

Kissinger Watch

issue #5 April 28, 2002

About This Issue

"No one can say that he served in an administration that did not make mistakes. The decisions made in high office are usually 51-49 decisions, so it is quite possible that mistakes were made. The issue is whether 30 years after the event courts are the appropriate means by which determination is made."

Henry Kissinger
Albert Hall, London, 24th April 2002

"Mr. Tatchell has made this application courteously and with obvious sincerity. I do not doubt the strength of feeling in him and many others that justice requires that Mr. Kissinger should face the allegations made against him in a court of law."

Nicholas Evans, District Judge
London, 24th April 2002

Dear readers,

We are publishing a special issue to provide you with a comprehensive overview of the controversies surrounding Kissinger's visit to London on April 24. We felt compelled to

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1. 'WAR CRIMES' CLAIMS: Kissinger begins to stoop under the weight of legal scrutiny opinion bears down Pinochet judge leaves the way open for charge against Kissinger Court rejects application to arrest Nixon's right-hand man over covert CIA activities in the 1970's

The Independent - United Kingdom; Apr 25, 2002
BY STEVE BOGGAN

HE LOOKED older than he did when he was arguably the most powerful man in the world, and there was more of a shuffle in his gait than a swagger. But the most striking thing about Henry Kissinger yesterday was the way he had begun to stoop, as if there were a great weight on his shoulders.

Only two hours earlier, a judge had rejected an application for him to be arrested and charged with war crimes but there was no sign of relief on his face. The old fox knew it would not be the last such application while the scent of blood was in the air.

The former US secretary of state was at the Albert Hall in London to deliver a speech to the Institute of Directors on globalisation. But all eyes had been on Bow Street magistrates' court, where the human rights activist Peter Tatchell had made an application to have Dr Kissinger arrested under the Geneva Conventions Act 1957 for the "killing, injuring and displacement" of three million people in Vietnam, Cambodia and Laos during the Vietnam War.

Outside the hall, demonstrators screamed at Dr Kissinger, 78, branding him an "evil war criminal" for overseeing American operations in South-east Asia and South America, where the CIA's dirty tricks operation, Condor, had shored up right-wing dictators, including General Augusto Pinochet of Chile, through a campaign of kidnapping, bombing and murder.

To imagine Dr Kissinger being arrested was impossible, but such a move had seemed just as unlikely in 1998 with General Pinochet. The district judge hearing the Tatchell application, Nicholas Evans, was, however, the one who had authorised General Pinochet's detention. Hopes among the protesters were as high as the levels of trepidation inside Dr Kissinger's dressing room, but Judge Evans did not order an arrest. He rejected Mr Tatchell's application but, importantly, appeared to leave the door open for another.

The judge said: "The material provided by Mr Tatchell makes generalised allegations and suggests possible sources
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omit a wealth of good articles as those published this week alone would have exceeded the capacity of any e-mailbox.

According to various newspaper reports, the requests of Judges Garzon (Spain) and Chateau (France) to question him regarding his knowledge of Operation Condor were refused by British authorities. Such a refusal – as amnesty international argues - would constitute a violation of the UK’s obligation under the European Convention on Mutual Assistance in Criminal Matters (articles 7 & 8). However, according to attorneys Juan Garces and Manuel Murillo these news reports emerged to be inaccurate. Last Friday Garces and Murillo published a statement maintaining that the questions WERE submitted to Kissinger (article 9). Furthermore, Garces and Murillo dismiss US state department’s claims that Kissinger enjoyed immunity. (article 10)

Judge Garzon has made further efforts to interrogate Kissinger by again addressing the issue directly to US-authorities. He is asking to send the letters rogatory to the United States (see article 11). However, as previous questions to the state department issued by judge Garzon and French judge le Loire have not been answered after several month, there is unfortunately little to expect from this renewed effort.

On Monday April 22, Jeremy Corbyn, Member of the British Parliament and chair of the Chile group tabled a House of Commons motion:

“On a point of order, Mr. Speaker. As Home Office Ministers are still in the Chamber, may I ask whether you have received any indication from them that they intend to make a statement about the impending visit to this country of Henry Kissinger, and requests that have been made in courts in Spain for him to be investigated by the Metropolitan police for abuses of human rights in Chile and other countries in south America during the 1970s, when Operation Condor killed large numbers of people? It is a matter of international human rights, and, as he will be in this country, it would seem a useful opportunity to ask him questions, as he is a person in a good position to know a lot of answers.” (House of Commons, point of order, 2002-04-24)

On the same day, British human rights advocate Peter Tatchell took an unexpected and unprecedented step: Tatchell sought from the Magistrates Court in London a public or pri-

vate prosecution against Kissinger for war crimes committed in Indochina under the domestic Geneva Convention Act 1957. His attempt failed, Judge Evans indicated that Tatchell had not made a prima facie case. However, Judge Evans statement conveys the impression that if a prima facie case could be made, a “suitably precise charge” could be drafted. “Judge Evans’ decision, however, made clear that to have Kissinger prosecuted after arrest, Tatchell will first need to overcome the obstacle of obtaining the approval of England’s Director of Public Prosecutions (articles 3-5)

Peter Tatchell is intent on liaising “with human rights lawyers and organisations in the United States, in order to obtain further evidence and witnesses. If I can get these, I hope to come back to court in a few months time and make a new application for Kissinger’s arrest.” (article 6)

Amongst the readers of KissingerWatch are a lot of legal experts and researchers, if you feel you could contribute to this case, please get in touch with us.

Thank you very much for your readership

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of potentially admissible evidence. I have serious misgivings concerning Mr Tatchell’s ability to actually obtain such admissible evidence.

“I ought not to issue any summons or warrant unless I can draft a suitably precise charge. I cannot presently do this on the information provided. Mr Tatchell has made this application courteously and with obvious sincerity. I do not doubt the strength of feeling in him and many others that justice requires that Mr Kissinger should face the allegations made against him in a court of law.”

Mr Tatchell was anything but deflated by the ruling. “The judge said that he could not ‘presently’ issue a warrant,” he said. “That leaves open the possibility that at some point in the future he might give me a warrant if I come back with more detailed evidence. I am now going to liaise with human rights lawyers and other campaign groups to get this evidence and make another application.”

Back at the Albert Hall, Dr Kissinger drawled through an unremarkable speech before joining the event’s chairman, Alastair Stewart, for a brief question-and-answer session.

Mr Stewart, a former ITN anchorman, did not give the old statesman an easy ride, immediately asking him whether he had made mistakes during his tenure. Dr Kissinger replied: “No one can say that he served in an administration that did not make mistakes. The decisions made in high office are usually 51-49 decisions so it is quite possible that mistakes were made. The issue is whether 30 years after the event courts are the appropriate means by which determination is made.”

Kissinger Watch

www.icai-online.org/kissingerwatch

a joint project of:

East-Timor Action Network
(www.etan.org)

International Campaign against Impunity
(www.icai-online.org)

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

He said he thought the principle of international jurisdiction represented progress in the search for justice, but he argued that the process would be undermined if decisions were left to individual judges who were being given information by individual groups. "The issue on which my testimony is being sought concerns matters 30 years ago," he added. "Some of it relies on the misapprehension of the judges that every cable that leaves the State Department is personally signed by the Secretary of State. But there are around 4,000 going out every day, many of which are simply administrative, and they all have the Secretary of State's name on them."

That excuse is unlikely to deter Baltazar Garzon, the Spanish judge who applied for the extradition of General Pinochet, or Sophie-Helene Chateau, a French magistrate investigating the deaths of French citizens in Chile under General Pinochet. They are both now gunning for Dr Kissinger and intend to compel him to give evidence in court.

After his appearance yesterday, for which he is thought to have been paid pounds 17,000, Richard Nixon's former right-hand man, the orchestrator of detente, the maker of the only Middle East peace deal to last any length of time, the man who played off Russia and China during the Cold War was in no mood to talk further.

Surrounded by bodyguards in the bowels of the old auditorium, he was asked if he would like to discuss the allegations being made against him. His answer was barked out unequivocally: "No!", and, seeming shorter than he used to be, he shuffled off out of sight around the circular corridors of the Albert Hall.

2. Kissinger admits possible errors on Vietnam

*Jamie Wilson and Giles Tremlett in Madrid
Thursday April 25, 2002
The Guardian*

Henry Kissinger yesterday responded to calls for his arrest for allegedly aiding and abetting war crimes by admitting that mistakes were "quite possibly" made by the administrations in which he served.

As the former US secretary of state told an audience of British business leaders at the Royal Albert Hall in London that the issue was whether courts were the right place to determine what had happened, protesters calling for his arrest staged a demonstration outside. They accused him of involvement in war crimes in Vietnam, Laos and Cambodia.

The 78-year-old told the Institute of Directors: "No one can say that he served in an administration that did not make mistakes. The decisions made in high office are usually 51-49 decisions, so it is quite possible that mistakes were made. The issue is whether 30 years after the event courts are the appropriate means by which determination is made."

Mr Kissinger said it would be impossible to recall every one of the thousands of cases he dealt with every day when he was in office, and that the US government had decided it would deal with questions about past policies, adding: "It is not a refusal on my part to answer questions."

Kissinger Watch

However, documents obtained by the Guardian show that the British authorities had to turn down requests from Baltazar Garzon, the Spanish judge responsible for the arrest of Augusto Pinochet, to question the former US secretary of state, because Mr Kissinger had personally refused to answer questions.

"We have spoken to Henry Kissinger's office. Mr Kissinger has refused to give evidence on his knowledge of the events mentioned in your rogatory commission. Apparently he has taken this decision on the advice of the US state department," a Spanish translation of the document sent to Judge Garzon said.

"According to British law it is not possible to take evidence from a witness without their consent. We regret, therefore, that we cannot help you with this request."

The document said that both the US state department and Mr Kissinger had said that if the request was sent through the US authorities, his attitude might change.

Earlier yesterday human rights campaigner Peter Tatchell made an unsuccessful legal move to have Mr Kissinger arrested under the Geneva Convention Act 1957, for the "killing, injuring and displacement" of 3 million Vietnamese and Cambodian people during the Vietnam war.

However, Mr Tatchell said he believed the wording of the ruling had left open the possibility that he might issue a warrant in the future if he could produce stronger evidence against Mr Kissinger.

"It is now my intention to liaise with human rights lawyers and organisations in the US in order to obtain further evidence and witnesses. I hope to come back to court in a few months time and make a new application for Mr Kissinger's arrest," he said.

Mr Kissinger arrived at the conference via a side entrance, ignoring reporters' questions over whether he had been involved in war crimes.

Outside the hall Guy Taylor, from Globalise Resistance, said: "Henry Kissinger will not travel to Spain, France, Switzerland and lots of countries in South America because he knows he will be arrested. But he has been swanning in and out of London for years."

3. Explanatory note regarding legal proceedings sparked by Kissinger's visit to London / ICAI

The expected arrival of Henry Kissinger in London to attend a conference on 24 April 2002 sparked several legal

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proceedings concerning his actions during his tenure as U.S. National Security Advisor and then U.S. Secretary of State in the Nixon administration. Two judges from Spain and France requested permission to question him in connection with cases brought against Augusto Pinochet in their countries. A British activist attempted to have him arrested for crimes allegedly committed in Cambodia, Laos and Vietnam some 30 years ago. All of these attempts failed to bring Kissinger before the courts, but some may have nonetheless made progress in other ways.

In particular, the attempt to have Kissinger arrested clarified procedures for initiating a case against him in England, and demonstrated how seriously at least one judge takes the matter. On Monday, 22 April 2002, Peter Tatchell, a British human rights advocate, asked an English court to issue an arrest warrant for Kissinger, who was expected to be in London the coming Wednesday. Judge Nicholas Evans of Bow Street Magistrates' Court, who had issued the first warrant for Pinochet, rejected Tatchell's application two days later. While this prevented an arrest, the decision, provided below, included several potentially important points:

- Proceedings under the UK's Geneva Conventions Act 1957 for war crimes committed prior to 1 September 2001 can be instituted only "by or on behalf of the Director of Public Prosecutions".

"... I am satisfied that proceedings can only be instituted by or on behalf of the DPP."

- However, the Court has a right to issue an arrest warrant for such offences, even when the DPP does not intend to bring proceedings. No consent is required from anyone but the judge.

"Thus, in the context of this application, it is within the power of this court to issue a warrant for Mr. Kissinger's arrest for an offence said to be contrary to section 1 of the 1957 Act even though proceedings for such an offence shall not be instituted except by or on behalf of the DPP."

- The Court left open the possibility of issuing an arrest warrant in the future, if presented with sufficient evidence, even when the DPP refuses to initiate proceedings. It, however, doubted the utility of doing so.

First the Judge rejected the application on the ground that the DPP's refusal to bring proceedings rendered an arrest useless, even if legal: "...in light of the DPP's letter..., in which the Director says ' I do not intend to institute proceedings for a prosecution in this case' it would seem quite pointless my issuing a warrant even if I were so minded."

He then explained that he had to refuse the application in this particular instance because he had not been presented with sufficient evidence, yet, importantly, implied that he might have done so had the evidence been adequate: "The material provided by Mr. Tatchell makes generalised allegations and suggests possible sources of potentially admissible evidence. I have serious misgivings concerning Mr. Tatchell's ability to actually obtain such admissible evidence. I ought Kissinger Watch

not to issue any summons/warrant *unless I can draft a suitably precise charge*. I can not *presently* do this on the information provided." [italics added]

- Furthermore, this Judge recognised the need of victims, witnesses and others for justice in this matter.

"I do not doubt the strength of feeling in him [Mr. Tatchell] and many others that justice requires that Mr. Kissinger should face the allegations made against him in a court of law."

Understanding these points could facilitate the ability of advocates and victims to bring future proceedings in England under the Geneva Conventions Act 1957, be they against Kissinger or others who have allegedly committed war crimes. It could also spark further research into the consistency of the consent requirement for initiating proceedings with the rights enshrined in the European Convention of human rights, including the right to an effective remedy, among others. Finally, the supportive words of the judge may even strengthen the efforts of those affected by the crimes in question to obtain justice.

4. APPLICATION FOR A WARRANT FOR THE ARREST OF HENRY ALFRED KISSINGER

The Justices's Clerk
Bow Street Magistrates' Court
28 Bow Street
London WC2E 7AS

22 April 2002
Dear Justices' Clerk,

APPLICATION FOR A WARRANT FOR THE ARREST OF HENRY ALFRED KISSINGER ON CHARGES OF WAR CRIMES UNDER THE GENEVA CONVENTIONS ACT 1957

I wish to lay an information and apply for a warrant for the arrest of Henry Alfred Kissinger on charges under Section 1 of the Geneva Conventions Act 1957: that while he was National Security Advisor to the US President 1969-75 and US Secretary of State 1973-77 he commissioned, aided and abetted and procured war crimes in Vietnam, Laos and Cambodia.

Namely, he proposed, authorised, supervised, monitored, allowed to happen and failed to halt:

1. the invasion and bombardment of two neutral countries, Cambodia and Laos;
2. the practice of indiscriminate bombing raids and search and destroy operations;
3. and the use of toxic defoliants and pesticides as weapons of war; causing mass death and suffering to the civilian population and severe long-term damage to the natural environment.

According to the US Senate sub-committee on Refugees, page 4

from March 1968 to March 1972 in excess of three million civilians were killed, wounded or made homeless. During this same period, the Pentagon confirms that the US dropped nearly 4.5 million tons of high explosive on Vietnam, Laos and Cambodia, which is more than double the tonnage dropped during the whole of the Second World War.

The chief architect of US war policy during most of these four years was Henry Alfred Kissinger. His acts of commission and omission are criminal offences under the Geneva Conventions Act 1957, Fifth Schedule, Protocol 1: Part IV, Civilian Population, Articles 51, 52, 53, 54, 55 and 57 (requirement to protect the civilian population and the natural environment), Part V, Execution of the Conventions and of the Protocol, Articles 80, 86 and 87 (requirement to ensure observance of the Conventions and Protocol 1).

Details of the offences, charges and evidence are attached.

To secure an arrest warrant for Henry Alfred Kissinger, I am requesting a hearing at Bow Street Magistrates' Court today, Monday 22 April 2002. Mr Kissinger will be present in the UK only on the night of 23 April 2002 and the morning of 24 April 2002. Given the brevity of his presence in this country, I therefore seek a court decision on my application for an arrest warrant by the afternoon of 23 April 2002 at the latest.

I have written to the Attorney-General and Director of Public Prosecutions requesting that they initiate legal proceedings for the prosecution of Mr Kissinger, and requested that if they are not willing to initiate a prosecution, that they consent to me bringing a private prosecution.

Copies of these letters are attached.

Pending a decision from the Attorney-General and Director of Public Prosecutions, I request that my court hearing for an arrest warrant proceed, with the court giving a ruling either today or tomorrow and then, if necessary, referring its ruling to the Attorney-General and Director of Public Prosecutions.

Given Mr Kissinger's short visit to the UK, it is, I contend, reasonable that I be granted a court hearing and an arrest warrant, pending the decision of the Attorney-General and the Director of Public Prosecutions.

Yours sincerely,
Peter Tatchell

INFORMATION

Application by Peter Gary Tatchell for a warrant for the arrest of Henry Alfred Kissinger under Section 1 of the Geneva Conventions Act 1957:

The Evidence

The evidence against Mr Kissinger, as set out in the book, *The Trial of Henry Kissinger*, by Christopher Hitchens (Verso, London, 2001), demonstrates that, during the period when he was National Security Advisor to the US President 1969-75 and US Secretary of State 1973-77, Mr Kissinger:

A. proposed, authorised, supervised and monitored the key
Kissinger Watch.....

elements of US war policy in Vietnam, Laos and Cambodia;

B. was involved in day-to-day war management, including planning and approving major military operations;

C. received detailed intelligence briefings on the effects of those operations;

D. knew of the massive civilian casualties and environmental destruction resulting from the US war effort;

E. approved military operations knowing they were likely to result in widespread civilian casualties and grave environmental damage;

F. neglected to ensure that US attacks were limited strictly to military objectives;

G. oversaw indiscriminate bombing raids and army sweeps that failed to distinguish adequately between military and civilian personnel;

H. did not act to ensure that US military operations spared civilians;

I. failed to warn or protect civilian populations;

J. made no serious attempt to halt civilian and environmental destruction;

K. evaded his responsibility to encourage and require observance of the Conventions and Protocol 1 by US government officials and military forces;

L. never pursued disciplinary action against the perpetrators of civilian and environmental damage who violated the Geneva Conventions and Protocol 1.

Specific evidence

1. Mr Kissinger was a senior party - second only to the President - to the secret, illegal invasion and bombing of two neutral countries, Laos and Cambodia, without a declaration war or any warning to the civilian population. In his own account of his period as Presidential advisor on National Security, *White House Years*, Kissinger admits that on Air Force One on 24 February 1969, together with H R Haldeman, Alexander Haig and Colonel Smitton, he conspired to work out "the guidelines for the (secret and illegal) bombing of the enemy's sanctuaries" in Cambodia and Laos.

2. US General Telford Taylor, the former chief prosecuting counsel at the Nuremberg trials, condemned the Kissinger-endorsed policy of air strikes against hamlets suspected of harbouring Vietnamese guerrillas as "flagrant violations of the Geneva Convention on Civilian Protection".

3. The following examples are evidence of indiscriminate US attacks, approved and overseen by Mr Kissinger, which caused widespread civilian casualties:

(a) Writing in *Newsweek* on 19 June 1972, Kevin Buckley revealed that one US official admitted that "as many as 5,000" civilians were killed by US firepower in the military operation *Speedy Express* in Kien Hoa province in 1969: ".the enormous discrepancy between the body count (11,000) and the number of captured weapons (748) is hard to explain - except by the conclusion that many victims were unarmed innocent civilians". In one village alone, an elder recalled: "The Americans destroyed every house with artillery, air strikes or by burning them down with cigarette lighters. About 100 people were killed by bombing, others were wounded

and others became refugees”.

(b) In March 1969, the hospital at Ben Tre reported 343 patients injured by “friendly fire” (US forces) and only 25 by “the enemy”.

(c) US raids were mostly conducted by B-52 bombers flying at such a high altitude that they cannot be seen from the ground, and give no warning to civilians of their approach. Moreover, they are incapable of accuracy or discrimination in their targeting - on account of both their extreme altitude and the sheer volume of their bomb load. Between March 1969 and May 1970, there were 3,630 US bombing raids on Cambodia.

(d) A memorandum by the Joint Chiefs of Staff concerning these raids, forwarded to the Defense Department and the White House, and almost certainly seen by Mr Kissinger, warned that “some Cambodian casualties would be sustained in the operation” and “the surprise effect of the attack could tend to increase casualties”. The memo stated that the target areas were populated, albeit sparsely. Mr Kissinger later told the US Senate Foreign Relations Committee that the targeted areas were “unpopulated”.

(e) From July to November 1973, there was 21 per cent increase in the bombing of Cambodia. The Air Force maps of the targeted areas list them as being, or having been, densely populated by civilians.

(f) Freelance investigator Fred Branfman secretly taped US pilots on bombing missions over Cambodia in the early 1970s. At no point did any pilots check before or during the raids that they were not bombing civilians. His expose that no precautions were taken to protect civilians was later written up in The New York Times by Sydney Schanberg; offering compelling evidence of the indiscriminate nature of US aerial attacks.

(g) US bombing is calculated to have killed 350,000 civilians in Laos and 600,000 in Cambodia. Several times more civilians were wounded and made refugees.

(h) During the first 30 months of the Nixon-Kissinger administration, the CIA’s counter-insurgency “Phoenix Programme” was responsible for the murder or abduction of 35,708 Vietnamese civilians.

4. Mr Kissinger approved the systematic use of chemical defoliants and pesticides (including Agent Orange) which, for decades afterwards, caused birth defects and rendered significant areas of Vietnam, Laos and Cambodia too toxic for people to live or farm - creating an environmental disaster that will continue to affect generations to come.

5. Intimately involved in military decision-making, Mr Kissinger chaired a number of hands-on posts, including the Vietnam Special Studies Group, which supervised the daily conduct of the war. Colonel Ray Smitton, the Joint Chiefs of Staff expert on air tactics, notes that by late 1969 Mr Kissinger was overruling his office on target selection: “Not only was Henry carefully screening the raids, he was reading the raw intelligence”. Later, he began to intervene to dictate mission patterns and bombing runs.

6. It is implausible for Mr Kissinger to claim that he was unaware of US violations of the Geneva Conventions. Kissinger Watch

He planned, sanctioned and monitored many of them. In his memoirs, White House Years, he acknowledges that nothing of significance took place in Vietnam, Laos and Cambodia without his knowledge or authorisation.

The Charges

Application by Peter Gary Tatchell for a warrant for the arrest of Henry Alfred Kissinger under Section 1 of the Geneva Conventions Act 1957:

According to the above specimen evidence, while Mr Kissinger was US National Security Advisor and US Secretary of State his conduct in relation to the war in Vietnam, Laos and Cambodia violated the following Articles of the Geneva Conventions Act 1957, Fifth Schedule, Protocol 1, Part IV, Civilian Population:

Article 51 - Protection of the Civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations..

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts of threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) (a) those which are not directed at a specific military objective

(b) (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(b) an attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantages anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

Article 52 - General Protection of Civilian Objects

1. Civilian objects shall not be the object of attack or of reprisals..

2. Attacks shall be limited strictly to military objectives..

Article 53 - Protection of Cultural Objects and of Places

of Worship

..it is prohibited:

(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.

Article 55 - Protection of the Natural Environment

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby prejudice the health or survival of the population.

Article 57 - Precautions in Attack

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects..

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

Moreover, Mr Kissinger's actions in the conduct of that war also violated the following Articles of the Geneva Conventions Act 1957, Fifth Schedule, Protocol 1, Part V, Execution of the Conventions and of the Protocol:

Article 80 - Measures for Execution

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.

2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.

Article 86 - Failure to Act

1. The High Contracting Parties and Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or going to commit such as breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87 - Duty of Commanders

1. The High Contracting Parties and Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol..

Signed: Peter Tatchell

Dated: 22 April 2002

5. REASONS for refusing the issue of a warrant IN BOW STREET MAGISTRATES' COURT

This is an application by Mr. Peter Tatchell for a warrant for the arrest of HENRY ALFRED KISSINGER on charges of war crimes under the Geneva Conventions Act 1957.

Section 1 of the Geneva Conventions Act 1957 creates an indictable only offence for 'grave breaches of scheduled conventions' carrying on conviction a maximum sentence for life or 14 years imprisonment depending on the particulars of the breach.

Section 70 of the International Criminal Courts Act 2001 amends section 1 of the Geneva Convention Act 1957. It inserts a new paragraph '1A' which, by sub-paragraph 1A(3), provides that 'proceedings for an offence shall not be instituted in England and Wales, except by or which the consent of the Attorney General'. Section 70(3) ICCA 2001 says 'The above amendments do not apply in relation to offences committed before the commencement of this section. The commencement date is 1st September 2001. This application relates to conduct in 1969-1973 so the amendments brought in by section 70 ICCA 2001 do not apply.

In its pre-amended form section 1 of the 1957 Act provided in section 1(3) 'proceedings for such an offence shall not be instituted in England except by or on behalf of the Director of Public Prosecutions'. Despite Mr. Tatchell's representations to the contrary I am satisfied that proceedings can only be instituted by or on behalf of the DPP.

Section 25 of the Prosecution of Offences Act 1985 provides (1) This section applies to any enactment which prohibits the institution or carrying on of proceedings for any

offence except – (a) with the consent (however expressed) of a Law Officer of the Crown or the Director; or (b) where the proceedings are instituted or carried on by or on behalf of a Law Officer of the Crown or the Director; and so applies whether or not there are other exceptions to the prohibition (and in particular whether or not the consent is an alternative to the consent of any other authority or person). (2) An enactment to which this section applies –(a) shall not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and (b) ... (3) In this section “enactment” includes any provision having effect under or by virtue of any Act; and this section applies to enactments whenever passed or made.

Thus, in the context of this application, it is within the power of this court to issue a warrant for Mr. Kissinger’s arrest for an offence said to be contrary to section 1 of the 1957 Act even though proceedings for such an offence shall not be instituted except by or on behalf of the DPP.

However, in the light of DPP’s letter dated 23rd April 2002, in which the Director says ‘ I do not intend to institute proceedings for a prosecution in this case’ it would seem quite pointless my issuing a warrant even if I were so minded. The material provided by Mr. Tatchell makes generalised allegations and suggests possible sources of potentially admissible evidence. I have serious misgivings concerning Mr. Tatchell’s ability to actually obtain such admissible evidence. I ought not to issue any summons/warrant unless I can draft a suitably precise charge. I can not presently do this on the information provided.

Mr. Tatchell has made this application courteously and with obvious sincerity. I do not doubt the strength of feeling in him and many others that justice requires that Mr. Kissinger should face the allegations made against him in a court of law.

The application is refused.

Nicholas Evans
District Judge
24th April 2002

6. Why Milosevic, but not Kissinger?

The Guardian Thursday April 25, 2002
Comment

If Slobodan Milosevic can be put on trial for war crimes, why can’t Henry Kissinger, asks human rights campaigner Peter Tatchell

I lost my bid to have the former US secretary of state, Henry Kissinger, prosecuted on charges of war crimes in Indochina, but there is good reason to hope that a future, better prepared attempt might succeed.

Refusing my application for an arrest warrant at Bow Street magistrates’ court, Judge Nicholas Evans said he was not “presently” able to draft a “suitably precise charge” based on the evidence “of generalised allegations” that I had submitted.

Judge Evans doubted whether I could produce more specific, admissible evidence. But his comments leave open the Kissinger Watch

possibility that he might issue a warrant in the future - if I can produce stronger evidence of Kissinger’s culpability in the killing, maiming, torture and forced relocation of civilian populations in Vietnam, Laos and Cambodia in the late 60s and early 70s.

It is now my intention to liaise with human rights lawyers and organisations in the United States, in order to obtain further evidence and witnesses. If I can get these, I hope to come back to court in a few months time and make a new application for Kissinger’s arrest.

I brought this case because the director of public prosecutions, David Calvert-Smith, has refused to prosecute Kissinger.

If I went out and murdered my neighbour, the DPP would use all his resources to bring me to trial. Yet Henry Kissinger organised indiscriminate B-52 bombing raids that killed hundreds of thousands of people and Mr Calvert-Smith does nothing. I believe that these are comparable crimes.

As national security advisor to President Nixon from 1969-73, and later as US secretary of state from 1973-77, Henry Kissinger was the chief architect of US war policy in Vietnam, Laos and Cambodia. In his own memoirs, *White House Years*, he boasts of his huge power and influence over the President, claiming that nothing happened in Indochina that he did not know about and authorise. According to the US Senate sub-committee on refugees, from March 1968 to March 1972, in excess of three million civilians were killed, wounded or made homeless. During this same period, most of which coincides with Kissinger’s role as NSA to the President, the US dropped nearly 4.5m tonnes of high explosive on Vietnam, Laos and Cambodia - more than double the tonnage dropped during the whole of the second world war.

What the US did in Indochina involved the mass killing of civilians and the premeditated, wholesale destruction of the environment using chemical defoliants such as Agent Orange. These are war crimes under the 1957 Geneva Conventions Act.

I am merely seeking to have the law enforced, without fear or favour. No one should be above the law, not even Henry Kissinger. He may have escaped arrest this time, but my bid to have him prosecuted continues. Three million civilians are crying out for justice.

Even Judge Evans, in his verdict, acknowledged the seriousness of my case:

“Mr Tatchell has made his application courteously and with obvious sincerity. I do not doubt the strength of feeling in him and many others that justice requires that Mr Kissinger should face the allegations made against him in a court of law”, he concluded.

Much of the damning evidence against Kissinger is set out in the book, *The Trial of Henry Kissinger*, by Christopher Hitchens (Verso, London, 2001). Hitchens demonstrates that Kissinger proposed, authorised, supervised and monitored the key elements of US war policy in Vietnam, Laos and Cambodia, and was involved in day to day war management, including planning and approving major military operations. He also cites sources indicating that Kissinger approved bombing runs that were not limited to military targets and were

likely to result in widespread civilian casualties.

Kissinger was a senior party - second only to the president - to the secret, illegal invasion and bombing of two neutral countries, Laos and Cambodia, without a declaration war or any warning to the civilian population. In his biographical account, *White House Years*, Kissinger admits that on Air Force One on February 24 1969, together with HR Halerman, Alexander Haig and Colonel Ray Smitton, he conspired to work out "the guidelines for the [secret and illegal] bombing of the enemy's sanctuaries" in Cambodia and Laos.

US General Telford Taylor, the former chief prosecuting counsel at the Nuremberg trials, condemned the Kissinger-Nixon policy of air strikes against hamlets suspected of harbouring Vietnamese guerrillas as "flagrant violations of the Geneva convention on civilian protection".

The following examples, documented by Christopher Hitchens, are evidence of indiscriminate US attacks overseen by Kissinger which caused mass civilian casualties:

Writing in *Newsweek* on June 19 1972, Kevin Buckley revealed that one US official admitted that "as many as 5,000" civilians were killed by US firepower in the military operation *Speedy Express* in Kien Hoa province in 1969: "The enormous discrepancy between the body count (11,000) and the number of captured weapons (748) is hard to explain - except by the conclusion that many victims were unarmed innocent civilians." In one village alone, an elder recalled: "The Americans destroyed every house with artillery, air strikes or by burning them down with cigarette lighters. "About 100 people were killed by bombing, others were wounded and others became refugees."

US raids were mostly conducted by B-52 bombers. They flew at such a high altitude that they could not be seen from the ground, and gave no warning to civilians of their approach. Moreover, they were incapable of accuracy or discrimination in their targeting - on account of both their extreme altitude and the sheer volume of their bomb load. Between March 1969 and May 1970, there were 3,630 such US bombing raids on Cambodia alone. A memorandum by the joint chiefs of staff concerning these raids, forwarded to the defence department and the White House, and almost certainly seen by Kissinger, warned that "some Cambodian casualties would be sustained in the operation" and "the surprise effect of the attack could tend to increase casualties". The memo stated that the target areas were populated, albeit sparsely. Mr Kissinger later told the US Senate foreign relations committee that the targeted areas were "unpopulated". From July to November 1973, there was a 21% increase in the bombing of Cambodia. Air Force maps of the targeted areas list them as being, or having been, densely populated by civilians. In other words, it was known there was a serious risk that non-combatants would be killed.

Freelance investigator Fred Branfman secretly taped US pilots on bombing missions over Cambodia in the early 70s. At no point did any pilots check before or during the raids that they were not bombing civilians. His exposé that no precautions were taken to protect civilians was later written up in the *New York Times* by Sydney Schanberg; offering compelling evidence of the indiscriminate nature of US aerial

attacks. US bombing is calculated to have killed 350,000 civilians in Laos and 600,000 in Cambodia. Several times more civilians were wounded and made refugees.

During the first 30 months of the Nixon-Kissinger administration, the US counter-insurgency "Phoenix Programme" was responsible for the murder or abduction of 35,708 Vietnamese civilians. Kissinger's role in formulating and implementing US war policy coincided with the systematic use of chemical defoliants and pesticides, including Agent Orange. These caused birth defects and rendered significant areas of Vietnam, Laos and Cambodia too toxic for people to live in or farm - creating an environmental disaster that will continue to affect many generations to come. Intimately involved in military decision making, Kissinger chaired a number of hands-on posts, including the Vietnam special studies group, which supervised the daily conduct of the war. Colonel Ray Smitton, the joint chiefs of staff expert on air tactics, noted that by late 1969 Kissinger was overruling his office on target selection: "Not only was Henry carefully screening the raids, he was reading the raw intelligence". Later, he began to intervene to dictate mission patterns and bombing runs.

It is implausible to suggest that Kissinger was unaware of US violations of the Geneva conventions. He planned, sanctioned and monitored many of the operations which resulted in these violations.

For all these reasons, and many more, I believe a prosecution is justified and necessary. If Slobodan Milosevic can stand trial for war crimes, why not Henry Kissinger.

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7. Kissinger testimony pleas refused

Giles Tremlett in Madrid

Guardian

Tuesday April 23, 2002

Britain has turned down requests from judges in Spain and France to interview former US secretary of state Henry Kissinger as a witness in cases they are pursuing for genocide, terrorism, torture and murder against General Pinochet and others.

The Home Office has told Spanish judge Baltasar Garzon and French judge Sophie-Helene Chateau that their requests for Mr Kissinger, who will be in London tomorrow to give a speech at the Royal Albert Hall, to be questioned by international commissions did not comply with British law.

"They are free to pursue it with the US authorities," a British official said last night.

The decision to turn down the requests from Spain and France signalled that the Home Office agreed with Mr Kissinger and the US government that all the judges' questions should be directed to the state department.

"The US department of state's defensive response to this inquiry can only raise questions about what Mr Kissinger has to hide," Joan Garces and Manuel Murillo, Spanish lawyers representing 4,000 victims of General Pinochet and other Latin American dictators, said in a statement.

The prosecuting lawyers in Madrid, who had not seen the formal British reply to Judge Garzon, said that Britain

could not legally claim Mr Kissinger enjoyed some form of “immunity” from being interviewed. They pointed out that crimes of genocide and terrorism, even if committed in Latin America, were criminal offences in Spain and had been under investigation since 1996.

They specifically needed to question Mr Kissinger about the Condor Plan, under which Latin America’s military regimes agreed jointly to eradicate their opponents in the late 1970s.

They said the question of legal immunity, which was turned down by the law lords in the case of General Pinochet, did not apply in this case because Mr Kissinger had not been charged or named as a suspect and was only wanted as a witness with potentially important evidence.

If the requests had been granted, Mr Kissinger would have been summoned to give evidence on oath in a magistrate’s court where he would have been questioned by the presiding district judge or the foreign judges.

Mr Garces said last night that there was no way of challenging the Home Office’s decision.

It was not clear last night whether Judge Garzon, who had General Pinochet arrested in London two years ago, would seek some other reason for travelling to London to interview Mr Kissinger.

8. Chile/UK: UK shirks its obligation to cooperate in human rights investigation

AMNESTY INTERNATIONAL - PRESS RELEASE

AI Index: AMR 22/003/2002 (Public)

News Service No: 72

23 April 2002

On the eve of Henry Kissinger’s visit to the United Kingdom, Amnesty International today criticized the reported refusal of the UK Home Office to cooperate with requests by French and Spanish judges to question the former US Secretary of State as a witness concerning widespread and systematic human rights violations — amounting to crimes against humanity — committed in Chile under the military government of Augusto Pinochet.

Spanish National Court judge Baltasar Garzón and French judge Sophie-Helene Chateau, who are investigating cases of human rights violations committed in Chile, each filed a commission rogatoire (an official request for information) requesting permission of the UK authorities to question Henry Kissinger as a witness for his knowledge of the secret operation known as “Operation Condor”.

The request of the Spanish and French judges is based on the mutual obligations of European countries under the European Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, of which the UK, Spain and France are parties.

“UK, French and Spanish nationals were among the thousands of victims of human rights violations committed under Plan Condor, and the UK authorities should cooperate with the Spanish and French judges in their investigations into these violations,” Amnesty International said.

“By questioning Henry Kissinger, investigating judges Kissinger Watch

could obtain important information to advance the long quest for truth and justice,” the organization added, urging the UK authorities to fulfil their obligations under international law by granting permission to question him.

As well as being a violation of the UK’s obligation under the European Convention, the reported refusal by the Home Office to cooperate with the French and Spanish authorities is inconsistent with its obligations under general principles of law, which were recognized by the United Nations (UN) General Assembly in the 1973 UN Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity. “This would be a clear indication of the UK government’s commitment to human rights and its determination to cooperate with European Community member states in human rights issues,” Amnesty International concluded.

Background

Operation Condor was a coordinated intelligence operation between the military governments of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay in the 1970s. As part of the operation, political exiles in any of these countries were illegally taken and returned secretly to their countries of origin, where they would be tortured, “disappeared” and often murdered. The operation was set up in Santiago, Chile; the military government of Chile and Chilean intelligence had close links with their US counterparts.

Principle 6 of the UN Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity declares that “[s]tates shall co-operate with each other in the collection of information and evidence which would help to bring to trial [persons against whom there is evidence that they have committed crimes against humanity] and shall exchange such information”.

William Beausire, a UK-Chilean dual national, was a victim of Operation Condor. He was abducted in Buenos Aires Ezeiza airport by members of the Argentine security forces in November 1974, as he was on his way to France. He was returned to Chile and held in various secret detention centres where he was tortured. William Beausire is one of the over 1,000 victims of “disappearance” in Chile. Since his “disappearance”, his relatives have been trying to clarify his fate and to achieve justice both in Chile and abroad.

For more information please call Amnesty International’s press office in London, UK, on +44 20 7413 5566

Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

9. The government of the United Kingdom DID approve its request to question Henry Kissinger

Madrid, April 26, 2002

Statement of Dr. Juan E. Garcés and Mr. Manuel Murillo, Chief Plaintiffs’ Attorneys in the case before the Audiencia Nacional of Spain against Augusto Pinochet and others, for genocide, terrorism, and torture Contact: Tel: 34-91-531-

STATEMENT REGARDING THE SPANISH COURT'S REQUEST OF APRIL 18 TO QUESTION MR. HENRY KISSINGER ABOUT ACTS OF INTERNATIONAL TERRORISM COMMITTED AS PART OF OPERATION "CONDOR".

The National Court of Spain has been informed by British Authorities that the government of the United Kingdom DID approve its request to question Henry Kissinger about terrorist acts committed as part of operation Condor. News reports indicating that the request had not been approved were inaccurate.

British authorities submitted the Spanish (and French) Court's questions to Mr. Kissinger. Mr. Kissinger refused to cooperate with the Spanish (and French) judicial investigation. British Authorities confirmed Mr. Kissinger's refusal to cooperate in a message to the Audiencia Nacional, communicated via INTERPOL on April 22. The complete text of this communication can be found below (translated from Spanish).

Kissinger's response demonstrates an unfortunate disrespect for European judicial authorities. His unwillingness to cooperate suggests a blatant lack of concern for Law and judicial processes. Moreover, that Kissinger would refuse to answer questions actually submitted to him by British authorities further heightens suspicions about what he has to hide.

"TEXT:

"With regard to this matter, and in response to the request for international judicial assistance directed to the Authorities of the United Kingdom, requesting the questioning of American national Henry KISSINGER, we attach copies of the faxes received in London, whose content is as follows:

"We have been in contact with the office of Dr. Henry Kissinger, as well as with the US Department of State. Attached we remit the message that the US Embassy in London sent by fax.

"Dr. Kissinger has refused to testify about his knowledge of the events referred to in the rogatory letter. Apparently, he has taken this decision on the advice of the US Department of State.

"According to the law of the United Kingdom, it is not possible to take testimony from witnesses without their consent. Therefore, we regret to inform you that we cannot help with this matter.

"Please note that according to both Dr. Kissinger's office and the Department of State, they might respond differently if you make a formal request directly to the US government."

"Attached document from the US Embassy in London:

"Dear Sir : Following up on our conversation this morning, with regard to your office's request to take the statement of Dr. Kissinger when he comes to London, the US government would like to inform Interpol-London, that any request by Spanish Judicial Authorities for judicial assistance in this matter should be addressed directly to the US government, as the request relates to matters arising when Dr. Kissinger was Secretary of State.

" Dr. Kissinger, therefore, will not be able to respond to the Spanish request directly during his time in London."

10. Statement: Regarding the Spanish court's request to question Mr. Henry Kissinger / J. Garcés & M. Murillo

Madrid, April 22, 2002

REGARDING THE SPANISH COURT'S REQUEST TO QUESTION MR. HENRY KISSINGER ABOUT ACTS OF INTERNATIONAL TERRORISM AND TORTURE COMMITTED AS PART OF OPERATION "CONDOR".

Statement of Dr. Juan E. Garcés and Mr. Manuel Murillo: Chief Plaintiffs' Attorneys in the case before the Audiencia Nacional of Spain against Augusto Pinochet and others, for genocide, terrorism, and torture

Contact: Office of Dr. Juan E. Garcés, Tel: 34-91-531-1989; fax: 34-91-5316811

According to press reports, the US Department of State has told British Authorities that Mr. Henry Kissinger can not answer questions that Spain's National Criminal Court has requested Britain put to him. The Department of State answer raises the issue of IMMUNITY. This position is disingenuous, and legally incorrect. The Audiencia Nacional's request to question Mr. Henry Kissinger as a witness raises no questions about his eventual "immunity" because:

1. The Spanish Court's questions refer only to acts of international terrorism ordered by officials of Chile and other South American States as part of "Operation Condor";
2. Those crimes are considered also crimes in Spain, and since 1996 they are under judicial investigation at the National Criminal Court of Spain. This is in conformity with the House of Lords legal doctrine;
3. The Spanish court has not asked any questions that relate to the policies of the US Department of State during the years in which Mr. Kissinger was its Secretary;
4. Mr. Kissinger is not currently Secretary of State;
5. The question of whether a former Secretary of State is "immune" has not been raised in this case because Mr. Kissinger has not been indicted by the Spanish Court. In contrast, this issue has been raised by proceedings against Mr. Kissinger going on in the United States District Court for the District of Columbia, in which the family of General Rene Schneider, former Commander in Chief of the Chilean Army, has sued Kissinger for his alleged involvement in Schneider's assassination in 1970.
6. Should any issues be raised by the Spanish Court's questions, Mr. Kissinger is the appropriate person to bring them up. He could do so appropriately only after learning the questions that the Spanish court has asked of him. Any objections he might have should be considered question by question, and resolved by the appropriate judicial authorities

The US Department of State's defensive response to this judicial inquiry can only raise questions about what Mr. Kissinger has to hide. It is unfortunate that Mr. Kissinger seems

more committed to obstructionism than to uncovering the truth about international terrorism and Operation Condor.

11. Spanish superjudge asks USA for permission to quiz Kissinger

BBC Monitoring Service - United Kingdom; Apr 24, 2002

[Presenter] As part of his investigation into the crimes committed during the Chilean and Argentine dictatorships, Judge Baltasar Garzon has asked the United States for permission to interrogate former US Secretary of State Henry Kissinger through letters rogatory as a witness. Antonio Sigris reports:

[Sigris] In this way, Garzon is not giving up on the idea of interrogating Henry Kissinger. He is asking to send these

letters rogatory to the United States to question him about Operation Condor, the coordinated repression of leftist dissidents in the Southern Cones military dictatorships in the 1970s and beginning of the 1980s. The National High Court judge will send a set of questions and relevant documentation with the request.

This is Garzon's reaction to the British authorities' refusal to take evidence from Kissinger, which the judge wanted to happen today coinciding with the former US secretary of state's visit in London...

Source: RNE Radio 1, Madrid, in Spanish 1700 gmt 24 Apr 02