to answer questions as a witness.

The request to question Mr Kissinger was sparked by lawyers representing victims of Gen Pinochet’s regime who spotted an article in The Guardian last month which said that Mr Kissinger was due to be a speaker at the Royal Albert Hall on April 24, as part of a convention organised by the Institute of Directors.

A Met spokeswoman said she was unable to say whether Judge Garzon’s request had been received or acted on.

However, an Institute of Directors spokesman said they were still expecting Mr Kissinger to speak at the conference next week.

### 3. MADRID: JUDGE WANTS KISSINGER QUESTIONED

*New York Times, World Briefing: Europe  
April 18, 2002*

Spain's top criminal judge, Baltasar Garzón, has asked British judicial authorities to question Henry A. Kissinger, the former American secretary of state, as a potential witness in an investigation of terrorist acts by Latin American governments in the 70's and 80's. Judge Garzón, who rose to prominence by pursuing the former Chilean dictator Augusto Pinochet, said he believed that Mr. Kissinger planned to attend a meeting in London next week, according to Joan Garcés, a lawyer involved in the investigation. Emma Daly (NYT)

### 4. Writs and demos over Chile coup hound Kissinger

*The Independent  
14 April 2002*

*By Hugh O'Shaughnessy and Robert Mendick*

The Chilean judge prosecuting Augusto Pinochet for crimes committed during his 17-year dictatorship, is seeking to extradite Henry Kissinger, the former US Secretary of State, to Chile.

The threat will overshadow a visit to London next week by Mr Kissinger, who will find himself hounded by an alliance of human rights campaigners and anti-capitalist demonstrators over his alleged connivance at General Pinochet's 1973 coup in Chile, as well as his part in the Vietnam war and America's secret bombing of Cambodia.

Mr Kissinger's planned speech to the Institute of Directors at the Royal Albert Hall on 24 April will be met by a mass protest - and preceded by 10 days of "Kissinger-bashing", beginning with a "Get Kissinger" press conference launched by Labour MP, Jeremy Corbyn, at the Houses of Parliament.

On 4 July last year Juan Guzmán, the Chilean judge, submitted some 30 questions to Mr Kissinger about his relationship with Gen Pinochet; the questionnaire was passed on by the US State Department, but he has not so far chosen to reply, and is not expected to do so. Nor is Washington likely to hand over to an international criminal tribunal a man who served as secretary of state to two presidents.

Any application for his extradition, however, would increase the embarrassment and pressure on Mr Kissinger, who last year quit France in a hurry rather than submit to a summons to appear before a judge Roger Le Loire, who was looking into the disappearance of five French citizens in Chile during the Pinochet years.

Mr Guzmán told *The Independent* on Sunday he would be pressing for Mr Kissinger's replies this month and if they did not come, extradition proceedings would follow. Such action would mirror the move by the Spanish judge, Baltasar Garzón, which led to the arrest of Gen Pinochet in London in September 1998. "I have been in

touch with the US embassy here in Santiago, and they say they have no idea why replies have not been sent to my questions," said Mr Guzmán.

Guy Taylor, of the anti-capitalist movement Globalise Resistance, said there would be a "direct action blockade" when Mr Kissinger appeared at the Albert Hall. "We are calling on the Home Secretary not to allow him into the country," he said. "He presided over one of the most brutal eras of US foreign policy in history."

Mr Kissinger is still threatened by a \$4.9m civil action from Joyce Horman for the death of her husband, Charles Horman, during Pinochet's 1973 coup, which formed the basis of the film *Missing*. He is also being sued in Washington by members of the family of the former Chilean army commander, General René Schneider. Schneider was assassinated in Chile in 1970 in what was seen as a plot, aided by the CIA, to prevent the election of the Socialist President Salvador Allende.

### 5. Kissinger may face Chilean court over coup killing

*Duncan Campbell in Los Angeles and Jonathan Franklin in Santiago  
Guardian  
Friday March 29, 2002*

The former US secretary of state Henry Kissinger may finally have to face court action over Washington's role in the overthrow of the Chilean government in 1973 and the bloody events that followed it. Mr Kissinger has been formally asked by an investigating judge in Chile to respond to questions about the killing of an American citizen, Charles Horman, in the wake of the coup. The story of the journalist and film-maker's death became the basis for the 1982 film *Missing*.

Ever since the arrest of General Augusto Pinochet in Britain in 1998, there have been attempts to show what part the US government played in the coup that brought him to power. Of particular interest has been the issue of whether the US effectively gave the military dictatorship carte blanche in dealing with dissidents, even if they were American citizens.

Part of the impetus for the new legal moves has come from declassified documents. One such US state department memo, dated August 25 1976, says: "The GOC

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[government of Chile] might have believed this American could be killed without negative fallout from the USG [US government].

“There is some circumstantial evidence to suggest US intelligence may have played an unfortunate part in Horman’s death. At best, it was limited to providing or confirming information that helped motivate his murder by the GOC. At worst, US intelligence was aware that GOC saw Horman in a rather serious light and US officials did nothing to discourage the logical outcome of GOC paranoia.” Juan Guzman, the judge leading the investigation, has determined that there are sufficient legal grounds to consider Mr Kissinger an important witness to the events surrounding Horman’s death. Witness statements from many of the key players in the case will be taken over the next six weeks.

Mr Kissinger’s lawyers indicated this week that the matter should be dealt with by the US state department, as he was working there at the time. Mr Kissinger is said to be willing to assist with whatever he remembers from “those distant events”.

Fabiola Letelier, a lawyer with the Chilean human rights group Codepu, has said that a number of “VIP surprises” will arrive in April to give evidence. Codepu lawyers have also secured the cooperation of retired military officials in giving testimony. According to one lawyer, these officials include witnesses to Horman’s execution. Mrs Letelier said yesterday that more than 150 declassified documents “affect this case one way or another”, and that Mr Kissinger appeared in several of them.

## **6. The Chilean Criminal Suit against Henry Kissinger et al.**

*By Pascale Bonnefoy (Santiago) and Germán Westphal (Washington, D.C.)*

The criminal suit filed in Santiago on September 11, 2001, against Henry Kissinger and others for masterminding and running Operation Condor, although slowly, is firmly moving forward.

To date, several relatives of Condor victims have testified before Judge Juan Guzman, as have Nobel Prize winner Rigoberta Menchu, from Guatemala, and Paraguayan lawyer Martin Almada, who in 1992 discovered the “Archives of Terror” detailing the military repression in the Southern Cone of South America. Henry Kissinger definitely had a direct hand in such repression with respect to Argentina, as some U.S. documents in fact show.

Operation Condor was the coordination of the intelligence services in the countries of the Southern Cone in the 1970s and 1980s, when most of Latin America was under military rule. Under Condor, government agents were able to arrest foreigners and hand them over to their counterparts in their countries of origin, where they were eventually tortured, killed or disappeared

One highly emblematic case of this “Prisoner

Management” is that of the Chilean sociologist Jorge Isaac Fuentes, who was arrested in Paraguay on May 17, 1975, upon his arrival from Argentina, and handed over in mid September of that year to Chilean Agents who flew him to Santiago. In Santiago he was illegally held captive at the infamous detention-torture center known as “Villa Grimaldi” and eventually “disappeared”. Chilean agents were notified of his arrest in Paraguay by the U.S. Embassy Legal Attache in Buenos Aires via a letter dated June 6, 1975. Since Fuentes’ address book included the names of some individuals with New York and Texas addresses, they were investigated by the FBI. The U.S. Embassy Legal Attache’s letter to Santiago, which has been declassified by the State Department —at the time headed by Henry Kissinger— promises the Chilean Intelligence Services to keep them informed of the results of the U.S. investigations. This is only one piece of evidence regarding the U.S. involvement in Operation Condor. There are others, like the message from the U.S. Ambassador to Paraguay sent to Henry Kissinger on October 13, 1978, in connection to the Condor use of the U.S. Communications Installation in the Panama Canal Zone, et cetera.

Operation Condor was headquartered in Santiago under the chief of the Chilean intelligence service Manuel Contreras, also mentioned in the lawsuit. Some of Condor’s most notorious victims are the former head of the Chilean army, general Carlos Prats, and his wife, Sofia Cuthbert, killed in Buenos Aires in 1974; former Chilean ambassador Orlando Letelier and his U.S. colleague Ronni Moffit, murdered in 1976 in Washington, DC; and Chilean political leader Bernardo Leighton and his wife, Anita Fresno, who were seriously injured after an assassination attempt in 1975 in Rome.

The Chilean lawsuit was filed by the U.S. National Lawyers Guild, which played a key role in the Nuremberg trials, the Rigoberta Menchu Foundation, the Continental Association of American Jurists, Martin Almada and the relatives of over 20 Operation Condor victims against former Secretary of State Henry Kissinger, former CIA Director Richard Helms, ex CIA Associate Director Vernon Walters, and the former dictators of Argentina, Jorge Videla; Bolivia, Hugo Banzer; Paraguay, Alfredo Stroessner; and Chile, Augusto Pinochet.

Pinochet is currently living in a country estate outside Santiago, and his prosecution before Chilean courts is on hold due to alleged health reasons. Videla is under house arrest in Argentina for the kidnapping of children of the disappeared. Banzer is undergoing cancer treatment in the United States, and Stroessner enjoys political asylum in Brazil.

The suit is also against former intelligence chiefs and agents and government officials in Chile, Argentina, Paraguay and Venezuela, as well as all individuals who may be found guilty of having committed crimes against humanity, war crimes, international crimes, conspiracy to assassinate, murder and torture in the context of Operation Condor.

The same week the lawsuit was filed in Santiago, Chilean judge Juan Guzman sent a rogatory letter to Kissinger to inquire about the murder of U.S. journalist Charles Horman, executed by the Chilean military in September 1973. Nine of the questions Kissinger must answer were leaked to the press:

1. "That the witness say if it is true or not that former ambassador Nathaniel Davis spoke with general Augusto Pinochet on October 12, 1973, about the situation of Charles Horman, in the sense that it was a pending case that concerned the US government that had to be solved."

2. "What were the contents of the instructions that former ambassador Nathaniel Davis received from the US government in terms of dealing with the Horman case at the highest political and military levels -directly with general Pinochet- on September 17, 18, and 19, 1973."

3. "What political and legal steps did the US government take to locate Charles Horman after his arrest on September 17, 1973."

4. "That the witness say if it true that the US government, through its embassy and consulate in Santiago, Chile, as well as through its other diplomatic offices, military attachés, including intelligence services and agents, made contact with and discussed with the Military Junta and its diplomatic representatives in the United States, or with other high-ranking Chilean military officers and intelligence services, immediately after the disappearance of Charles Horman, that is, September 17, 1973, in order to take all possible measures to assure his liberty and his eventual DEPARTURE from Chile".

5. "That the witness state if it is true that during the days following the Military Coup, that is, September 11, 1973, when Charles Horman returned to Santiago from Viña del Mar with US citizen Terry Simon on September 15, 1973, in an official car of the United States driven by the US Navy captain Ray Davis, the Embassy and Consulates of the United States in Chile had already received instructions to adopt special measures to offer the necessary protection to all US citizens in Chile, without exception".

6. "That the witness state if he personally ordered or requested an investigation of the events; or if he knows if other US officials adopted similar measures so as to determine the administrative or disciplinary responsibilities for the behavior of diplomatic or consular employees, military or civilian personnel working in Chile in 1973 and the following years, for the omissions or negligence they may have committed in the exercise of their JOB/DUTIES by permitting/ALLOOWING the arrest, disappearance and murder of US citizen Charles Horman".

7. "If the witness is aware that the US government, during the period in which he was Secretary of State, carried out activities or initiatives in order to investigate and resolve the arrest, disappearance and murder of Charles Horman; if this is so, if he knows what the results and conclusions of such investigation on the Horman case were".

8. "That the witness state whether it is true that in/ON Kissinger Watch.....

September 1973, or in/ON other occasions, he phoned Chile directly to communicate with general Augusto Pinochet, Admiral Ismael Huerta and Admiral Patricio Carvajal, both of the latter high-ranking officers of the Chilean Navy, to request information from Chilean military authorities on the arrest, disappearance and death of US citizen Charles Horman".

9. "That the witness say if he is aware that the US government was informed, in October 1973, through its own means, and which Chilean sources confirmed, that Charles Horman had died and that he had been executed by a military patrol upon orders given under the command of general Augusto Pinochet, head of the Military Junta".

Although more than six months have passed since judge Guzman issued his questionnaire, Kissinger has not responded. The same has happened in the case of the rogatory letter processed through the State Department by French judge Roger Le Loire. In the last few hours, Spanish judge Baltasar Garzon has taken action to question Kissinger in connection to Operation Condor during his announced visit to London. Kissinger has responded through his lawyers that he will cooperate with judge Garzon provided that the questions are processed through the State Department... Given the fact that neither Chilean judge Guzman's questions nor French judge Le Loire's questions have been responded via that route, it is very unlikely that judge Garzon's questions will be in fact answered, and the only available option appears to be that Kissinger be interrogated in London as per the terms of the judicial anti-terrorist cooperation agreement that currently exists between the Kingdoms of Spain and Great Britain. Unless, of course, Kissinger cancels his visit. In this event, the only remaining option would be to request his extradition, as Chilean judge Juan Guzman has already indicated in view of Kissinger's unjustified delay to answer his questions above.

## **7. Family of Slain Chilean Sues Kissinger, Helms; Military Leader Was Killed in Kidnap Attempt Linked to Nixon Administration**

*By Bill Miller*

*Washington Post Staff Writer*

*Tuesday, September 11, 2001; Page A22*

The family of Chilean military commander Rene Schneider, who was killed 31 years ago during a botched kidnapping, filed a federal lawsuit in Washington yesterday accusing Henry A. Kissinger, Richard M. Helms and other officials in the Nixon administration of orchestrating a series of covert activities that led to his assassination.

The lawsuit, which attorneys said is based heavily upon recently declassified CIA documents, seeks more than \$3 million in damages from Kissinger, Helms and the U.S. government for "summary execution," assault and other civil rights violations. It alleges that Schneider was targeted because he stood in the way of a military coup designed to keep leftist Salvador Allende from taking

power as Chile's president. At the time, Kissinger was Nixon's national security adviser, and Helms headed the CIA.

The suit revisits one of Chile's most notorious crimes and marks the first time that high-level U.S. officials have been sued in connection with the shooting. Schneider was the left-leaning head of the Chilean Armed Forces, and his murder was long considered to have been carried out by right-wing extremists within the military. The suit focuses on U.S. government ties to the assailants that were described in the declassified papers.

"The United States did not want Allende to assume the presidency, and my father was the only political obstacle for a military coup," said Schneider's eldest son, also named Rene Schneider, who resides in Chile. He and his brother, Raul, an artist living in Paris, are the named plaintiffs. "Obviously, he had to be taken out of the way."

The family chose to sue after carefully reviewing the materials that became public in the past two years, Schneider said. The documents, he said, "made me realize that my father's death is perhaps the one crime perpetrated outside the U.S. that most clearly links back to the U.S. government, the CIA, and Kissinger in particular." "I don't want revenge," he said. "I want the truth to be established."

Kissinger did not return a telephone message left at his New York office. Helms denied wrongdoing but would not discuss details, saying that he hadn't seen the suit and that "it's a long and complicated case." In his 1979 autobiography, Kissinger denied involvement in Schneider's death. He wrote that the group that tried to kidnap Schneider "proceeded on its own in defiance of CIA instructions and without our knowledge."

The role of the United States in Schneider's death has been studied for years. A Senate committee in 1975 found evidence that U.S. officials hoped to instigate a coup to stop Allende and provided arms and encouragement to those plotting the general's kidnapping. But the committee said its evidence showed the CIA had withdrawn support of the kidnapping before it was carried out and never envisioned that he would be killed.

Thousands of additional documents were declassified in recent years and provided a more comprehensive account of what happened. In addition, the CIA provided a report to Congress last year that detailed the agency's activities in Chile in the early 1970s.

According to the Schneider family, the materials showed that the CIA continued to encourage a coup in the days leading to the kidnapping. The CIA also provided \$35,000 to some of those jailed for Schneider's death, the suit said.

"Every single factual assertion in this complaint is based on a document that has been furnished by the U.S. government," said Michael E. Tigar, the family's attorney.

The chain of events began Sept. 15, 1970, when Nixon met with Kissinger and Helms and ordered that action be taken to prevent Allende from assuming office after an election in which he had won the most votes. According to Kissinger Watch .....

the lawsuit, Nixon said he was not concerned about risks and authorized \$10 million to be spent on a military coup.

But military officials in Chile made clear that Chile's commander in chief, Schneider, would not go along with a coup, the suit said. The lawsuit said Kissinger and the CIA supported a secret plan to kidnap Schneider so that the military could take over before Allende's election could be approved by Chile's Congress.

On the morning of Oct. 22, 1972, after two aborted kidnapping attempts, Schneider was ambushed en route to work. The general's car was surrounded by about six cars, and struck from behind by one of them. The kidnappers smashed the back-seat windows on both sides. As Schneider was getting out his gun to defend himself, the assailants shot him. He died three days later at a military hospital, one day after Allende's victory was ratified.

Allende remained in power until a 1973 military coup that was indirectly supported by the CIA; he killed himself while under siege. Gen. Augusto Pinochet then began a 17-year reign in which thousands of people were killed or tortured. Pinochet was arrested in London in 1998 and indicted in Chile last year. But an appellate court recently suspended the legal proceedings because of concerns about his mental fitness for trial.

Military courts in Chile found that Schneider's death was caused by two military groups, one led by Roberto Viaux and the other by Camilo Valenzuela. Viaux and Valenzuela, both generals, were convicted of charges of conspiring to cause a coup, and Viaux also was convicted of kidnapping. The CIA aided both groups, the lawsuit said.

In a section of his autobiography entitled "The Coup That Never Was," Kissinger recounted the September 1970 meeting with Nixon and the plans to move forward with a secret coup agenda. He said there was less to the plan "than met the eye" because Nixon had a history of backing off plans as their implications became clearer.

Kissinger wrote that he ended the plan Oct. 15 and that Viaux's group acted on its own. He also wrote that no one, not even Viaux, ever intended to assassinate Schneider.

Peter Kornbluh, a Chile expert at the nonprofit National Security Archive, who lobbied for full declassification of Chile documents, said the lawsuit could force Kissinger, Helms and others to provide more information about what took place.

"This crime was Chile's equivalent of the Kennedy assassination at the time," Kornbluh said. "It was an unparalleled, unprecedented act of political terrorism."

Kissinger has faced other recent scrutiny. In May, he declined to appear before a French judge who wanted to question him about allegations of human rights violations in Latin America during the 1970s. He referred the request to the State Department.

*Staff writer Anthony Faiola, staff researcher Robert Thomason and special correspondent Pascale Bonnefoy contributed to this report. Bonnefoy reported from Santiago, Chile.*

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## 8. A NUREMBERG PROSECUTOR'S RESPONSE TO HENRY KISSINGER

By BENJAMIN B. FERENCZ, [www.benferencz.org](http://www.benferencz.org)  
J.D. Harvard 1943, a former Nuremberg war crimes prosecutor

*Brown Journal of World Affairs, September, 2001*

Henry Kissinger's essay on "The Pitfalls of Universal Jurisdiction" (Foreign Affairs July/August 2001) perceives danger in allowing international legal norms to interfere with political actions by national governments. The former U.S. Secretary of State in the administration of President Richard Nixon warns that current efforts to deter genocide and other crimes against humanity by creating an international criminal court (ICC) run the risk of becoming a "tyranny of judges" or a "dictatorship of the virtuous."

He refers to "inquisitions and even witch-hunts."

Kissinger's focus on the past exaggerates the dangers of the present and ignores the needs of the future. If we are to have a more peaceful and humane world, international law must play a greater and not a lesser role.

Dr. Kissinger challenges the basic concept of universal jurisdiction. He argues, incorrectly, that the notion is of recent vintage. He gives scant weight to ancient doctrines designed to curb piracy or to a plethora of international conventions following the First World War. He fails to recognize that international law is found not only in treaties but also in general principles of justice and in customs which gradually obtain universal recognition. International law is not static but advances to meet the needs of a changing world.

Over half a century ago, Robert M. Jackson, on leave from the U.S. Supreme Court to become Chief U.S. Prosecutor before the International Military Tribunal at Nuremberg, declared: "To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice." The learned judges reviewed the law on which the trials were based and concluded that it was "not an arbitrary exercise of power on the part of victorious nations" but "the expression of international law existing at the time of its creation..." The Nuremberg principles were affirmed by the United Nations in 1946 and became binding legal precedents for war crimes trials in Tokyo and elsewhere.

Justice Jackson and Telford Taylor, his successor for a dozen subsequent trials at Nuremberg, repeatedly made plain that the law being mobilized to maintain peace in the future would apply to all nations equally.

The United States inspired the world when it proclaimed at Nuremberg and elsewhere that aggression, genocide and other crimes against humanity were universally prohibited by international law. It was recognized that states can act only through individuals and thus those leaders responsible for the crimes could be held to account in a court of law. Crimes like aggression,

genocide and similar large-scale atrocities are almost invariably committed by or with the connivance of a national government and it thus becomes imperative to have available an international tribunal that could bring them to justice.

For over half a century, United Nations committees struggled in vain to reach consensus on a code of international crimes that would be punished in an international court. Cold war politics stymied all U.N. efforts to create an international criminal jurisdiction. Powerful nations remained unwilling to yield their sovereign rights to kill as they alone saw fit. After years of meticulous argumentation at the U.N., a breakthrough finally came in Rome in 1998 where 120 nations voted in favor of an ICC to curb the incessant murders and persecution of millions of innocent people. The U.S. was one of 7 nations that voted No. Mr. Kissinger now argues that because of "the intimidating passion of its advocates", the judicial procedures designed to punish and deter new crimes against humanity are being "spread with extraordinary speed and has not been subjected to systematic debate". It is not the passion of its advocates that is moving nations toward the rule of law - it is the passion of those who have been victims of politics as usual.

The tribunals set up by the Security Council of the United Nations in the 1990's, with strong U.S. support, to punish massive war crimes committed in former Yugoslavia and Rwanda, are belittled by Dr. Kissinger's argument that "It was never thought that they would subject past and future leaders of one nation to prosecution by the national magistrates of another state where the violations had not occurred". None of these arguments are convincing. Kissinger scorns the judgment of Great Britain's esteemed Law Lords who confirmed the legal validity of the detention in England of Chile's former Head of State, Augusto Pinochet, who was accused of crimes committed against Spanish nationals in Chile. He ignores, for example, the widely hailed prosecution of Adolf Eichman by Israel, for Holocaust crimes committed in Europe at a time when the state of Israel didn't even exist. He fails to recognize that these advances in international jurisprudence also reflect the changing needs of contemporary world society.

In 1776, the Declaration of Independence declared that "governments derive their just powers from the consent of the governed." The United Nations Charter speaks in the name of "We the Peoples..." The Universal Declaration of Human Rights, adopted in 1948 refers to 'the equal and unalienable rights of all members of the human family...' and declares that it is essential "that human rights should be protected by the rule of law." These and many other international human rights instruments reflect the growing realization that true sovereignty lies in the people and not the state. Today, no nation and no person can be above the law. No one should oppose the creation of new institutions being created to help realize the dreams of suffering humanity.

Professor Kissinger is quite right to insist on due process protection and fair trials for every accused but his assumption that the ICC will flout these rights is completely unfounded. Quite the contrary, the best way to be sure that law will not be abused as a weapon to settle political disputes is to create a competent international court composed of highly qualified judges from many nations bound by rules that guarantee a fair trial under internationally approved standards and scrutiny. As of July 1, 2001, 36 states, including some of our staunchest allies, have completed the ratification process thereby confirming their unconditional acceptance of the Court. U.S. insistence upon complete immunity for all U.S. nationals is viewed by many of our friends as a repudiation of vaunted U.S. ideals and an unacceptable affront to the rule of law that must apply equally to everyone.

The ICC seeks to usher in a new regime of increased respect for international law. The court will have no jurisdiction over crimes committed before the court comes into existence. There is no retroactivity. Only crimes of concern to the international community as a whole, such as genocide, crimes against humanity and major war crimes, can be tried. The supreme international crime - aggressive war - can only be considered later - if there is a near-unanimous amendment. Furthermore, it must not be forgotten that national courts are given priority and the ICC will have jurisdiction only where the national courts are unable or unwilling to provide the accused with a fair trial. The Security Council can block prosecutions indefinitely if needed for reconciliation or peace. Administrative and budgetary controls are clearly defined. Without its own police force, the court must depend upon the Security Council to enforce its decisions. Enforcement can be vetoed by any of the five privileged Permanent Members, including the U.S. Kissinger's reference to the "unlimited discretion" of the prosecutor is unfounded. Many safeguards are written into the statute. A court that acts arbitrarily or seeks to abuse its limited powers will soon cease to exist.

Kissinger argues that the International Criminal Tribunal for Yugoslavia (ICTY), created at U.S. behest in 1993, had the effrontery to receive a "complaint" alleging that punishable crimes against humanity had been committed during the NATO air campaign in Kosovo in 1999. He should have stressed that in this instance the ICTY Prosecutor properly dismissed the complaint and refused to issue an indictment. The statute that governs the ICTY was approved by the United States and the United Nations for the purpose of bringing to justice those leaders responsible for crimes against humanity committed since 1991 in that particular region. It made no exceptions for U.S. nationals or others. The burden is always on the prosecutor to prove beyond doubt that the law has been violated. It must be shown that the accused knew or should have known that the deeds were criminal and that the defendant had the obligation and ability to prevent the crimes from happening. Despite initial difficulties and Kissinger Watch .....

occasional shortcomings the ICTY has earned respect for its very fair treatment of the accused and its development of international criminal law. It is a new-born babe that must be helped and encouraged and not disparaged.

The innocent need not fear the rule of law. Kissinger's misperceptions about current international law lead him to the erroneous conclusion that if the U.S. does not ratify the ICC treaty Americans will be outside its reach and hence protected from malicious accusations. He fails to notice that without the protective shield of binding international law and institutions to enforce it, the military captive is completely at the mercy of his captors. In every democratic society it is unavoidable that some unjustified complaints may be lodged for political or other nefarious purposes. It is also inevitable that some judgments may go awry and some judges may be incompetent or worse. That is no reason to abolish courts or to refuse to accept new courts where needed. Outstanding American international legal experts, including ten former Presidents of the American Society of International Law and the American Bar Association have, after careful study, concluded that it would be in the best interests of the United States and its military personnel for the United States to accept the proposed ICC as quickly as possible. The same conclusion was reached in 2000 by outstanding professors of the Harvard law School after a careful study by leading military and legal experts assembled by the venerated American Academy of Arts and Sciences.

A politically conservative constituency in the United States argues for the protection of American sovereignty as though we were still in the Middle Ages. Senator Jesse Helms of North Carolina has been a leading opponent of the ICC. Even though the U.S. Constitution vests the President with the power to negotiate and sign treaties, the distinguished Senator did not wait for the President to submit the ICC treaty to the Senate for its needed advice and consent but intruded into Presidential prerogatives by proclaiming that it would be "dead on arrival." The wily Senator also introduced legislation deceptively named "The Servicemembers Protection Act" designed to abort the ICC by imposing economic and military sanctions against states that support the court. He managed to have its submission endorsed by Henry Kissinger and several other distinguished former public servants, whose signature seemed more an act of political fealty than considered legal judgment since it relied on many arguments that were demonstrably false. Opponents of the ICC refuse to recognize that in today's interdependent world all major problems are global and require global solutions. Binding international rules have become necessary and are accepted universally to protect the common interest. The prevention of massive crimes against humanity deserves equal protection of universal law.

Mr. Kissinger makes an argument that, when needed, the Security Council can create additional ad hoc tribunals. Until the ICC is fully functional ad hoc courts may prove to be unavoidable to curb some of the more

outrageous cases of impunity. But a bevy of independent courts is hardly an adequate deterrent to universal crimes. Justice regarding the most serious crimes in the world cannot depend upon the political whim of those who control the United Nations. The crimes must be spelled out in advance and not condemned only retroactively. Temporary courts created a la carte are very costly and lack the uniformity required by an international legal system. It is understandable that a former Secretary of State should not be eager to place national politicians under the supervision of an international judicial system. He accuses the ICTY of allowing “prosecutorial discretion without accountability” - ignoring all the controls that exist to prevent abuse. He makes the unfounded allegation that the “definitions of the relevant crimes are vague and highly susceptible to politicized application.” His statement that “defendants will not enjoy due process as understood in the United States” is refuted by a host of prominent international lawyers, including a former Legal Adviser to both the Defense and State Departments. (See 95 American Journal of International Law (Jan. 2001) 124.)

In concluding, Kissinger, the constant diplomat, makes three “Modest Proposals”. He suggests that the Security Council appoint a committee to monitor human rights

violations and report when judicial action appears necessary. If the local government has not been democratically elected or seems incapable of sitting in fair judgment, the Council may set up additional ad hoc tribunals. But the Council must specify the scope of prosecutions and provide for due process. He fears “one-sidedness” of the pursuit of universal jurisdiction which “may undermine the political will to sustain the humane norms of international behavior so necessary to temper the violent times in which we live.” He ignores the reality that other states will demand the same rights that the U.S. wishes to reserve for itself. What it boils down to in the end is that Henry Kissinger says he agrees with the goals of the international criminal court, and even gives some credit to its advocates, but he fails to recognize that the safeguards he seeks from an ICC are already in place. He remains uncomfortable with what he perceives to be the speed and vigor with which the idea of universal crimes punishable in an international court is now moving forward. His call for a public debate is fully justified. Let an informed public study the facts and then let the politicians know whether they prefer politics as usual to law.