

TERRORISM & HUMAN RIGHTS AFTER SEPTEMBER 11

*Towards a Universal Approach for Combating
Terrorism and Protecting Human Rights*

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Cairo Institute for Human Rights Studies

(CIHRS)

CIHRS is a professional, non-governmental research center specialized in the study of human rights in the Arab world. CIHRS was founded in April 1993 and has started its activities in April 1994. The institute views itself as part of the international and Arab human rights movement.

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Terrorism and Human Rights after September 11

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TERRORISM & HUMAN RIGHTS AFTER SEPTEMBER 11

*Towards a Universal Approach for Combating
Terrorism and Protecting Human Rights*

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on Terrorism & Human Rights

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(EMHRN)

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(FIDH)

Edited By: Ashild kjok

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Introduction

Has The International Community Succeeded In Combating Terrorism OR Has It Exacerbated its Risks?

This book is published on the same week that witnesses the first anniversary of the terrorist attacks on the USA, those attacks which led to the death of nearly three thousand individuals from various nationalities and which impelled the US to launch large-scale military operation on Afghanistan 26 days after the attacks, on October 7th 2001.

The aim of this anti-terrorist campaign was to eradicate terrorist focal points that orchestrated the September 11th attacks, namely Taliban and its militias and Al Qaeda group led by Bin Laden.

This incident, and the successive developments that followed, led to a re-articulation of political interactions in the entire world. What came to be called "The War Against Terrorism" has become the major actor in the formulation of those interactions and in forging new alliances at the expense of other factors.

Within the context of the global war against terrorism, large-scale pursuits of suspected groups and individuals from Indonesia and Philippines in the far east, to the US and Canada in the far west have taken place. Several measures have been enacted to dry out the resources of funding to suspected groups. This war was on the verge of extending to Somalia; however, this possibility receded to push Iraq to the top of the list of target states, represented in the "axes of evil" –in American jargon—including Iran and North Korea as well.

One year after this war, observers monitored the following:

1. No clear-cut legal evidence has been presented to the world regarding those accused of launching the September attacks, even though evidence strongly points to Al Qaeda group.
2. The war against terrorism did not succeed in liquidating either Taliban or Al Qaeda, or even seize their prominent leaders. There are possible indications that Afghanistan has become a pit hall for US Army, especially with the failure to broaden the political base of the Afghani regime currently in power, nor in overcoming the serious and growing schisms between its major wings.
3. Available reports and statements of UN and some security and defense experts and intelligence services in Europe and the US, which have been followed in succession during the latest weeks, warned against the fact that Al Qaeda group has broadened its alliances and that it has not lost its capacity to launch other influential and unprecedented terrorist attacks.
4. The broad international coalition against terrorism that has gathered after September 11th is suffering from a serious rupture over the next step, namely the attack on Iraq. Only Washington and London are supporting this step, which is seriously and explicitly opposed by the closest allies in Europe, Asia and the Arab World. Not only this, but this rupture has extended into the American and British Administrations, and into main political streams within both countries.
5. The scope of this war is restricted to combating the symptoms of the "terrorism illness", without its root causes, political, social, economic and cultural roots. Furthermore, the way this campaign has been managed exacerbated the risks of terrorism by:
 - a) Aggravating the feeling of injustice; shunning fair issues of peoples and groups by avoiding impartial solutions based on principles of the right to self-determination, justice, equality and equity. Palestine is the most prominent example, where the Israeli occupation of Palestine has been condoned and justified, massacres committed during last year have been allegedly advocated as a war against terrorism and legitimate self-defense. Other examples include also Chechnya and Kashmir.
 - b) Exhibiting heedlessness of and irresponsibility toward international law and institutions of the international community. This represents an incitement to all parties –groups, peoples and states- to resort to violence for conflict resolution and the attainment of rights. This in turn would lead to further marginalization of

institutions of the international community and degradation of the moral and political status of international law.

c) Explicitly violating human rights world wide, both in practice and legislations, including both Europe and the US. A set of legislations that severely circumvent freedoms and civil rights, as well as the rights of political asylum-seekers and migrants have been enacted. Under this umbrella, several Third World and Arab countries have followed suit, by enacting more restrictive legislation, justified by similar acts in countries of the North. Advocates of democracy and human rights have been harassed and arrested, and many of them have been subjected to unfair trials.

d) Giving a great stimulus to the "Clash of civilizations" scenario, and thus reanimating waves of racial hatred against Arabs and Muslims in particular.

A review of this book reveals that the participants foresaw those developments and warned against their repercussions four months after the launching of the so-called "War Against Terrorism", even though they belong to various cultural, religious and political backgrounds. They came from the far east in Malaysia, to the far West in Colombia and the United States, and from South Africa in the South, to Denmark in the far North, and from the Arab and European Mediterranean Basin.

They represent the "third voice" that have come to realize the exorbitant risks of terrorism. However, they strongly believe it can be eradicated, but without sacrificing human and peoples rights. They warn against undermining or underrating the importance of those rights, which in fact would magnify the perils of terrorism.

This voice represents a harmonious tuning between different cultures and religions. Its content stands in sharp contrast to the premise of clash of civilizations, which is stirred up by the irrational conduct of the war against terrorism. The latter feeds bitterness among peoples and cultures and infuriates the blaze of resentment and racism.

Participants in the "Terrorism and Human Rights" Symposium concluded several recommendations, which were included in its final report. The general trend of those recommendations runs totally counter to the conduct of the "War Against Terrorism". Even though both, the recommendations and this war, seek the same target, namely the eradication of terrorism, however, they differ radically, since participants to the symposium were keen not to sacrifice human and peoples

rights, international institutions and international law and to target the root causes of the terrorist phenomenon, not to be restricted to its noticeable symptoms.

If there is another label that can be given to the final report of the symposium, it is probably better to say: "Why the international community fails in combating terrorism"? It might be the title of a new book, which would include the proceedings of the coming CIHRS follow up workshop, next winter.

After one year of the war against terrorism, a fundamental fact remains solid, no one knows when or where it would end up? Moreover, there is no consensus over the definition of "terrorism", nor serious effort by the international community toward this end!

Bahey el-din Hassan
CIHRS, Director
August 30, 2002

OPENING SPEECHES

Bahey el-din Hassan
(CIHRS)

On behalf of the staff of Cairo Institute for Human Rights Studies (CIHRS), I hereby have the honor to declare the International Symposium on Terrorism and Human Rights, organized by CIHRS in collaboration with the International Federation For Human Rights (FIDH) and the Euro-Mediterranean Human Rights Network (EMHRN) opened.

It may be a coincidence that we are convening only a few steps away from the World Trade Center in Cairo. However, it is not coincidental that we are holding this international symposium in Cairo at the invitation of CIHRS. We initially called for convening this symposium as a result of the human rights movement in Egypt's early awareness of the grave hazards ensuing the emergence of non-state actors seeking to achieve political goals through acts of violence and terrorism, infringing upon human rights.

It is not an exaggeration to say that the human rights movement in Egypt has played a leading role in dealing with such violations by considering the combat of such violence as a duty that has to be undertaken by human rights NGOs; and also in asserting that setting aside human rights considerations and restricting public freedoms and rights, under the pretext of combating terrorism, creates a climate most suitable for disseminating the ideologies of violent and terrorist groups. The Egyptian Organization for Human Rights (EOHR) was the first to pose the dire need for the United Nations to pay special attention to grave human rights violations perpetrated by non-state actors that are not responsible before the state or the international community, on the international agenda, through the 1993 Vienna World Conference on Human Rights and its regional preparatory meetings. This task requires that the United Nations produce a definite vision on how to combat this pattern of violations in the framework of international human rights law.

At that time, EOHR, represented by myself and my colleague Dr. Mohammed el-Sayyed Said, CIHRS' Academic Advisor, managed to convince the NGO Forum at the Vienna Conference to adopt and include this recommendation in the document submitted to the convening governments. However, the latter did not adopt this recommendation at the time. Moreover, one of the activities that we undertook in the Vienna Conference was to hold a workshop, the first of its kind, entitled "Human Rights Violation by Non-State Actors."

Now, more than eight years after the Vienna Conference and four months after the September 11 events, we are re-discussing the same issue, though after the expansion of the danger of international terrorism and after the declared war on terrorism became a war on human rights themselves.

Undoubtedly, you all share with me the feeling of the grave responsibility laid on our shoulders to arrive at appropriate strategies on how to combat the evils of terrorism effectively and decisively, and simultaneously face the pending hazards threatening the human rights system, civil freedoms and international humanitarian law as a result of the open confrontation since the September 11, 2001 terrorist attacks against the United States.

The horrible terrorist attack against the United States, resulting in the death of thousands of innocent American and other victims constituted an unjustifiable and inexcusable Crime against Humanity and a stain of disgrace on the forehead of human rights values. It is most unfortunate that the hysterical climate created by the September 11 attacks has made the war on terrorism an actual war on human rights.

Human rights considerations were set aside. Rules of international humanitarian law were blatantly violated during the war launched by the United States in Afghanistan, in the name of the international coalition against terrorism, cooperating with the Afghani armed factions opposing the Taliban regime. It has become difficult to discern between states with major democratic traditions and third world authoritarian regimes in their contest of restricting civil freedoms, undermining human rights guarantees, and privacy and adopting exceptional measures threatening the rights of minorities and asylum-seekers in the name of security and stability requirements, and combating terrorism.

This development is further exacerbated considering that undermining human rights in democratically categorized states of international weight, which are supposedly to be followed as examples, - such as the United States - in itself amounts to giving a free hand to dictatorships and authoritarian regimes in the world to violate human rights without being held accountable.

In furtherance to this, the political climate since September 11 has aggravated racist tendencies towards Arabs and Muslims in Europe and North America and allowed the spread of racist ideas closely related to the clash of civilizations and the discourse of mutual hatred between the West on the one hand and Arabs and Muslims on the other. Moreover, these racist ideas have become an ideological cover employed by both parties to mobilize forces of extremism, fanaticism and hatred of the Other. This portends the undermining of the global creative efforts to combat terrorism and ensure the most suitable conditions for cultural coexistence in a context of respect for cultural diversity and the right of different cultures to equal self-expression, exerted throughout many decades.

Equally important in this regard is the continued marginalization of the role played by the United Nations in international affairs and in preserving international peace and security, as illustrated in the wake of the September 11 events. The United Nations' practical role was limited to endowing the unilateral mechanisms of action, adopted by the United States and the international coalition revolving in its orbit, with legitimacy. This entailed the paralysis or misuse of the mechanisms of international legitimacy in favor of the U.S. interests and its explicit, or implicit, goals in the context of its war on terrorism.

A positive sign, however, is that moral forces throughout the world, led by the international human rights movement, did not sit on their own hands.

Human rights NGOs have proven their adherence to humanitarian moral principles and refused to trade them off in the name of combating terrorism. They asserted that

prosecuting the perpetrators of the attacks, and combating terrorism in general, should be undertaken in the framework of respecting, rather than marginalizing, the rules of international humanitarian law and the universality of human rights. They also highlighted that the exacerbation of the phenomena of violence and terrorism is closely related to the blatant inequalities and injustices in today's world at the political, economic, social and cultural levels. Thus, combating terrorism should focus on redressing these injustices if we are indeed to put an end to terrorism.

Ladies and gentlemen,

We have ahead of us an agenda filled with major questions. I certainly do not want to run ahead of your proceedings, but allow me to stop at the Palestinian issue, which forms an intersection between major issues that arose after the September 11 attacks.

Bin Laden attempted to use the defense of the rights of the Palestinian people as a pretext to justify the September 11 crime and endow it with legitimacy. However, the Israeli terrorist state of racist settler occupation was more successful in employing the consequences of September 11. It succeeded in portraying the legitimate right of the Palestinian people to resist the occupation and to self-defense against Israel's continued oppression given the failure of international mechanisms to support it with assistance and protection, as a kind of terrorism that Israel has to deal with in the same way that terrorism was dealt with in Afghanistan.

Paradoxically, the United States did not manage to wait more than 26 days before it launched a war in response to the September 11 attacks, whereas it wrecks its wrath upon the Palestinian people for not enduring the 34-years of Israeli occupation and terrorism and 53 years of oppression, massacres and expulsion. Even worse, the United States gave Sharon, the war criminal, a green light to proceed with shedding the blood of the Palestinians. Meanwhile, it continues to impede any possible international mechanism for protecting the Palestinian people through its influence in the Security Council.

Any discussion of the feelings of hatred between the West on the one hand, and the Arabs and Muslims on the other, cannot but deal with the rights of the Palestinian people. One cannot be indifferent to the accumulated feeling of injustice from which the Arabs suffer due to the Israeli occupation crimes that the United States, in collusion with Europe, endows with impunity and protection. Consequently, this undermines the credibility of international human rights law and international humanitarian law and increases the reservation of many people in the Arab and Islamic worlds as to the universality of human rights' principles and values. The international community's lack of necessary political will to implement the UN resolutions regarding Palestine, some of which date back more than half a century, undoubtedly reflects the subjection of the international community to the blackmailing of one state: Israel. The latter threatens international peace and security, occupies the territories of another people, exercises terrorism and violence, uses artillery, F16 airplanes, military vessels and tanks against the civilian population, wages a war of starvation and imposes a racist and apartheid regime. However, the international community does not dare to apply to Israel the same criteria of accountability applied to the rest of the world.

I believe that this constitutes one of the most serious challenges facing the universality of human rights and the universal umbrella, which is supposed to protect these rights. This also constitutes fertile land for the spread and dissemination of violent and terrorist tendencies in our region.

Our responsibility as a human rights movement also requires that we stand up to international forces manipulating human rights, intentionally disable mechanisms of the international law of human rights, exempts a certain state from being held accountable and excludes whole groups and peoples from the protection of international law. What happened in Guantanamo is no different than what is happening in Ramallah and Gaza in the Occupied Territories.

The international human rights movement is more than ever in dire need to adopt new methods to achieve its goals. The question posed after the September 11 events is not only about the effectiveness of the movement, but rather about the feasibility of its sheer existence.

The human rights movement should come up with new means of action and pressure the United States, for what it is doing might change the whole world into a jungle where there is no law or discipline but the law of force.

Perhaps it is high time that any dialogue between members of the international human rights movement on the one hand and the U.S. administration, its representatives and diplomats on the other, be limited to drive the U.S. administration to reconsider its policies, which abuse universal human rights, whether in Afghanistan or Guantanamo or Palestine, or even in regards to the violation of civil liberties in the United States itself.

Perhaps it is also about time to restrict the official role, played by the United States in human rights affairs, which does harm to the human rights movement, its principles and credibility. Perhaps the failure of the United States last year in the elections of the UN Commission on Human Rights was not a coincidence. I believe that unless the United States reviews its policies, re-granting its seat in the new elections next April would be the wrong message from the international community to the American administration and people.

Ladies and gentlemen,

We look forward to this symposium, hoping that it will be an opportunity to redouble the efforts of the universal human rights movement to arrive at an effective strategy to combat and eliminate international terrorism, which constitutes a major source of human rights violations. Terrorism undermines human rights principles and values and provides governments with a pretext for further violation of human rights. We also hope that this symposium will be an important step in mobilizing international consensus to adopt such strategies and means. We also hope that it will give a momentum to unbiased efforts aimed at combating terrorism in accordance with a framework that presents a disciplined definition of terrorism and terrorist crimes, so that it would not criminalize naturally peaceful activities or stain peoples' rights to national liberation and resisting occupation as terrorism. We also hope that the symposium will come up with mechanisms for combating terrorism, while respecting international human rights law and limiting human rights violations.

I realize that this mission requires that we deal with numerous political and ideological problematics and avoid many ensuing political mine fields. However, I do believe that the diverse participation from various cultures from different regions of the world at this symposium will put us, through the neutral and objective collective effort of the participants, on the right path towards eradicating terrorism, protecting and promoting collective and individual human rights and rehabilitating of the universality of the principles and values of human rights.

Mary Robinson*
(UNHCHR)

I welcome the invitation to contribute a statement to this conference that is examining the subject of human rights and terrorism. It is of great value to hold symposia such as yours organised by civil society organizations in which the subject can be examined and recommendations made.

The phenomenon of terrorism sets many challenges the interlinked purposes of the United Nations: international peace and security, human rights, human development and the rule of international law. These challenges are not new, but the terrorist attacks in the United States of September 11 reverberated around the world and shocked humanity. I have taken the view that, under existing norms of international criminal law, the attack on the World Trade Centre towers can be characterized as crimes against humanity, both because of the nature and scale of the attack and because it was aimed against civilians.

At present, there is no international court to try international crimes of this nature. But it is important to recall that we now in principle have a statute, the Statute of the International Criminal Court, which provides for individual criminal responsibility for international crimes, including for the first time a standing international forum for their prosecution. We must ensure that this comes into force through sufficient ratification and thereby equip ourselves with the means to deal with such horrors as that of September 11 in the future. There are 60 ratifications required for the Statute to come into force. At the end of 2001, there were 139 signatures and 48 parties. The expectation is that the Statute could come into force in the second half of 2002. The universal ratification of the Statute is an important goal for the world community. The latest figures available indicate that 13 states in this region have signed the Statute. None have ratified it. I hope that your deliberations will include a discussion of what can be done to encourage Arab states to take the necessary steps to join the Statute.

The Security Council responded promptly and expanded the scope for international co-operation in the aftermath of September 11. In Resolution 1373 of 28 September, it created a new international legal obligation for states to co-operate against terrorism, taking language from existing international conventions and by invoking Chapter VII, made those provisions enforceable in all jurisdictions. It requires all states to report to the Committee no later than 90 days from the adoption of the resolution on the steps they have taken to implement it. That Committee is now reviewing the responses of states to the resolution.

Before the September 11 attacks, the United Nations General Assembly had generated a number of resolutions, declarations and a number of conventions dealing with

* Delivered on behalf of the , UN High Commissioner for Human Rights by Mr. Kevin Boyle, Senior Advisor of the UNHCHR.

terrorism. Further, after the attacks, the UN General Assembly held a special debate on terrorism, with 171 nations participating calling for the ratification and implementation by all states of all existing and any new anti-terrorism conventions. A new comprehensive Convention incorporating features of existing treaties is at an advanced stage in the General Assembly. There remain problems with an acceptable definition of terrorism, which hopefully can be resolved in the coming weeks.

Alongside effective national and international action against terrorism, there must be both a concern to ensure that increased powers taken by states do not lead to abuse of human rights and a willingness to look at underlying causes of terrorism and conflict.

Long experience teaches us that the claims of security always threaten the erosion of rights. It must be stated firmly that there is nothing in Security Council Resolution 1373, which requires states to erode human rights. The international human rights regime has a built in flexibility to allow states to take extraordinary measures in times of national emergency such that may arise from terrorism. But the international standards require that any such measures be compatible with specific procedural and substantive safeguards. There is unfortunately growing evidence that countries are ignoring or neglecting these safeguards.

I mentioned Resolution 1373 of the Security Council, creating a new international obligation for states to co-operate against terrorism. The possibility of implementation approaches to this resolution and other anti-terrorist actions impinging upon rights is serious: one risk is that some states may use this as a pretext under which to crackdown on legitimate opposition. Another is that some states may excessively limit the core human rights guarantees that we all operate under. As I mentioned, the international community has yet to reach consensus on a definition of terrorism. This gap leaves considerable scope for governments to define what they consider to be terrorism acts.

A cause for concern is the fact that in some countries non-violent activities have been considered as terrorism, and excessive measures have been taken to suppress or restrict individual rights, including privacy rights, fair trial, the right to asylum, political participation, freedom of statement and peaceful association. It is essential that the UN be ready to monitor and act against any such excesses: the Security Council's resolution must not be used to legitimise and justify excessive measures at the expense of human rights.

I would echo the comments of the Secretary General in his statement to the Security Council on January 18 this year:

“We should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights. On the contrary, I believe that in the long term we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism...while we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities, such as human rights, in the process”.

My office is engaged with other partners in monitoring the impact of September 11 on human rights. OHCHR is developing its own project to strengthen the Office's capacity to maintain updated information on anti-terrorism measures taken at the country level worldwide, and to make strategic and timely interventions where needed. OHCHR could not undertake this major task on its own. We are strengthening our partnerships with regional

organisations, and with national and international NGOs, including in your region. Many organisations are already compiling extensive and reliable information on anti-terrorism measures adopted by states. We hope that we can share that information.

I have also urged the UN human rights mechanisms, notably the UN Special Rapporteurs and Treaty Bodies, to remain vigilant in the post September 11 period. They were requested to highlight situations where rights may be at risk. The Special Rapporteurs have on several occasions, and particularly during their annual meetings in 1996 and 1997, addressed the relations between human rights and terrorism. The study on human rights and terrorism undertaken by Ms. Kalliopi K. Koufa, the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights is particularly relevant today. As experts in international human rights law, the insights they can offer into the human rights approach at times of crisis such as these, is invaluable.

Regional and sub-regional activities

Let me turn now to the development of regional activities by my Office in the Arab region.

As you will know, during the 1990s, the human rights movement burgeoned throughout the Arab world. From the Maghreb to the Gulf States, there are now more than 50 NGOs that work in monitoring, protection, awareness-raising, education, legal assistance, research and victim rehabilitation; at the same time, regional non-governmental institutions have begun to flourish.

In response to these positive developments and to requests for assistance from governments and civil society, my Office's involvement in the Arab world has increased. We have strengthened its relationship with Arab regional organizations, while human rights mainstreaming has led to joint activities between OHCHR and other UNB organisations.

To respond adequately and comprehensively to increasing demands from Arab countries, Arab national and regional NGOs and UN agencies in the region, we regrouped all OHCHR technical cooperation activities in the Arab world under a single desk, the Arab Region Desk, within the Activities and Programmes Branch in the Economic and Social Commission for Western Asia (ESCWA) in Beirut. One will be primarily concerned with the Arab region embracing the Gulf States and North Africa. This will enable us to be present and develop partnerships with UN agencies and NGOs in the region.

Strengthening regional and national capacities in the Arab world

An important component of OHCHR's strategy in the region is to use regional projects as a framework through which the office can respond to demands for technical assistance in the field of human rights. This also creates linkages with regional partners with whom OHCHR will work. Our objective is to build national and regional human rights capacities in the Arab world based on shared experiences and progress made in the areas of the right to development and economic, social and cultural rights.

Let me say a few words about the pillars of our approach in developing cooperation with regional and sub-regional partners.

First, we believe deeply in national capacity building for human rights protection and promotion. Therefore, we are emphasising cooperation at the national level for the development and strengthening of national institutions and for the pursuit of national plans of action for the promotion and protection of human rights.

Second, we are fostering national, regional, and sub-regional exchanges of experience on national capacity building and on the work of institutions such as national human rights commissions.

Third, we are seeking to work along with regional partners such as the Arab Institute for Human Rights, the Arab Organisation for Human Rights, Cairo Institute for Human Rights Studies, UNDP Arab Bureau and to be helpful in areas where they indicate the need for such help.

Fourth, we are seeking to support efforts for education and training about human rights. We pay particular attention to the role of educators, teachers and disseminators.

Fifth, we highlight, with our regional and sub-regional partners, efforts for the protection of children, women, minorities and vulnerable communities.

Sixth, we pay equal attention to civil and political rights and economic, social and cultural rights. We emphasise the sharing of national experiences on the implementation of these rights, and we reinforce the importance of implementing the right to development.

Seventh, we join with regional and sub-regional partners in seeking to combat gross violations of human rights, wherever they may be committed.

Finally, in seeking to develop our future cooperation with regional and sub-regional partners, including the League of Arab States, we shall be guided also by the priorities you set in your respective countries and by the call to action for the protection of human rights that I am sure will issue from this conference. It would be my hope, after the results of your conference are known, to organize shortly thereafter a consultation involving my office and all regional actors in the Arab region, on how we can enhance cooperation and how we can combine our efforts to implement for the further protection and promotion of human rights in the Arab world. All the participants will be kept informed through the auspices of my regional representative in Beirut, of the results of this consultation so that the dialogue commenced here between us can be continued and intensified in the future.

Efforts to imbed a culture of human rights in the region cannot be realized without the involvement of the civil society. Non-governmental organizations, particularly those working for human rights, play an important role in the promotion and protection of human rights at the local, national and regional levels. We must salute the dynamism of NGOs in the Arab world, which, moreover, have to work under difficult conditions.

In the near future, I hope to have the opportunity of consulting further with some of you here in Egypt or in Bahrain and Lebanon, where I will be traveling next month. My aim is to develop with you national and sub-regional projects for capacity building in the area of human rights. Together, we can help strengthen protection on the ground for children, women and men in the Arab region and elsewhere in the world.

Amr Moussa*
(LAS)

Mr. Chairman,

Distinguished Participants,

In the outset, I have the honor to extend to you the greetings of Mr. Amr Moussa, the Secretary General of the League of Arab States (LAS), his gratitude for this kind invitation, and apology for his inability to attend in person for prior engagements. Mr. Moussa wishes the symposium all the success in meeting the aspirations of our Arab peoples and all peoples of the world who believe in freedom, justice and equality between all human beings. Mr. Moussa was keen that the LAS participates in this international symposium organized by three devoted human rights non-governmental organizations out of belief in the significant role played by NGOs in promoting and protecting human rights and in the importance of cooperation and coordination between governmental institutions and civil society NGOs to face the challenges currently facing humanity as a result of the aggravation of social, economic and political problems, manifestations of racism and racial discrimination not to mention injustice, exploitation, occupation, aggression and denial of some peoples' basic rights like the right to development.

Holding this symposium comes in a very important timing when the world is passing through a serious turning point after the painful events of September 11 whose negative impacts have been reflected on the Arab and Islamic worlds. This has been clearly manifested through distorting the image of Arabs and Muslims and portraying them as terrorists in addition to racist practices against Arab and Muslim communities abroad, particularly in Western states. This subject was the main focus of the meetings (held on January 9-10, 2002) of the 16th session of the standing Arab Human Rights Committee. Recommendations of the meetings denounced crimes of Xenophobia and discrimination against Arab and Muslim communities in western states and assaults against Arab and Islamic institutions including mosques and Islamic centers. The Committee also recommended that cooperation and coordination be intensified between Arab and foreign human rights NGOs to defend the Arab and Muslim communities abroad and to highlight the real image of the Arab and Islamic civilization and religion. The latter discards all forms of terrorism and calls for upholding tolerance and peaceful dialogue.

* Delivered on behalf of the Secretary General of the League of Arab States, by Mr. Mohamed Radwan Bin Khadraa, Head of the General Department for Legal Affairs.

Mr. Chairman,

Distinguished Participants,

Arab states have been the first to warn against the danger of terrorism and the importance of taking collective measures to combat it. Since the beginning of the seventies of the last century, a number of Arab leaders have been calling for convening a UN international conference to examine the phenomenon of terrorism. Also, the LAS took a leading role in concluding the Arab Convention to Combat Terrorism in 1998, which came into force in 1999. The Convention includes a precise definition of terrorism distinguishing it from struggling against foreign occupation and aggression. It also includes many security and judicial measures to prevent and combat terrorism. A mechanism to implement this convention has been in use by Arab states.

Believing in that combating terrorism can not be achieved except through a collective effort in the framework of international legitimacy and respect for human rights, a panel of Arab experts has been formed, in the framework of the Arab League, to examine Security Council Resolution no. 1373 on measures of combating international terrorism. The panel recommended that it is necessary to comply with international human rights standards and laws to guarantee transparency and justice in respect of the implementation of the Security Council resolution and respect for the procedures adopted to prosecute those accused of terrorist crimes.

Needless to say that Arab States have frequently denounced all forms of terrorism and supported UN efforts aiming at eliminating international terrorism, especially efforts exerted to convene a UN international conference on Terrorism and to draft a comprehensive international convention to combat terrorism (including a definite definition of terrorism that discern between terrorism and peoples' legitimate right to combat occupation and aggression and a definition of State terrorism)

From this perspective, the LAS also calls on the international community to strictly combat Israel's state terrorism against the Palestinian People. Israel has taken advantage of the September 11 attacks and their ensuing campaigns of Xenophobia against Arabs and Muslims in addition to the occupancy of international community with combating terrorism to escalate its most horrible terrorist practices against the Palestinian People, its National Authority institutions and symbols. These practices include targeting the life of, and imposing a siege on, the Palestinian President. Amidst the silence of the international community, Israel is pursuing its grave human rights violations on the Palestinian Territories. These violations include perpetration of brutal massacres and mass crimes by various kinds of weapons, destruction of public and private properties and infrastructures, closing and segmenting Palestinian areas and consecrating the policy of colonization and occupation of the Arab territories. All of the above-mentioned Israeli crimes are considered, in accordance with rules and provisions of

International Law and International Humanitarian Law, as war crimes, crimes against humanity and acts of genocide. Thus perpetrators of these crimes should be prosecuted and brought to trial for just retribution.

In this respect, the LAS asserts the importance that this symposium urgently calls on the international community to abandon its double-standard policy in dealing with the Israeli aggression and state terrorism, to take summary, tangible and practical procedures to protect the Palestinian People against the aggression of the Israeli Occupying Forces, and finally to lift the illegitimate and arbitrary measures imposed on the Palestinian President and put an end to Israel's occupation of the Palestinian territories in Palestine, the Golan Heights and *Shaba* farms in South Lebanon.

Mr. Chairman,

Distinguished Participants,

Believing that all civilizations, cultures and religions should work together for the interest of human beings, a conference on the Dialogue between Civilizations was held on November 26-27, 2001, under the auspices of the LAS, gathering many prominent Arab intellectuals. Proceedings of the conference asserted that civilizations and cultures do not clash but rather enrich each other and work jointly for the interest and progress of human beings.

Dialogue between civilizations, human rights issues and conditions of emigrant Arabs come on top of the priorities plan made by HE Secretary General for developing the joint Arab action system. This plan also includes appointing a rapporteur on Dialogue between Civilizations, a rapporteur on Civil society and another on emigrant Arabs to rebuild the Arab system on novel basis in which the governmental action is integrated with the non-governmental action to serve Arab citizens everywhere.

Undoubtedly, this symposium constitutes a suitable platform to portray to the world that we call for peace, fraternity, justice, freedom and equality and that we seek to consolidate tolerance and dialogue between cultures and civilizations.

Wish you all the success in your work and May Peace and Blessings of Allah Be on you All

Sidiki Kaba

(FIDH)

Introduction

The massive and unprecedented terrorist attack on the United States in the 11th of September has shockingly alarmed the whole world on the multi-faceted threat posed by international terrorism.

During this symposium, we have to question the consequences of terrorism and of the anti-terrorist war from the vantage point of human rights. Terrorism, just as war, is an unbearable violation of human rights that should be condemned and combated in all circumstances. Combating terrorism should adhere to the same principle of universality as the human rights system itself.

The attacks perpetrated against civilian populations cannot find one justification and their authors must be brought before justice, strictly respecting the international provisions relating to the protection of human rights.

Facing terrorist attacks, justice must overcome the temptation of revenge. However, this duty of justice cannot undermine human rights international provisions otherwise it would legitimise those who are in favour of arbitrary systems.

We have to consider the consequences of the anti-terrorist war from the vantage of human rights (1), the means of combatting terrorism in the respect of human rights (2) and to reflect over the possibility of a global coalition for peace, human development and democracy (3).

1) Anti-terrorist war and prejudices to human rights

Considering the political nature of the terrorist attacks, no international Conventions that came into force defines the crime of international terrorism. The approach has therefore been sector-based, aiming at isolating certain acts of terrorism such as the taking of hostages or terrorist bombings and encouraging contracting States to embody such offences in their internal law.

Considering that terrorism is not as such a separate offence in the international field, States have full responsibility for legally qualifying and punishing acts of terrorism. This often has pernicious effects, in that the responsibility can be used by the authorities to restrict public liberties.

Too often, States take advantage of the horror of the crime of terrorism in order to provide themselves with a whole array of legal instruments for suppressing any form of political protest. The FIDH fears that under the pretext of combating terrorism, some authoritarian states may intensify the repression against their opposition or national minorities. As a matter of fact, in China, the muslim minority in Xinjiang (Uighurs) do

suffer increased repression since China joined the anti-terrorist war. In Zimbabwe, the world security climate is used to make the opposition and the press quiet.

Dispensing justice for terrorist acts is also problematic. The States are implementing exceptional judicial proceedings to try presumed terrorist individuals. The suspects are deprived of appropriate defense, the evidence supporting the charges remain secret, justice is given by exceptional or military courts (which working and composition undermine basic principles of equity), death penalty can be sentenced. These proceedings stand in obvious violation of international standards that guarantee the right to a fair trial, such as the International Covenant on Civil and Political Rights. Presumed members of Al-Qaeda detained at Guantanamo bay by the United States may not benefit from a faire trial. On January 22, the FIDH submitted their case to the UN Working group on arbitrary detention in order to denounce this exceptional justice and the conditions in which they are held, in violation of the 1949 Geneva Conventions. Letting the governments act on the field of summary justice contradicts the vital respect of human rights. Some governments will use the particular context of the fight against terrorism to legitimate the settling of certain emergency situations.

Finally, the FIDH expresses its deep concern regarding the repressive attitude of the governments that use the fallacious pretext of the fight against terrorism to pass acts that violate fundamental freedoms. If most States can legitimately strengthen their mechanisms to guarantee the right to security, this may result in breaches to collective and individual freedoms that have no legitimacy. Indeed, restrictions to fundamental freedoms are exceptionally allowed by international law, but only under very strict conditions. Only can their scrupulous respect enable us to avoid arbitrariness. Yet, there are more and more breaches to human rights, freedom of the press and freedom of information on the Internet. The FIDH particularly regrets the arrests and the provisional detentions, without any evidence being demanded, press censorship and other serious obstacles to public freedoms. Those violations of public freedoms are quite widespread in the West.

In the United States, the USA Patriot Act includes numerous provisions for phone tapping, electronic surveillance, search warrants, police custody of immigrants suspected of terrorist activities or of supporting terrorists, that are a serious hindrance to liberties. In Great Britain, the antiterrorist law voted by parliament in December 2001 is not in accordance with the European Convention of human rights. It does for example enable prolonged detention of foreign citizens without any investigation going on. In France, Germany and in other places, antiterrorist laws breach fundamental public liberties.

In order to denounce these abuses, the FIDH in collaboration with two others NGOs (RSF and HRW) has created a web site www.enduring-freedoms.net. This website lists the principal abuses of civil liberties as well as the reactions of the partner organizations to these restrictions of public liberties.

However, these periods of security troubles are precisely the moments when it is necessary to fight for the application of civil and political freedoms. History teaches us that the moments of hysteria, war or instability are times when no new laws should be promulgated when they restrict liberties and give even greater powers to the State and its repressive bodies. In the fight against terror, law should not forget its essence. Opportunism and haste must give way to a pertinent reaction.

2) Fighting terrorism in the respect of human rights

To get out of this problematic, the FIDH recalls that the Statute of the future International Criminal Court introduces objective norms, along with judicial proceedings that are neutral and respect the right of the defense, that may prove useful in the fight against international terrorism. Though the States decided that the crime of terrorism did not come under the jurisdiction of the Court, the Final Act of the Rome Statute "recommends that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court considers the crimes of terrorism with a view to arriving at an acceptable definition and its inclusion in the list of crimes within the jurisdiction of the Court". Besides, from the moment of its implementation, the Court will be able to examine acts of terrorism that fall under the qualification of genocide, crimes against humanity or war crimes, since those crimes come under the Court's jurisdiction.

3) Towards a global coalition for peace, human development and democracy

Further thought needs to be given to the causes of these attacks. The pursuit of the wealthiest States' self-interest, to the detriment of equity, solidarity and the right of the people to self-determination, deprives entire populations of any hope for a better life and favours the emergence of the most harmful ideologies. Religious radicalism is better heard when people have lost the hope of a better life. Supporters of kamikazes, willing to kill and to be killed for a cause that has nothing to do with the message of love and peace any religion should bear, are to be found among desperate people.

The current antiterrorist reprisal does not respond to the challenges faced by the international communities. The 11 September attacks have stressed the importance of these challenges, concerning conflict resolution, human development and democracy. On October 23, the FIDH launched the idea of a global coalition for human rights to face these challenges, which call in priority for multilateral political action in the framework of the United Nations.

Current events in the Middle East recall the necessity of peaceful and negotiated resolution of conflicts putting at risk international peace and security, at the first place the israelo-palestinian conflict. An international conference for the resolution of this issue based on the UN resolutions recognising the right a Palestinian state and the right to security of Israel should be held.

Urgence is also great of an economic globalisation based on the respect for human rights and subjected to the international obligations of States concerning social, economic and cultural rights.

Overall, it is the primacy of democracy that has to be recalled. Its principles are the only relevant for ensuring respect of human rights and repression of human rights violations.

All together, we have to realise that to win the war against terrorism, it is imperative to constitute a global coalition for peace, human development and democracy. It is of our interest if we want to achieve a world delivered from terror and misery that Universal Declaration for Human Rights aims at.

The FIDH has submitted those ideas to the United Nations Commission on Human Rights. (the written intervention of the FIDH before the 58th session of the UN Commission on Human Rights is available on the Cairo Institute for Human Rights Studies website (<http://www.cihrs.org>)) and considers that these recommendations made to the States could contribute to the work of our symposium.

Recommendations :

1. The FIDH emphasizes the importance for States to work together in the prevention and suppression of acts of terrorism – in the strict respect of international law of human rights - , in particular through increased co-operation, the ratification and the full application of the international and regional conventions on terrorism.
2. The FIDH recommends that the effective implementation of these instruments in the internal law of the States, including through the principle of universal jurisdiction, must take place in the essential framework of respect for human rights.
3. The FIDH specifies that the draft international and regional conventions on the definition of the terrorist crime must
 - take into account the various authors of acts of terrorism (individual, group, State);
 - avoid the pitfall of excessively broad coverage, which could in reality hinder individual and collective liberties or which could include such risk.
1. The FIDH recalls that being explicitly excluded from the Statute of Rome, the crime of terrorism must under no pretext be included into the Court jurisdiction except if the States parties decide to do so at the review conference due to be held seven years after the coming into force of the ICC. Any attempt to reopen the Statute would seriously undermine the integrity of the Statute, and would bring into question the legal and political balance of the Court, and would jeopardize its early coming into force.
2. The FIDH asserts that certain acts of terrorism could, under very specified conditions set up in the ICC Statute, be considered as being acts under the jurisdiction of the Court. In particular, the intentional act of terrorism (characterized by murder, persecution or other inhuman acts), isolated or not, on a large scale or planned, directed against the civilian population, in application of a general policy on the part of a State or an organization, could be qualified as a crime against humanity under Article 7 of the ICC Statute. However, the preparatory works of the Rome Statute and case law of the international criminal tribunals should lead us on the contrary to err on the side of caution. Anyway, such qualification is, in fine, at the burden of the independent organs of the Court specified in the Statute, that is to say the Prosecutor, and the Court itself.
3. The FIDH recalls that, in the context of the fight against terrorism, eventual exceptional measures taken by the States must strictly be limited by international provisions to fully respect human rights law.
4. Finally, we could decide to discuss the modalities of instituting a global network for human rights. Only a global coalition for peace, human development and democracy can preserve us of the scourge of terrorism.

Khader Shkirat (EMHRN)

Until today, anyone who speaks about terrorism must start the discourse with a definition. Even the United States does not provide a universally accepted definition, as its annual review on global terrorism says. While most people agree that terrorism exists, few can agree on what it is preferred by the US State Department, terrorism is: "Premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience."

The key point about terrorism, on which almost everyone agrees, is that it's politically motivated. This is what distinguishes it from, say, murder or football hooliganism.

Another essential ingredient is that terrorism is calculated to terrorize the public or a particular section of it. The American definition does not mention spreading terror at all, because that would exclude attacks against property. For those who accept that terrorism is about terrorizing people, other questions arise. Does it include threats, as well as actual violence?

Another characteristic of terrorism, according to some people, is that targets must be random - the intention being to make everyone fear they might be the next victim.

The US State Department regards attacks against "noncombatant targets" as terrorism. But if one follows the footnote you will find that "noncombatants" includes both civilians and military personnel who are unarmed or off duty at the time.

In the American definition, terrorism can never be inflicted by a state.

Denying that states can commit terrorism is generally useful, because it gets the US and its allies, including Israel, off the hook in a variety of situations. The disadvantage is that it might also get hostile states off the hook - which is why there has to be a list of states that are said to "sponsor" terrorism while not actually committing it themselves.

Interestingly, the American definition of terrorism is a reversal of the word's original meaning, given in the Oxford English Dictionary as "government by intimidation". Today it usually refers to intimidation of governments.

As far as international law is concerned, the major concern is that of definition. Similarly difficult is the question of the width of definition one should accept with respect to acts undertaken.

Recently and in the past, Western countries, in particularly those that support Israel, tend to define "terrorism" in such a way that acts describable as "terror" are applied mostly to resistance groups and rarely to states. According to Israel all acts of resistance by the Palestinians are forms of terrorism, including acts against Israel's occupation forces. This kind of attribution of the term "terrorism" renders it meaningless.

By utilizing the term "terrorism" uncritically, important issues are overlooked. For example, it has been common, historically, for the superior power to label its weaker adversary as terrorist (e.g. the French resistance was labeled terrorist by the Nazi's when they were occupying France; South African blacks were labeled terrorist by white supremacist Afrikaaners; the Afghan resistance by Russia; the Palestinians by Israel).

In this sense, it should be recalled that as late as 1986, Nelson Mandela's African National Congress (ANC) was classified as a "terrorist organization" by the U.S. administration. Moreover, leading members of the Israeli government, including prime ministers were wanted on charges of terrorism. The ANC was removed from the American list of terrorist organizations without the ANC changing either its tactics or its program.

Generally, any occupying power has described resistance to its occupation as terrorism. To give meaning to the word "terrorism" one must distinguish legitimate resistance to oppression, as approved in the United Nations Charter, from terrorism for terror's sake. In the context of the Palestinian struggle for self-determination this distinction has become so blurred and the identification of terrorism with the Palestinians so pervasive, that the Palestinian has become the quintessential terrorist, the archetype. However, since the 1960s, thirty times more Palestinian civilian deaths were caused by Israeli attacks than Israeli civilian deaths caused by Palestinian violence.

In 1948 the nations of the world adopted the Universal Declaration of Human Rights, which provides that "if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, human rights should be protected by the rule of law".

International humanitarian law prohibits attacks on the civilian population as such, as well as individual citizens. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.

The Declaration on Principles of International Law (1970) emphasized that all states are under a duty to refrain from any forcible action, which deprives people of their right to self-determination. The Declaration also notes that "in their

actions against, and resistance to, such forcible action" such peoples could receive support in accordance with the purpose and principles of the UN Charter.

Various UN resolutions have therefore reaffirmed the legitimacy of the struggle of peoples for liberation from colonial domination and alien subjection, "by all available means including armed struggle"*.

Article 1(4) of Protocol I, additional to the Geneva Conventions, considers self-determination struggles as international armed conflicts situations. The principle of self-determination itself provides that where forcible action has been taken to suppress the right, force may be used in order to counter this and achieve self-determination.

Today, it is easy to become cynical about the relevance of international law. Our sensibilities are now flooded with images of war, violence and atrocities. In these circumstances, it seems more necessary than ever before to protect the public's well-being to whatever extent possible by working for effective implementation of the existing international law, in particular international humanitarian law.

The question is almost never asked as to why any human being would willfully inflict pain and terror on another. One side has the advantage of using its modern army and weaponry, including F-15 and F-16 fighter jets, Apache helicopters, tanks and various calibers of ammunition and, the other, its suicide missions. It is a regrettable fact that both sides have reverted to acts of violence but it should be noted that Israel's use of terror has been qualitatively and quantitatively much higher than that of the Palestinians. The number of civilians killed as the result of actions by Israel, both before its creation and after, has far exceeded the number of Israeli civilians killed by Palestinian groups.

Violence and terrorism in the Middle East did not start in September 2000. Israel occupied the West Bank and the Gaza Strip in 1967 by force. Many well-documented occurrences of Israeli state terror over the years have taken place. Monitoring human rights violations today, one must not overlook the extent to which Israeli participation in aggression and violence against Palestinian civilians creates a most disturbing pattern of terror directed against civilians, including women, children and the aged.

Dehumanization by way of political language has an anaesthetizing effect and it paralyses normal human empathy and disrupts moral inhibitions. Ariel Sharon's insistence on mopping up "2,000 terrorists" in Sabra and Shatila in 1982 was virtually a mandate for the indiscriminate slaughter of 2,000 Palestinians. The predominant terminology employed by Israeli spokespersons, the U.S. government and to a great extent the media is an additional factor in creating conditions in

* (see UNGA 3070, 3103, 3246, 3328, 3481, 31/91, 32/42 and 32/154).

which human rights violations, including gross violations of humanitarian law, including war crimes are tolerated.

Therefore, as human rights organizations we have to demand from governments who argue that they are fighting terrorism to ensure respect for humanitarian law and human rights. Recently, the EU recognized Israel's security concerns but stressed that it be addressed with full respect for human rights and within the framework of the rule of law, in accordance with article 2 of the Euro-Mediterranean Agreement. The EU has stated that extra-judicial killings and other human rights and international law violations, such as administrative detention and collective punishment, including the increasing recourse to house demolitions, are unacceptable and contrary to the rule of law.

In the fullest sense, all peoples share an interest in achieving a more lawful world. We are now on the brink of the brink of universal justice and effective implementation of international humanitarian law, that is, when governments are genuine about their fight against terrorism.

Conference PAPERS
I) Human Rights Challenges

Human Rights Challenges Following the Events of September 11 and Their Impact on Universality and the Human Rights Movement

by Irene Khan

"Your role collapsed with the collapse of the Twin Towers on September 11" These blunt words of a senior security official to Amnesty International delegates in December last year concisely capture the fundamental challenges that human rights and the human rights movement face following the events of September 11. Have the attacks on the U.S.A., and the reaction of governments and the public to the attacks, indeed made human rights and its advocates irrelevant? What can and should we do in response? The deep shock, anger and grief following the attacks gave rise to powerful demands for the punishment of perpetrators and the prevention of similar attacks. Governments introduced a range of legislative and other measures – new crimes were formulated; organisations were banned and their assets frozen; people are being imprisoned indefinitely without charge or trial; the applications of asylum seekers suspected of "terrorist" links will be rejected on the basis of information which is not revealed to them and which they cannot therefore challenge.

In a world engaged in the so-called "war on terrorism", human rights were seen as an obstacle to ensuring victory and human rights defenders as defenders of "terrorists". In a recent CNN poll more than 60% of respondents said that Amnesty International should keep out of Afghanistan.

Such challenges to human rights and the human rights movement are not new. Amnesty International has been monitoring so-called security and "anti-terrorist" measures for 40 years and these actions have consistently been associated with human rights violations both directly and indirectly. That is, the measures themselves violated human rights – for example, arbitrary detention and unfair trials, or they facilitated the violation of rights – in particular, incommunicado detention has often provided a context in which detainees have been tortured and otherwise ill-treated. Violations have been further encouraged by a climate of impunity, which invariably prevailed. From 1985 to 1997 there was a UN Special Rapporteur on the question of human rights and states of emergency. In his tenth and final report he noted that from the 1970s onwards there had been what amounted to an institutional epidemic of states of emergency which, like a

contagious disease infecting the democratic foundations of many societies, were spreading to countries on virtually all continents. As a result, in many cases states of emergency merely became the legal means of "legalizing" the worst abuses and the most pernicious forms of arbitrariness."⁽¹⁾

While few countries have formally declared states of emergency since September 11, many have reacted as if their security was in grave and imminent danger. They have responded on their own initiative and under international pressure. The Security Council adopted resolution 1373, setting out a range of legislative and other measures states should adopt to prevent and suppress "terrorism". The Council also established a Counter-Terrorism Committee to whom states are required to report and which will assess their action.

The risks to human rights of sweeping "anti-terrorist" measures were of course well known to the members of the Security Council. Their records, and those of their allies, are not unblemished by such conduct. It was also soon apparent that governments were not only responding to genuine new security concerns revealed by the September 11 attacks but – in some cases – were exploiting the "war on terrorism" to crack down on opponents who had nothing to do with those events.

It was not surprising, however, that the Security Council did not request the Committee to ensure that the measures taken by states were in conformity with their UN charter obligations to respect human rights. In turn, the Committee's guidance to states did not indicate that they should comply with international human rights standards nor advise them how to do so. The Committee has not responded to requests from the UN High Commissioner for Human Rights, from Amnesty International and others that it should issue such guidance and appoint a human rights law expert to assist it in monitoring the actions of states. Amnesty International has studied a number of the reports that States have provided to the Committee and – predictably - governments are simply describing the action they are taking, without indicating whether these actions are in conformity with their human rights obligations. It is instructive to note that by January 10 2002, in the first 90 days of its operations, the Counter-Terrorism Committee had received reports from 117 countries. Around the same time there were 1334 overdue reports to the human rights Treaty Bodies.⁽²⁾

⁽¹⁾UN Document E/CN.4/Sub.2/1997/19: Introduction; dated 23 June 1997.

⁽²⁾ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - 136 reports overdue; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - 254 reports overdue; Convention on the Rights of the Child (CRC) - 147; Convention on the Elimination of Racial Discrimination (CERD) - 461 reports overdue; International Covenant on Civil and Political Rights (ICCPR) - 152 reports overdue; International Covenant on Economic, Social and Cultural Rights (ICESCR) - 184 reports overdue (as of 15 January 2002).

Given the Security Council's lack of vigilance over the impact of the measures it has demanded governments implement, we welcome the unprecedented statement of 17 UN Special Rapporteurs on the Human Rights Day, 2001. The independent experts expressed "deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment for all of human rights and fundamental freedoms." They deplored "human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media" and pledged "to monitor the situation closely."

Amnesty International is calling on the forthcoming UN Commission on Human Rights to hold a discussion on the best means to ensure state compliance with their human rights obligations when taking measures to deal with "terrorism", and would welcome your support for this proposal.

September 11 And Universality

The application of double standards in human rights discourse is not new. The fact that, since September 11, governments' statements and actions have been marked by flagrant hypocrisy and selectivity no longer surprises, though it continues to shock.

Governments that denounced discrimination against women by the Taliban as a justification for overthrowing the régime have been less vocal about the plight of women in Saudi Arabia, for example. The coalition needs Russia; can we expect its members to be critical of Russia's conduct in relation to human rights in Chechnya?

One of the most striking areas in which governments are applying human rights standards inconsistently since September 11 is that of bringing to justice people who may have violated human rights and humanitarian law. That is so with respect to three areas

- those who planned, aided and committed the attacks in the U.S.A.
- those who may have violated humanitarian law in the course of the conflict that resulted in the overthrow of the Taliban regime.
- those who violated human rights and humanitarian law in Afghanistan prior to and during the period of Taliban rule.

I will briefly elaborate on each of these.

(1) "Justice" for the perpetrators of the attacks in the U.S.A.

The U.S.A. may use so-called "military commissions" to try non-nationals alleged to have been involved in terrorism. The commissions are not courts that are

constituted and operate according to the fair trial standards laid down in international human rights law. The U.S. government has yet to announce the rules under which the commissions will operate. It is likely that secret evidence and anonymous witnesses will be permitted. The commissions will be able to sentence people to be executed, without right of appeal to a court.

So, an unfair system of justice will be applied, to non-citizens only.

(2) Justice for those who may have violated humanitarian law in the course of the conflict in Afghanistan

In November, hundreds of prisoners and guards were killed during clashes within the Qala-i-Jhangi, a fort on the outskirts of Mazar-i-Sharif. British and U.S. forces are reported to have been involved, including by directing US air strikes.

The circumstances surrounding that incident are unclear. Amnesty International and others called on the coalition forces - Afghan, U.S. and UK - to conduct an urgent inquiry into the events and to take appropriate action against any person, who may have committed serious violations of international humanitarian law. These calls have been rejected.

(3) Justice for those who violated human rights prior to and during the period of Taliban rule

The people of Afghanistan experienced serious, widespread and systematic violations of their human rights by various forces in the period prior to, as well as during the period of Taliban rule.

Amnesty International believes that the truth about past abuses of international human rights and humanitarian law must be established. There should be no amnesties, pardons and similar measures for alleged perpetrators if such measures would prevent the emergence of the truth, a judicial determination of guilt or innocence, and full reparation to victims and their families.

Serving justice must be a key consideration for the decision-makers – both Afghan and external – concerning the future of the country.

If the events of September 11 set back universality in the area of justice, they may also have also have provided a window of opportunity for its advancement in other areas.

The main actions that governments have taken to prevent a recurrence of the kind of attacks that took place on September 11 can be characterised as falling within conventional criminal justice frameworks – measures designed to stop people from planning, organising and committing crimes.

But governments have also been forced to give greater attention to the reasons why some people plan, organise and commit such crimes, and why many other people support them. At least some have acknowledged that simply trying to eradicate “terrorists” cannot effectively prevent “terrorism” – it also requires action

to examine and address the causes of “terrorism”. And those causes are sometimes located outside the countries and regions where “terrorists” plan and commit their crimes.

The events of September 11 have been a catalyst for discussion about the grievances of the communities from which “terrorists” are drawn and which have given them sustenance. The conflict in Israel and the Occupied Territories is the most evident example. Explicitly or implicitly, the framework for that discussion is one of human rights, all human rights: economic, social and cultural rights as well as civil and political rights, the rights of groups and peoples as well as of individuals.

In the jargon of human right advocates, the events of September 11 have stimulated people to see universality and indivisibility – all rights for all people – as a matter of self-interest, as well as a moral imperative.

Conclusion: Challenges To The Human Rights Movement

I want to conclude by naming three challenges for the human rights movement that are implicit in my preceding remarks.

First, reaffirming our commitment to universality – human rights for all – in words and actions. We are perhaps all too familiar with the accusation that we are defending “terrorists”, murderers and criminals - that we are perceived as defending the views or actions of individuals, rather than their fundamental rights. But how can we face the future, if we fail now in our defence of the basic human rights of all - including those who commit despicable acts, which, as individuals or organizations, we strongly condemn.

Though we must campaign to strengthen the international and regional mechanisms monitoring the human rights impact of the “war on terrorism”, we sadly cannot expect governments to provide these mechanisms with adequate powers and resources. The non-governmental organisations’ role as independent researchers and advocates has been vital and will continue to be so.⁽³⁾

The **second** challenge is to continue our campaign to establish an effective, permanent, independent international justice system as soon as possible. Ad hoc

⁽³⁾ The contribution of non-governmental organisations is strikingly illustrated in the June 2001 report of the UN High Commissioner for Human Rights, listing countries where a state of emergency was in force. UN Document E/CN.4/Sub.2/2001/6 dated 12 June 2001. Eight states or territories were included where a state of emergency had been declared before July 1999 and continued thereafter: Israel, Syria, Algeria, Egypt, Indonesia, Sierra Leone, Sri Lanka and Turkey. Only the Sri Lankan government was identified as the source of information about the state of emergency despite the requirement of the International Covenant on Civil and Political Rights that notification be lodged with the UN Secretary General. In two other cases the source was the Human Rights Committee and in the remaining cases, the source was either international news agencies or Amnesty International.

justice may be better than no justice at all, but a situation where the powerful determine whether and how justice will be done, and to whom, is wrong and cannot be sustained.

We do not yet have a permanent international criminal court. At present, January 2002, 48 of the 60 countries required to establish it have ratified the Rome Statute. The se are all from the Americas, Asia, Africa and Europe. Not a single Middle Eastern state – not an Arab state, not Israel, not Iran - has yet done so, but we are encouraged that many of them have taken the first steps toward ratification by signing the Statute.

The **third** challenge is for the diverse organisations that make up the human rights movement to allocate the time and resources that are required to work together more effectively. True, we have different priorities and constituencies, and there are issues about which we do not agree. But at a time when governments are constructing a “global coalition against terrorism”, it is vital that we construct a “global coalition for human rights”.

September 11 has increased our own vulnerability and that of those on whose behalf we work. Last November, two Amnesty International researchers were assaulted and detained in Tunisia by more than a dozen security policemen, who confiscated their computers, passports, cameras and films, and all their documents - the documents were never returned. The Human Rights Minister accused the delegates of exaggerating the importance of the incident, claiming it was "normal" for police to be particularly "vigilant" in the wake of the September 11 events. At least two people, whose names appeared in the stolen documents, received death threats and were warned against meeting Amnesty International representatives

We need to assist each other; to welcome new human rights defenders to strengthen our voice for justice in all parts of the world; and to support and demonstrate solidarity with human rights defenders whom the authorities seek to prevent from carrying out their work by all means ranging from petty interference, to prevention from travel, to imprisonment, to murder.

Amnesty International commends the Cairo Institute for Human Rights Studies for organizing this timely opportunity for us to reflect on the significance of the events of September 11, and to affirm our commitment to collaborate with you to achieve human rights for all.

The Human Rights Crisis in the Middle East in the Aftermath of September 11

by Joe Stork

The attacks of September 11 in New York and Washington represented a massive crime against humanity, and thus constituted in themselves a grave assault on the right to life of thousands of individuals, and on human rights as an organizing principle in the international system. These attacks have compromised human rights principles and practices, and this negative impact has been extended by the response of numerous states to those events. This dialectic of terror and counter-terror have set in motion a profoundly negative dynamic for human rights, one that poses a serious threat to our work as individuals and organizations, and to the well-being, in human rights terms, of millions of the world's citizens. At the same time, it is possible to see in these developments an opportunity, or perhaps challenge would be a better word, for governments, international bodies including but not limited to the United Nations, and components of the global "civil society" to reassert the absolutely essential place in domestic and global politics of respect for fundamental human rights.

The countries of the Middle East are deeply implicated in the crisis that has overtaken us, and the sponsors of this symposium deserve our thanks for providing this opportunity to explore the nature of the challenges we face.

I see the Middle East implications in at least three areas.

First, the perpetrators of the crimes of September 11 originated from the region, and the accused sponsors of the attacks have justified them in terms of profound grievances that are probably shared by huge numbers of the region's people.

Second, governments in the Middle East have long used the mantras of terrorism and counter-terrorism to delegitimize political opponents, including non-violent critics, and have been well represented among the states that have taken advantage of the global intergovernmental counter-terrorism campaign to justify further repressive measures against non-violent opponents and critics.

Finally, while acts that can fairly be described as terrorist continue to plague many countries and regions, it is in the Middle East—and more broadly countries with Muslim majorities or actively insurgent minorities—that political ruptures and conflicts have generated extensive multi-state and interstate as well as domestic political violence, characterized by a pernicious disregard for the lives of innocent

people. The region may justly claim that it is not uniquely responsible for this state of affairs, but human rights activists working on Middle East issues can and must play a significant part in the historic task of combating the deep-seated disrespect for human rights expressed on so many levels by the September 11 events.

There is no need to dwell on the ways in which the September 11 attacks violated the most basic rights—to life and bodily integrity, to security of self, family, and community—of thousands of innocent persons, who worked in and around the World Trade Towers and the Pentagon, or who were on those civilian aircrafts that were turned into fearsome weapons of destruction. More than this though, these attacks were directly antithetical to the core value of human rights: that there are limits, articulated and codified in the instruments of international human rights and humanitarian law, to legitimate and permissible conduct. The basic humanitarian principle of respect for civilian lives and property rules such attacks as illegitimate, whether conducted clandestinely as these were or by openly belligerent parties in a situation of declared war. This core value can also be easily stated in another way that would be easily understandable to any person regardless of how unfamiliar he or she may be with its legal aspects. Simply put: certain means are never justified, no matter what the end purpose, and no matter whether we are talking about a state or an armed group.

This core principle was assaulted head on by those involved in perpetrating the September 11 atrocity. It is a principle that applies equally to the steps that governments, on their own and in coalition or through international bodies, take to suppress those non-state groups or individuals responsible for planning or carrying out attacks that are indiscriminate or that target innocent people. And for reasons just mentioned, it seems reasonable to say that the Middle East is one—not the only, to be sure, but one—of the regions in the world where there is a pressing need to affirm this elemental principle of human rights—namely, that the ends do not, ever, justify means that involve serious and systematic violations of human rights or grave breaches of international humanitarian law.

Let me turn now to the response of numerous Arab governments—I leave aside Israel's brutal behavior towards the Palestinians of the occupied territories, because it is the topic of a separate presentation to this meeting—in the aftermath of September 11. Of course the examples range far beyond the region. Russian President Vladimir Putin did not hesitate to embrace the rhetoric of counter-terrorism in defence of Moscow's war without quarter against Chechnya, and Chinese Foreign Minister Tang Jiaxuan's similar defense of Beijing's response to political unrest in Xinjiang province. Zimbabwe's Robert Mugabe joined right in, labeling his independent journalist critics as "supporters of terrorism."

Those who reside here in the region will no doubt be able to add to the instances I will cite here of the ways in which some governments have sought to use the crisis to impose more severe restrictions on political critics and to justify the long-standing authoritarian character of their rule. There have been unconfirmed reports of hundreds of detentions in Saudi Arabia and the United Arab Emirates. For today, I want to focus on those governments that have advertised their anti-terrorist credentials in terms of the repressive aspects of their rule.

Syria, for instance, has claimed that it was "ahead [of the United States] in fighting terrorism," in the words of Minister of Information Adnan Omran. President Bashar Asad in early January urged the U.S. to "take advantage of Syria's successful experiences," referring to the government's ruthless campaign against the Muslim Brotherhood in response to assassinations and other acts of armed violence attributed to the organization's armed wing. Syria's security forces carried out mass arrests, tortured detainees with impunity, and engaged in summary and extra judicial executions on a large scale. On June 26, 1980, units from the paramilitary Defense Brigades, commanded by Rifaat al-Asad, massacred some 1,100 suspected Muslim Brothers at Tadmor military prison, in reprisal for the attempted assassination of then-president Hafez al-Asad a day earlier. In February 1982, the government carried out a full-scale military assault on the city of Hama, a Brotherhood stronghold, leveling parts of the city and killing an estimated 5,000 to 25,000 residents. Hundreds of persons accused of being members or supporters of the Muslim Brotherhood, as well as non-violent critics of the government, remain imprisoned in Syria today. "The kind of terrorism that we faced was the same kind and probably the same persons now fighting the United States," the Information Minister said.

In its response to the United Nations' Security Council Counter-Terrorism Committee (CTC), set up to coordinate government responses to Security Council Resolution 1373, Syria reiterated that it "has always condemned terrorism in all its forms" and cited its adherence to the Arab Convention for the Suppression of Terrorism, "which distinguishes between terrorism and legitimate struggle against foreign occupation." The response notes that Law 93/1958 "imposes government supervision of [charitable and social associations'] activities, their accounts and their resources." The response also invokes several Penal Code articles, including Article 306, which "provides that all associations established for the purpose of changing the social or economic character of the State or the basic mores of the community using one of the [unspecified] means listed in article 304 shall be dissolved, and their members shall be sentenced to hard labour for life."

In October, **Jordan** amended by decree its penal code and press law in order, said Prime Minister Ali Abul Ragheb, "to cover all the needs that we are confronting now." The amendments allowed the government to close down any publication deemed to have published "false or libelous information that can undermine national unity or the country's reputation," and prescribed prison terms for publicizing in the media or on the internet pictures "that undermine the king's dignity" or information tarnishing the reputation of the royal family. The prime minister told *Al-Rai* newspaper that the aim was not to suppress press freedom "but rather to put an end to attacks on the country and the authorities." Because King Abdallah had earlier dissolved parliament, Jordan's legislators will only have a chance to review the amendments after they reconvene in September 2002.

The new amendments apparently provided the basis for the January 13 arrest of Fahd al-Rimawi, editor of *Al-Majd* weekly, for articles criticizing Abul Ragheb's government and predicting, accurately as it turned out, that the king intended to replace his cabinet. Rimawi was released on bail on January 16. If

convicted, Rimawi could face jail terms of up to three years, as well as sizeable fines.

Algeria has reportedly turned over to the United States and other governments the names of Algerians operating in the country and abroad, whom the government considers “terrorists.” According to the BBC, in the week after September 11 the government handed Washington a list of 350 alleged Islamist militants “known to be abroad and whom Algerian intelligence believes are likely to have links to Osama Bin Laden.” The BBC cited unnamed “sources in the Algerian government” saying that some of the people on the list are “moderates” but others “highly suspect.” There were also reports that the government had provided Western governments with a list of some 2,000 names of alleged members of the Groupe Islamique Armeé (GIA) and the Salafist Group for Preaching and Combat (GSPC). These were persons reportedly active inside Algeria, “though,” the BBC added, “some may well be dead.”

Such lists of suspects in the past have been assembled by questionable means, including torture and intimidation of detainees, and thus not necessarily reliable. Those rounded up in the past on the basis of such lists have seldom been limited to militants themselves. Algeria’s ten-year Islamist insurgency has certainly contributed to today’s terrorism crisis, and reached abroad with bombings in France in the 1990s and attempted sabotage against U.S. targets more recently. But Algeria’s recent history reveals as self-defeating any tendency to embrace that country’s rulers as anti-terrorist allies without, at the very least, pushing simultaneously on the serious human rights abuses that have stoked that country’s conflict—notably the prevalence of impunity for security forces as well as “repenting” guerrillas. Any serious strategy for combating terrorism must also confront the consequences of suppressing political rights in the manner of Algeria’s rulers, especially the refusal to respect the results of free elections in 1991 and the continued refusal today to allow all parties committed to nonviolence and pluralism to participate in the electoral process.

Bahrain has not, to my knowledge, instituted any particular repressive measures in the aftermath of September 11. In its response to the Counter-Terrorism Committee, however, the government called attention to its supervisory role over the still-limited exercise of freedom of association, as authorized by Decree Law No. 21 of 1989. The government does not mention that this law stipulates that associations “shall not engage in politics” and outlaws any association “should the object thereof prejudice the well-being of the state, form of government or its social system.” The law also requires organizers of meetings to provide fifteen days prior notification to the authorities, along with the agenda, and permits the government to “designate the person it deems fit for attending the said meeting.” Finally, the law requires that the organizers provide the authorities with minutes and resolutions of the meeting within fifteen days.

The government further invokes Part VI of the Penal Code promulgated by decree in 1976. Despite the commendable steps recently taken by Sheikh Hamad, revoking the State Security Measures Law of 1976 and the special State Security Court, the Penal Code retains features inconsistent with the government’s stated

commitment to institute political and legal reforms. Article 279, for instance, authorizes the death penalty for cases involving acts of arson against government or public buildings or establishments.

Egypt I have saved for the last in this listing, though it has been among the most forthright and elaborate in justifying continuing human rights violations in terms of combating terrorism. In the immediate aftermath of September 11, Egyptian Prime Minister Atef Abeid lashed out at human rights groups for "calling on us to give these terrorists their 'human rights,'" referring to documented reports of torture and unfair trials. "After these horrible crimes committed in New York and Virginia, maybe Western countries should begin to think of Egypt's own fight and terror as their new model." Egyptian security forces on September 20 arrested Farid Zahran and held him for fifteen days without charge; apparently fearing that a demonstration he was helping to organize to mark the first anniversary of the outbreak of Palestinian-Israeli clashes would raise criticism of the government's close ties with the U.S. The government has also ordered nearly 300 suspected Islamists to be tried in three separate cases before the Supreme Military Court, despite their civilian status. According to defense lawyers, many had been imprisoned for years without trial.

Washington has been complicit in more ways than one in helping to promote this self-serving rationale for repression. U.S. Secretary of State Colin Powell noted early on that "we have much to learn" from Egypt's anti-terrorist tactics, despite the fact that such tactics have been used against non-violent critics as well and include emergency rule, detention without trial and trials before military courts. Egypt is "really ahead of us on this issue," Powell said.

On December 16, President Mubarak asserted that new U.S. policies "prove that we were right from the beginning in using all means, including military tribunals...." In its most recent human rights report on Egypt, the State Department had said Egypt's military tribunals "infringe on a defendant's right to a fair trial before an independent judiciary." "There is no doubt that the events of September 11 created a new concept of democracy that differs from the concept that Western states defended before these events, especially in regard to the freedom of the individual," Mubarak said.

Among those whose cases have been referred to military courts are 22 professors, doctors, and other professionals accused of membership in an "illegal group"—the Muslim Brotherhood. The evidence against them includes publications whose titles were judged suspicious. "There was no time to read what they said, but from their titles they looked suspicious", one investigator in the case told the Associated Press. Nabil Osman, head of the State Information Service, defended the detentions and trials of Muslim Brotherhood supporters. "Most Islamic groups, the extremist groups that appeared here, all came from the same womb. They can claim that they are not shooting now, but instead of bullets they are shooting concepts of extremism and deception."

Two Egyptian asylum seekers in Sweden, Ahmad Hussein Mustafa Kamil Agiza and Muhammad Sulaiman Ibrahim al-Zari, were forcibly repatriated on

December 18 after their claims were rejected in an unfair procedure—on secret evidence grounds that that they had alleged connections to armed Islamic opposition groups. According to Amnesty, more than three weeks after their forcible return, their location is unknown and they have not had access to family or lawyers. Other Egyptians have reportedly been forcibly repatriated by Jordan, Canada, Bosnia, and Uruguay.

A foreign ministry official, Hussein Derar, has dismissed concerns about Egyptian government “opportunism” after September 11 as “baseless.” Regarding criticism of the high number of civilians recently referred to military court trials, Derar said, “The accused are granted the right of legal defense and some accused are even released.”

Egypt’s response to the CTC asserts, much like Syria’s, that it was “among the first states to deal with the phenomenon of terrorism and its causes,” citing the promulgation in 1992 of Law 97 and other additions to the criminal and procedural codes. The submission goes on to state Law 97’s extremely broad definition of terrorism, as “any use of force or violence *or any threat or intimidation* to which the perpetrator resorts in order to carry out an individual or collective criminal plan *aimed at disturbing the peace or jeopardizing the safety and security of society* and which is of such a nature as to create harm or create fear in persons or imperil their lives, freedom or security; harm the environment; damage or take possession of communications; *prevent or impede the public authorities in the performance of their work; or thwart the application of the Constitution or of laws or regulations*” [italics added].

Egypt’s submission also notes the criminalization of unauthorized fundraising, and the penal code provisions that mandate execution or life sentences of hard labor for “supplying ... groups, gangs, *or other terrorist formations* with weapons ammunition, explosives, *materials, instruments, funds or information* to assist them in carrying out their aims.”

Finally, the government says it has strengthened cooperation with security authorities in other countries “with a view to crushing terrorist activity,” and cites its active engagement with the Council of Arab Ministers of the Interior to enforce the Arab League Convention for the Suppression of Terrorism, whose definition of terrorism it summarizes as “any crime or attempted crime committed in accordance with a terrorist aim in any contracting State or against *citizens, property or interests* of such State, which is punishable under the internal law thereof.”

All of the Arab government reports to the CTC cite their adherence to the Arab Convention for the Suppression of Terrorism, which entered into force in May 1999. This calls our attention to the serious defects of that regional instrument from a human rights perspective.

To begin with, the definition of terrorism employed in the convention is typically vague: “violence,” for instance, is not defined, and as written and ratified the convention appears to allow arrest without evidence that a specific criminal offense has been committed. By further authorizing detention and prosecution for posing a “threat” of violence, the convention even more alarmingly appears to

encompass acts of widely differing gravity. In Article 3 (1)(7), the convention proposes to "strengthen activities of the security media services and the coordination between them and the media activities in each country."

The convention also appears to include in its definition of terrorism attacks on legitimate military targets as understood under international humanitarian law. Such attacks are no doubt in violation of domestic laws, but this "flexibility" calls into question the appropriateness of the "terrorism" label and underscores the need to press for a consensus definition of "terrorism" that takes into account existing international human rights and humanitarian law, as well as international and domestic criminal law.

The critical need for such an effort is further indicated by the fact that the convention takes as its legal points of reference only national laws of states parties to the convention, and the Convention itself. There is, in other words, no mention of the need to respect international human rights and humanitarian law in coping with a vaguely and broadly defined threat, despite clear potential for serious abuses. The convention is totally silent about fair trial guarantees, and contains no requirement that detention conditions be humane. Safeguards against abuse of extradition requests by state parties are likewise absent.

There is, additionally, no provision indicating that the convention also applies to acts committed by agents of the states. The clear implication of such an omission, of course, is that the acts of terrorism to be combated are, implicitly and in practice, restricted to acts of individuals and groups opposed to the government, or acting in vigilante fashion.

These and other problems relating to the definition of what constitutes terrorism are not at all unique to the Middle East and the Arab League, as we shall see. The approach of the Arab states, though, does embody those problems to a high degree, and suggests that there may be an important role for human rights organizations and activists in the region in constructing a definition of terrorism that is consistent with international human rights and humanitarian law, and our organizations can be an important force in helping to establish a badly needed consensus on this question.

This exculpation of the state, by its own power of political definition, from responsibility for acts of terror committed in its name and by its agents, is one of the challenges that we in the human rights movement face. It is a challenge posed by governments in the Middle East, but in this they are no different from their counterparts in the West and the East, the North, as well as the South.

One can legitimately argue that terror committed by or on behalf of a state is essentially covered in existing international law--especially humanitarian law. Article 51 (2) of Protocol I, for instance, specifies, "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." Acts of terror are, in other words, war crimes and crimes against humanity. By extension of Common Article 3 to the Geneva Conventions, they are applicable in conditions of warfare that is not international in scope. Other crimes of terror, such as torture and "disappearances," are covered under international

human rights treaty law, in some cases by specific conventions. So, one might say, it is superfluous and unnecessary to speak of terrorism as a crime that could be committed by a state. The problem with this argument, of course, is that it also applies to non-state actors. The crimes that would fall into anyone's characterization of terrorism--mass murder, for instance, or the threat of indiscriminate harm for political goals--are also covered by existing domestic and international criminal legislation. What the label of terrorism lends is simply the dimension of political purpose: this is what distinguishes, to use some recent examples from the U.S., the "Unabomber" from the Columbine High School massacre. Perhaps, it might be argued, it is this political dimension that makes it appropriate to confine the label of terrorism to acts by non-state entities, in the sense that acts of the state are quintessentially political. I, for one, would not be satisfied with that response, and I do see a role for the human rights movement in generating an understanding of terrorism as a set of crimes undertaken for political ends, regardless of the perpetrator.

This leads us to a further definitional issue, arguably a more critical one, which is also by no means unique to the Middle East. It is, however, one that does find full expression here. In the West it is frequently expressed, as "one person's terrorist is another person's freedom fighter." This is nonsense of the most pernicious sort, from a human rights perspective, for on the one hand it fully buys in to the ethic of the ends justifying the means, and on the other hand it expresses the debasement of political language and terminology by deploying the various cognates of "terror" to delegitimize one's political adversary. I almost had to sympathize with U.S. Secretary of State Colin Powell during his first trip to the Middle East after September 11, when he had to endure the Syrian information minister's lecture on how "George Washington was"—by this logic—"a terrorist, and then move on to hear Prime Minister Sharon denounce Yasir Arafat as "our Bin Laden."

We have here a linked assertion, by governments and their mandarins, that terrorism is by definition something done by non-state entities, and its common demagogic deployment, mainly but not exclusively by states, to demonize and delegitimize armed (and often even nonviolent) opposition forces. This demagoguery has come to claim, in the aftermath of September 11, virtually all discursive political space around the question of political violence and the law. This is a process that started long ago, and in the Middle East it can be dated, I think, to the early and mid-1970s, when there emerged a cult of counter-terrorism, heavily promoted by Israeli government and political parties and their partisans in the West. But it is one to which the Arab governments have themselves contributed heavily. To take just one instance with which I became quite familiar while researching the human rights crisis in Bahrain in the mid-1990s: the government there routinely—one could even say ritualistically—referred to demonstrators who blocked traffic or set tires alight in the streets as "terrorists," and this nomenclature was of course dutifully reflected in the media, all under the state's thumb, and by all neighboring Arab states. Now during Bahrain's intifada there certainly were several incidents that could arguably be labeled as terrorist, but there was absolutely no justification for dismissing the entire opposition as illegitimate. One

could, of course, find similar instances in most other Arab states, not to mention Israeli demonization of militant Palestinian resistance to occupation in these terms.

The terrorist/freedom fighter canard is really just a variant of this demagogic deployment of the terrorism rhetoric. It is all the more unfortunate, therefore, that this variant is codified and enshrined in relevant treaty documents and official intergovernmental declarations such as the Arab Convention for the Suppression of Terrorism and the Convention of the Organization of the Islamic Conference on Combating International Terrorism. Using almost identical language (but here I am citing the language of the Arab Convention) they affirm “the right of peoples to combat foreign occupation and aggression *by whatever means, including armed struggle...*” [emphasis added]. Politically such a formulation represents merely a mirror image of the Israeli contention that all forms of militant struggle, and certainly armed struggle, are indistinguishable from terrorism.

It is worth noting that we find in Security Council Resolution 1373, passed on September 28, similar language in the preamble “Reaffirming the need to combat [terrorist threats] *by all means*”, but at least in this instance the phrase is conditioned by the clause “in accordance with the Charter of the United Nations.” Similar conditioning, at the very least, is badly needed in the case of the Arab and Islamic conventions cited above.

As we in the human rights movement survey this sorry scene, we need to recognize the watershed character of the September 11 events for human rights in the region (as well as globally). We can also recognize here an opportunity for our movement to assert clearly and at every opportunity that the issue is not whether arms are used, but how they are used. Armed groups as well as security forces commanded by states commit condemnable violations of international humanitarian law and human rights principles. Acts of indiscriminate violence, or acts of violence that target civilians; need to be condemned forthrightly, even (indeed, especially) when they are committed on behalf of a cause that we as individuals or as organizations wholeheartedly support.

I want to close with two suggestions for what those of us engaged in human rights issues in the Middle East might take up in response to this accentuated crisis. One is that we continue to do the monitoring, reporting, and advocacy around those human rights issues that are part of our particular mandates. In the aftermath of September 11, this work should be especially attentive to abuses of police and judicial authority in detaining individuals, including abuses such as torture and incommunicado detention, and restrictions on freedom of expression and freedom of association in the name of suppressing terrorism. In particular, we need to monitor carefully exchanges of alleged terrorists within the region, as well as bilateral exchanges of detained persons with states outside the region.

My second recommendation is perhaps more ambitious: that we promote a usable (and from a human rights point of view user-friendly) understanding of terrorism that would apply to perpetrators whether they are individuals, non-state or sub-state entities, or forces acting on behalf of a state. Despite the famous failure of the international community to arrive at a comprehensive definition, going back

to a still-born League of Nations convention of 1937, I would argue that this is a task well-suited to the human rights community, and I would urge us to begin by taking up the 1992 recommendation of the Dutch international law expert A. Schmid to the U.N. Crime Branch. Schmid noted the high degree of international consensus around the issue of what constitutes a “war crime.” This, he argued, should be our point of departure: the core of the war crimes definition—deliberate targeting of civilians; hostage-taking; killing of prisoners, etc—and extending it to peacetime. Terrorism, in Schmid’s phrase, would be understood as the “peacetime equivalent of war crimes.” Such a definition would of course apply to acts that have a political purpose—and not for instance to the psychopathic mass murders that punctuate the weekly news in the United States. But the political character of the act is secondary, and not essential to a definition with legal implications and consequences.

There are understandable, though not particularly defensible, reasons why such a definition, or understanding, has eluded us thus far. The main one, in my view, is the insistence of governments generally that they retain a controlling hold on a definition that suits their interests by excluding their actions and policies. It is an extension of the notion that the state by definition holds, or strives to hold, a monopoly on the exercise of violence in a society. One can make an analogy, perhaps, with international law defining acts of piracy: acts committed by private individuals aboard a private vessel for personal gain. This excludes a boarding party operating under a sovereign flag—Israel’s recent seizure, for instance, of the *Karine A*.

In the case of terrorism, this interest of the state may be best served by the absence of consensus. All of the acts potentially covered by the term are criminal acts under existing international and domestic criminal law. The “terrorist” label has been wielded in a purely political fashion, until recently. Now, however, there are crucial legal ramifications attached—witness the debate over the U.S. refusal to grant captured Taliban and al-Qaeda fighters prisoner-of-war status. Sentences for “ordinary” crimes of violence are “enhanced,” and “ordinary” rights accorded to “ordinary” criminals are suspended. In this setting it becomes incumbent to arrive at an understanding grounded in existing international law, and it is international humanitarian law and human rights law that offers the most useful orientation for this purpose.

This, I would say, is a major conceptual and political challenge that confronts the human rights movement in the wake of September 11. The components of that movement in the Middle East have a critical role to play—given the extent of serious violations of humanitarian law by armed groups and violations of humanitarian law and human rights law by governments in the region. This means taking seriously the need to campaign against such practices not only when committed by the state but also when they are committed by opposition groups. This could mean some combination of advocating publicly legal sanctions and criminal prosecutions, shaming, and persuasion. The alternative is likely to be a continuing assault on both the principles and applicability of human rights in the region; justified in the “any means necessary” logic that has unfortunately characterized too much of what passes for politics in the region in the current period.

Terrorism, Human Rights and Palestine after September 11*

by Jaber Wishah

Ladies and gentlemen,

I have given quite some thought over the years to how the issues of human rights and what is called “terrorism” intersect – both as a human rights activist and as a former so-called “terrorist” myself. Also, we as *Palestinian* human rights activists have quite some experience with the use and misuse of this word for decades. The attacks of 11 September, however, have succeeded in helping further the agendas of repressive states such as Israel.

The single-minded focus of the United States government on “terrorism” since 11 September has created many opportunities for states to increase repression of groups they believe are terrorists, as with the Russians in Chechnya, the Chinese in Xinjiang, and so on. Nowhere is this more apparent than the unprecedented escalation of Israeli attacks against Palestinian civilians in the Occupied Palestinian Territories (OPT).

I would like today to speak about two topics. First, in a general vein, I will demonstrate how international humanitarian law can help us distinguish between terrorism and legitimate armed struggle, and how adopting such norms, rather than constraining such movements, can actually help them. Second, I would like to address our specific situation in the OPT, with a focus on how Israel has taken advantage of the so-called “war against terror” and how international civil society can work against this.

Terrorists and Freedom Fighters

Many analysts have pointed out the lack of a clear, common definition of terrorism, and the danger of this vagueness, which allows states to pick and choose who they believe are “terrorists” and who are “freedom fighters.” It is clear that the idea that *any* non-state group using violence is automatically a “terrorist” is arbitrary, without any legal precedent, and will never be a sustainable political consensus across states. But the need for some definition still exists. From the perspective of a human rights organisation, our concern is the promotion of international human rights standards and

* Jaber Wishah submitted his paper before the symposium, but was eventually prevented from attending. This paper was therefore not presented at the symposium.

international humanitarian law, and adherence to these standards strikes me as a good criterion for distinguishing between terrorism and legitimate armed struggle. Of course this is not necessarily a complete definition, but it is an essential part of one.

Although it should come as no surprise that groups waging legitimate armed struggle should observe basic rules of warfare, the problem is that international law is designed mainly for states. And in a sense, if international law were to be enlarged to incorporate national liberation movements, this would represent a concession that many states would not be willing to make. Ariel Sharon, for one, would probably be more than content if all Palestinian armed groups were to disregard these rules, because this would reinforce his attempts to project the legitimacy of the state of Israel versus the illegitimacy of the non-state of Palestine.

This is why it is important for national liberation movements and armed opposition groups to take the initiative themselves and to adopt some form of definition or code to distinguish themselves from terrorist groups. I am not a pacifist – rather, speaking as both a human rights activist *and* a former participant in the Palestinian armed struggle, I firmly believe that national liberation movements and armed opposition groups would have much to gain by adopting international humanitarian law in their thinking, in their behaviour, and in their language. During my days in the Palestinian armed struggle and in Israeli prisons, the question of means and rules was constantly debated, and this debate must continue.

One possible starting point for such a conversation can be found in the 1977 Protocol I to the Geneva Conventions, Article 43, paragraph 1:

The armed forces of a Party to a conflict consist of all organised armed forces, groups, and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

There are two important ideas in this passage. First, the Protocol says that a group can be party to a conflict even if it is not recognised as such by its opponents. This presents a major opportunity for armed opposition groups to gain international legitimacy, which is even more crucial if the state being opposed possesses overwhelming military superiority. Second, it also stipulates that such groups should obey international law and enforce this obedience on its rank-and-file in order to qualify as combatants.

I am not suggesting that it is either practical or desirable for armed opposition groups and national liberation movements to be held to all of the same standards as states or to obey every single letter of the Geneva Conventions. As I said, international law is still primarily designed for states. What I am suggesting however, is that a separate code for non-state groups is needed but that the same basic principles should still apply.

What does status as a combatant mean for national liberation movements or armed opposition groups? For one, the Protocol stipulates that they be treated as

prisoners of war in article 44, paragraph 1. This is especially interesting in light of the question of the US government's treatment of prisoners captured in Afghanistan. The United States has refused to recognise these men as prisoners of war, instead calling them "unlawful combatants," detaining them in inhumane conditions, and making them candidates for military tribunals with extremely low standards of protection. Whether or not these prisoners should be considered POWs under the Protocol is not something we can determine here. But it is interesting to note that even former members of the American military have criticised the decision, arguing that if the US government treats prisoners in an inhumane way, they should only expect the same treatment for any American soldiers captured in combat.

Armed opposition groups and national liberation movements have even more to gain, I believe, from international law. By adopting some kind of reasonable criteria to distinguish themselves from "terrorists," national liberation movements and armed opposition groups would effectively place the ball in the court of repressive states, forcing them to come up with their own definition of terrorism which would be much more open to critique. Increased awareness of both a legal and a common-sense distinction between terrorism and legitimate armed struggle would undermine the ability of states such as Israel to label everything they don't like as "terrorism" and to justify all of their actions in the name of "security."

This brings me to the last and most important point about the centrality of international humanitarian law in providing criteria to distinguish between legitimate and illegitimate political violence. By drawing attention to and affirming the general principles of international humanitarian law, armed opposition groups can help strengthen human rights as a means of restraining the very states they oppose. And a clearer idea of what is and what isn't terrorism will inevitably highlight the question of state terror – which we already know as war crimes and crimes against humanity.

More of the Same, but Worse

Although it is quite clear that the focus on "terrorism" has drawn the US and Israel closer together and away from international human rights standards, it is worth mentioning that this was a constant, even while many were led to believe that the US was placing pressure on Israel. Speaking for human rights organisation on the ground in the OPT, I can assure you that there was no significant reduction in violations at any time during this period. Rather, attacks have clearly escalated in number and scope, as we have seen in the unprecedented mass house demolitions in Khan Yunis in December and Rafah in January.

In the immediate aftermath of the attacks, Palestinian President Yasser Arafat condemned them and pledged his support to the US. The Americans, fearing a backlash in the Middle East if its campaign in Afghanistan were to be prolonged and excessively bloody, were said to be re-considering their policy towards the Palestinians and inclined to restrain Israel. The situation on the ground, however, did not improve at all. Arafat and Israeli Foreign Minister Shimon Peres agreed on a cease-fire during their first working meeting in months at the end of September, but dozens of Palestinian civilians were killed that week as Israeli troops did not hesitate to use lethal force

against unarmed protesters throughout the OPT. Meanwhile, although George Bush used the word "Palestine" at the UN General Assembly several weeks later, October saw more Palestinian deaths than any other month in 2001.

The rapid collapse of the Taliban regime only solidified a pattern that was apparent from 12 September onwards. During a dramatic and month-long reduction of Palestinian resistance operations from mid-December, there was no pressure on Sharon to make any movement towards negotiations with the Palestinians and Israeli violations of Palestinian human rights continued. Israeli forces assassinated a Palestinian activist in Hebron, killed over 25 Palestinians, and carried out numerous incursions of Palestinian areas and arrests, while regular shelling of Palestinian refugee camps continued unabated. And now, the situation has even more dramatically deteriorated. On 10 and 11 January, Israel destroyed nearly 100 houses in Rafah refugee camp rendered another 40 or so uninhabitable in the single most destructive act of collective punishment during the al-Aqsa Intifada. Soon thereafter, it resumed its assassinations, killing of unarmed protesters, and attacks on the infrastructure of the Palestinian National Authority.

What is to be done about Israel's cynical exploitation of the focus on "terrorism" to crush the Palestinian national movement? The international community of states has clearly demonstrated that it lacks the political will to enforce international humanitarian law and compel Israel to respect international humanitarian law, specifically the Fourth Geneva Convention, in the OPT. In a sense, one can see this international campaign against "terrorism" as a cover for states everywhere to assert their authority over non-state actors, no matter how arbitrary or brutal their actions may be.

If states are to use "terrorism" as a justification for human rights abuses, then it is the responsibility of civil society to resist this. Nowhere was this made more apparent than at an event just before 11 September, namely the World Conference Against Racism in Durban, South Africa. At Durban, over 3,500 civil society groups overwhelmingly approved a document that, among other things, clearly declared Israel's policies in the OPT to be a system of apartheid and called for sanctions to compel its adherence to international humanitarian law. Several days later, at the governmental conference, states caved in to the pressure of a US-Israeli walkout and produced a document that mentioned Israel as having "legitimate security concerns" while failing to condemn its illegitimate occupation of Palestinian land. The contrast could not have been clearer, between the voices of victims on one hand and empty words of governments on the other.

Although the world before 11 September may seem to be so long ago, those civil society groups that spoke out at Durban still exist and are still active, and most of them understand that the major problem facing the world is not "terrorism" but the unrestrained power of elites, whether one speaks of the globalization of corporate power, military adventurism, or occupation and apartheid in the OPT. Durban showed that civil society is healthy and strong, and that it shows no signs of becoming any weaker.

The Impact of the September 11 Attacks on Civil Rights in the United States

by Neil Hicks

There is no doubt that the unprecedented attacks on New York and Washington D.C. on September 11, 2001 have had a profound impact on domestic policy in the United States. Its full impact is still emerging and will not be clear for several years. One important observation to make at the outset is that even in the face of a devastating attack on the United States, government proposals to curtail rights have been met with argument and opposition, from both inside and outside the government, that have in many instances lessened the negative content of such measures when implemented. Pluralism, dissent, public accountability and the checks and balances built into the system of government, remain strong in the United States, despite statements by some public figures that may have given cause to question this.

Responding to the new feelings of public insecurity engendered by the first war-like attacks on the continental United States since the Spanish- American war of 1898, it is unsurprising that the government has taken measures designed to bolster national security. What is disappointing, at least from the perspective of a human rights organization, is the narrow conception of security apparent in the measures adopted, and in too much of the public debate about the appropriate response to the attacks. In this debate, some have been alarmingly eager to sacrifice basic freedoms in the name of national security. But there is no simple equation whereby a diminution in rights and freedoms inevitably leads to greater security. In fact, less accountability and less transparency, more executive privilege and less judicial and congressional oversight, creates the risk that public security will be endangered by poor government.

The sobering lesson for human rights activists is that even in a highly developed industrialized country, like the United States, with a deeply embedded tradition of constitutional rights protection, the impulse to impose draconian measures is strong when security concerns come to the fore.

Deprivations of the rights of U.S. Citizens

One of the reasons for the strong support for more stringent security measures among many in the United States is that these measures have been disproportionately directed at non-citizens. But the impact on the civil rights of U.S. citizens of measures included in the USA Patriot Act and other legislative and administrative acts have been significant.

For example, the FBI has been granted greatly increased powers to monitor telephone and e-mail communications. Similar powers are being sought by many states, raising the possibility that loosely regulated state police will have greatly increased powers to conduct surveillance into the lawful, private affairs of U.S. citizens in the name of combating terrorism. Such investigations would be much more wide-ranging, and much more likely to be inappropriately invasive, if they were to be extended beyond the federal (national) to the state (local) level.

In a development that has prompted strong opposition from the legal community, on October 31, 2001, the Justice Department issued an interim rule permitting the Bureau of Prisons to monitor communication between lawyers and their imprisoned clients. The new provision empowers the Bureau to monitor previously confidential verbal or written exchanges between lawyers and their clients, who may be held in any form of detention. Those allowed to be monitored include individuals who have not been convicted of any offence; on certification by the Attorney General "that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to facilitate acts of terrorism." Such certification will last for up to one year, and is not subject to judicial review.

Under pre-existing law, federal authorities can seek appropriate remedies under the well-established "crime-fraud" exception to attorney-client privilege. In a closed-door hearing before a federal judge, and in the absence of the offending attorney, the court can take immediate and effective actions, including ordering the monitoring of communications if necessary. Other options include removing the attorney from the case and prosecutors are always free to initiate criminal proceedings against attorneys where appropriate. These procedures ensure judicial review in the narrow band of cases where an attorney is abusing the attorney-client privilege, protect legitimate attorney-client communications, and ensure that authorities have the power to investigate and prevent criminal activity without obstruction.

The new rules undermine the principle of attorney-client privilege, an essential part of the right to effective legal representation, protected by the Sixth Amendment of the U.S. Constitution as well as international law. The rules will impinge on legitimate attorney-client communications. Legal organizations, including the American Bar Association, have called for them to be rescinded.

The new focus on the need to tighten national security against the threat of terrorism, and the increased attention given by human and civil rights groups to responding to the raft of proposed new measures, has meant that the perennial problems of racial discrimination and poverty in the United States have been pushed down the priority list. Nevertheless, such problems remain, and they will only be exacerbated by an economic recession.

The impact on non-U.S. citizens

Perhaps the most disturbing elements within the USA Patriot Act are those, which greatly expand the government's powers to detain non-citizens with minimal judicial review or respect for due-process safeguards. A feature of the Act are the new discretionary powers granted to the Attorney General to order detentions or instigate surveillance measures against those deemed to be threats to national security. Such powers have weakened judicial oversight, although it is important to note that much will depend on how these powers are exercised in practice, and on the procedures that will govern their implementation. Of key concern will be the Attorney General's standard or evidentiary threshold for certifying an individual as a threat to national security. There are disturbing indications that the Attorney General will rely heavily on secret evidence in making such determinations, which will be impossible for detainees or their legal representatives to challenge in any review procedure.

The original version of the bill, proposed by the Attorney General on September 19, 2001 would have granted him virtually unchecked authority to detain indefinitely any non-citizen he certified as a threat to national security. No time limit was proposed, and the draft legislation explicitly stated that the substantive basis for certification could not be reviewed by any court.

As a result of campaigning by U.S. civil and human rights groups, and the concern of parts of the media and some members of Congress, important human rights safeguards were incorporated in the Act signed into law on October 26, 2001. These include:

- After seven days of detention, the Attorney General must charge a detainee with a crime, initiate immigration procedures for deportation, or release the individual.

- The Attorney General's certification of an individual as a suspected terrorist must be reviewed by a federal court every six months and either renewed or revoked.

- Individuals who have been ordered deported but are still in detention 90 days after the removal order, and who the government is unlikely to be able to deport in the foreseeable future, may be kept in jail for additional six month

periods only if the government can demonstrate to a federal court that their release would endanger national security or the safety of the community.

- The substantive basis for the Attorney General's certification is subject to judicial review. Such review may be sought at any federal district court nationwide. (Earlier versions of the bill limited review to the federal district court in Washington D.C., which would have made it extremely difficult for many non-citizens to challenge their detention.)

While these safeguards are important, they do not provide adequate safeguards against arbitrary detention. The seven-day limit on detention without charge, while much better than no limit at all, is longer than the standard required in international law. For example, in its General Comment on Article 9 of the International Covenant on Civil and Political Rights, the Human Rights Committee has stated that the period of custody before an individual is brought before a judge or other officer may not exceed a "few days." After the seven-day period, the risk of indefinite detention remains for those ordered deported, but who in practice cannot be deported – such as those who face a credible threat of torture in their countries of origin.

In what is likely to be a significant number of cases, the new law will result in long-term detention of non-citizens who have never been charged with a crime but who have violated their immigration status in some way. It is likely that those who do not have valid travel documents, or whose countries will not take them back, will be subject to long-term detention if certified as a threat to national security by the Attorney General.

The law provides no guidance on what process the Attorney General must follow in making and reviewing a decision to certify someone as a suspected terrorist. Nor does it provide guidance to the courts on what evidence they should consider in assessing the reasonableness of the Attorney General's decision, whether detainees will have access to the evidence on which such decisions are based and the standards for review of such evidence. One danger is that U.S. authorities may rely on lists of suspected terrorists supplied by other governments. Non-violent government critics and political opponents may be included in such lists.

The draconian new powers to detain non-citizens were not adopted with a sunset provision, as were other parts of the act, so they are now a permanent feature of U.S. law.

The government has used its powers to detain non-citizens, often using mechanisms available to it under immigration law, prior to the adoption of the new counter-terror legislation. In the weeks and months after September 11 more than 1100 people, mostly Arab and Muslim men, were detained. These detentions were carried out in considerable secrecy, with the authorities refusing to disclose the identities and the places of detention of those detained. There were reports of

detainees suffering delays in obtaining legal counsel. For example, the Lawyers Committee learned in November of detainees held in a special unit of a detention center in Brooklyn, New York, being told that they could only make one telephone call a week to find legal counsel. This problem was particularly acute for immigration detainees who, unlike those charged with crimes, were not entitled to free government-funded legal representation. There were also reports of verbal and physical mistreatment, and of harsh conditions of imprisonment. Information about the legal basis for the detentions seeped out slowly. More than half of the detainees were held on routine immigration violations, such as overstaying a visa, which appeared to have no link to the attacks. A smaller group was detained on federal criminal charges for such offenses as theft or credit card fraud, which again appeared unrelated to the attacks. Other detainees were held as material witnesses, people deemed to have information valuable to the investigation that were thought likely to abscond, if released.

One major problem with these detentions was the authorities' unwillingness to release information about them. The authorities justified its secrecy by citing the need to withhold information that might be helpful to the enemy, and its concern for the privacy of the detainees. These arguments, although valid in some instances, did not allay concerns that a great many of the detainees were being held on the basis of their religion and ethnicity, rather than as a result of their connection to any terrorist conspiracy. Even though most of the detentions may have had a technical legal basis, individuals of a different ethnic or religious background would not have been taken into detention for the same offense or an equivalent violation of immigration rules. Such discrimination runs counter to guarantees of equal protection under the law in the U.S. Constitution and in international human rights treaties binding on the United States.

In addition to carrying out hundreds of detentions of Arab and Muslim men, the FBI also carried out "voluntary" interviews with thousands of other people in this category. It is highly questionable how voluntary such interrogations were for most people, who could not have been unaware that a failure to cooperate with the FBI may have rendered them objects of suspicion, and therefore liable to detention.

The rights of non-citizens were further eroded by new regulations issued by the Immigration and Naturalization Service (INS) after September 11. Regulations issued on September 20 gave powers to the INS to detain a non-citizen who has committed no crime – and who is not in any way suspected to be a danger to anyone – for an unspecified period of time without even charging the non-citizen with an immigration violation, let alone a crime.

Regulations issued on October 26 allowed INS attorneys to overrule an immigration judge's decision to release a detainee on bond. The appeals process is extremely slow so non-citizens may remain detained for substantial periods of time without any suspicion of the detainee's involvement in any crime.

These regulations went beyond the already broad powers of detention in the Patriot Act, and bypassed the legislative branch of government in the Congress. They were an attempt by the INS, a branch of the executive, to seize extraordinary, dangerous powers to detain non-citizens arbitrarily.

Another proposed counter-terrorism measure, which also elicited significant opposition, was President Bush's November 13 order authorizing the use of special military commissions to try non-citizens accused of involvement in terrorism. No one has yet been referred to such a commission, and the procedures under which such trials may take place have not yet been announced by the Defense Department. In the process of vigorous public debate, including criticism from within the President's own party, the administration does appear to be considering adding some fair trial safeguards in proposed regulations (which have not yet been made public). Reports indicate that as of mid-January, the Bush Administration may incorporate the following due process protections into the Defense Department rules that will govern military trials: presumption of innocence, the right to civilian counsel of the defendant's choice, a requirement of proof beyond a reasonable doubt, unanimous verdicts for capital sentences, and public trials. Despite these positive signals, the Bush Administration has been silent or has sent conflicting signals on three critical issues: jurisdiction of the commissions, availability of habeas corpus, and right to judicial review. To properly satisfy minimal due process requirements under U.S. and international law, the Bush Administration's final regulations must address the following issues, in addition to the protections mentioned above:

- Jurisdiction of Commissions: Military commissions should not be used for suspects apprehended in or extradited to the United States. They must be limited only to suspects engaged in armed conflict against the United States overseas who are being tried for violations of the laws of war.

- Habeas Corpus: A detained person must have the ability to challenge the lawfulness of the detention before an independent court.

- Judicial Review: A defendant must have the right to appeal to an independent court to determine whether there were significant legal errors in the trial.

When it was first announced, the President's order left open the possibility that military tribunals may be employed to try non-citizens detained in the United States. After the December 11 referral of French citizen, Zacarias Moussaoui to trial before a federal court in Virginia on charges of involvement in the September 11 attacks themselves; it now seems unlikely that military tribunals will be used against non-citizens in the United States. The U.S. citizen Taliban fighter, John Walker Lindh, and the British citizen discovered with explosives in his shoes on a U.S. bound flight, Richard Reid, have also been referred to trial before federal courts. It remains to be seen if detainees taken from Afghanistan to a detention facility in Guantanamo Bay, Cuba, and other detainees suspected of connections to

al-Qaeda who may fall into U.S. hands in Afghanistan, or elsewhere, will appear before such tribunals.

Some positive measures

While the administration has been forthright in asserting its powers to carry out detentions of non-Americans, and surveillance of anyone, with insufficient regard for constitutional or human rights protections, it has been sensitive to human rights concerns in other areas. For example, the Justice Department quashed rumors that Arab and Muslim detainees would be subjected to torture and other coercive interrogation techniques. The Defense Department has also repeatedly made assurances that detainees under its jurisdiction would be treated humanely and not subjected to torture. Regrettably, some commentators openly called for the use of torture against terrorist suspects.

More generally, the Bush administration, and the President himself, has spoken out repeatedly against stereotyping, and the victimization of Arabs and Muslims for the crimes of al-Qaeda. The President's commendable emphasis on tolerance, and on the need for Americans of all creeds to stand together in the fight against terrorism, made a contribution to minimizing incidents of hate-crimes against Arabs and Muslim Americans in the aftermath of September 11. These welcome developments indicate the increasing importance of the organized Muslim community in U.S. politics. Nevertheless, the threat from Arab and Muslim terrorism, which has been indelibly ingrained on the American psyche after the September 11 attacks, has created increased tolerance among Americans for targeting of Arabs and Muslims for restrictions of their basic rights. There can be no doubt that in the aftermath of September 11 the biggest losers in terms of rights protection in the United States have been Arab and Muslim non-citizens.

The international perception

As troubling as the substantive deprivations of basic rights that have taken place, is the image that the U.S. government has sent to the world that in the fight against terrorism, it is willing to hold itself above international law. Part of this has been the projection to a global audience of statements and attitudes taken by the Bush administration designed to appeal to a patriotic domestic constituency eager for results in the war against terrorism. Regrettably, around the world, other governments have taken their cue from the administration's rhetoric, and have taken to characterizing their usual repression of domestic dissent as a necessary part of the war against terrorism. Here in Egypt, the government has stated that the rest of the world is now coming to understand the harsh measures taken against Muslim extremists. In Syria, government officials have sought to explain the Hama massacre of 1982 as justifiable in the context of a war against terrorism. In Russia,

the government has found new international support for its pursuit of a brutal war in Chechnya.

Even prior to September 11 the United States, and the Bush administration in particular, were often reluctant to comply with international treaties on human rights and other areas. At the same time, and perhaps sometimes paradoxically, the U.S. government was not reluctant to preach what it did not practice in terms of observance of international human rights standards. States, which practiced detention without trial, and threatened to ride roughshod over due process rights were sharply criticized in the State Department's Annual Country Reports on Human Rights Practices, and elsewhere. The exemplary force of such criticism, such as it was, has been badly dented by some of the statements and actions of the Bush administration after the attacks. Many states will point out that acts of warfare and serious political violence on their soil are not as rare as they have been in the United States, and that maybe the United States should now show them a bit more indulgence in the human rights field.

Challenges facing the international human rights movement post September 11

This acceptance of the idea that human rights violations are permissible, and even desirable, in certain circumstances is perhaps the biggest challenge facing the international human rights movement as a whole in the aftermath of September 11.

For too long, many governments that have ratified treaties have not made serious efforts to abide by them. Their failure to do so has hampered efforts by human rights advocates to argue for the universality of international human rights standards.

Elements within the international human rights movement are located in the West, where it has been safe and uncontroversial to be in favor of human rights in the recent past. There has been a disconnection between the perceptions and experiences of human rights activists based in the West, and those in the South for whom the struggle for human rights is a much more serious, and potentially dangerous, undertaking.

Recent restrictions on human rights in the United States, and elsewhere in the West, in the aftermath of September 11, have served as a reminder that faced with threats to security, the Western world's commitment to basic human rights safeguards are too quickly compromised. To the extent that the advocacy of Western-based human rights activists has ever sounded like, "why can't you be more like us," to an audience in the South, then clearly, it is time for a change. If such advocacy is ever going to make a difference, it should learn from the fallibility within our own systems, which have permitted rights to be curtailed. We should also take heart from the methods of dissent, argumentation and peaceful

protest, which have averted more serious deprivations of rights. These are tools, which can be used in the international struggle for human rights protection.

One positive result of the post September 11 situation in the United States has been a realization by internationally focused human rights organizations in the United States that there is much for us to do within our own society to address these new challenges to human rights. It is to be hoped that this shift in emphasis in our activities will contribute to greater empathy with human rights activists in countries around the world who habitually face repression from their governments. The sobering realization that our domestic struggle for human rights is not won, should enable us to better imagine ourselves in the circumstances faced on a daily basis over periods of years by activists in this part of the world, and elsewhere.

After September 11, and the setbacks suffered for human rights globally, it is imperative that the international movement redouble its efforts to develop a coordinated strategy for human rights implementation, taking into account the strengths and limitations of the various component parts of the international human rights movement. The exemplary force of the Western model, which was not working well in this part of the world anyway, should no longer be seen as a viable option for effective human rights promotion. Realization of the limits of Western pressure for promoting human rights change, especially governmental, but also non-governmental, is now more important than ever.

Here are some elements of a rough framework for what a more coordinated cooperative human rights strategy might look like:

- Local groups and local activists must be at the forefront of struggles against repression in their own countries.
- Where local circumstances make open advocacy impossible at a local level, Western based rights organizations should defer to local activists in determining appropriate strategies.
- Western based groups should focus on creating conditions in which local human rights activists are able to take on such a role by campaigning against restrictions on human rights activism, such as restrictive laws on association and other repressive official policies directed against human rights activists.
- In particular, Western-based human rights activists need to be mindful of policies of their own governments which reinforce the actions of governments in the South that routinely violate human rights, and to devise strategies for challenging such policies in their own countries.

If that is a vision of a new division of labor within the international human rights movement, there are also common tasks for all human rights activists, a unified agenda for the international movement. We all need to challenge the damaging simplification that restricting human rights will contribute to national security. The human security approach, advanced by the Canadian government,

among others, offers a much more holistic and nuanced understanding of the concept of security. To quote from a Canadian government document:

A human security approach inevitably raises questions about the place of national security. Fundamentally, these two concepts are complementary. People are made safer by an open, tolerant, responsive state capable of ensuring protection of all its citizens. At the same time, enhancing human security reinforces the state by strengthening its legitimacy and stability. A secure and stable world order is built from the bottom up and the top down.

The drafters of the Universal Declaration wrote in full knowledge of the destructive force of unfettered state power, hence the emphasis on the state's obligation to uphold the rights of individuals under its jurisdiction and the notion that the individual, endowed with rights, could be a counterweight to state power. The readiness of governments in the West to abrogate elements of their rights traditions that have developed over many years in the face of threats to national security, despite the structural checks and balances built into the system of government in the United States and elsewhere, demonstrates the enduring validity of old axioms that all that is required for evil to triumph is that good men should do nothing, and that the price of freedom is constant vigilance. These are sobering, but invigorating realizations for Western-based human rights activists, which can lead to a stronger global movement for human rights, with a more equitable distribution of power between the West and the South.

The Impact of the September 11 Attacks on Civil Liberties in Europe

by Driss El Yazami

The American intervention in Afghanistan following the September 11 terrorist attacks was at first named “infinite justice” and then “enduring freedom”. This last name was chosen some weeks ago by several international NGOs⁽¹⁾ to launch a common website⁽²⁾ listing human rights abuses in the aftermath of September 11. This website confirms the fears of numerous organisations throughout the world that restrictions on civil liberties are being introduced under the pretext of combating terrorism.

An analysis of the reactions of the member organisations of the FIDH after September 11 stressed 5 common points⁽³⁾: unanimous condemnation of terrorist attacks; demand for a reaction in accordance with international law; fear of inter-community tensions and of abuses of the rights of immigrants and asylum seekers; problems of defining the crime of international terrorism; and fears of security policies breaching liberties. Some of these fears very soon turned out to be legitimate.

At the beginning of October 2001, the French government presented 13 amendments to a security bill to the Senate, after the bill had already been adopted by the Parliament⁽⁴⁾. Considering that terrorism is often financed by drugs and weapons traffic and rests upon “*the use of new information and communication technologies*”, the government proposed 13 measures that are to last until December 31, 2003 (when a re-evaluation should take place).

Several rights organisations and lawyers’ unions expressed serious concerns about these amendments. They criticised the rush in which the law was adopted, as well as the fact that these measures may intensify the fears of the population. From

⁽¹⁾ FIDH, RSF and HRW

⁽²⁾ www.enduring-freedoms.net

⁽³⁾ See article by E. Wrzoncki on FIDH website <http://www.fidh.org>, under September 11 terrorist attacks.

⁽⁴⁾ This bill, passed into law since (journal officiel November 15) addressed a range of issues including the driving code, bank cards, dangerous animals...

a legal point of view, the procedure was considered unconstitutional and it was suspected that the amendments aimed mostly at reinforcing social control. “*In the name of the fight against terrorism, general police powers are extended*” the French League for Human Rights (LDH) stated in a press release on October 11.

The new law grants the authorities the power not only to search car luggage racks, but also to search all the cars in a neighbourhood or even a whole district (*département*) regardless of whether the owner is absent or whether there are witnesses. The scope of search warrants has also been widely extended. The judge of liberties will authorise searches on the basis of police documents only. Private security agents are entitled to body search people in airports, harbours, and even the street. In practice, this will lead to a privatisation of police powers. Finally, electronic surveillance has been extended even to cases that have nothing to do neither with drug and weapon trafficking nor with terrorism, and Internet service providers will have to store all information exchanged by their clients for a year.

Some of these measures will certainly be submitted to the control of the judiciary. However, these guarantees may be purely formal. Car searches, for example, will no longer really be controlled by magistrates. Moreover, the judge of liberties will base his decision on police documents only. There is also reason to question the temporary character of these measures, considering the positions taken by the right-wing opposition and parts of the current majority. Indeed, the adoption of this law was characterized by considerable political consensus, despite a very critical deliberation in the Consultative Commission on Human Rights, to whom the case was submitted by the French League for Human Rights (LDH, Ligue des droits de l’Homme). As the political opposition did not submit this case to the Constitutional Court, citizens did⁽⁵⁾.

This new law is part of a larger set of measures and laws, which have already been subject to criticism. In 1986, law instituted an “anti-terrorist judge section” whose principles and functioning are rather questionable⁽⁶⁾. In 1986, a plan called “*Vigipirate*”, involving a mobilisation of all police and military forces and an intensification of all controls, was set up. This plan, which was never made public, was reactivated on September 12, in reaction to the September 11 attacks. As a result, a new law was not necessary, according to human rights defenders.

People opposing the new anti-terrorist law adopted by Great Britain in December 2001 also argue that a new law was not necessary. The country already

⁽⁵⁾ The text of submission to the Constitutional court is available on the website www.lsjjolie.net. For a critical analysis of this law, please refer to the French human rights league website www.ldh-asso.fr.

⁽⁶⁾ The FIDH investigated this special section in 1999. See report on www.fidh.org, *Antiterrorist laws in France : the open door to arbitrariness* by M. Mc Colgan and JP Dubois

had one of the most extensive anti-terrorist legislations in Europe, which had caused numerous human rights violations in the past⁽⁷⁾.

New measures were taken, despite protests and the concern shown by the House of Lords. As in France, they provide for phone tapping and Internet communication surveillance. Internet service providers are obligated to keep data for a longer period than before, and judicial authorisation is no longer required before the police access such information, approval from the Interior Minister or a senior civil servant is sufficient. The British legislation authorises prolonged detention of suspects, even when no charges are presented. This disposition is a clear violation of the European Convention on Human Rights that had just been integrated into British law, through the Human Rights Act of October 2000⁽⁸⁾.

Two of the measures proposed by Mr. Blair's government were not adopted thanks to the reaction of Members of Parliament and British civil society. These measures were to make ID cards compulsory and to create a new charge called "incitement to religious hatred".

In Germany, in addition to measures concerning foreigners and asylum seekers⁽⁹⁾, the main dispositions concern co-ordination of police services and electronic surveillance. The traditional separation between information and police services has been abolished. Information services now have unlimited access to the common filing system of the police (INPOL) and of the military security services (MAD). Moreover, the foreign information service (BND), border police and the Federal Office for the Protection of the Constitution have common responsibility in relation to visas. For the first time in the history of the Federal Republic of Germany, the German Service for the Protection of the Constitution has powers similar to those of the police. The new law extended their access to various electronic information sources. Internet service providers, postal services, and banks are required to provide access to personal information on people suspected of "supporting international terrorism", an expression which is very vague.

"Who defines the limits between 'terrorists' and 'liberties defenders'?" twenty German human rights organisations asked in a joint press release in November 2001. They are not confident that the new law will be temporary,

⁽⁷⁾ Liberty, the national council for liberties, noted that only very few of the more than 7000 persons arrested in Britain, under the Prevention of Terrorism Act were eventually charged with terrorism. This law was amended in 2000.

⁽⁸⁾ For a detailed analysis of this law, see www.liberty.human-rights.org.uk

⁽⁹⁾ As another presentation will treat that topic, we won't develop it here. However, it is to be noted that Germany is the country where foreigners have been the most targeted by the new security laws. Police and information services will be entitled to search throughout a central control registry of foreign citizens, which will file a lot of information proving the 'real' country of origin of foreigners. Digital prints and 'other documents proving the identity' of asylum seekers will be kept for ten years, and will systematically be compared to digital prints found during crime investigations. Moreover, foreigners will not be allowed to create associations whose objectives or activities are deemed prejudicial to the fundamental interests of the Federal Republic of Germany.

despite the fact that it will be re-examined in 5 years. "Experience shows that once established, surveillance measures are only exceptionally removed", they stated.

Along with Spain, Portugal and Italy, France, Germany and Great-Britain are the only EU-states that have specific laws and juridical instruments on terrorism, in which the terms "terrorist" or "terrorism" are mentioned, and that expressly incriminate terrorist acts.

In the nine remaining EU-countries, there is no "specific rule concerning terrorism". Terrorist acts are punished as infractions of the general criminal law. The three countries that already had specific legislation on terrorism are thus precisely the ones that reinforced it after September 11. There is no logic to this, but it should be noted that three quarters of the immigrants in Europe are to be found in these three countries.

On the international level, the 15 EU-countries have signed and ratified a whole set of thematic conventions on terrorism⁽¹⁰⁾. These states are also parties to the European Convention for the Repression of Terrorist Acts, elaborated within the Council of Europe (Strasbourg, January 1977) and applying to its about 40 member countries.

The European Commission and the EU-member states used this convention as a reference when elaborating a European policy to fight terrorism, as it is the first international convention to list a number of acts considered crimes of terrorism. The Convention excludes all political motivation from the terrorist acts, thus facilitating extradition procedures between European states.

Still on the regional level, article 29 of the European Union treaty, a fundamental European text, clearly evokes terrorism, defined as a grave type of criminality that has to be prevented and combated by strengthening police and judicial co-operation. Arrests of members of Islamic groups (especially Algerian) in Europe over the last three or four years have probably been undertaken in this framework, but not publicly. A European police office, competent in terrorist cases, was created by a convention on November 27, 1995. In October 1996, the Council of Ministers decided to create a "file of terrorism specialised competencies, knowledge and expertise". In 1998, the Council stated that the fight against terrorism would be one of the priorities of EUROPOL, the European police office.

On the legal level, the 15 EU countries signed two conventions on the extradition of persons condemned by law to another country of the Union, in 1995 and 1996. These conventions preceded the probable suppression of the formal extradition procedure of a person definitively condemned. This was one of the conclusions of the European Summit of Tampere in October 1999 (conclusion 35).

⁽¹⁰⁾ Concerning hostage taking(1979), hijacking (1970), nuclear weapon proliferation(1980) and financing of terrorism (1999).

But very soon, enhanced police co-operation and legal steps were deemed insufficient, and the need for a common European judicial space was stressed. This common judicial space appears all the more necessary for combating financial crimes, money laundering and to facilitate the development of a European common market.

On September 5, six days before the attacks, the European Parliament adopted a resolution requesting the suppression of the extradition procedure, the creation of a European search and arrest warrant and the harmonisation of national legislation on terrorism.

This explains why the European Commission submitted two frame-decisions to the Council of Ministers, one regarding the fight against terrorism and another concerning a European arrest warrant, as early as September 19.

The Commission would not have been able to prepare these two decisions in only eight days, but the September 11 attacks certainly accelerated the process. Presented on September 19 and published a few days afterwards on the Commission's website, these two decisions were highly criticised without much publicity.

The main criticism concerned the definition of a terrorist infraction. In some cases, it would cover street demonstrations, for example against globalisation, or certain forms of labour union actions (e.g. occupation of a factory by fired employees).

The Ministers of Justice and the Interior discussed the decisions and agreed on them in December 2001. Their agreement is not public yet, but according to various sources, the protests had a positive impact.

The new version apparently refers to articles of the Charter of Fundamental Rights and to the European Convention on Human rights protecting the right to strike, union liberties, and freedoms of demonstration, meeting, association and expression. Concretely, occupation of a public or private site (a factory for example) that would have been deemed a terrorist infraction in the September 19 version has been removed. Moreover, it seems that Sweden, Denmark, and Ireland have demanded that their national parliaments deliberate the new legislation before approving it. The case will, of course, also be submitted to the European parliament, which constitutes a new opportunity for public debate or amendment.

To sum up, three countries have introduced new anti-terrorist legislation that clearly infringes upon the liberties of all citizens and in particular on those of the lower social classes and immigrants.

“The consequences of the new legislation are important: it will allow massive intervention by police forces especially in difficult neighbourhoods and thus reinforce the feeling that law itself is a source of discrimination and arbitrariness, in places where control is often determined by origin. Freedom of circulation, safety of one's home and privacy of correspondence are being

restricted for causes that do not always have to do with terrorism. In fact, “it is a general reinforcement of social control, under the pretext of terrorism”, as Michel Tubiana, vice-president of the FIDH wrote in an article published in *Le Monde* on October 11.

On the EU-level, it is too soon to say whether civil liberties will be seriously undermined. Nevertheless, it is certain that the September 11 events have been a decisive impulse for developing a common judicial space and led to a reinforcement of the co-operation between the police forces and information services of the 15 EU-member States. This co-ordination under development may be a threat, as it is not subject to debate and public deliberation.

Consequences for Freedom of Statement of the Terrorist Attacks of September 11

by Toby Mendel

I have been asked to talk about the impact of the terrorist attacks of 11 September 2001 on freedom of the media in the world, North and South. I will attempt to cover this topic as fully as I can. However, I recognise that most of my information comes from northern sources and that, as a result, my treatment of the topic in relation to the South will be less than comprehensive.

In the aftermath of the attacks of 11 September, a number of governments around the world, particularly in the North but not exclusively, have taken steps to enact new legislation to enable them to take more effective measures to combat terrorism worldwide. To a greater or lesser extent these legislative efforts give the authorities legitimate new powers to address the very real problem of terrorism, a problem that, in the past, appears to have attracted less official attention than one would have expected. At the same time, however, governments have taken advantage of the climate of fear, in some cases verging on hysteria, to give themselves some powers which trench on human rights. The most obvious, and blatant, examples of this are in relation to the detention, removal and/or trial of suspected terrorists without respect for due process guarantees that have been established over centuries. However, in some cases, legislative measures have also eroded guarantees of freedom of statement and of information.

More subtle, but no less important, is the impact of 11 September in terms of self-censorship, both encouraged by the authorities and in response to public attitudes. Such self-censorship has made it difficult openly and critically to discuss issues such as the root causes of terrorism and how best to address this problem, including an assessment of the effectiveness of the war in Afghanistan and other military measures to fight terrorism. It has also made it much more difficult for human rights advocates to promote what are now unpopular causes, such as the human rights of those accused of terrorism. This undermines holistic, long-term attempts to address the problem of terrorism.

A related problem is the enormous international attention currently being devoted by the international community to the fight against terrorism. While this is not necessarily a bad thing in itself, it has two side effects, which are most unfortunate for human rights advocates. First, given overall limits to international action, the overwhelming focus on terrorism diverts attention from human rights issues. Second, the main powers playing an active role in the fight against terrorism, particularly the United States, have been prepared to overlook human rights abuses to gain allies or strategic advantage.

Formal Measures Limiting Freedom of Statement

General Measures

Various governments around the world, including the United States, United Kingdom, Canadian and Indian governments, have introduced new legislation in the wake of the attacks of 11 September to address the threat of worldwide terrorism. These laws focus primarily on powers to detain and try suspected terrorists. Of some notoriety at the moment, for example, is the Executive Order issued by President Bush of the United States, which provides for the trial of non-citizen "international terrorists" by military commissions. This provides the authority for the trials of al-Qaeda suspects at the US military base in Guantanamo Bay, Cuba.

The new rules also have implications for freedom of statement. Under international law, freedom of statement may be restricted, but only where the measures taken are necessary and proportionate in relation to a legitimate aim. Addressing terrorism is clearly a legitimate aim, but where measures have an excessive impact on freedom of statement, or could be drafted more narrowly and still achieve the aim, they cannot be justified.

An example of a measure restricting freedom of statement is a provision, under the USA PATRIOT Act (United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), allowing the U.S. Secretary of State to declare persons seeking entry into the United States to be "inadmissible" because they are deemed to have undertaken advocacy that undermines U.S. anti-terrorist efforts. The broad terms of this power mean that it can be used against practically anyone articulating anti-American sentiment in a region where terrorism is suspected. Legitimate criticism of U.S. policy and/or practice may be deterred, for example, because the editors and/or owners of certain media outlets do not want to jeopardise their ability to enter the United States. The breadth of this power, and the fact that it is wielded by a political actor, the Secretary of State, make it hard to justify as a restriction on freedom of statement.

In many instances, the authorities have new, broader powers to undertake electronic surveillance and monitoring, for example of telephone or Internet communications. These are powers which historically have been seriously abused by the authorities, and which were subjected to formal limits only after concerted public action, including exposure of official abuse. Although communications are most directly protected as an aspect of the right to privacy, the threat of excessive official surveillance may also lead to self-censorship. In the past, courts have often struck down these powers as offensive to human rights and, although terrorism has to be addressed, there is little to suggest that broader surveillance powers are needed for this task than to combat other kinds of crime.

A less direct threat, but also of concern, is the widespread detentions and interrogations going on in a number of countries, most particularly the United States, where hundreds of individuals, mostly of Middle Eastern origin, have been detained. This targeting has created a climate in which members of certain communities fear they may be subjected to official harassment. As a result, they may be deterred from expressing their concerns about U.S. policy, or even from criticising the very practice of detentions; for fear that such criticism may increase their chances of becoming a target.

Authorities in some countries have also attempted to rein in independent reporting relating to Afghanistan. This started with U.S. officials using their influence to try and prevent the Voice of America, an independent but State-funded broadcaster that remains susceptible to official pressure, not to air an interview with the Taliban leader, Mullah Mohammed Omar. The station eventually decided to broadcast just a few excerpts from the interview as part of a larger programme.

On 10 October, National Security Advisor Condoleezza Rice held a conference call with major U.S. network broadcasters, urging them not to broadcast pre-recorded statements by Osama bin Laden. This was justified by White House spokesperson Ari Fleischer as follows:

“At best, Osama bin Laden’s messages are propaganda calling on people to kill Americans. At worst, he could be issuing orders to his followers to initiate such attacks”.

The networks insisted that they were treating the call simply as friendly advice, and rejected the idea that it amounted to censorship.

The idea that Osama bin Laden would use American broadcasts to disseminate his message verges on the ridiculous, given the many other more reliable means at his disposal to achieve this end. Despite this, the networks did agree to review tapes before airing them, suggesting the conference call did affect reporting. Britain followed suit a few days later with Prime Minister Tony Blair’s director of communications, Alistair Campbell, “summoning” broadcasters in the U.K. for a meeting on the same issue. Again, the broadcasters, including the BBC, insisted they had not been censored. A joint statement issued afterwards stated that the broadcasters believed “sensible dialogue with the Government is important during the current conflict. But we will retain the right to exercise our own independent, impartial editorial judgement.” However, broadcasting practise in relation to the airing of direct statements by al-Qaeda did change recognisably after the meeting.

Far more insidious were attempts by U.S. officials to censor the independent Qatar-based *Al-Jazeera* satellite channel. *Al-Jazeera* is one of the few independent broadcasting voices in the Middle East and had, even before 11 September, established quite a reputation for its open political reporting. Even before the war in Afghanistan began, on 2 October, the U.S. Embassy in Qatar issued a formal diplomatic complaint regarding *Al-Jazeera’s* coverage of the Afghan issue. This was followed a day later by a meeting in Washington between U.S. Secretary of State Colin Powell and Qatari ruler Sheikh Hamad Khalifa al-Thani, at which the Sheikh was requested to rein in *Al-Jazeera’s* coverage. It would appear U.S. officials were irked by *Al-Jazeera’s* frequent airing of its exclusive December 1998 interview with Osama bin Laden, and its anti-American and anti-Israeli position. The latter was a particularly sensitive issue, given U.S. attempts to secure peace in the region as part of its coalition-building efforts.

These blatant attempts by U.S. officials to censor *Al-Jazeera* were widely criticised. Several media freedom groups, including the U.S.-based Committee to Protect Journalists and Reporters sans Frontières, based in France. A New York Times editorial on 11 October 2001 also decried the censorship and instead called on U.S. officials to address *Al-Jazeera’s* perceived bias by ensuring the station had full access to U.S. views on events. It is

noteworthy that *Al-Jazeera* had in the past complained that it was unable to secure interviews with U.S. officials.

I have focused above on a few well-known attempts by U.S. and British authorities to rein in media reporting. It is very likely that many other governments around the world, which were sensitive to public response to these events and the war in Afghanistan, also engaged in such practices.

Secrecy

The past few years have witnessed a significant growth in openness in countries around the world, and in official recognition that the public has a right to know what government is doing on their behalf. This is reflected in the fact that, over the past five years, numerous countries from every region in the world have adopted freedom of information laws, giving individuals a right to access information held by public bodies. The attacks of 11 September have had an unfortunate impact on this very positive trend.

Openness is often the first casualty of war, as governments justify secrecy on the basis of military necessity and the public accepts this excuse too readily, not being willing, or able, to effectively question it. There is something particularly insidious about this form of secrecy, since it is extremely difficult to assess independently the need for secrecy in a conflict situation.

This problem is reflected in the BBC Editorial Policy Guidelines on reporting on the war, which, to their credit, they made public. The Guidelines recognised both the need to inform the public and the risk that disseminating information might increase the hazards facing the armed forces. As a result, the BBC Guidelines signalled a willingness to withhold information for a while at the request of the military authorities, as long as satisfactory reasons are given. This is probably the best the BBC can do, but it obviously gives the military authorities some power to manipulate information.

Almost immediately after the 11 September attacks, U.S. officials were calling for better protection for confidential documents, even though leaks of such documents had nothing whatsoever to do with the attacks. Reports indicate that in practice it is now more difficult to access sensitive information. In November 2001, shortly after the beginning of the war in Afghanistan, the United Kingdom put off implementation of its Freedom of Information Act, adopted in November 2000, until at least January 2005. It had previously been scheduled to come into force in the summer of 2002. Around the same time, the Canadian authorities amended their Access to Information Act by allowing the Minister of Justice to issue certificates to the effect that the records covered would not longer be subject to disclosure. This was done despite the fact that studies have indicated that the Act already provided adequate protection to national security interests.

The three special international mechanisms on freedom of statement – the UN Special Rapporteur on Freedom of Opinion and statement, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of statement – expressed concern about these developments in a Joint Declaration on 20 November 2001, as follows:

Certain governments have, in the aftermath of the events of 11 September, adopted measures or taken steps to limit freedom of statement and curtail the free flow of information; this reaction plays into the hands of the terrorists.

The impact of increased secrecy on countries in the South is hard to assess but there is little question that the impact has been global. A number of countries in Eastern and Central Europe, already in the process of adopting secrecy laws as a condition for NATO membership, can be expected to rein in their newfound commitment to openness. Furthermore, it has become far more difficult for human rights advocates to argue in favour of openness, given the moves towards greater secrecy of countries like the United States and Canada, which have in the past played a leadership role on this issue.

Official measures find their parallel in the sometimes blatant manipulation of military information during the war by both sides. An interesting example of this is the failed U.S. raid of 19 October 2001 on Afghan territory, which was successfully repulsed by Taliban forces. For their part, the Taliban reported significant numbers of U.S. fatalities, whereas in fact no Americans died. The U.S. authorities, on the other hand, claimed the next day that the raid had been a success. General Richard Myers, Chairman of the U.S. Joint Chiefs of Staff, stated in a press briefing that it had been conducted "without significant interference from Taliban forces" and the authorities even released footage demonstrating this, later revealed to be showcased rather than real. The U.S. authorities only acknowledged much later that the raid had led to a number of casualties but continued to obscure the extent and effectiveness of Taliban resistance.

The media had no independent means by which to verify or assess either side's claims. Western media duly reported the U.S. claims of success while media in some countries, including, for example, in Pakistan, presented the Taliban claims of fatalities as accurate. This led to the public either being misled, confused or kept totally in the dark. By the time the truth did finally emerge, there was enough general confusion that only careful readers would have been set straight. In any case, by that time the importance and relevance of the information had significantly declined.

As this example clearly shows, official control over information places the media in a very difficult position. They have to report on these events, which are of paramount public importance, and yet they have very little capacity to independently assess military claims. Leading Western media adopted a practice of noting after every report received from the Taliban that the claims were "unverified". Although the same was clearly true in the case of reports by the U.S. military authorities, this was never mentioned, giving the impression of bias.

Problems of Self-Censorship and Media Bias

The impact of official restrictions on freedom of statement is at least paralleled by the effect media self-censorship and bias has had on the flow of information to the public in the aftermath of 11 September. Self-censorship in this context derives from a number of factors, usually driven by some sort of public fear. In some cases, officials have taken active steps to promote self-censorship. An example of this was the successful attempt by U.S. President Bush and his officials to promote a climate in which anyone who was not with the United States was seen as supporting the terrorists. This bipartisan attitude of "us and them" is palpably false in fact and has the effect of eroding the middle ground, making it very

difficult to criticise the U.S. administration's response to the attacks. Even the name of the anti-terrorist legislation, the USA PATRIOT Act, was cleverly designed to stifle dissent.

To some extent, the U.S. media simply accepted the administration's lead in this area, failing to challenge assumptions and the overall framework, no doubt in part because of overwhelming public support for it. This is reflected, for example, in CNN coverage of the war in Afghanistan, which billed their coverage under the banner "Strike Against Terror", thereby effectively precluding any real criticism of the military action.

U.S. officials have also used the "us and them" tactic directly to attempt to quell human rights voices. On 7 December 2001, appearing before the Senate Judiciary Committee, U.S. Attorney General John Ashcroft stated:

[T]o those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends. They encourage people of goodwill to remain silent in the face of evil.

There is something ironic in this message, inasmuch as one of the key problems with the terrorists is that they do not respect liberty and the rule of law and yet Ashcroft is criticising those who defend liberty. There is further irony in Ashcroft's concern about silencing people of goodwill, since that is exactly what he himself is trying to do.

Public attitudes have also have an impact on open discussion and the free flow of information about the Afghan situation. An example of this was the airing of a regular BBC show called "Question Time", hosted by David Dimbleby, two days after the attacks. The show brings together a handpicked audience and a number of special guests and, on that day featured, among others, the former U.S. Ambassador to the United Kingdom, Philip Lader. Strong anti-American sentiments were voiced by the audience and Mr. Lader was reportedly reduced to tears. Over 2000 viewers called in to complain about the programme. The BBC originally defended the programme but then reversed its position and the Director General, Greg Dyke, took the unprecedented step of issuing a personal apology, which included the following statement:

[D]espite the best efforts of David Dimbleby and the panel, there were times in the programme when the tone was not appropriate, given the terrible events of this week.

In my view, the apology was unfortunate. The Bush administration portrayed the attacks from the very beginning as a war against America, thereby paving the way for a military response. Opposition to this, including that voiced on BBC's Question Time, was effectively being stifled out of respect for the dead. However, open and frank debate about the attacks was essential, including in the period immediately after they occurred; since this is a key formative period for people's views, including about how to respond appropriately.

The enormity of the tragedy continues to be used in attempts to stifle criticism. A recent televised debate in the U.K concerned the rights of prisoners accused of supporting al-Qaeda and being held at Guantanamo Bay. An American lawyer, finding himself unable to successfully justify the U.S. position, accused his challenger, a human rights activist, of demeaning the memory of the victims. Obviously the plight of the victims cannot justify human rights abuse by U.S. authorities, but it does play on peoples' emotions, causing them to lose sight of the real issue.

Self-censorship and bias also played a role in reporting on the war in countries where there was significant public opposition to the war. For example, in Pakistan, even leading dailies regularly reported on Taliban claims of success without much verification, although most ultimately proved to be false. The example of reporting on the U.S. raid of 19 October has already been noted. Another example concerns Taliban claims in early November to have shot down a B-52 bomber. This attracted newspaper attention in Pakistan for several days, even though the "evidence" behind the claim was very dubious. In the event, the claim proved to be false.

These instances of self-censorship derive primarily from underlying public fears and biases, rather than media manipulation. Conflict brings out the worst in people, and a tendency to interpret events emotionally, rather than based on a sober assessment of the situation. This almost naturally leads to a situation of self-censorship, whereby it becomes difficult to voice unpopular views and in which the media avoid certain types of controversy for fear of a public backlash. Unfortunately, the very topics that become taboo are often the matters which society most needs to discuss openly.

Promoting Human Rights

A serious implication of the attacks of 11 September for human rights advocates is the general decline in priority of human rights concerns, including those relating to freedom of statement. Human rights advocates around the world are finding it more difficult to promote their causes for a number of reasons. A key problem is that the attention of the international community is focused on combating terrorism, to the detriment of promoting human rights. Resources and attention are limited, and the overwhelming attention given to terrorism naturally undermines efforts in other areas.

A related problem is that key international players, including the United States and the U.K., have shown that they are willing to overlook human rights and related problems as a trade-off for support in the fight against terrorism. A good example of this is Pakistan, where the international community had expressed serious concern about both the development of nuclear military capacity and the military takeover. These concerns were, however, summarily brushed aside in exchange for Pakistan's support for the war in Afghanistan.

Finally, as noted above in relation to freedom of information, it is far more difficult for countries, which have promoted human rights, to continue to do so when they themselves have been repudiating long-established rights. This clearly affects human rights advocates as well, since it is difficult to convince governments to improve their human rights records when those governments are aware that rights are being limited in established democracies. As the three special rapporteurs on freedom of statement noted in their 20 November 2001 Joint Declaration, "We are particularly concerned that recent moves by some governments to introduce legislation limiting freedom of statement set a bad precedent".

Effective Strategies to Combat Terrorism

Up to now, I have focused on the negative impact of the attacks of 11 September on the human right to freedom of statement. The response to these attacks has been largely military and, to a lesser extent, diplomatic, for example in efforts to prevent a war between India and Pakistan. This part of the paper argues that any long-term strategy to address the problem of terrorism must include efforts to promote greater respect for freedom of statement. It is only in the context of respect for freedom of statement that the root causes of terrorism can be addressed. As the three special rapporteurs on freedom of statement noted in their Joint Declaration, “[We are] of the view that the events of 11 September 2001 and their aftermath highlight the importance of open public debate based on the free exchange of ideas, and should serve as a catalyst for States all over the world to bolster guarantees of freedom of statement”.

Respect for freedom of statement is essential both in those countries which are potential targets of terrorism and in those countries which risk harbouring or generating terrorists. Although there can be no question that the methods employed by terrorists on 11 September were totally illegitimate, it is equally clear that they were motivated by concerns which strike a chord with many people living in the poorer regions of the world. These concerns may be described as “pull” factors for terrorism. It is short-sighted, indeed futile, to attempt to address the problem of terrorism without understanding pull factors and taking steps to address them. This can only be done through frank, open debate, in a context of respect for freedom of statement and the free flow of information and ideas.

At the same time, terrorism thrives in repressive environments, where peaceful, democratic means of expressing dissent, and of having one’s views heard, are not available. It also thrives on rumours, distortion and bias, in other words in places where reliable, accurate information is not freely available. There is, therefore, a clear association between breeding grounds for terrorism and lack of respect for human rights, and in particular the right to freedom of statement, what we might call “push” factors. A comprehensive strategy to address terrorism must, therefore, seek to eliminate push factors, including by enhancing protection for human rights.

Finally, there is a need for more, and better, contact between communities and societies around the world. Over the longer term, contact, including open communication, is the only way to address problems such as racism, which has unfortunately flourished since 11 September, and partisanship, including both anti-Muslim sentiment and demonising the West and the United States.

Conclusion

Freedom of statement, and of the media, has suffered in a number of ways since the attacks of 11 September. Official actors have taken steps which both directly limit freedom of statement and information and which indirectly have a chilling effect on freedom of statement. Equally important is the serious climate of media self-censorship and bias in many countries, which leads to a denial of the public’s right to know.

Restricting freedom of statement at this crucial time is likely to undermine, rather than enhance, long-term strategies to address the problem of terrorism. Frank, open debate is essential to counter both push and pull factors associated with terrorism.

II) International Law

Moral and Practical Imperatives of International Relations Post 9/11

By Marwan Bishara

Like most others, I remember what I was doing on September 11, 2001. I had a meeting to summarize the Durban International Conference against Racism (WCAR) with a number of French intellectuals at the Foundation Sadou in the 6th Arrondissement in Paris. We debated putting out a statement that would expose the hypocrisy of the European and Western media coverage of the international conference, and point out its important achievements as a document most worthy of closing the twentieth century.

What has become of us since 9/11 is a different and most telling story. Ben Laden has brought upon the world new disasters that will take a long time to account for. He is depicted as a medieval character with his robe, beard and backward ideology. Nonetheless, it would have been merciful if he had simply set the clock backwards, but unfortunately, he accelerated time forward in the wrong direction.

September 11 has posed a different set of priorities than the ones emerging from WCAR; and these will challenge human civilization in the next century. 9/11 put security over development, military solutions over conflict resolution, police over policy, or as the French say, Flic over fric, anguish and fear over understanding and rationality. It erected higher national barriers than those already in place, and accelerated the separation of peoples thus aggravating the isolation of the less fortunate in an ever integrating globe. Ben Laden is the product of the twentieth century; his parents are the Cold War military and the global, liberal economy. For now on, there is little anybody can do to stop the free fall in world affairs, because Ben Laden does not represent a particular a religious culture or ethnic group, as much as he represents the inherent contradictions of the new era of globalization.

International agreements aiming at ameliorating our lives and managing our relations in the new century are being shredded. Ideas about the nature of globalization and human security, about past grievances and future cooperation and coexistence, which took off before that ill-fated September 11 day, have been silenced or deformed ever since.

September 11 marked a clear and everlasting division between the practical and moral imperatives of our human civilization, just as we began to demand their convergence into one in an ever more globalized world. Since then, everyday choice boils down to taking a decision in favour of what is practical over that which is the correct or perhaps the moral thing to do. (By morality in the context of international relations we simply mean the respect and the active

protection of human social and economic rights and freedoms, guaranteeing people's right to live a life with equal opportunity to happiness.)

Asymmetric Enemy and the War on War

September 11 was the end of the era in which the United States perfected its zero-dead approach to conflict, with minimum casualties to the United States and maximum damage to the enemy. President George W. Bush declared the United States to beat war before nominating an enemy. "War on terrorism" is war on a war, because terrorism is a form of warfare. It is referred to in various circles as the weapon of the weak. In fact, it is the direct result of di-symmetry of power.

The war on the new "terrorists" leaves no less controversy and confusion. The new enemy is mobile, transnational, or sub-national, so now begins the era of asymmetric conflicts. For decades, the United States spent trillions of dollars to ensure minimum casualties in any confrontation. In the Vietnam War, it spent hundreds of thousands of dollars for each dead Vietnamese fighter. In the Gulf war, it kept U.S. casualties low. And with rapid, massive bombardment from afar (the Colin Powell doctrine), the United States hoped for zero casualties in future symmetrical wars. Its missiles and superior fighters, supported with the most sophisticated airborne intelligence, could guarantee such results by inflicting unbearable destruction on the enemy.

That was until four civilian airplanes with full fuel tanks were transformed into high explosive missiles by what appears to be middle class hijackers using knives and cardboard cutters, willing to die for their cause. Nineteen of them died killing four thousand. This is not the sort of battle America has been equipped to fight. Terrorism crossed the Atlantic with skill and success, fulfilling America's own prophecy. Why?

This is just the sort of "asymmetric war" -scenario some American strategists have been warning against in the last few years. America, the military and economic superpower, with a very low tolerance for casualties when it comes to civilian and military deaths, was hit where it hurt most, in the pride of America's might, the Pentagon and Wall Street. The perpetrators succeeded in terrorizing and tormenting mainstream America.

Asymmetry must be distinguished from di-symmetry, meaning a quantitative difference in firepower and force, a strong state against a weak one (the United States against Iraq). Asymmetry is about qualitative differences in the means, values and style of the new enemies. Once a power like the United States insists on exclusive superiority in world affairs as well as in conventional warfare, its disadvantaged enemies will resort to unconventional asymmetrical means to fight it, avoiding its strengths and concentrating on its vulnerabilities.

Globalization and Terrorism

The parameters of power have changed in the era of globalization. Today, power requires an accumulation of various methods, such as controlling the flow of information and the proliferation of technologies, as well as dominating the skies and penetrating outer space. Control in these fields have become as important as it once was to dominate the seas or to secure trade lines to become a superpower.

Make way, a revolution in military affairs is on its way and is bringing along with it a new brand of 'asymmetrical' enemies and threats stemming from this new domination; it could be

cyber attacks or use of unconventional weapons. America's crushing capacity in conventional warfare and its enhanced deterrence of conventional threats is a breeding ground for new kinds of threats. Flagrant quantitative or di-symmetrical imbalance of power in the new world is leading to qualitatively different or asymmetrical types of threats. In other words, what Saddam Hussein's secular regime couldn't do with his reputed conventional armed forces against America in the battle field, i.e. the humiliation or at least hurting of America, Ben Laden's al-Qaeda was able to do with four civilian airplanes and a network of nineteen 'believers' ready to give their life away.

America before and after 9/11

Once the Cold War had put an end to symmetrical conflicts involving the all mighty America (not realized by Saddam Hussein!), Washington began to rethink its deterrence strategy and capacity to confront new dangers to its national security and interests abroad. Revolution in Military Affairs RMA was put on Pentagon's table in the framework of an increasingly globalized world. The basic assumption has been that in the new world, world superiority and superpower status will depend on control of space and information. Since then, the Information revolution has altered virtually every aspect of our society. Never has America been so powerful, so determined, and so aggressive, so bent on domination and control as it has been since 9/11, and never has the world been so acquiescent and intimidated as it has been since America launched its war in Afghanistan.

The pressures that had begun to build up against the Bush administration internally and against the United States externally, regarding America's role in the world, have completely vanished. The Kyoto Protocols on the environment, the ABM treaty on missiles proliferation, the space treaties or the World Conference Against Racism, all of which the United States tried to ignore or violate, have taken the back seat after America was attacked on September 11. When the Bush administration spoke about walking out of international treaties and agreements that regulate important aspects of the international society of nations prior to that date, the world rolled its eyes in dismay. After September 11, all objections were silenced as the world listened to a new offensive American rhetoric with a mixture of obedience and bewilderment. Washington's declaration of an open-ended "war" was articulated by a new /old Texan ranch style rhetoric dominating the world's television screens.

During the post-Cold War decade, as the Americans celebrated 'freedom's victory over totalitarianism' and Western economies expanded their authority and domination at a breathtaking pace, the rest of the world sank deeper into conflicts, poverty and famine. More wars took place in the last decade than in the preceding thirty years, as new ethnic and sub-state conflicts emerged. Never has the world been so rich with so many poor. Thanks to satellite media and information technology, the world has also become more informed about its condition than ever before.

North versus South

The real divisions in the world between an ever integrating North and the South were sidelined by 9/11; they took the back seat to manufactured divisions between "the West and Islam" or between "right and wrong" or even worse "good and evil". By the North, we generally refer to the three converged regional power centers, North America, Europe and Japan (and to a certain extent East Asia). These three liberal economic powerhouses have drawn ever

closer together to form a new center of gravity in world affairs under the leadership of the United States. The rest is the South.

These three blocks make up less than one fifth of the world's population, but dominate world economy and trade. Under America's leadership, they control all international financial institutions and most of the world's global institutions. The United States controls some 25 percent of the voting power in the World Bank, and together with Germany, it makes up the leading block in this powerful financial institution. The North has established so-called strategic systems of the business sector, the military, the governments and NGOs. These systems work beyond the direct responsibility of any one state; their sphere of influence has thus no limit in our world. Most of the economy of the North is formal, transparent and subjected to conventional market forces.

Those who make up the driving force of the world liberal economy have abandoned the enthusiasm with which they first looked for new states to join the North after the Second World War. Well before the end of the Cold War, the North began to close itself and solidify its networks within its three blocks. A potential member has to be an extremely good candidate, ready to do all that is asked from it and which could compromise its social cohesion, cultural life and political stability. And even then there are no guarantees that it will eventually become a full member in this loosely organized, fluid, system of global governance. Certain Latin -American and a couple of East European countries have been singled out as possible candidates to enter the strategic complexes of the North.

The North showed less interest in dealing with the South in the last two decades. Commercial investments in Africa collapsed except in areas controlling the raw materials of the continent. Investment in the Soviet Union dwindled apart from the usual interest in energy sources and a few valuable raw materials. From North Africa to South-America and Eastern Europe, Northern investment fluctuated so dramatically that it left all three areas unstable and facing serious economic troubles.

Restrictions on immigration from South to North also increased as the refugee regime was hardened, and forced return became more common relative to granting asylum. Globalization is about integration, but people in the South are more segregated than ever, despite of modern means of communication. Even South-South migration is difficult, like the rest of Southerners' conditions.

According to a number of economists, Northern strategy in the South has moved away from development toward poor relief and population containment, including new security measures for social control and riot control.

These and other developments in the last two decades show how the South has become more segregated. However, this segregation does not amount to barbed wires or simple territorial constraints; it is rather a question of domination and subjugation. In other words, the South is not left to run its own affairs, nor is it simply controlled from afar. It has become increasingly penetrated by Northern systems of influence and domination, insuring Northern interests and minimum spill over into the North in terms of refugees and political instability that threaten the North's economic interests.

Despite this segregation, the South has remained part of the global marketplace, where the North sells its goods and buys its raw materials. The South has developed "gray areas", at times with the complicity of Northern economic and security forces, public and private. These gray areas have developed unconventional business and security systems that are not part and

parcel of the Northern strategic complexes, but work parallel to them using windows of opportunity created by the transition from a state system to the unregulated globalization of the marketplace.

New Grey Areas of Globalization

These gray areas went uncontrolled as they by-passed state boundaries and sovereignty and made their own networks in the global space. Internal dynamics of private businesses, money laundering, mafias and drug trafficking have all flourished in the gray areas of the South, as the North looked the other way. The United Nations estimated that the international illegal drug trade was worth some \$500 billion annually toward the end of the 1990s, i.e. 8 percent of world trade. This is more than the oil trade. All in all, it is estimated that some \$750 billion dollars have been gained. This goes unaccounted for in Northern reports about the economy of the South, and has not been taken into consideration by the sociological and at times even strategic analyses of the social transformations of the South, and its relations to conflict, war and violations of human rights.

Within a short period, a gray area of paramilitaries/para-businesses grew, and benefited from free trade practices and political instability in the South. Take for example the case of Angola. The UNITA movement, which previously enjoyed the support of the United States, South Africa and Israel, found itself with no solid ally after the Cold War, especially after a negotiated settlement was found. When UNITA lost the elections, it went back to being an underground movement, gaining revenues from the diamond trade in Southern Angola, which gave it access to international markets, to money and weapons, making it autonomous financially and security wise. It is estimated that within two years, more than 100 000 people will have died in this renewed conflict, as compared to the 125 000 killed throughout the 16 years of Cold War supported conflict in the country.

The case is similar in Columbia, where the Leftist FARC rebels became autonomous after the Cold War, using the drug plantations in their areas. Bolivia is no different, Coca plantations allegedly represent a third of the country's GNP. In Angola, the illegal or informal economy makes up 90 percent of GNP, and in Mozambique, the formal economy is estimated to no more than half of GNP, while in Somalia, there is no formal economy to account for.

Could one even begin to understand what happened on September 11 without looking into the shadow economy of Afghanistan, including drug trafficking and smuggling across international borders? In a country like Albania, one fifth of the country's economy consists of smuggling while in Russia, the formal economy is only half of the country's economic activity. Sudan, Kenya, Yemen and many others have similar conditions. In the South in general, it is estimated that the conventional or formal economy accounts for about half of the total economic activity, with certain countries at much less than that. This represents a gigantic gray area in today's world. (Duffield. P. 141, 142)

It is towards this background of socio-economic evolution that the unconventional forces that the North has identified as new "asymmetric" threats to its conventional global liberalism must be interpreted. The new enemy, as we shall see, is presumed to have global ramifications, including in the recent immigrant and mostly poor populations of the North.

In the age of globalization, the evolution of terrorism as a new and more complex type of threat, represented by an asymmetrical enemy, goes hand in hand with a necessity to change the way we used to look upon human rights.

Instead of a mechanical search for causes, actions and reactions, a new methodology is necessary to analyze terrorism and human rights in the 21st century. This does not mean that human rights violations are any less disheartening than they were in past decades or that terrorizing people has a different flavor in the age of globalization. However, it is no longer sufficient to study those developments as an assembly line of causes and effects.

The new global system must be studied for what it is: a system. One that involves diverse factors at times autonomous, at other times integrated or perhaps networked. Sub-systems feed into each other and to other subsystems producing complex, so-called network systems of conflicts. Understanding the way these systems work is paramount to the micro study of any of its components or networks.

The sweeping era of globalization emerged as the world was preoccupied with ideological and national conflicts. Once the ideological divide faded away with the collapse of the Soviet Union, the world was left dumbstruck by the rise of globalization, where a world drawn apart by inequality and indifference was drawn closer together by information and technology. Geography, the source of most conflicts and wars, has been challenged by technology and new extra-territorial and extra-terrestrial (outer space) systems of influence as new sources of power and domination.

Return to Basic Universal Values

Unfortunately, in the name of cultural relativism, some people would object to all attempts at universalizing values of human life and dignity and at internationalizing certain norms of conduct otherwise referred to as international humanitarian principles. It is unfortunate that as the market place continues to impose on all of us the conformity of Mac Donald's, Levis and CNN consumerist culture, the badly needed universal principles, that could best protect humanity from the wrath of vulgar neo-liberalistic market domination, universal values remain subject to condemnation and scorn in the name of religion and cultural relativism.

Life in the 21st century poses serious challenges, particularly to us in the South, and it takes serious people with serious ideas and programs and with will and determination, to see them implemented. WCAR was one of many building blocks needed to establish a new relationship between North and South. But only few days after an agreement was reached, reckless actions in New York and Washington accomplished exactly the opposite of that it meant to produce.

So far, it has been practical to burn fuel and pollute the hemisphere in the short run. It has been practical to leave it to the market to form people's lives; to rob people of their natural resources and keep their countries unstable and their regimes corrupt until further notice; to turn a blind eye to the suffering of those who do not concern us directly; to discriminate and expose to racial profiling those who do not belong to "our" civilization; to put thousands in prison to make millions feel secure. It is even practical to allow hundreds of thousands to die in a distant country, until a new policy is devised.

But not any more. As the world is becoming a global village, technology has already won over geography, and no one is far enough to escape from the dangers of an exploding world. Not even America. If the West does not agree to take the necessary steps to ameliorate the global conditions in which we live, including fixing the inequality between North and South, the West will inevitably become the battlefield of new dangers stemming from instability and chaos in the South.

Question: If universal values or moral imperatives are so impractical, why are they necessary? Why are they important for those who do not confuse earthly or universal morals with divine commandments? Why are ethics and morals necessary for diehard seculars? Of course, the discussion has been going on for thousands and certainly hundred of years. Simply put, and for the purpose of this paper, universal values and the respect of human rights in general, are our best bet to preserve civilization in the long run. Ethics translate into securing the long-term interest of humanity on this earth.

Responding To September 11 The Framework Of International Law*

By Helen Duffy

It is in times of greatest strain that legal boundaries are most important. The shocking attacks of 11 September 2001 took place, not in a normative void, but against a backdrop of established international law and developing international practice in addressing atrocities. So far as the international response to September 11 disregards that law, the implications for human rights are potentially grave. Excepting the current situation from the framework of international law will discredit and undermine the universality of the rule of law, laying the foundation for future violations.

This paper seeks to set out in brief the law governing possible responses to September 11, highlighting areas where the law is unsettled. It will begin with the basic principle of peaceful settlement of disputes and the prohibition on use of force, and then explore the exceptions to this rule. It will then consider the circumstances in which acts of individuals become attributable to a state, and the consequences of attribution. Finally considers the model of international criminal law enforcement, assessing how it might be enforced against individuals who are responsible, directly and indirectly, for the attacks of September 11. A myriad of other issues - including the international humanitarian law and human rights norms that apply in armed conflict, once there has been resort to force - are not addressed here but can be found in the original paper of which this is a brief summary.

Peaceful Resolution Of Disputes And Use Of Force

In deciding how to respond to the events of September 11, states must bear in mind the obligation, so far as possible, to resolve disputes by peaceful means. This obligation is enshrined in Art 2(3) of the UN Charter, which states:

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, shall not be compromised.

The question of the lawfulness of the use of force should only arise in circumstances where there are no peaceful means at the aggrieved states' disposal, or where such means have been exhausted or found to be ineffective.

* This is a very shortened version of a research paper that was presented by Helen Duffy at the International Symposium on Terrorism and Human Rights. The summary has been prepared by CIHRS, with Ms. Duffy's approval. Due to space limitations, all her footnotes had to be omitted. The original paper, issued in October 2001 can be obtained from the Interights website (www.interights.org)

The current rules governing the lawfulness of the use of force are contained in the UN Charter and customary international law, which contemplates certain exceptions to the general prohibition on the use of force. Leaving aside the question of humanitarian intervention, which has not been invoked in the present situation, the exceptions involve:

- i. the use of force in necessary self defence, and
- ii. Security Council authorisation of force, on the basis that the Council determines it necessary for the maintenance or restoration of international peace and security.

Any resort to armed force should fall within one of these exceptions.

Self Defence

Article 51 of the UN Charter provides that:

Nothing in the present Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security....

As the Charter's reference to the 'inherent' right of self defence reflects, Article 51 was intended to encompass customary international law. Where Article 51 lacks specificity, an understanding of its content can therefore be informed by customary law.

The essence of self defence, as the term suggests, lies in its defensive as opposed to responsive or retaliatory objective. This distinguishes permissible defence from prohibited reprisal. Central to an assessment of justifiable self defence is therefore an assessment of the threat to the state, which must be imminent, and an identification of the source of the threat, to which defensive action must be directed. Where the threat derives from individuals, legitimate defensive action against states is linked to the question of attribution and the ability of the state or states to control the threat.

The following conditions are generally considered to require satisfaction before resort to force can be justified as self defence.

Armed attack

The express language of Article 51 contemplates self defence only 'if an armed attack occurs against a Member of the United Nations'. As such, according to the International Court of Justice (ICJ), '[s]tates do not have a right of ... armed response to acts which do not constitute an 'armed attack' (*Nicaragua*, para 110). However, the 'armed attack' requirement is the most controversial of the self defence conditions, and highlights a number of areas where international law is unsettled.

Key issues in dispute are whether there has to have been a 'prior' armed attack, the definition, nature and object of an armed attack and the need for state responsibility for the attack to engage the right to self defence under international law, as discussed in turn below.

Anticipatory self defence Numerous commentators assert that in certain circumstances it is illogical or unreasonable to require states to wait until an 'armed attack' has occurred to defend themselves. Despite the wording of Article 51 to the contrary, some argue that customary law contains no such requirement and that anticipatory self defence against an imminent threat of

attack is permissible. Others note the dangers of pre-emptive strikes and adhere to the view that they are unlawful, while a third view, found in Oppenheim's International Law, is that 'while anticipatory action in self defence is normally unlawful, it is not necessarily unlawful in all circumstances...'

The language of the *Caroline* case of 1837 has been widely quoted as establishing, and at the same time strictly limiting, those circumstances in which the use of self defence in anticipation of an attack might be permissible. The test established was one of necessity that was 'instant, overwhelming, and leaving no choice of means, and no moment for deliberation.' (*Oppenheim's International Law, op.cit.*, 421).

Territorial Integrity/Political Independence, Defence of Nationals etc.

While there is no accepted definition of armed attack, it has been said to signify considerable seriousness and to exclude 'isolated or sporadic attacks'. It is generally (though not universally) considered to be an attack against the territorial integrity or political independence of a state. However, some assert that an attack against a state's interests or nationals would suffice, though support in state practice and academic writing for 'self defence' to cover defence of nationals abroad remains limited.

State v. individual responsibility for the attack

A further unsettled issue of greater potential relevance in the wake of September 11 is whether a state must be responsible for the attack for the right to self defence to be triggered. Neither the language of the Charter nor the logic of self defence necessarily require proof of state involvement in an existing armed attack. Indeed the seminal *Caroline* case involved non-state actors. Numerous writers, however, specifically assert that state involvement is necessary, and that, for self defence to be justified, acts of individuals or groups must be imputed to the state, in accordance with state responsibility. Following from this, it has been suggested that coercive action directed against a state without any responsibility for an existing or imminent attack could constitute an international wrong against that state.

Necessity and Proportionality

Necessity and proportionality are universally recognised as requirements of the law of self defence, and as having been required even before the UN Charter.

Necessity

The necessity of force presupposes that all alternative, peaceful means have been exhausted, are lacking or would be ineffective against the anticipated threat.

Logically, for measures to be necessary to avert a threat, they must be capable of doing so. A relevant question in determining the right to self defence is therefore the effectiveness of any proposed measure. Moreover, self defence can only be justified where the targets of defensive action are clearly identified, such that their contribution to the threat in question can be properly assessed. For defensive action to be justified against persons or entities other than those directly responsible for an attack or imminent attack, the link between the *threat* and those *targets* must be established.

As the *Caroline* case shows, necessity may imply a degree of immediacy. While an immediate response may not be an effective response, the longer the time lapse, the more

tenuous the argument becomes as to the urgent necessity of unilateral action (as opposed to collective action under the UN umbrella).

Proportionality

Proportionality and necessity are intertwined, with proportionality requiring that the force used be no more than necessary to meet the threat presented. Consistent with the underlying purpose of self defence, to defend the state from future harm, the proportionality test must be applied *vis a vis* the existing or continuing threat as opposed to in respect of any prior armed attack.

Security Council takes over

A final requirement for self defence under the U.N. Charter is that any individual or collective self defence measure must be immediately reported to the Security Council.

Article 51 of the UN Charter provides that:

...Measures taken by Members in the exercise of this right of self defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Reflecting this, Article 5 of the NATO treaty specifically provides:

...Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Self defence under the Charter, as reflected in the NATO treaty, is clearly permissible only as a temporary measure pending Security Council engagement. If measures of force are initially justified, as necessary and proportionate self defence, they may still fall foul of the law if they are coupled with a subsequent failure to engage the Security Council.

Security council: maintenance of International peace and security

In situations where self defence cannot be justified, the only legitimate use of force is that authorised by the Security Council. The Security Council has broad powers under Chapter VII of the UN Charter to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to take those measures it deems necessary for the maintenance of international peace and security. However, its power to use force is not limitless; it is constitutionally confined to taking or authorising force in circumstances where doing so is 'necessary to maintain or restore peace or security.'

It should be noted that one of the contexts in which the use of force has been mandated was to secure the arrest of suspected criminals (Security Council Resolution 837, 1993). The unilateral use of force, even for the purpose of criminal law enforcement, is impermissible, and history indicates several examples of unilateral enforcement action by states that involved violation of the territory of other states having been condemned. Such enforcement action, including the use of necessary and reasonable force for the purpose of achieving the objective, can however be authorized by the Security Council.

If the Council reaches a decision, all members of the UN are required by Article 25 'to accept and carry out' those decisions. Article 43 also commits all members 'to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.'

In accordance with practice, the Security Council may decide not to take the forceful action itself, but may nominate others to do so. Numerous such situations have arisen where states, regional organizations or 'coalitions of the willing' have been authorised to take 'all necessary measures' to give effect to the Council's decisions.

Security Council resolutions 1368 and 1373 condemn the attacks of September 11 and call for specific action short of the use of force to be taken in response. The fact that they reiterate the right of 'self defence' may presuppose the view that self defence was legitimately invoked, although the language invoked in the operative clauses falls short of authorising the use of force, for either defensive or law enforcement purposes.

State Responsibility

The question of state responsibility for the events of September 11 has caused much speculation and debate. It permeates the discussion of lawful responses to September 11, and as to against whom any response should be directed.

Any peaceful inter-state resolution of disputes, by negotiation for example, may presuppose state responsibility, or at least the *de facto* authority of the state to negotiate and ultimately deliver on agreements reached. So far as the critical issue of the use of force is concerned, the precise relevance of state responsibility is controversial. As noted above, some commentators assert that a state must be involved in an armed attack for the right to self-defence to be engaged. Whether or not this is so, necessity and proportionality would seem to require that any force be directed against the source of the ongoing imminent threat; before force can be directed against a state that state should be responsible for the threat or at least capable of averting it. By contrast, individual criminal responsibility is largely unaffected by whether a state is responsible, as international criminal law does not recognise official immunities for egregious international crimes.

State Responsibility in International Law

States can be responsible for international wrongs, either directly or vicariously. They are directly responsible where the wrong occurs at the hand of state officials, in which case the act amounts to an 'act of state.'

Where private individuals or groups with no 'transparent relationship' with the state are responsible, the issue is whether the state exercises 'effective control' over their actions. Some question whether encouragement or even passive acquiescence in wrongs is sufficient to render a state responsible, but the law appears to indicate that this depends upon the ability of the state to prevent or control the wrong in question. It is well established that states are not strictly responsible for wrongs orchestrated on or emanating from their territory.

As one commentator has noted, 'a transparent relationship between terrorist actors and the state is predictably uncommon' (Schiedeman, *op cit.*, 262). Thus, states may be legally

responsible although not formally linked to perpetrators, provided the legal test is satisfied, as described below.

Effective or Overall Control

According to the International Court of Justice in the *Nicaragua* case, the test is whether the state or states in question exercised 'effective control' over the wrongdoers.

In *Nicaragua*, the United States benefited from the relatively high threshold established by the Court, which found that it could not be held responsible for the acts of the Nicaraguan Contras. Although the Court found the US to have helped finance, organize, equip, and train the Contras, this level of involvement did not 'warrant(s) the conclusion that these forces [were] subject to the United States to such an extent that any acts they have committed are imputable to that State.' (*Nicaragua*, in 18 *Wis. Int'l L.J.* 145, 265.) The United States was liable for other activities where there was proof that they were the result of direct action on the part of the United States military or foreign nationals in its pay, but not in respect of the support given to the Contras. This aspect of the judgment is controversial. Nonetheless, the *Nicaragua* 'effective control' test remains the authoritative source on the point.

A similar test has been approved and applied more recently by the international criminal tribunal for the former Yugoslavia (ICTY). The tribunal found that different tests applied in respects of private individuals who are not militarily organised and paramilitary or similar groups, where the test was whether the state exercised 'overall control' over their activities (*Tadic Appeal Decision*, para 137). However, the tribunal noted that where the 'controlling State' is not the State where the armed clashes occur, 'more extensive and compelling evidence is required to show that the State is genuinely in control of the units or groups not merely by financing and equipping them, but also by generally directing or helping plan their actions....' (*ibid*, para 138).

In another case before the International Court of Justice, the Court noted that subsequent approval or endorsement of wrongful acts may provide evidence of state responsibility. The ICJ in the *Tehran Hostages* case found that while the responsibility of Iran for the original takeover of the US Embassy in Tehran in 1979 was not proved, subsequent encouraging statements in the face of incidents including hostage taking by students, created liability on the part of the state (1980 ICJ 3, 31-34). This case is not, however, inconsistent with the effective control test, as the Iranian state was considered capable of putting a stop to the situation and instead chose to endorse it. A significant question arising from these facts and the effective control test is therefore the extent of a state's capability to prevent.

It has been noted that 'the issue becomes more difficult when a state, which has the ability to control terrorist activity, nonetheless tolerates, and even encourages it' (Travalio, *op.cit.* at n.32, 154). This reflects international resolutions that urge states to refrain from 'acquiescing in or encouraging' terrorist activity (General Assembly Resolution 49/60, para 4). Nevertheless, it would appear that 'the traditional view is that state toleration or encouragement is an insufficient state connection...' (Erickson, *op cit*, n.90, 100-103, cited in Travalio, *ibid*) and that question remains whether, in line with the *Nicaragua* test, the involvement of the state in question amounted to 'effective control.'

It is ultimately an issue of fact 'whether the individuals concerned were sufficiently closely associated with the state for their acts to be regarded as acts of the state rather than as

acts of private individuals.' (*Oppenheim's International Law, op.cit.*, 550). In the light of current law, including *Nicaragua*, considerable proof of state involvement would be necessary to demonstrate state responsibility under international law.

International Criminal Law And Individual Responsibility

To the extent that the events of September 11 constitute crimes under international - or relevant domestic - law, those responsible, directly or indirectly, are susceptible to international and/or domestic investigation and prosecution.

While individual criminal responsibility under international law is not a new phenomenon, in recent years a system of international justice, with national and international components, has crystallised from the experience of addressing atrocities on the domestic and international levels. The work of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda ('ICTY' and 'ICTR'), the elaboration by consensus of the International Criminal Court ('ICC') Statute and innovations in domestic law and practice have been the principal contributors. As a result, the international community is now armed with a detailed body of international criminal law and a range of jurisdictional options to implement it.

The experience of, among others, the *ad hoc* tribunals demonstrates the viability of prosecutions involving complex criminal networks, including against those in the highest echelons of power and in respect of massive crimes. While investigations of crimes such as those witnessed on September 11 are a considerable task, crimes of greater scale and most likely complexity have been investigated and successfully prosecuted before, and there can be little doubt that the same is achievable in the present context.

Crimes Under International And National Law

Crimes under international law are particularly serious violations of norms that are not only prohibited by international law but also entail individual criminal responsibility. They can be based on customary law or a binding treaty.

Customary law is binding on all states and, so far as criminal responsibility is concerned, on all individuals. Among the sources that can be looked to for the purposes of identifying the content of customary law in this field are the jurisprudence of international *ad hoc* tribunals, the ICC Statute and draft annexes and national court practice.

Treaties by contrast are only binding on those states party to them. Although treaties bind states, they may also, as in the case of treaties governing international criminal law, affect individuals. Consistent with basic principles of legality in criminal law, care must be taken to ascertain whether the treaty in question was 'binding' on the individuals alleged to have been involved in criminal conduct.

This part of the paper will highlight crimes that may have been committed on September 11. It will also discuss the question of 'terrorism' and its status under international law.

Crimes against Humanity

'Crimes against humanity' are widespread or systematic attacks directed against the civilian population. These are crimes under customary international law, hence prohibited by all persons irrespective of nationality or national laws. Unlike many other international crimes, these crimes have never been the subject of a binding convention to which reference can be

made to determine specific content. However, regard can be had to the ICC Statute, the first treaty to set out comprehensive definitions of these crimes, other earlier international instruments, as well as ample jurisprudence emanating from prosecutions for crimes against humanity.

Crimes against humanity consist of conduct such as murder and inhumane acts when carried out as part of a widespread or systematic attack against the civilian population. The distinguishing feature of crimes against humanity is that they must be 'widespread or systematic'. It should be noted, however, that the conduct of the particular perpetrator need not be 'widespread or systematic.' Even a single act by a perpetrator may constitute a crime against humanity, provided it forms part of a broader attack or campaign. Moreover, the requirement that the occurrence of crimes be widespread or systematic is a disjunctive one. The attack need not be both widespread and systematic.

Definition of widespread or systematic

There is no one source that identifies a precise definition of these terms under customary law. The ICC instruments do not define the terms. However, they have been considered and applied in numerous cases by the ICTY and ICTR. It is clear that both the concepts 'widespread' and 'systematic' are intended to import a considerable element of seriousness, and to 'exclude isolated or random acts.' The key aspects of that jurisprudence on each term are set out below.

'Widespread'

The 'widespread' requirement may be satisfied in a range of ways. Most commonly, the term is understood to refer to the *scale* of the crime. The ICTY has defined the term as acts committed on a 'large scale' and 'directed at a multiplicity of victims.' (IT-95-14, para 206.) While scale will often involve a series of acts, it need not, as 'widespread' refers also to the *magnitude* of the crime. One single egregious act of sufficient scale or magnitude may suffice.

'Systematic'

With regard to the requirement of 'systematicity,' several cases have held that this can be satisfied by the repeated, continuous nature of an attack, a 'pattern' in its execution or the existence of a plan or policy behind an attack. In one recent decision, the ICTY drew these factors together, noting that any of the following may provide evidence of a systematic attack: (1) the existence of a plan or political objective; (2) very large scale or repeated and continuous inhumane acts; (3) the degree of resources employed, military or other; (4) the implication of high-level authorities in the establishment of the methodical plan. (Case No. IT-95-14/2, para. 179.)

The ICC Statute imposes an additional threshold not found elsewhere in international law (art. 7), in that the incidents would have to involve a 'course of conduct', 'multiple acts' and a 'policy' behind the attacks, in addition to being either widespread or systematic.

There must also be a 'state or an organisation' with a policy to commit an attack. However, the 'policy' need not be formalised and may be inferred from the circumstances.

Attack against the Civilian Population

Finally, it is well established that the attack must be directed against the *civilian*, as opposed to a military, population.

War Crimes

This section is relevant to the question whether the events of September 11 might amount to war crimes, otherwise known as serious violations of the laws and customs of war.

As the name suggests, war crimes must take place in war or armed conflict. Prosecution of those responsible for September 11 for war crimes, unlike for crimes against humanity, would have to be premised on these events amounting to the initiation of armed conflict. The ICTY definition of 'armed conflict' holds that:

...an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts...

(Para 70 of the Appeal Chamber majority decision on the *Tadic Jurisdiction*)

While this definition was thought to be broad-reaching, the events of September 11 do not fit readily into either category of conflict. If a state is responsible for the resort to armed force - which would have to be established according to the 'effective control' test discussed earlier - then September 11 may amount to the initiation of international armed conflict between states. If so, the acts of violence may amount to grave breaches of the Geneva Conventions, which consist of certain very serious crimes, including 'willful killing', committed in international armed conflict against protected persons such as civilians, which any state may prosecute.

If state control is *not* established, the question arises whether this is an 'internal' conflict between governmental authorities and groups within a state. But if the attack emanates from groups that are not 'within a state' it cannot therefore amount to an 'internal' conflict.

It may be that the events of September 11 highlight a new hybrid type of armed conflict - between organised groups and foreign States. The law governing such a scenario is un-settled. If such armed violence might be considered to amount to an 'armed conflict', it is unclear, for example, whether it would have to be 'protracted' - as set down by the ICTY to distinguish internal conflicts from civil unrest - in order to distinguish conflict from isolated attack. Humanitarian law may evolve to encompass this hybrid type of conflict.

If there was an armed conflict arising on September 11, as opposed to a lesser level of sporadic violence, the basic principles of international humanitarian law (IHL), including accountability, would also apply. (Whether or not this is so, undoubtedly the rules of IHL apply following the military response to September 11 that began on October 7. These rules are not addressed here, but form part of the original study available from Interights.)

Navigating the uncharted waters around whether armed conflict arose on September 11 may, for present purposes, be unnecessary if other crimes were committed, such as crimes against humanity or crimes under domestic law, and an appropriate forum has jurisdiction. One obvious issue that deserves consideration in the light of September 11 is terrorism.

Terrorism

There is no accepted definition of 'terrorism' in international law. The issue has long been the focus of international attention, resulting in a proliferation of agreements relating to the issue and an on-going endeavour to draft a global convention against terrorism. However,

international consensus has never been achieved on a precise definition of what constitutes 'terrorism' and who can be responsible for it. The dispute over what constitutes terrorism reflects in part the saying that 'one person's terrorist is another's freedom fighter', as well as the intractable question of which actors can be responsible for terrorism – and specifically whether it can include state actors.

Consistent with the cardinal principles of legality and certainty in criminal matters, it is difficult to see how terrorism, as yet undefined, could be said to constitute a crime of customary international law, justifying criminal prosecution on that basis. However, certain commentators do assert that customary law prohibits terrorism and confers universal jurisdiction to penalise and prosecute the crime.

Terrorism is defined as a crime in certain treaties that are binding on the states party to them and which, in certain circumstances, oblige particular states parties to exercise jurisdiction over the crimes covered. Were a prosecution to proceed solely on the basis of a treaty, complex issues may arise, including questions of how that treaty became applicable to the individual. However, where the treaty has been incorporated into domestic law of a state with jurisdiction, such as the state on whose territory a crime is committed, this issue is avoided. The United States has enacted such legislation, for example in the Antiterrorism Act of 1990, which could provide a basis for prosecution for 'terrorism' offences in the United States.

Hijacking

Other treaty crimes may also be relevant and provide a basis for prosecution. Specifically, there are a number of conventions relating to hijacking, some of which oblige state parties to exercise jurisdiction over suspects in specified circumstances. Like the terrorism conventions, certain of those relating to hijacking have been incorporated into United States domestic law, providing a possible basis for prosecution in that jurisdiction.

Common Crimes

Finally, it should be noted that murder, whether as a crime against humanity or not, is a crime in most domestic jurisdictions, including the United States. While perhaps not reflecting the egregious nature of the events of September 11, it remains an option to prosecute in a domestic court as a common crime. As noted in the discussion on universal jurisdiction, below, all states should be able to exercise their jurisdiction over the events of September 11 simply on the basis of the prosecution of mass murder.

Direct And Indirect Individual Criminal Responsibility

If the events of September 11 amount to crimes under international law, then the perpetrators, direct and indirect, can be held responsible. Direct responsibility attaches to those who order, plan, instigate, aid and abet, or contribute by acting in a common criminal enterprise with others for the commission of a crime. Those directly responsible are not only those who hijacked the planes, who killed themselves in the process, but also the full networks of persons who assisted in various ways. While national laws vary considerably as to principles of criminal law and terminology used, they tend to encompass a similar range of forms of participation incurring criminal responsibility.

Certain people may be responsible not only for what they do – such as ordering or instigating crimes - but also in certain circumstances for what they fail to do under the doctrine of superior responsibility. A military commander or a civilian in a position of authority may be liable if he or she knew or should have known that the crime would be committed and failed to take necessary and reasonable measures to prevent it. This can be an extremely important basis of liability, where access to evidence of high level orders that would link those in the highest echelons with the crime in question proves elusive.

Jurisdiction To Prosecute

International law and practice point to numerous possible venues for the investigation and prosecution of a potential September 11 case.

National Courts

International law recognises the right of certain states to exercise criminal jurisdiction. These are principally the state where the crime occurred, the state of nationality of suspects, the state of nationality of the victims and, for certain serious international crimes, all states, based on universal jurisdiction.

Customary international law has long provided for any state to exercise jurisdiction over crimes such as murder, crimes against humanity, war crimes. In addition, certain international agreements have provided for jurisdiction over these or other crimes.

Important developments in the practice of universal jurisdiction indicate that it is increasingly a real international jurisdictional possibility; as a practical matter this is particularly so where the territorial state cannot or will not exercise jurisdiction.

International Jurisdictional Alternatives

The Security Council, under Chapter VII of the UN Charter, has broad powers to take measures for international peace and security. In 1994 it exercised those powers to establish two international criminal tribunals for Rwanda and the former Yugoslavia. It would be possible for the Security Council, which has expressed willingness to act in the current situation, to establish a tribunal or, it has been suggested, to extend the jurisdiction of an existing tribunal.

International experience also points to several hybrid models of quasi-international justice that have emerged from negotiation and agreement. Recently, an agreement between the UN and Sierra Leone led to the Statute of the Special Court for Sierra Leone, which combines elements of national law, procedure and personnel with international components. The approach of the Nuremberg tribunal suggest that several states can together establish an international tribunal by agreement, conferring on it the power to do 'what any one of them might have done singly,' namely prosecute on the basis of one of the grounds of jurisdiction mentioned above.

While perhaps an unlikely model, the *Lockerbie* case is also potentially relevant. The unusual model that emerged from the diplomatic impasse over the refusal to extradite suspects in the 1988 bombing was of a national court sitting on foreign soil, applying mostly national law, with the exception that there was no jury. This arose in response to the alleged inability of the Scottish courts to dispense fair and impartial justice in the particular case. This scenario could ultimately become relevant if, for example, a case were made as to the inability of the US jury system to handle this matter, given the strength of national sentiment.

Implementing Justice

The international criminal law enforcement model depends, naturally, on international enforcement. International cooperation with any anticipated judicial forum is essential for the purposes of, for example, arresting suspects, freezing assets and securing evidence.

A complex body of bilateral and multilateral agreements governs cooperation between states in matters of extradition and mutual assistance with criminal investigations. According to normal extradition agreements and practice, and the ICC Statute, a request for extradition would be accompanied by an indictment or accusation and a showing of *prima facie* evidence.

It has to be noted that extradition regimes are complex, and often fraught with obstacles and delays. For example, there are several grounds for refusing to extradite suspects and constitutional problems in certain states that may limit the ability to cooperate. These procedures, some of which protect important human rights, may in certain cases impede speedy justice.

In certain circumstances, states may consider that such 'cooperative' procedures are wholly inapplicable, for example where the crimes are believed to be state sponsored, or where the urgency of the situation demands swift action. If so, the Security Council can circumvent obstacles to speedy transfer of suspects by authorising enforcement action.

The interplay between international criminal law and the law on the use of force is not one of straightforward alternatives. There may be circumstances in which a state needs to resort to the use of force to protect itself from imminent attack, where even concerted criminal justice enforcement cannot avert the threat. But the legitimacy of the use of force depends on a strict necessity and proportionality test and the absence of any peaceful alternative. The extent to which the complex system of international criminal justice as it currently stands does or should provide an effective alternative would appear to deserve further attention.⁽¹⁾

⁽¹⁾ The original research paper contained a final part treating laws applicable in armed conflicts, thus discussing the legal framework in case of use of force.

The Use of Force in Afghanistan and International Humanitarian, Human Rights, Diplomatic and Criminal Law

by Curtis Francis Doebbler

International law is the creation of states. And because states throughout history have proven to be exceptionally conservative bastions of authority, international law is prone to uphold the status quo. This has been the case, with rare exceptions, since 1625 and the first comprehensive treaties on international law that was penned by the Dutchman Hugo Grotius. The mere fact that international law emerged almost at the same time as the nation state has twined the two inseparably throughout the development of human society. The result is that it is usually the powerful states of the day that stand to gain the most from a world that respects international law. In the context of international terrorism, it is even appropriate to suggest that respect for international law is perhaps the best form of prevention and the best way to reiterate the legitimacy of states when so-called terrorists seek to undermine this legitimacy.

These are common understandings upon which both supporters and critics of America's war on terrorism agree. These are also appropriate starting points for an evaluation of America's war and international law. They create a common point of departure to which one can return after having done the tedious business of an international lawyer, which requires examining the laws that apply to America's war.

This contribution will examine the international humanitarian, criminal and diplomatic laws that apply to America's attack on Afghanistan, the self-proclaimed first stage of a war on terror, a war against an invisible foe. The examination will start at the beginning of the armed conflict on 7 October 2001 when the first bombs fell upon the poorly armed, poorly trained army of the impoverished country of Afghanistan. The evaluation will be concerned with *jus in bello*, the legality of how force is used, and not *jus ad bellum*, which concerns the legality of using force in the first place.

Jus in bello concerns how states conduct military campaigns. It is primarily the 'laws of war' or 'international humanitarian law', however, it may also include international human rights, diplomatic and criminal law. Each of these will be considered below. The consideration will start with a statement of the basic principles of international law. These should be self-evident to any respectable international lawyer, but their reiteration is nevertheless useful. After having explained these very few principles, the applicable rules of international humanitarian, human rights, diplomatic and criminal law will be described and applied. The actions to which the rules are applied are examples. An exhaustive examination of the actions of parties to the conflict is not attempted. Furthermore, the rules of law that are being applied are the most obvious. Some of the more controversial rules that may be considered and applied are not

considered. Finally, this contribution returns to its starting point by considering the long-term consequences, particularly for international peace and security.

Some General Principles of International Law

The most basic principle of international law is that states are sovereign. The principle of sovereignty holds that every state is equal under the law. This does not, of course mean that every state is 'equal', but only that international law should be applied to all states equally. To do otherwise is to undermine the very basis of the law and to return to a situation in which states could act without respect to any law on the basis of their relative capability to enforce their will by force. International law not only provides some certainty even for the less powerful states, it also contributes to establishing the United States' position as a world leader.

The principle of sovereignty means that states are given the discretion to act in ways that they see fit as long as they do not violate international law. In the overwhelming majority of cases this means that states do not have to act, alone or with other states, unless they have agreed to do so. In general this means that unless a state has ratified a treaty or it is bound by a rule of customary international law, it is free to act as it likes. Treaties are instruments whereby a state explicitly consents to be bound by a rule of international law. Customary international law is law that is formed by consensus. Customary international law may bind a state that has not consented to it, although exceptions that have been recognized very much weaken the chance that this may happen. For example, a state that objects to a rule from the time it emerges as a rule of customary international law, is considered a persistent objector and is not bound by the rule. In addition, a state that does not agree with a rule and is an effected state, may prevent a rule from becoming customary international law, according to the International Court of Justice in its Advisory Opinion on the legality of nuclear weapons in 1996. The only exception to the possibility of opting out is a rule of *jus cogens*, but since nobody really seems to know what this is and even some of the most basic norms have been disputed and may not qualify for this 'super-law' status, it is rare that such law would apply.

Perhaps the most important point to consider about the above basic principles of public international law is that most states are bound to international law only because they explicitly agreed to be bound by the law. Thus the legal rules discussed below are being applied to states that have explicitly agreed that these rules apply to them. They are, therefore, not outside interferences with a state's internal affairs, but matters that the states themselves have brought into the public forum.

International Humanitarian Law

International humanitarian law is the law of war. Although this law is found in customary law and in numerous international treaties, the Third and the Fourth Geneva Conventions are of particular importance to the armed conflict in Afghanistan. The Third Geneva Convention⁽¹⁾ protects prisoners of war, including those who might be prisoners of war until a competent tribunal providing them due process has determined that they are not prisoners of war. The Fourth Geneva Convention⁽²⁾ protects civilians, including those who have been mistakenly

(1) Convention Relative to the Treatment of Prisoners of War, signed at Geneva, 12 August 1949, entered into force 21 October 1950, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135.

(2) Convention Relative to the Protection of Civilian Persons in Time of War, signed at Geneva, 12 August 1949, entered into force 21 October 1950, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

injured by parties to the armed conflict. Both the United States and Afghanistan have ratified the four Geneva Conventions and are thus High Contracting Parties to the Third and Fourth Conventions.

The conventions make a distinction between armed conflicts of a non-international nature and those of an international nature. Although the armed conflict in Afghanistan may have been a non-international armed conflict or a civil war before 7 October 2001, as soon as the United States attacked Afghanistan, the conflict became an international armed conflict. This does not require a declaration of war nor does it matter whether one or more parties to a conflict designate the conflict as a war. Article 2 of the Third and Fourth Geneva Conventions unambiguously states that this law applies "to all cases of declared or undeclared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."⁽³⁾ Furthermore, it makes no difference whether an attack is aimed at one particular group within another state, such as the Taliban, or in self-defense. The mere fact of an armed attack means that international humanitarian law applies.

In Afghanistan there have been violations of these treaties, particularly by the American-led allies. Some of these violations have involved the treatment of prisoners. For example, on 12 and 13 November 2001, North Alliance forces that were fighting together with American forces killed Taliban-combatants who had surrendered.⁽⁴⁾ Other violations have involved attacks on civilians or civilian targets or the use of prohibited weapons or means of warfare that particularly threaten the human dignity of civilians.⁽⁵⁾ Both the Third and Fourth Geneva Conventions require that states prohibit violations of these treaties in their national laws and that they prosecute individuals who violate the law.

In addition, customary international law provides for some general protections of civilians in all types of armed conflicts. The principle of customary international law can be found in the practice and opinions expressed by states. International case law and long-standing treaties are good means for bringing this law to light. For example, in the Nicaragua Case, the International Court of Justice upheld the general principle that civilians are protected from attacks and the Fourth Hague Convention from 1899 is frequently cited as prohibiting attacks against civilians.

1) The Treatment of Prisoners of War

The Third Geneva Convention requires that a detaining power treat prisoners of war humanely. A prisoner of war is anyone who has taken part in an armed conflict as a member of the regular armed forces of a country or as a militia or volunteer corps forming part of the armed forces.⁽⁶⁾ By the American's and their allies' own admissions both the Taliban and al-Qaeda fighters would appear to fall into this category. British Prime Minister Tony Blair, for example,

⁽³⁾ This provision appears in article 2 of both the Third and Fourth Geneva Conventions, *see supra* notes 1 and 2, respectively, for the citations of these Conventions.

⁽⁴⁾ *See Crimes of War* at <http://www.crimesofwar.org/expert/news> accessed on 12 December 2001.

⁽⁵⁾ For example, the American bombing of the Foreign Ministry building of the government of Afghanistan in Kandahar and the bombing of Al-Jazeera Television's office in Kabul or the numerous cases of the 'mistaken' bombing of civilian targets.

⁽⁶⁾ Art. 4(A)(1) of the Third Geneva Convention.

stated that al-Qaeda forces were indistinguishable from the Taliban, which was at the time the de facto government of Afghanistan. In any event, as the Inter-American Commission on Human Rights has confirmed,⁽⁷⁾ that the prisoners must be treated as prisoners of war (POWs) until an independent tribunal has determined their status. Furthermore, if the prisoners are POWs then once the Third Geneva Convention applies it remains in effect until, as required by the Convention,⁽⁸⁾ the prisoners are repatriated.⁽⁹⁾ And the importance of the protections is illustrated by the fact that prisoners are forbidden from waiving their rights under the Convention.⁽¹⁰⁾

The Third Geneva Convention prohibits the killing or mistreatment of surrendered prisoners (*hors de combat*),⁽¹¹⁾ the public display of prisoners,⁽¹²⁾ taking actions that intimidate the prisoners unnecessarily,⁽¹³⁾ mistreating prisoners,⁽¹⁴⁾ and refusing them access to fair trial including legal representation,⁽¹⁵⁾ and medical or religious personnel and practice.⁽¹⁶⁾ Prisoners also have the right to sufficient food,⁽¹⁷⁾ clothing,⁽¹⁸⁾ adequate hygienic conditions,⁽¹⁹⁾ adequate health care,⁽²⁰⁾ freedom from close confinement except to safeguard their health,⁽²¹⁾ to be treated with due respect for their rank and age,⁽²²⁾ and allowed to send and receive communications.⁽²³⁾

Of particular importance to the prisoners being held by the United States and its allies are the rules providing that the prisoners need only provide their name, date of birth, rank and serial number.⁽²⁴⁾ Furthermore, no “form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever.”⁽²⁵⁾ The denial of access to lawyers and the questioning under duress that the United States has employed against the prisoners violates the object and purpose of these protections.

The United States’ failure to recognize that the prisoners it has captured and interned at the Guantanamo Naval Base in Cuba and elsewhere are prisoners of war is a prima facie violation of the Third Geneva Conventions. This is especially the case when no independent

⁽⁷⁾ Decision of the Inter-American Commission on Human Rights dated 13 March 2002 granting precautionary measures in a case brought by the Center for Constitutional Rights and others alleging that the United States should at the very least create an independent tribunal to determine the status of prisoners.

⁽⁸⁾ Art. 118 of the Third Geneva Convention.

⁽⁹⁾ Art. 5 of the Third Geneva Convention.

⁽¹⁰⁾ Art. 7 of the Third Geneva Convention.

⁽¹¹⁾ Art. 13 of the Third Geneva Convention.

⁽¹²⁾ *Id.*

⁽¹³⁾ *Id.*

⁽¹⁴⁾ *Id.*

⁽¹⁵⁾ *Id.*

⁽¹⁶⁾ Artt. 34 to 37 of the Third Geneva Convention.

⁽¹⁷⁾ Art. 26 of the Third Geneva Convention.

⁽¹⁸⁾ Art. 27 of the Third Geneva Convention.

⁽¹⁹⁾ Art. 29 of the Third Geneva Convention.

⁽²⁰⁾ Artt. 30 and 31 of the Third Geneva Convention.

⁽²¹⁾ Art. 21 of the Third Geneva Convention.

⁽²²⁾ Art. 45 of the Third Geneva Convention.

⁽²³⁾ Art. 71 of the Third Geneva Convention.

⁽²⁴⁾ Art. 17 of the Third Geneva Convention.

⁽²⁵⁾ *Id.*

tribunal has been formed to determine their status and the American President has stated that his country is refusing to form such a tribunal. The treatment of the prisoners also violates the provisions of this treaty insofar as the prisoners are being held in lodgings that are outside in the open air; without contact with family, friends, and legal representatives who have requested access to them; have had their hair and beards cut against their will, have been provided food that is contrary to their culture and religion; have been repeatedly questioned and threatened if they do not provide information; and have been displayed in public to the press. These actions all violate the provisions indicated above.

Finally, a state whose personnel commits any of these offenses against prisoners is under a legal obligation to try in their own courts or extradite persons committing such grave breaches of the Third Geneva Convention.⁽²⁶⁾ However, although the failure of a state to prevent violations and grave breaches is an extremely serious matter, other states may not take reprisals that consist of denying the same rights to prisoners they may have captured. Nevertheless, if one state ignores the laws of war, especially a powerful state, it is likely that others will feel justified in acting in the same way. One may ask how many American prisoners would have returned from the First or Second World Wars or from the wars in Korea or Vietnam, if the rules of international humanitarian law had been flaunted as the American themselves are doing now? Or perhaps, a more pertinent question for Americans is how many American soldiers will now have their lives and well being threatened by other countries ignoring the law to the same extent as the American government has done?

ii) The Treatment of Civilians

The Fourth Geneva Convention requires states to protect civilians by respecting the immunity from attack of civilian related facilities such as hospitals⁽²⁷⁾ and by respecting the integrity of specially protected persons such as women and children.⁽²⁸⁾ Customary international law also requires that civilians are not targeted by military operations and prohibits the killing of civilians by attacks.

Evidence of violations of these prohibitions has been provided by a variety of organizations including the media and International Committee of the Red Cross (ICRC). For example, the ICRC reported that at "least eight civilians were killed and sixteen others wounded" when two bombs were dropped on central Kabul.

Numerous sources have documented attacks against civilians by the American military and its allies. Professor Marc W. Herold of the Whittmore School of Business and Economics at the University of New Hampshire in the United States has documented more than 4000 civilian casualties resulting from the United States attack.

The rules of humanitarian law are important because they are the last safeguard against the most egregious transgressions against humanity. If we forsake these rules, we fall into the abyss of inhumanity. To put this consequence into perspective, one may note that while the attacks on the World Trade Centers in New York constituted serious breaches of American law, violations of international humanitarian law are much more serious offenses because they are not only against the American people, but against international society as a whole.

⁽²⁶⁾ Art. 129 Third Geneva Convention.

⁽²⁷⁾ Art. 18 of the Fourth Geneva Convention.

⁽²⁸⁾ Art. 16 of the Fourth Geneva Convention

International Human Rights Law

Although international human rights law is often said to be made for peacetime, it also applies during times of war. This is undoubtedly true about customary international law, especially those provisions that may have achieved the status of *jus cogens*.

Even where relevant international human rights law is only found in a treaty, it will apply unless the state party has expressly derogated from its obligations. Neither the United States of America nor Afghanistan derogated from their obligations under international human rights law. In addition, both the United States and Afghanistan have ratified the International Covenant of Civil and Political Rights.⁽²⁹⁾ The United States is also a member of the Organization of American States, which makes it answerable to the Inter-American Commission on Human Rights for their actions in violation of the American Declaration of the Rights and Duties of Man.⁽³⁰⁾ This Commission can accept individual complaints from individuals who believe their human rights as protected by the American Declaration have been violated by the United States. The difficulty with bringing such cases is that these victims must show that the United States exercised jurisdiction over the petitioners, but this is not an insurmountable obstacle.⁽³¹⁾

The right that is perhaps most meaningful in a situation of armed conflict is the right to life. Although the taking of life is not absolutely forbidden, the permissibility of taking life is significantly restricted. The right particularly prevents the arbitrary taking of life, including the taking of life with reckless disregard for precautions necessary to safeguard life when dangerous actions are being undertaken. This right continues to apply during armed conflict as a matter of customary international law and often as treaty law. The African Commission on Human and Peoples' Rights have unambiguously stated that this right, together with every other human right in the African Charter on Human and Peoples' Rights, is non-derogable and therefore continues to apply in all armed conflicts. In comparison the European Convention, the American Convention, the International Covenants of Civil and Political and Economic, Social and Cultural Rights all provide for possible derogation in times of armed conflict.

In the present conflict, both the United States and Afghanistan are bound by the right to life in article 4 of the ICCPR. Although this instrument allows for derogation, neither state availed themselves of these provisions. Thus the right continued to apply in the armed conflict. In addition, the United States was bound by the right to life in the Declaration of the Rights and Duties of Man, which is important because it allows individuals who were subject to threats to their life in Afghanistan as a consequence of the United States attack against this country, the right to petition the Inter-American Commission for a non-binding, but nevertheless authoritative interpretation of the United States legal obligations under customary international law.

Having understood that the right to life applies to the conduct of hostilities in Afghanistan, it is also important to consider its interpretation. To begin with, it is unlikely that this right applies to prevent any taking of life in armed conflicts, although it may be important to consider whether the first use of force was legitimate under international law in determining the

⁽²⁹⁾ Neither state has ratified the Optional Protocol that provides for individual petitions.

⁽³⁰⁾ This Declaration dates from 1969, before it became politically inappropriate to refer only to the male sex in the title of such declarations. It might also be noted that the United States has not ratified the American Convention on Human Rights.

⁽³¹⁾ See complaint concerning the violations of human rights by United States forces in Grenada, Inter-American Commission on Human Rights.

extent to which the taking of life might be permitted. For example, if the United States' use of force was illegal because it violates article 2(4) of the Charter of the United Nations as well as customary international law, which is likely, then it would logically follow that the taking of life in furtherance of this illegal use of force is also illegal. This is notwithstanding the fact that the conduct of hostilities is in accordance with the rules of international humanitarian law. Just as, for example, under the laws of most countries, including the United States, a negligent actor is responsible for the consequences of his or her negligence, so a state that violates international law logically incurs state responsibility for the consequences of its unlawful actions.⁽³²⁾ It would indeed be ironic if international humanitarian law were interpreted so as to relieve a state of responsibility for actions for which it would otherwise be responsible. This would both abuse the understanding of the founders of international humanitarian law as well as its humanitarian ideals.⁽³³⁾

Despite this apparent logic, the Inter-American Commission on Human Rights has on occasion attempted to apply international humanitarian law instead of international human rights law.⁽³⁴⁾ This mistake was quickly corrected by the Inter-American Court of Human Rights that has unambiguously decided that it applies international human rights law and only uses international humanitarian law as an interpretatory aid. Although this judgment rested as much on the Court's aversion to applying treaties that contradict or lessen the protections of provisions of the American Convention as it did on the fear of limiting the protection of human rights, the same logic applies to the broader issue. In other words, given that international human rights law reflects the most fundamental protections of our humanity, which when violated plunge us into the abyss of inhumanity towards each other, it would be odd to allow another area of international law to limit their application. It would be hoped that our international legal system would in fact work in the other direction, whereby states' discretion to use force to take human life is limited by any other obligations they have undertaken.

Having understood this, however, it may still be possible to admit that the taking of human life is not illegal when the use of force is legal. For example, if the United States was to show that the government of Afghanistan planned the attacks on the World Trade Center or that the government of Afghanistan was planning an attack against the United States before 7 October 2001, then it would have become imperative to consider whether the taking of life in the armed conflict was lawful. The United States would then have been enacting legitimate self-defence. Assuming *in argumendo* that this was the case, international humanitarian law then becomes extremely valuable in determining whether particular takings of life violate international humanitarian law. To make this evaluation, it is necessary to refer back to rules of international humanitarian law. In brief, actions which violate international humanitarian law—such as attacks aimed at or arguably even injuring civilians as collateral damage where significant precautions were not taken and the military necessity and proportionality cannot be demonstrated—would undoubtedly violate international human rights law. The opposite,

⁽³²⁾ ILC Draft Articles on State Responsibility and the Chorzow Factory Case before the PCIJ.

⁽³³⁾ In this regard, it is interesting to note that Henri Dunant, oft cited as the father of international humanitarian law, believed—somewhat differently than the ICRC today—that this law would contribute to ending war. That is indeed does contribute to this end is also the apparent position of the states that have ratified the UNC as this document indicates the willingness of states to restrict the use of force in international affairs to as great an extent as possible.

⁽³⁴⁾ Cite Las Palmas Case before Commission.

however, would not necessarily be true. Actions that are in accordance with international humanitarian law could conceivably still violate international human rights law. This might be the case for example, when a killing meets the criteria of military necessity and proportionality under international humanitarian law, but not under international human rights law.

Other international human rights that are of relevance are the right to a fair trial, the right to humane treatment, the right to health care, the right to food and the right to a minimum standard of living. The prisoners the United States are holding in Cuba are being denied the right to a fair trial by the fact that their legal representatives are being denied the right to contact them, and by the fact that the head of state of the United States government has threatened them with trials in courts and with procedures that do not meet minimal international standards. The civilians in Afghanistan are being denied the social and economic rights just mentioned through the destruction of their means of survival, including health care facilities, without adequate action being taken to rebuild the destroyed facilities. The United States government has even gone so far as to indicate that it will deduct some of the money it spent destroying the country, from its pledges for rebuilding the country. Perhaps the greatest victim in the world since 11 September 2001 have been human rights themselves, exactly as any real terrorist would have wanted it to be.

Diplomatic Law

An issue of diplomatic law, one of the oldest and most respected areas of international law, is also at stake because the United States has arrested several individuals who were accredited diplomatic representatives of the Afghanistan government. This law is also laid down in treaties. The most notable is the Vienna Convention from 1961. Not only may this treaty, according to the International Court of Justice, create individual rights equivalent to international human rights, but it also forms one of the most valued expressions of international law between states.

The United States' arrest and detention of former Ambassador Abdul Salam Zaeef for his having represented his country as a fully accredited diplomat in Islamabad, Pakistan, is a serious violation of international law relating to diplomatic immunities that will undoubtedly have serious consequences for the treatment of diplomats around the world. If it is not a blatant violation of international law by the most powerful country in the world, it is at least an attempt to change this law so as to seriously weaken it.

International Criminal Law

International criminal law overlaps with the areas of law to which reference has already been made. Essentially, this law deals with individual criminal responsibility for violations of the other areas of law, although not all violations of international humanitarian, human rights or diplomatic law are violations of international criminal law. This law can be divided into two general categories. The first category is the law that is applied in accordance with international agreements such as the statutes establishing the international criminal tribunals for the Former Yugoslavia and for Rwanda. This law has limited relevance to Afghanistan at the moment, as no international criminal tribunal exists, although there are substantial calls to create one.⁽³⁵⁾ The

⁽³⁵⁾ On 19 January 2002, a representative of the United Nations Office of the High Commissioner for Human Rights visited Afghanistan to review the possibility of establishing an international criminal tribunal. Unfortunately, the United States has strongly objected to the establishment of such a body,

area where this law is relevant is in defining some constraints upon the so-called 'war on terrorism' that the United States has proclaimed against phantom enemies. The second category of law is that, which may be applied by national courts. Most states now have, as required by the four Geneva Conventions, legislation in place that allows them to prosecute individuals over whom they acquire jurisdiction for violations of international humanitarian, human rights, and diplomatic law. Few states recognize their obligations to prosecute such individuals. This law may be referred to as 'international law' because the offenses can be found in international instruments rather than solely under domestic law.

A relevant provision of international criminal law is the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. This treaty requires state parties to cooperate with each other through sharing information, about assailants (art. 12), in criminal proceedings in another country (art. 11), and on matters of extradition (art. 8). Most importantly, however, it requires a state having in its possession an alleged offender to try or extradite that offender to another state that will try him or her (art. 7). It does not require extradition, nor does it allow for the kidnapping of offenders by a state that has a right to try the offender. This treaty, however, only applies to countries that have ratified it, which do not include Afghanistan, Iraq or Sudan. Where this treaty does not apply a state is free to treat offenders as it sees fit, even to grant them asylum, under international law.

The consequence of the United States' failure to respect international law's basic principle of sovereignty could, in the future, lead other states to act in similarly unlawful ways, citing the United States' action as a precedent. For example, if the United States were to bomb Afghanistan because of its alleged involvement in the bombings, its unlawful disrespect of Afghanistan's sovereignty will send the message to the world that the use of force against the sovereignty of another country is legitimate when there is an 'important issue at stake' for the country or entity using force. It is similar to a domestic situation where the police resort to vigilante activities to suppress crime. Although the summarily execution of criminals may have a short term effect on combating crime, it will usually also have a detrimental effect on society, in part, because criminals will understand that they must shoot at the police to defend themselves.

The Importance of Being Ernest about International Law

The United States government is widely acclaimed to control the most powerful military in the world. Without doubt its military is overwhelmingly superior to the armies of countries like Iraq, Somalia, Yugoslavia, Haiti, Panama, Grenada, North Korea, Vietnam, Cambodia, Nicaragua and Afghanistan, against whom it has been deployed since World War II. The frequent use of force by the United States appears to have encouraged it to view itself to be above the law. While lip service is frequently paid to international law, in practice the American government frequently ignores it. Ironically, however, the United States probably has the most to gain by respecting the law, as international law is biased towards maintaining the status quo. Fighting by the rules, makes it much more likely that a superpower will be victorious than that the army of a country such as Afghanistan will prevail. In addition, failing to fight by the rules is an indication of cowardliness that encourages weaker countries and non-state actors to resort to acts of terrorism to protect their interests. A non-state actor evaluating the United States' action against Afghanistan is likely to resort to acts of violence without respect for the constraints of

apparently fearing that American citizens who engaged in violations of international law in Afghanistan might be put on trial.

humanitarian law, if those constraints do not appear to be temporarily advantageous. This is the natural consequence of moral outrage at attacks like those against the World Trade Center or those that daily befall vulnerable groups like the Palestinians. This is exactly what international law was intended to mitigate or prevent.

While the understandable tendency will be to react with emotional outrage and in a way that expresses political and military power, this may only increase the harm already perpetrated on a victim state and devalue human dignity throughout the international community.

Individuals who resort to violence welcome responses that are violent. Perhaps no better evidence of this can be found than in the United States' most recent past in the case of the Oklahoma City Bomber, Mr. Timothy McVeigh, who went to his death unrepentant and laughing at the horrible deed he had committed. It is too simple to think that the Saddam Hussein's and Osama Bin Laden's of this world will feel repentant for any atrocities they have committed, when states express their anger by using force.

The essence of terrorism, which is often misunderstood, is that of being an underdog. This forces the terrorist to act in the most extreme way in order to achieve even a modest goal, knowing that even if he or she loses something, including his or her own life, it is likely that his or her point will be made as a result of the other party's reaction. It is the reaction of the stronger party against the weaker that helps the terrorist to maintain his or her stature as a freedom fighter and a hero to the weak and oppressed. Whether such thinking is morally right or wrong is not as relevant as confronting this reality. Those who resort to using force against the United States are aware that this country is militarily and economically powerful. The attacks on the American way of life rely on showing that the United States is also unjust and unmerciful. One way of doing this is by convincing the rest of the world, even those states that politically agree with the United States, that the United States does not respect international law. As indicated above, this can be done with frightening ease.

A massive and unrestrained expression of military might against a country such as Afghanistan, Iraq or Sudan does not add to the United States' claim of military superiority, but rather to the claims of its enemies that it does not respect international law. It also causes the American military to be viewed as cowardly and thus legitimizes such cowardly attacks by others. Alternatively, respect for international law reiterates and develops upon the strides that have been made towards ensuring respect for the values of human dignity throughout the world.

Avoiding War Using International Law to Compel a Problem-Solving Approach

by Brian J. Foley

Necessity has been called "the mother of invention" Although the precise relationship between these concepts may be open to debate, they are certainly closely related in international law: The requirement that force may be used only when necessary should compel a search for alternatives to force and violence. After September 11, however, no such search occurred. There were and are alternatives to the U.S. war against Afghanistan, but the U.S. and the UN failed to work together to find any. As such, the war against Afghanistan is illegitimate under international law.⁽¹⁾

This short paper argues that the search for alternatives to violence in international responses to terrorism is not merely an idealistic whim: it is a legal requirement. This paper thus also argues that U.S. and UN Security Council should have worked together to seek, and try, alternatives to force and violence. More generally, this paper encourages a broader search for alternatives, with broader participation, by the UN, individual nations, NGOs, human rights experts, scholars and lawyers. Finally, it speculates that changes in international law may help to ensure that this search is carried out. Because war is often the greatest human rights violation of all -- and triggers further violations -- seeking and investigating reasonable alternatives to war may be the most profound protection of all for human rights.

⁽¹⁾Because this paper focuses on the requirement of necessity and how it should work to compel the search for alternatives to force and violence, it does not undertake the analysis of whether the war against Afghanistan meets the requirements of self-defense under international law, the only legal basis the U.S. has claimed. To that end, see four analyses widely published and distributed by three members of Lawyers Against the War: Gail Davidson, "International Law: The Illegality of the War on Afghanistan," *The Lawyers Weekly*, November 2, 2001 (Toronto, Canada); Gail Davidson, "International Law: The Illegality of the War on Afghanistan," *Native News Online*, October 16, 2001.

<http://nativenewsonline.org/attackonus2.htm>); Brian J. Foley, "Legal Analysis: U.S. Campaign Against Afghanistan Not Self-Defense Under International Law," *Counter Punch*, November 6, 2001 (www.counterpunch.org/foley1.html); and Michael Mandel, "This War is Illegal and Immoral and Must be Stopped," Science For Peace Forum and Teach-In, University of Toronto, December 9, 2001. (http://scienceforpeace.sa.utoronto.ca/Special_Activities/Mandel_Page.html).

Additionally, for an excellent and broad discussion of the international laws applicable to the September 11 attacks and responses thereto, see Helen Duffy, "Responding to September 11: The Framework of International Law" (available at www.interights.org).

The Requirement of “Necessity” in International Law Concerning the Use of Force (“Jus ad Bellum”)

The UN Charter provides a sweeping prohibition against the use of force, commanding in Article 2(4) that, "All Members shall refrain in their international relations from the threat or use of force." Article 33 commands that all "[t]he parties to any dispute ... shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means..." That force is prohibited is not surprising, given that the very first words of the UN Charter declare, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

Under the international law concerning when nations may apply force, "*jus ad bellum*,"⁽²⁾ force and violence are last resorts, to be used only if "necessary." This is the case under the UN Charter as well as under the longstanding "just war" doctrine.⁽³⁾ The rule traditionally used to determine when a nation may use force in self-defense explicitly requires and defines "necessity" as an absence of other means to address the danger: "There must be a '*necessity* of self-defense, instant, overwhelming, leaving *no choice of means*, and *no moment for deliberation*,' and the action taken must not be 'unreasonable or excessive,' and it must be 'limited by that necessity, and kept clearly within it.'"

Under the UN Charter, decisions about using force fall within the province⁽⁴⁾ of the UN Security Council, except in the limited, temporary instance of a nation's need to use force in self-defense to fend off an armed attack. When a nation uses force in self-defense, the UN Security Council is supposed to take control over that use of force as soon as possible.⁽⁵⁾

⁽²⁾ As opposed to laws, including humanitarian laws, governing combatants in conflicts already underway, "*jus in bello*."

⁽³⁾ ³⁷ See UN Charter, Article 42: "Should the Security Council consider that measures provided for in Article 41 [measures not involving the use of armed force] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces *as may be necessary* to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations (emphasis added)." For an expression of the just war doctrine, see, e.g., The National (U.S.) Conference of Catholic Bishops, "The Harvest of Justice is Sown in Peace" (1993) "Last Resort: force may be used *only after all peaceful alternatives have been seriously tried and exhausted*. (emphasis added)." Most likely, the UN Charter displaces this doctrine, but in any event, the two do not conflict on this issue.

⁽⁴⁾ ³⁸ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* 314 (7th Rev. ed. 1997) (quoting Daniel Webster, *British and Foreign State Papers 1841-1842*, Vol. 30, 1858, 193) (emphasis added). This rule was penned by U.S. Secretary of State Daniel Webster in an exchange of diplomatic papers concerning an 1837 incident where British forces crossed the border from Canada and destroyed the *Caroline*, an American ship, in a New York state port, because it was being used to assist Canadian rebels against Great Britain. The rule is widely regarded as the "classic" rule on self-defense in international law. *Id.*

⁽⁵⁾ See Article 24 ("Members confer on the Security Council primary responsibility for the maintenance of international peace and security") and Article 46 ("Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee."); Article 51 (nations may use force in self-defense "until the Security Council has taken measures necessary to maintain international peace and security").

The UN Charter sets out what could be described as a pattern for the use of force only when necessary, and escalation only by necessity. Indeed, the Charter is structured in this pattern. Chapter V creates the Security Council and enumerates its powers; Chapter VI is entitled "Pacific Settlement of Disputes," and Chapter VII is entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Article 33, in Chapter VI, commands, "[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a resolution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." The rest of Chapter VI discusses Security Council involvement in solving these disputes should the nations' efforts at pacific solution fail.

Chapter VII, "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," outlines how the Security Council decides when to use force, and the measures it may take. The requirement that force may be applied only when necessary, and that escalation must also be of necessity, runs throughout.⁽⁶⁾ Article 41 states that, in dealing with threats to peace and security,

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

The following Article, 42, states,

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.

Article 42 requires careful, thorough consideration of -- if not actual attempts to implement -- the means set forth in Article 41, which can be broadly described as economic sanctions. Military forces may be used "as may be necessary," but those uses should at first be non-violent: "demonstrations" and/or "blockade." Actual violence seems to fall under "other operations." Although I am not arguing that violence is *never* permissible, I note that a canon of legal interpretation is to construe terms such as "other operations" in light of the preceding list. Here, the list clearly encourages the non-violent use of armed forces before any resort to violence.

It is clear, therefore, that the UN Charter permits force only when necessary, and encourages the use of pacific means to settle disputes, by nations and with the involvement of the Security Council and other organs of the UN, such as the General Assembly and International Court of Justice.⁽⁷⁾ After September 11, however, there was no meaningful search for alternatives

⁽⁶⁾ See Helen Duffy, *supra* note 2, at 29 n. 10.

⁽⁷⁾ See generally Chapter VI, "Pacific Settlement of Disputes."

-- at least that the public can point to.⁽⁸⁾ The United States simply claimed it could act alone under the right of self-defense set forth in Article 51.⁽⁹⁾ It is fair to say that Article 51, even read broadly, does not allow the ongoing situation of single nation's deciding if and when it will use force, how much force to use -- and to draw up, unilaterally, a list of nations it aims to attack, in "self-defense." Yet this is precisely what the U.S. is doing.⁽¹⁰⁾

The Mother of Invention: Requiring a Problem-Solving Approach in Jus ad Bellum

Under international law, the UN Security Council and Member Nations must think up and try peaceful means of resolving disputes. But how can they find such means? How does one find such means to respond to the attacks of September 11? Or to respond to the problem of terrorism generally? A problem is that terrorism does not neatly fit within existing categories in international law; indeed, there is not even an agreed-upon definition of terrorism under international law. After September 11, there were debates over whether the attacks were "acts of war" or "crimes," based on the belief that the answer to this question would yield an adequate course of action.⁽¹¹⁾ Yet this distinction does not make a difference; an "act of war" does not, logically, necessitate a military response, or award a nation a blank check to respond with armed force. As discussed above, the UN Charter sets forth how to deal with acts of war.

If anything, this problem of how to conceptualize terrorism should be regarded as an opportunity to investigate different and fresh approaches. One approach is to use the method of problem-solving where one defines the problem, generates a wide variety of possible solutions using a variety of thinking methods, and then, using reason and experience, chooses the best among them.⁽¹²⁾ A characteristic of competent problem-solving is to ask the right questions. For example, in generating solutions, one might keep asking, "What else might we do here?" To guide that inquiry, one might also ask, "How can we see this problem as an opportunity to address the needs of a wide spectrum of people and constituencies?" To generate answers, a person would use an array of thinking techniques and methods, both traditional and innovative,

⁽⁸⁾ Below I discuss the importance of public awareness of this search for alternatives.

⁽⁹⁾ See Letter from the Permanent UN Representative of the United States to the President of the UN Security Council (October 7, 2001), UN Doc. S/2002/946 (October 7, 2001).

⁽¹⁰⁾ For specific examination of the legality of the U.S. course of action, see the articles listed in the first paragraph of Footnote 2.

⁽¹¹⁾ See, e.g., Geoffrey Robertson QC, "There is a Legal Way Out of This ... As Long as It is Handled as an Act of International Crime, Not One of War," *Guardian* (London), September 14, 2001 (advocating treating the attacks as crimes against humanity and applying judicial efforts before any military strikes are launched).

⁽¹²⁾ ⁴⁰ "Creative Problem Solving," which employs this method, is a growing movement in legal education and beyond, in the U.S. and beyond. This method is described as follows:

Creative problem solving is an evolving intellectual discipline that requires lawyers to define problems so as to permit the broadest possible array of solutions, both legal and non-legal. Creative problem solving seeks many points of view, and systematically examines problems for their relational implications at the individual, institutional and societal levels. It seeks a caring approach and solutions that are imaginative or transformative in nature. This explanation comes from Professor Janeen Kerper, Academic Director, McGill Center for Creative Problem Solving, California Western School of Law, San Diego, California, USA. Cal Western has built its curriculum around this approach.

all of which can be taught and learned.⁽¹³⁾ It may not be easy to come up with different approaches, but it is possible, especially when many people with relevant and broad experience are included in the process.

That such an approach was not taken by the U.S. and UN in response to September 11 is apparent. The all-important first step down this road was never taken, which has led to disastrous consequences for human rights: The problem to be solved or goal to be achieved was never adequately defined. For example, was it (1) apprehending Osama bin Laden and key al-Qaeda members, or (2) preventing further terrorist attacks from al-Qaeda and other sources? The military solution -- and the backing of repressive, anti-Muslim regimes in countries such as Uzbekistan,⁽¹⁴⁾ as well as deal-making that, inter alia, lifted sanctions imposed on Pakistan and India for their nuclear proliferation⁽¹⁵⁾ -- will quite possibly prove counter-productive to these ends, especially that of limiting violence in the future. One thing that should be clear is that the solution chosen should be reasonably expected to be effective, and not exacerbate the problem.⁽¹⁶⁾

The U.S. failure to define the problem and goal caused "mission creep," a term used to describe the tendency of a military incursion to grow in size and objectives. What appeared to be a mission to apprehend one man, Osama bin Laden, or destroy al-Qaeda camps and capabilities, seemed to turn into a mission to liberate Afghans from the Taliban -- a U.S. humanitarian incursion. But whether that was the mission became murky when the U.S. refused to stop bombing to allow food to be trucked in for millions of Afghans facing starvation.⁽¹⁷⁾ What started as a "War on Terrorism" (again, vaguely defined) seemed to become something else.⁽¹⁸⁾ Many Americans whom I know personally and believe to be reasonable asserted that this "liberation" justified, even if only post hoc, the military campaign.

⁽¹³⁾ See, e.g., Edward de Bono, *de Bono's Thinking Course*, 1-10 (1982, 1985) (Chapter entitled, "Thinking as a Skill"). See also James L. Adams, *Conceptual Blockbusting: A Guide to Better Ideas* 3d ed. 1-3 (1985). These are but two of many outstanding books in this field.

⁽¹⁴⁾ See Simon Churchyard, "Supporting Tyranny in the Name of Freedom," *Red Pepper*, February, 2002.

⁽¹⁵⁾ Carl Conetta, "Beyond bin Laden: The Temptations of a Wider War," Project on Defense Alternatives, Cambridge, MA (USA): Commonwealth Institute, 28 September 2001, endnote 2. (<http://www.comw.org/pda/0109bm22.html>).

⁽¹⁶⁾ The requirement that the chosen solution be effective is closely related to the *jus ad bellum* requirement of necessity. "Logically, for measures to be necessary to avert a threat, they must be capable of doing so. A relevant question in determining the right to self-defence is therefore the effectiveness of any proposed measure. If measures against those responsible for an attack will increase the threat then they can hardly be said to be necessary to avert it." Helen Duffy, *supra* note 2 at 11.

⁽¹⁷⁾ See Deborah Barfield, "Afghanistan Edges Toward Famine - Relief efforts hampered by bombing, weather," *Newsday* (New York, NY, USA), November 11, 2001, at 5.

⁽¹⁸⁾ It is unclear that destroying the Taliban was necessary to defeat al-Qaeda, which has been described as having "cells" in up to 60 nations. Indeed, the relationship between the Taliban and al-Qaeda could support an argument for leaving the Taliban in place and infiltrating and/or working with it to gather information about the widespread cells, their training, their capabilities, and the like. Or, the Taliban could have been provided incentives to split off from al-Qaeda, as a report released just after the Symposium for which this paper was written -- suggests. See Carl Conetta, "Strange Victory: A critical appraisal of Operation Enduring Freedom and the Afghanistan war," Cambridge, MA (USA): Commonwealth Institute Project on Defense Alternatives Research Monograph #6, 30 January 2002. (<http://www.comw.org/pda/0201strangevic.pdf>).

Yet questions persist: Has the U.S. "won"? When will the war "end"? Is the threat of terrorism gone? U.S. officials have given ever-changing, often contradictory reports that: Osama bin Laden has escaped from Afghanistan; he remains in Afghanistan; he was probably vaporized by U.S. bombs. Another question persists: What happens if U.S. forces never capture bin Laden -- and is finding him the key to ending international terrorism? That terrorism would somehow end with the destruction of al-Qaeda -- even the destruction of all its cells in every country it is said to infest -- is highly unlikely. Terrorism, of course, is a tactic, not a doctrine, form of government, or idea per se. In this light, waging a military campaign against it is a fool's errand.

These nagging questions evince the failure to define the problem to be solved. If one does not know whether or when one can declare victory, then the problem has not been defined: Won *what*? Victory over *what*? The U.S. government may have been in shock after September 11. It may have felt compelled, by public opinion, to wage war. That said, the resulting war has been violent and, destructive, and has violated human rights. As a result, it may have increased the likelihood of terrorist attacks in the future.

If the above analysis is correct, then at the least it shows the inappropriateness, and, moreover, the danger, of allowing a single nation to determine how it will respond to a major terrorist attack. A collective approach such as the UN Charter provides is necessary, and people of conscience should continue to argue for it.

Toward a More Inclusive and Open Security Council: Changing International Law and Practice

The chances of effective problem-solving increase when a range of people with broad and relevant experience are included in the process.⁽¹⁹⁾ The UN Security Council could facilitate the search for answers to the questions above by calling upon experts, and in particular leaders, workers and scholars from the human rights community. Who better to help think up ways to resolve conflicts while safeguarding human rights? Currently, the Security Council does not encourage such participation from these constituencies; it is the other way around. For example, The NGO Working Group on the Security Council, a group of about 30 NGO representatives from groups such as Amnesty International, CARE, and Oxfam, has worked since 1995 to build informal relationships with members of the Security Council.⁽²⁰⁾ This involvement is a step in the right direction. Yet there exists no mechanism to *force* the Security Council to work with such groups; the relationships and meetings are for the most part voluntary, and promoting "cordiality" appears to be an important concern of the working group, which, of course, can impede dialogue and problem-solving.⁽²¹⁾ International law could be interpreted to force the Security Council to consult with such groups; at the least, this practice should be encouraged and

⁽¹⁹⁾ The chances are also increased when the decision-makers are trained in problem solving. One suggestion would be to encourage the Security Council to attend seminars to develop these skills. In fact, such training is often provided by consultants to high-level management of large corporations and other institutions.

⁽²⁰⁾ Information about the NGO Working Group on the Security Council can be found on the Global Policy Forum website, www.globalpolicy.org.

⁽²¹⁾ See *id* (describing relationships between the Working Group and Council members as "cordial").

promoted. Indeed, with the weight of the world upon it -- and the potential to be criticized by the world -- the Security Council should welcome such input.

Yet that grave weight also encourages secrecy, which collides with another good way to improve the consideration of peaceful means: increase the openness of UN Security Council deliberations. More openness would likely encourage the inquiry and debate that can lead to better ideas. Openness often disciplines decision-making by encouraging it to follow principles of reason and equity. As the names of groups such as Human Rights Watch suggest, it is easier to ignore human rights when no one is looking.

Thus it is time to reform current Security Council and UN rules and practice to encourage inclusiveness and openness. The Security Council should "judicialize," i.e., show the thinking behind, its conclusions regarding its own uses of force as well as the use of force by individual nations. For example, the Security Council could be required to produce a document discussing alternatives to force and whether and why each would fail. In this way, the range of the search could be seen, and specious, tendentious arguments exposed. Again, there are few decisions that are graver, and thus more worthy of discussion, than whether to unleash a modern war machine, which always kills civilians and forces others to flee and live in refugee camps.

Of course there may be an objection that such a "judicialization" of the Security Council would deprive it of necessary speed in making such decisions by turning it into a "debating society." Yet the UN Charter accounts for this requirement of speed, allowing, for example, nations to use force to defend themselves from armed attack "until the Security Council has taken measures necessary to maintain international peace and security."⁽²²⁾ The Security Council is in fact designed as a deliberative body, as the Charter sections outlining its powers make clear.⁽²³⁾ In any case, whether lightning speed was necessary after September 11 is doubtful. U.S. officials globe-trotted to negotiate rights to use bases in, and fly bombers over, various nations, and to shore up support from allies, for more than three weeks. Surely, U.S. officials could have made better use of the Security Council in this time. Indeed, had the Security Council deemed military force necessary, it simply could have used its powers under the UN Charter to require member nations to provide the bases and fly-over rights the U.S. spent time negotiating on its own -- and possibly more quickly.⁽²⁴⁾

Pressure from the General Assembly

If the Security Council will not conduct such an inquiry regarding the necessity for using force and violence in a given case, then the General Assembly should conduct its own. The General Assembly could also work with experts, activists and scholars to find alternatives to force in impending conflicts, which might pressure the Security Council to justify its decisions.

Solutions also could be generated "proactively" to address other, perhaps less pressing problems that might lead to military incursions if left to fester; Afghanistan in 2000 comes to

⁽²²⁾ UN Charter, Article 51.

⁽²³⁾ See UN Charter, Chapters V - VII.

⁽²⁴⁾ See UN Charter, Article 43(1) ("All Members of the United Nations ... undertake to make available to the Security Council ... armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining peace and security.").

mind. These suggestions could be published widely. The General Assembly, as a "voice for the South," has more of an interest in preventing military campaigns by the North, which dominates the Security Council; efforts at "judicialization" might have to begin here.

Pressure from the International Court of Justice (ICJ)

When possible, member nations can initiate claims to the International Court of Justice concerning particular uses of force. Nations indirectly affected by a particular use of force could develop legal theories on which to base claims for these effects. Such action can help create doctrines to prevent future uses of force.

In other instances, the General Assembly or qualified UN organizations could use their powers under Article 96 to request the ICJ to issue an advisory opinion concerning the legality of a particular use of force. Although working through the Court can be time-consuming, the Court by its nature can conduct fairly searching inquiries concerning the legality of the use of force.⁽²⁵⁾

Advisory opinions offer a real opportunity for guidance. Questions can be framed more broadly than the question a particular member nation might be able to pose in the context of an actual claim for damages. For example, in 1996 the ICJ issued an advisory opinion in response to a request by the General Assembly, which the ICJ framed as follows: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"⁽²⁶⁾ The advantage of the advisory opinion here is clear: No nation had to wait to be attacked by nuclear weapons before raising the question. Perhaps a similar question could be framed by the General Assembly to ask whether the use of military force to topple the governments of "terrorist nations" is ever legal, or under what circumstances it would be legal to use force in response to terrorist attacks. Obviously, great care would be needed to frame such a question, and I do not attempt to frame it here; I am merely suggesting the possibility. Similarly, there may be a risk of an unsatisfactory answer; again, I merely suggest the possibility of seeking an advisory opinion, as a way of voicing these concerns, and of challenging the dominant powers.

Pressure from Outside the UN

In lieu of, or in addition to, these efforts by the various UN organs, human rights experts and scholars must step up their own efforts to generate and publish alternatives to using force, and to generate popular support by showing the common benefits that will accrue from protecting human rights. One of the things that struck me after September 11, as an American arguing against an impending, and then actual, war against Afghanistan, was the lack of

⁽²⁵⁾ See, e.g. *Nicaragua v. USA*, ICJ Rep. 1986, 14.

⁽²⁶⁾ *ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 35 *ILM* 809 (1996). This question was originally, "Is the threat or use of nuclear weapons in any circumstance permitted under international law? (Est-il permis en droit international de recourir à la menace ou à l'emploi d'armes nucléaires en toute circonstance?)" UNGA Res. 49/75K (Dec. 15, 1994). This question was not novel: The General Assembly passed a resolution in 1961 declaring nuclear weapons illegal, and the request for the advisory opinion from the ICJ was originally brought in 1993 by the WHO. Peter Malanczuk, *supra* note 5, 346-50.

alternatives presented. The questions I heard most were, "If you oppose war, then what do you suggest instead?" and, "What are you saying, we do nothing?"⁽²⁷⁾

Notwithstanding that to criticize a proposal one need not posit an alternative, alternatives are what many grieving, fearful and angry Americans demanded in response to any criticism of the war. Despite that international law may seem calm and deliberative concerning *jus ad bellum* decisions, a population responding to an outrageous terrorist attack is anything but calm and deliberative. The legal mechanisms to determine the responses to such attacks must take this reality into account. (As should the fact that a superpower might avoid the UN altogether.) Ideally, human rights activists would have been able, after September 11, to point to concrete alternatives to war that would have proved less costly, in both lives and money; to pose less of a danger of increasing the likelihood of responsive terrorist attacks; and to punish the planners and perpetrators of the September 11 attacks. Human rights activists should keep in mind that for many people, war will seem like the best response to an outrageous terrorist attack. We should try to defuse the fear, anger and other feelings that fuel such a belief.

Ultimately, governments respond to their people, and UN Security Council members are not oblivious to their own governments' positions and needs. Promoting effective alternatives to using force -- both when conflict is imminent and when it is not -- will help expose some decisions by the Security Council (and nations) to use force as unreasonable and inequitable, and thus illegal. Shining light on the decision-making process could increase the incentive to find, and try, peaceful options.

Conclusion

The concept of necessity in *jus ad bellum* requires that before force may be used to resolve conflicts between nations, the UN Security Council and, in the case of self-defense, national officials, must undertake a penetrating and careful search for and consideration of peaceful means, and must try these peaceful means unless they would prove futile. This is a legal requirement. It is not simply idealistic.

The best way to carry out this requirement is for the actual decision-makers to use a problem-solving approach and expand the pool of those who can help generate possible solutions. To that end, the Security Council must embrace other actors, such as government and NGO-officials, experts, scholars, and in particular human rights activists, experts, and leaders from around the world. Concern for peace and human rights is not the province of "peaceniks" or "human rights activists" alone; it is the province too, of those whose job it is to follow and carry out international law. Thus, for the human rights community to tackle the problem of how to

⁽²⁷⁾ Some writers did, of course, suggest alternatives. See, e.g., Stuart Diamond, "A Violent War Against Terrorism is Doomed to Fail," *The Philadelphia Inquirer*, September 23, 2001; Jamie Lowther Pinkerton, "Brains, Not Bombs," *The Spectator*, October 27, 2001; The Rev. Dr. Peter Wells and Sally Milbury-Steen, "War is Not the Only Way," *Delaware News-Journal*, October 16, 2001; Philip W. Wilcox, "The Terror," *The New York Review of Books*, October 18, 2001 at 4. For a creative, wide-ranging, general list of ways to combat terrorism, see United Nations Office for Drug Control and Crime Prevention, "A Classification of Counter-Terrorism Measures" (http://www.undcp.org/terrorism_measures.html).

make the Security Council decision-making process more inclusive and more open, we must ask, as a first step, "How can we get the Security Council and governments to seek other means, and to include us in that process?" One way to do this now is by focusing ourselves on finding peaceful alternatives to force and convincing the public of their efficacy, which could expose particular uses of force as unreasonable and unnecessary. We can also use organs of the UN such as the General Assembly and International Court of Justice in raising these concerns. In turn, this exposure could put pressure on the Security Council and governments to consider and adopt reasonable, effective and equitable peaceful means.

The wide search for alternatives is eminently practical and reasonable, and necessary. There appears to be no other way for humankind to make the leap to peaceful resolution of conflicts and problems. Human rights are among the first to fall by the wayside in war. Preventing war is a necessary first step in protecting human rights, and we must turn much of our energy toward finding alternatives, and toward forcing governments to try them.

III) Westophobia and Islamophobia

Westophobia and Islamophobia Mutual Suspicions

by Gamal Abdel Gawad

"We look at the world and at ourselves but we do not interpret them objectively as they are. We look at them through the contents of our consciousness, which is a mixture of intuition, knowledge and beliefs. In this respect, understanding the Western World cannot just be a theoretical task or a philosophical vision. It is rather the outcome of a specific historical experience, physical as well as spiritual."

Hisham Sharabi

The image of the Arab World in the Western mind is of a world full of hatred against the West. This image is far from reality, as the Arab image of the West includes a lot of positive elements. The Arabs look upon the West as a symbol of technological progress, prosperity, cleanness, tidiness and punctuality. They also see the West as a symbol of equality, freedom, social justice, respect for law and democracy. Moreover, some Arabs even perceive the West as a synonym for physical beauty. However, these positive impressions of the West are usually not expressed in the channels through which the West can learn about the attitudes of the Arab public.

The political structures in most Arab countries are quite complicated. The most striking characteristic of Arab polities is the high level of apathy toward the public sphere, especially regarding political participation. Since there are few institutions and little tradition for studying public opinion in the Arab World, conclusions about it tend to be inaccurate, and usually reflect only the visible part of political and intellectual life in Arab societies. The image will thus only reflect the aspects of public attitude that are normally presented in media channels, i.e. the attitudes of the elites, who have access to the media.

The elites referred to in this context are not the ruling elites, but rather a number of small groups engaged in politics and public affairs, which might belong to ideological, economic or ruling elites. These groups tend to adopt a selective approach to the West and to Western culture. With the exception of small extremist Islamist groups, all these political and ideological elites believe that the West has something to contribute to the development and progress of our countries. In particular, this applies to Western technological achievements, which might contribute to economic development and also to improve our

countries' relative position in the world in the economic and military fields. A similar attitude also exists toward Western organizational and administrative structures, which contribute to higher levels of performance. Moreover, it also applies to Western democracy, even though Islamists and Pan-Arabists tend to conceive democracy merely as the procedural arrangements of fair periodic elections.

However, each of these elites has its fears of the West. While the Islamists perceive the Western model as a threat to authentic Islamic values, the pan-Arab elite sees the West as a threat to pan-Arab interests such as achieving Arab unity and liberating of Palestine. The socialist elite perceives the West as the stronghold of capitalism, seeking to expand its capitalist dominance over the countries of the Third World and thus impose exploitation, dependency and backwardness. And all of the above elites fear globalization, which they perceive as an attempt to expand the American and Western domination in the fields of economics, politics and culture. The incumbent bureaucratic elite, on the other hand, is concerned about the impact of market economy, which is strongly advocated by the West, on the foundations for its economic and political control.

These groups' reservations and concerns about the West are more likely to find their way to the mass media than mainstream attitudes, as a result of the nature of modern media and particularly its tendency to accentuate negative rather than positive aspects and threats rather than assurances. Through such processes, the image of the West presented in Arab media does not give an accurate representation of the image of the West among the public at large.

Nonetheless, the reasons for being concerned about the relationship between the West and the Arabs, and the coexistence and exchange between these two cultures, are still valid. Many scholars are puzzled by the fact that Arabs' perception of the West today is much more negative than their perception of the West during the colonial era, which ended more than half a century ago. Their surprise changes into a shock when learning about the feelings of content and comfort that some Arabs expressed in reaction to the terrorist attacks of September 11.

Two critical periods of modern Arab history should be examined in order to understand this shift in Arab attitudes toward the West: 1) The period immediately following the first encounter between Western civilization and the Arab World in modern history, i.e. Napoleon Bonaparte's invasion of Egypt in the late eighteenth century. 2) The post-colonial era after the Arab peoples gained independence.

The Arabs and the west – the first encounter:

The shock of encountering the West and of getting first hand experience with it is the most important event that has happened in the Arab World since the end of the eighteenth century. As a result of its long subjection to the rule of the Ottoman Empire, the Arab World suffered from isolation and stagnation for three centuries, during which cultural exchange between the Arab World and the West was suspended. When the armies of Napoleon Bonaparte arrived in Egypt in 1798, the Egyptians were astonished by the technological,

organizational and cultural achievements of the West, and by the contributions that these achievements made to the overall power of the West. In other words, when the Muslim World recovered from the long involuntary isolation that had been imposed on it, it discovered that the parity with Europe that it had enjoyed until their last encounter no longer existed, and that a wide gap had arisen between the Muslim World and Europe, and was dividing them.

As a result of this experience, the Arabs developed contradictory feelings toward the West. They admired the West for the unimaginable progress that it had made, but this success simultaneously created a feeling of inferiority and helplessness toward the West and its unprecedented achievements. Abd el-Rahman al-Jabarty, the most important Egyptian historian at the time of Bonaparte's invasion, expressed these contradictory feelings by commenting on what he observed in the laboratories of the French scientists accompanying the French army: "they do strange things, the results of which cannot be conceived by the minds of people like us". Finally, the West was the conqueror that must be rejected and resisted.

This multi-faceted feeling of admiration, inferiority and resistance has dominated Arab attitudes towards the West since then. The tension between these various components of the Arab perception of the West has created contradictory responses to the Western challenge from Arab societies. Among these responses was the traditional trend, which rejected the West and wanted to restore and maintain traditional Arab society. On the other extreme, some people admired the West to the extent that they wanted to demolish Arab societies altogether, including their cultures, traditions and customs, and rebuild them through a simple duplication of the Western model. Between these two extremes, there was an eclectic moderate trend seeking to combine Western modernity with the essentials of Arab culture, in particular those aspects of Arab culture believed to be most important to Arab Muslim identity.

These eclectic moderates, who had strong liberal inclinations in the political, economic and cultural fields, dominated the cultural and political scene in most Arab societies until the middle of the twentieth century. They succeeded in leading Arab societies into modernity by introducing, among many other things, modern Western institutions such as civil education, bureaucracy, market economy, constitutions, elected parliaments, political parties, syndicates and labor unions. They also introduced modern urban planning, modern infrastructure and modern industry to the Arab World following the Western model, and needed to find a theoretical and moral basis to justify this imitation. Despite the occupation and the cultural differences between the West and the Muslim World, the liberals found this basis in the principle of the unity of human civilization, ever evolving through the contribution of different nations and cultures in history. The liberals argued that Muslims had contributed to the progress of human civilization in particular by helping Europe to get out of the darkness of the Middle Ages when Muslim civilization was at its peak. Accordingly, Muslims had the right to borrow from the West without being ashamed. In this context, the liberals reinterpreted Arab-Muslim history to shed more light on interactions between Muslims and the cultures of neighboring countries such as Persia, India and the Roman Empire. They tried to authenticate their attitude of borrowing from the West by

emphasizing the fact that interaction with other civilizations always has been an established practice in Muslim history. Moreover, the moderate liberals implied that there was a causal relation between the rise and prosperity of the Islamic civilization and its openness towards non-Muslim civilizations. Clearly, this was an attempt on the part of the moderate liberals to legitimize their approach towards the West as a resumption of the approach previously adopted by the first Muslims.

From liberal reformers to nationalist radicals:

The moderate liberal reformist trend dominated the national movements, which were calling for the independence of Arab countries for a very long period. While struggling against European colonialism, the liberals were careful not to confuse their position against colonial occupation with hatred and rejection of Western civilization. They argued that maintaining good relations with the West was the best way to modernize Arab societies, and take them from traditionalism to modernity. They adopted a strong reformist gradualist approach, according to which colonial dominance was not the cause of the weakness and backwardness of the Muslims, it was rather the other way round, the weakness and backwardness of the Muslims was the cause that they were subjected to colonialism. Colonial control would thus gradually decrease if the Muslims learnt how to master the tools and means of the West.

The intensified struggle against Western colonialism, as well as social transformations accompanying modernization, created an environment conducive to the emergence of anti-Western radical groups. These groups justified their anti-Western attitudes by two ways of reasoning. The first was a radical orientation against colonialism, held to be responsible for all problems facing the colonies. The suffering of the colonies was not just the result of military occupation, but rather of their relationship with the imperial West that is seeking to maintain its hegemonic status even after the end of occupation. The radicals tended to broaden the concept of colonialism to include various kinds of relations with the West. They argued that progress and development in the colonies was conditioned on severing ties with the Imperial West. The second line of reasoning used by the ascending radical movements was a rejection of the Western model. Their hostile attitude toward this model was particularly explained by its liberal ideas, democratic system, and market economy. Adopting the Western model in countries of the Third World, the radicals argued, would lead to the continuation of both Western control and backwardness.

The Palestinian problem was one of the factors, maybe the most important factor that led to the increased influence of radicals on the Arab political scene. The success of the Zionist movement in establishing the State of Israel and the subsequent expulsion of the Palestinians deeply affected Arab consciousness. This wound combined with a profound feeling of humiliation resulting from Israel's defeat of several Arab armies in the 1948 War, the outcome of which discredited the liberal reformers, who had held the leadership positions in Arab countries until then. The war also increased hostility against the West that showed much sympathy for the Zionist movement and offered Israel financial and moral support, to the extent that Arabs held the West responsible for the establishment of Israel and

its victory over the Arab armies. Prevailing opinion among Arabs is that if it were not for Western support of Israel, the latter would never have succeeded and the history of the Middle East would have been entirely different.

For many reasons, the anti-Western radicals ascended to power through a series of military coups in a number of Arab countries, i.e. Algeria, Egypt, Iraq, Libya, Sudan and Syria. The regimes established by the Arab radicals have remained in power during most of the period following independence. Even in countries where the radicals failed to occupy the center stage, radical ideologies and beliefs had a great influence on the public. In other words, developments in the Middle East during the second half of the twentieth century offered radical ideologies a chance to influence and shape the Arab intellectual and political arena.

The radical regimes of the Arab World underwent a profound transformation. Like their predecessors, they failed to keep the promises they had made to their peoples. This was particularly true in the 1967 War against Israel. The Arab defeat in this war forced the radical Arab regimes to reconsider their policies and slogans in domestic as well as foreign politics. This adjustment was a must due to international changes, which resulted in a climate that was no longer suitable for radicalism. Nevertheless, their transformation was far from complete, since the legitimacy of these regimes was strongly tied to their past. Therefore, the abandonment of radicalism was done in a way to give the ruling elites a chance to reestablish themselves, i.e. by choosing what they wanted to keep and what they wanted to give up, to what extent, and according to what would best serve their interests. It no longer makes much sense to describe today's Arab regimes as radical. However, the influence of radicalism still prevails in the ideological and political spheres. This particularly applies to role played by intellectuals in the Arab World.

The impact of the radical era on the political and intellectual life in the Arab World can be summarized as follows:

- 1- the nation, rather than the individual, is considered the principal political unit and agent of action. Pressures on the individual to conform to the group are high, while individualism is considered a sign and cause of national weakness.

- 2- the external challenges are considered the most important challenge confronting the Arab World, to the extent that public perception of politics tends to confine it to issues of foreign policy. This attitude serves to distract public attention from domestic problems and avert political participation.

- 3- the fate of important domestic issues, such as economic development and democracy, is strongly linked to the external challenge. In the Arab World, it is a common belief that domestic reform is conditioned by and must follow the triumph over the external challenge.

- 4- The Western model does not suit the Arab World and could be a backdoor for Western hegemony.

The radical failure complicates relations with the west:

The era of radicalism in the Arab World created high expectations among people regarding the future awaiting the Arabs. But the final results of this era did not meet any of these expectations in a significant way. The radicals failed to liberate Palestine, failed to achieve economic and social development, and failed to improve the world's image of the Arabs. Moreover, the radical regimes established dictatorships under which Arab peoples still suffer. And in the end, the radical regimes had to improve their relations with the West, against which they rebelled in the past.

At the same time, the concept of the West has been distorted through profound reductionism in the Arab mind. The West became synonymous to the United States. The United States was reduced to American foreign policy. And the latter was reduced to American foreign policy in the Middle East. In this context, many in the Arab World see nothing in the West but the American alignment with Israel. Such reductionism is extremely conducive to the rise of hostile feelings against the West, and certainly does not allow people to perceive the many great progressive and humanistic contributions of the West.

While the failure of the Western-oriented liberal reformists led to the rise of anti-Western national radicalism, the former did not utilize the failure of the latter to regain its influence. While the slogans of radical nationalism lost public attention, the anti-Western stance survived and even flourished.

The current negative image of the West in the Arab World could be ascribed to a number of pressing factors:

1) The Arab inability to find a solution to the Palestinian problem is a principal reason for the anger and the hostile mood prevailing in the Arab World. The chronic Arab failure to handle the Palestinian question in the right way generates an Arab inclination to search for a scapegoat. The West, represented by the U.S.A., emerges as the evident candidate to be held responsible for the current state of affairs in Palestine. The ruling Arab regimes tend to promote such thinking as a means of diverting public anger and disappointment from themselves.

Although the Palestinian struggle against the Israeli occupation has many aspects similar to the struggle waged by other Arab peoples against Western colonialism, the former has incited more hatred against the West than the latter. The peculiar characteristics of the Arab-Israeli conflict are in themselves a sufficient source for disappointment, anger, and eventually hatred. Moreover, it should be noted that Arabs had the chance to take an active part in the national liberation movement during their struggle against colonialism, an option that they do not have in the case of Palestine. Involvement in the struggle against colonialism provided people with a moral satisfaction, which they cannot achieve in Palestine. This happens at a time when modern mass media, particularly satellite TV, bring the suffering of the Palestinian people to the comfort of Arab homes constantly. It could thus be argued that today's Arabs are much more influenced by the developments in Palestine than their ancestors were by the struggle against colonialism in their own countries. The citizens of both Arab and Muslim countries are deprived from almost every possible means

to support the Palestinians. This deprivation creates a feeling of impotency, which in turn increases their feelings of disappointment. The accumulated and non-released feelings of impotence, feed their feelings of suspicion and anger, which could evolve into hatred.

2) The way in which the world's major powers handle the problems of the Middle East contributes to maintain these attitudes towards the West. The international system, headed by the United States frequently fails to address Arab concerns in a proper way. This failure creates a feeling of being discriminated against by the West among Arabs, and also gives them a reason to accuse the West of applying double standards. Iraq is an obvious example of this situation, as the international community's failure to solve the problem of Iraq's dictatorship has aggravated the suffering of the Iraqi people rather than punished Saddam Hussein and his clique. Many Arabs cannot understand why the international system handles the failures of Iraq and Israel to comply with international law in two totally different ways. This perceived discriminatory practice gives Arabs a feeling of being targeted by the West; and further aggravates Arab attitudes against the West.

3) The policies of Arab governments contribute to the anti-Western feelings. Most Arab governments have realized that they have to open their countries to the winds of global change, lest their countries be marginalized and left out in the era of globalization. However, Arab governments fear that this opening will induce demands for reforms that they will not be able to resist; and to handle this dilemma, they tend to deepen economic openness while deliberately allowing, and even might feed, anti-West feelings as a means of limiting the political and intellectual influence among the public of the Western political model.

4) Islamism has dominated the cultural and political scene in most of the Arab World after the failure of both liberal reformists and radical nationalists. The anti-Western attitudes of Islamism are much stronger than similar components in radical nationalism. While the latter limits its hostility to the West to the political field, the former focuses on the bigger issue of cultural, and particularly religious, identity. Islamism highlights the difference between Muslim and Western cultures, claiming that these differences are irreconcilable. Moreover, Islamists show much concern about the impact of Western culture on Arab and Muslim values and identity, which could be a result of the exchanges and interactions between the two civilizations. Thus, while the liberal reformers believed in one human civilization, and the radical nationalists believed in the possibility of a healthy relationship with the West upon solving their existing political conflicts with them, the Islamists believe that the identity conflict between the Muslim World and the West is unsolvable. Although many moderate Islamists tend to tolerate differences of culture and identity, the influence of the radical fundamentalists on the public arena should not be underestimated

5) The rise of radical nationalism in the Arab World was accompanied by a rise in the popularity of the conspiracy theory. Many in the Arab world believe that the West deliberately conspires against Arabs and Muslims to stop their progress. Such ideas invoke fears and doubts about the West and its intentions. Those who believe in the conspiracy theory can easily interpret any action or development as a part of the grand Western scheme, as the notion of conspiracy itself does not require any solid evidence. It is simply enough to

believe that there is a great conspiracy against the Arab nation and interpret everything in this direction. Belief in the conspiracy theory and blind interpretation of daily events in a manner complying to this belief feed each other mutually.

Thus, there is some truth to the claim that anti-Western feelings are widespread in the Arab World. Some of the causes for this phenomenon are related to the West and to policies pursued by major Western countries, particularly American policies, toward the Arab world.. However, some of the causes are also related to characteristics of the political development in the Arab World itself. Feelings of fear and suspicions of the West are likely to remain, as long as these causes are still present. And it seems that we will have to live with this trend for a long time into the future.

Assimilation or Deportation Arabs in Europe and their Struggle for Civil Rights

by Dyab Abou Jahjah

In this paper, I will present an overview of the current situation of Arabs in Europe. My intention is not to elaborate on legal procedures or new legislation by the European Union on "combating terrorism" nor I will be trying to define terrorism or propose strategies to deal with it, as I am sure many of the other papers in this conference will be doing that. Instead, I will try to shed some light on the socio-political and cultural interactions between Arabs and Europeans and the socio-cultural context prior to September 11 and what changes occurred after it. This is not an academic paper and was not meant to be one. My intention all through will be to reflect the situation out of an Arab-European perspective. September 11 will not be the pivotal date in this paper nor its leitmotiv. I will try to sketch a more comprehensive image of the roots of Islamophobia and anti-Arab feeling in Europe with a political and historical approach. As an illustration case, I will examine closely the situation of the Arab community in the province of Flanders in Belgium, because it is where I live and therefore I would be more capable of giving a personal testimony on the situation there.

This paper is based upon the experience and day-to-day findings of the Arab European League (AEL), a Belgian-based organization that is active in defending the civil rights of Arabs in Europe and promoting a better understanding for Arab causes in general. AEL is more a movement than a lobby; it operates on the grass-root level and is widely represented among the second generation Arabs in Belgium.

The Burden of History

Not many people in Europe today are aware of the way their role in history has been perceived and experienced by other peoples. Not many Europeans would like to enter a debate on the repercussions of their colonization on what they call the Third World. Neither would they like to admit that many of the world's conflicts today are a direct result of the mess Europe created wherever it passed. In Belgium, for instance, the colonization of Congo is barely mentioned in public debate, and the continuous interference in the politics of that country even after the end of direct colonization (see the Belgian implication in the murder of Lumumba) is also not a favorite subject of discussion. The same goes for Rwanda and Burundi, and the relation between the Belgian colonization of these countries and the

creation of the division between Hutu and Tutsi. The direct and indirect fueling of the conflict between these two groups, which resulted in the Rwandan genocide and the death of more than a million people, is also a subject to avoid.

Europe suffers from selective amnesia, on the one hand it will never forget the Holocaust, never forget even September 11, but Algeria, Rwanda, Bosnia, and Iraq are all too often forgotten.

The new Europe is trying, however, to cut a new deal with the world. It is trying to be the enlightened partner of the unique superpower. It is always looking for nuances, for that good middle way, often to the frustration of the American big brother and its loyal lackey in London. Europe is playing an important role in what it calls development cooperation, building partnerships with its southern neighbors that are useful, even though they are far from being a structural solution to any problem. That enlightened Europe that is propagated mainly through the institutions of the European Union is supposed to bring a *message* of tolerance and broadmindedness to the world and help healing the wounds of conflicts and war. Nevertheless, one might wonder if this new message that Europe wants to bring to the world and the role that Europe wants to claim are not a modern-day version of the infamous "*white man's burden*" of the past centuries. It is legitimate to ask this question since ethnocentrism still stains policies and minds in the old continent.

The Apogee of Fear

Europe has a problem with its own history. It is trying to forge an identity out of a conflictual past with as only tools: common interests and values. The process of European integration is shaking the foundations of old identities and making certain populations feel insecure and threatened.

In a globalizing world and an integrating Europe, a peasant from the Flemish countryside or a worker from the port of Antwerp, or even a banker from Brussels, will easily feel exposed to "external dangers", regardless of their actual existence or lack thereof. These dangers can take the form of economic competition, such as hostile takeovers by multinationals or European mergers accompanied by what is cynically called rationalization, which means sacking workers to cut down expenses in a more competitive environment. Sabena and Swissair merged and then both went bankrupt, shortly before Belgium replaced its national currency with the Euro. Economic transformations are conceived not only as a source of instability on the labor market or as a financial adventure in an unknown realm, but also as a loss of national symbols (national airline, national currency). The danger "that is coming from outside" can also be a disease (mad cow or foot-and-mouth) and once again be expensive to deal with. The threat can even take more modern and unfamiliar forms, like a computer virus (you all remember the "I love you"-virus coming from the outside, somewhere in cyber space). But the biggest threat of all, despite innovation and transformation, is the most ancient of all: fellow man.

People are more than ever afraid of other people, especially when the other is coming from outside. When he is a stranger, a foreigner. In a world losing its boundaries, the

foreigner has become more threatening for many reasons. He is more likely to come from the “*outside*” to the “*inside*”, as borders are becoming vague in Europe and people can travel almost as easy as goods. He is more likely to claim the same rights, as European citizens can now vote in municipal and European elections in Belgium, and discussions are going on about giving even non-EU residents that same right. He might be more skilled and more capable of finding a job in the new economy that is based upon communication skills and technological literacy. He is very likely to take advantage of tax advantages, while withdrawing money from the national market and transferring it to his home country. He will bring with him new ideas and new traditions that might not be consistent with the nature of the country and its people.

Cocooning within the safe boundaries of ones own community and country is no longer a possibility, except in few cases.

These reasons make a Flemish individual from Antwerp mistrust and even dislike *a priori* any Dutch person who has moved to live and work in Antwerp (thousands of Dutchmen indeed took that step and are met with such attitudes).

So here, we are talking about what such a situation can do to the relationship between two white Europeans speaking the same language and very likely practicing the same religion and sharing similar values. Let us now imagine that this “*other*” is a bit more different than a Dutchman is. Let’s say he is dark-skinned, with black curly hair, that he comes originally from Morocco, speaks Arabic and practices Islam. But also, that he is a manual worker, not very skilled and struggling to survive and often forced to use the welfare system and social security funds, as finding a job has become more difficult than ever, even for more skilled people. It is needless to say that the fear and mistrust will be far greater.

Islamophobia, Racism or just Xenophobia?

Xenophobia is not strange to human nature whether you are Arab, European or Chinese. It is actually a natural reflex that has deep-going roots in the human psyche ever since we first left our caves and took to the fields and steppes and started encountering other human groups. But in Europe it is accentuated by another, more malicious and less general attitude: racism. Racism is an ideology and a state of mind prescribing the supremacy of one’s own race over all other races. A racist person does not believe in productive coexistence and interaction and can only conceive one relationship with people from other races and that is exploitation. In other words, if one can exploit or at least use another racial group then one can tolerate its presence, and in all other cases, that racial group has to disappear, because if it is useless its mere existence w is harmful. Making another racial group disappear can be achieved through ethnic cleansing, deportation or even genocide.

Nowhere in the world did racism flourish more than in Europe. Racist paradigms evolved and mutated, but never disappeared. From slavery to the “*white man’s burden*”, and from “*missionary evangelization*” to the “*message of Europe*”. From Hitler’s “*final solution*” to Le Pen’s “*repatriation of all non-European strangers*”.

Racism added to xenophobia is an explosive cocktail. If you want to make the equation even more complicated, you should bring Arabs and Islam into the picture.

Europe has never digested its defeat in the crusades, nor did the Arab world forget the atrocities committed by these "*savages coming from the north*" and their holy war to retrieve the tomb of what they see as their god. Islam for Europeans is not simply another average unknown world; it is historically and psychologically hostile and dangerous.

In the middle ages, the fear of a superior Arab-Islamic empire and civilization trying to expand its territory into the heart of Europe was more than just a phobia, it was a geopolitical reality. Nowadays, components of this same fear are still present in European popular culture and are increasingly infiltrating the political spectrum. The only difference is that the image of the Arab-Islamic culture and world is no longer that of a superior foe, but rather of a weakened and wounded one. At the same time, it is a foe contesting the status quo and using the dynamic and mobilizing nature of its religion to revitalize itself and regain its ancient status.

This paper did not start with the buzz sentence "after the fall of the Soviet Union", because we all know that it is when the communist danger was defeated that Europe and the West started to be haunted by its old demon of Islamophobia. And unlike anti-communism, Islamophobia can perfectly be combined with racism and xenophobia. The result was that in the beginning of the nineties, anti-Arab and anti-Muslim discourse started to become trivial mainstream discourse in many environments. And this all coincided with theories about an unavoidable clash of civilizations, where the West and Islam will be the main protagonists. The polarization of the world was reestablished, with the West and its Judeo-Christian civilization on one side, and the Arab and Islamic worlds and Islam on the other. It is the Middle Ages revisited.

Soon after, the West sent its first modern-day crusade to save a friendly vassal prince from the evil and madness of a megalomaniac and bloodthirsty Saracen dictator.

Paving the Way of Pain

Even though the Gulf War of 1991 was clearly an American war and though most European policymakers conceived it as such and even defined their implication and strategies in it in function of one goal, i.e. tempering the American outburst and ambitions, the Gulf war was lived and experienced differently on the popular level. If we put aside the traditional protests of pacifist and leftist Europe, that are by no means representative of the mainstream, the average European citizen bought the American version of the story and looked at Iraq as an empire of evil governed by a madman plotting to control the world.

Reaganism is a very simplistic doctrine that can easily gain support among the masses. Its populism is the key to its popularity, and this is true in Europe, as it is true in the United States.

Bush senior, a loyal disciple of the third-rank actor -who obviously acted well enough to make it to the White House but never to Hollywood- knew this very well and stayed loyal to the almost religious polarization methods practiced by his predecessor. The demonization of the enemy leader is an essential step in the process of dehumanizing his people. Both processes have been thoroughly executed during the Gulf War in a way that allowed for the murder of thousands of Iraqi civilians, which was only spoken of as "collateral damage". In the streets of Brussels, the polarization was strongly felt. On the one hand, the Belgian population was completely terrified by the possibility of an Iraqi missile attack reaching the heart of Europe, while the Arab immigrant community that is strongly present was bitter about the war and did not hide its sympathy with Iraq and its despise of the Americans.

The Arabs in Belgium were thus looked upon as the "fifth column" of the evil enemy. Immigrants who were invited to come to Belgium in the sixties, when the country experienced a shortage of cheap labor and who worked hard and helped building Belgium's infrastructure and industry not to mention working in mines under barely human conditions, have become useless since the economic crisis of the seventies and early eighties. What the Belgian government did not anticipate is that most of them decided to stay, especially since their children were born in their new country. And as we already mentioned while talking about racist mechanisms, a useless different ethnic group cannot be tolerated or accepted, it has to disappear. This was exactly how Moroccans in Belgium were perceived, and unfortunately, this is still the case today. One might argue that this has to do with the racist white supremacy attitude of the average Belgian, accentuated by the economic crisis, and that is indeed true. The statistics of the European Union (Euro barometer 1997) single Belgium out as the most racist country in Europe. But it is also true that the islamophobic reflex that was revitalized by the Gulf War added extra fuel to the whole explosive cocktail. After the defeat of Iraq, the bitterness of Arabs in Belgium turned into frustration and the fear of the fifth column did not vanish.

It is by no means a coincidence that 1991 was the year that witnessed the most violent clashes between the police and Arab youth in what looked like intifada scenes in the streets of Brussels, only weeks after the Gulf War ended. The reason for the clashes was that the far right, racist party "Vlaams Blok" was allowed to hold a political rally in Molenbeek, a neighborhood of Brussels where mainly Arab immigrants live. Vlaams Blok was already campaigning on a strong anti-immigrant platform very similar to that of Le Pen in France. Among its slogans, one could read "Islam out" or even "halt Islamic invasion". To allow a party like this into the streets of Molenbeek in the spring of 1991 was definitely asking for trouble. The clashes were very violent and lasted for days and ended only when the Minister of Interior issued an official apology to the Arab community and promised not to make such mistakes in the future. A couple of months later, the same racist party scored a sweeping victory in the national elections and even became the biggest political party in the important city of Antwerp.

The other side of the medal

It is because Europe has the most experience with racism, that Europe talks the most about anti-racism. And it is there, in European anti-racist strategies, that the most dangerous mistakes were made and racism is building its most impressive shrines.

The electoral victory of Vlaams Blok shocked and surprised their friends and foes alike. No one could imagine that a party with such an archaic message as “the immediate deportation of all non-white immigrants” could gain so much support. The entire political establishment felt the ground shaking under its feet, not only because the Blok was racist, but also because the Blok is an openly anti-Belgian party calling for the immediate independence of the Flemish provinces. An urgent need was felt to deprive this party of its main attraction, namely the immigration issue. Solutions were allegedly to be worked out in order to solve existing problems among various groups of the population.

Integration was all of a sudden prescribed as the magical remedy for all the illnesses of racism and hatred in society. A whole strategy of integration was prophetically revealed by two prominent individuals, Johan Leman and Paula D'hondt. But instead of looking at integration as a process involving the whole population, immigrant and indigenous alike, that inevitably leads to a multicultural society and the abolishment of discrimination, integration -- as understood by Leman and D'hondt -- was a process that must result in the abolishment of all differences between the majority and the immigrant minority by way of total assimilation of the minority. In other words, diversity rather than the incapacity of Belgian society to deal with it was considered to be the problem. So instead of creating a more diverse societal structure, one should eliminate diversity and go back to a monocultural situation. This logic is the other side of the racist medal, as it is also calling for the disappearance of the “*other*” through the elimination of all that it makes him an “*other*”, his culture, his language, and even his religion. The only thing that it is willing to accept is for him to have different physical characteristics, but even on that level they were not ashamed to say that “marrying a Belgian” was the “highest level of integration”.

Not having a problem with a person of another race as long as he speaks your language, has your culture, and believes in your values is maybe not completely racist, it is just three quarters racist and one-quarter hypocrite, which is exactly what the integration policy of the Belgian government is.

Another very important characteristic of that policy is that it just doesn't work.

Assimilation is now farther than ever, and let me be clear on the fact that this is a positive fact, because cultural diversity and the right to preserve one's culture and language are sacred human rights. The immigrant community often experienced the integration policy of the government as an attack on its values and very existence as a minority group. As a reaction to this, it started to organize itself in self help-organizations, which main task was the promotion and preservation of culture and religion. Mosques flourished and Arabic classes would reach most of young immigrants, giving them a necessary tool to keep their culture. On the political level, the failure of the integration policies generated a false impression that no solutions for the genuine problems facing any multicultural society are

possible, and this impression provided additional arguments to the Vlaams Blok that the only possible solution was and still is deportation. After ten years, the immigrants are more Moroccan and Muslim than ever, the Belgian public is more Islamophobic than ever and the Vlaams Blok is stronger than ever with 15 percent of the national vote and 33 percent in the city of Antwerp. The Leman- D'hondt strategies did not only fail, they backfired.

In the neighborhoods where Arabs and Belgians live next to each other, tension is raising and a storm is looming on the horizon. Next time the wind will blow, the 1991 riots will look like a fresh breath on a sunny morning.

Towards a Human Rights Approach

Almost two years ago, in May 2000, the Arab European League published two articles in one of the most respected newspapers in Belgium, calling for a halt to the integration policies and for approaching the whole issue of majority-minority relationships through a human rights perspective. We said that the concept of integration as applied in Belgium is undemocratic and racist, and that equal rights and multiculturalism are the only way towards harmonious coexistence. Making integration a precondition for basic rights is an outrage, the only condition to enjoy human rights is being human.

At the time, our position came as a shock to many people who still believed in the old paradigm and were unable to see that it is a fiasco. We were accused of being fundamentalists because we were in favor of preserving our identity, we were accused of being communists because we appealed for equal rights and we were conceived as being a danger because we declared that we are taking the matters into our own hands. But our articles did start a debate and provoked Leman and his disciples into admitting many shortcomings in their policy. They could call us "The Arab Panthers" but they couldn't deny that what we were saying was true.

In Belgium, and especially in Flanders, an Arab can barely rent a house, and even social habitat firms who are linked to the state are operating with exclusion lists barring any Arab name. Arab children are rejected at schools, and quotas are being imposed to limit their numbers. Those who do make it through primary school are canalized into technical branches by the administration. Those who do succeed in obtaining a university degree, despite all obstacles, find it impossible to get a job. The only jobs available are in the social sector, which is known to be more tolerant.

With no proper housing, no proper schooling and no access to work, three of the most basic human rights are systematically being violated. Discrimination is not an occasional malfunction of the system, but a structural mechanism infesting the whole society. Second-generation immigrants, who are born in Belgium and know no other place as their home, feel this situation the most. It has created a generation with no future and nothing to lose. And instead of dealing with the main problems that racism and discrimination are causing, government policy is a combination of assimilation-oriented action and police repression.

In a four-year study of youth and urbanism, professors Ludo Walgrave and Kris Kesteloot from the Catholic University of Leuven found that there are ten times as many white, Belgian youngsters as Arabs among the drug dealers. However, Moroccan youngsters are arrested ten times more often than Belgians for drug dealing. This means that the police are ten times more likely to arrest a Moroccan than a Belgian for committing exactly the same crime. In the city of Antwerp, where 33 percent voted Vlaams Blok and an even bigger percentage sympathizes with that party, the police commissioner Luc Lamin openly admitted that his police corps is heavily infiltrated by far right militants. "One third of my policemen at least are Vlaams Blok sympathizers", he said to the media. Now please imagine how fair a police patrol would be when it comes across a group of Arab kids in the streets of Antwerp.

The term that Belgians use to describe an Arab is "makkak" which means "white ape", would it be a crime to contest the authority of a police officer calling you that? The answer is no. Contesting a discriminatory authority is not only legitimate; it is a democratic duty.

Two years after our first appeal for equal rights, we are still receiving, daily, tens of complaints and registered cases of racial abuse, mistreatment and discrimination. We try to use our good access to the Flemish press to confront decision makers with this fact, and our lawyers try to make legal steps in some of the cases, but we are financially restricted to the absolute minimum necessary. In addition to the complaints from a community looking to us as its sole defender, we are receiving hate mail from a majority that is unable to conceive that a makkak is just another human being. And of course, the occasional life threat is a familiar guest to our mailbox and answering machine.

A Day Like Any Other

Let us put something straight, if there is something to conclude from all the former paragraphs, it is that Europe did not need September 11 to be islamophobic or anti-Arab. Sure, right after the events we registered a higher frequency of incidents and racial abuse in most European countries. I was myself arrested on September 16, together with 50 other members of our organization. We were told by police officers things like "together with the Americans, we will smash your brains", but I was also interrogated weeks before the events by an officer of state security who gave me his card, and I was amused to read "Islam and terrorism-cell" on it. What happened in New York made it less politically incorrect to use terms such as terrorist-Islam and allowed the far right parties to be more assertive in their discourse, but it did not create the syndrome itself. September 11 in Europe is an act of language more than action. It has taken the debate onto another level, and has maybe to a certain extent sharpened an existing situation, but the situation was already dramatic enough before. After September 11, an Arab has difficulties in finding a job, renting an apartment or sending his children to school, but it was exactly the same on September 10.

For asylum seekers, Europe was already a fortress and asylum policy was designed to expel as many as possible and accept as few as possible. Security was the hot-item on September 10, and even a small gathering of Arab children on a sidewalk was considered a security issue, and still is.

New European policing practices are not of a magnitude that can be compared to what is going on in the United States itself. So does that mean that the situation in Europe has stabilized? Or that the potential of islamophobia is exhausted? We do not believe this to be the case. The fact of the matter is that Europeans are very aware of why the United States were targeted rather than Brussels or Berlin, just like everybody else is aware of these reasons. Europe does not feel the real urge to take measures similar to those that were taken in the United States, and will not risk destabilization through pushing a very young, dynamic and numerous Arab second-generation onto a radical path. When far-right extremists tried to intimidate Arabs in the city of Antwerp in 1993, by burning a mosque and a tearoom, the reaction was swift. Several cafés known to be frequented by far right extremists were flattened and their headquarters in Antwerp -- a place called "the Lion of Flanders" -- was invaded by masked Arab youth and totally destroyed.

The Arab community in Europe is to be compared to the black minority in the United States and not with the Arab community there. It is socially, politically and economically excluded, aware of the fact of discrimination and racism, feels exploited and used, and has produced a futureless young generation with nothing to lose. This generation has developed a sub-culture of rebellion, and is ready to take its cause to the streets at any moment. In Paris, in Marseille, just like in Brussels and Rotterdam or London, trying to oppress Arabs and Muslims will mean a street war that nobody wants.

We have succeeded in keeping our community relatively calm through the years, and we intend to continue canalizing its legitimate grievances into political and civil action, but Europe must be willing to make our task easier, and until now we have felt that they are aware of that.

Conclusion

I am aware that this paper did not draw a very positive image of the interaction between Arabs and Europeans, but it is my deep conviction that it has drawn a realistic image. If we ever want a solution to these problems, we have to start by naming things by their names. Political correctness is not a valid reason to avoid the naked truth, no matter how difficult and hard to bear that truth might be. Europe may have better intentions than the United States, and a more balanced stance on the Middle-East conflict, but this will not change the fact that it is oppressing and discriminating its Arab minority. The situation I sketched is not exclusively Belgian, in Denmark the situation is even worse, in Austria and in France similar situations are lived by our youth. The latest outbursts of racial violence against Moroccan immigrants in the south of Spain testify of similar patterns. In Italy, the government is in the hands of the Islamophobic Berlusconi and his far-right allies. In Britain, the streets of Birmingham and Oldham recently witnessed very violent racial riots between Muslim Asian youth and white far-right extremists. In Germany, racial attacks are registered daily, especially in the east of the country.

America might be bullying the world on the international level, but it certainly had a better approach to its own race-relation problems. The events of September 11 changed that for the Arab community, and forced them into a civil rights battle that they were never willing to enter. Arab-Americans lately realized that they need the help of other minorities to whom they never gave their support because their socio-economic position allowed them to

enjoy a better standard of living than them. In Europe, our community is among the poorest and most oppressed, we have always been in the middle of a civil rights battle and September 11 has nothing to do with that. Since 1991, we have been stigmatized as terrorists and a fifth column and screened and infiltrated by all kinds of security agencies. Our mosques are monitored and our offices are bugged. The only difference is that Europeans know how to hide their iron fist with a silky glove, while Americans just wave it naked in the air. A question of more refinement, one might argue.

But still, we believe in a solution and that is the respect of the international declaration of human rights and its application in a proactive and concrete way. We do not need our rights if we cannot exercise them; the abstract form of a right has no value if it is not met with practical fulfillment. Racism should no longer be considered an opinion but a crime, and discrimination should be rooted out. The existing gap resulting from years of discriminatory policies on several levels should be closed by affirmative action policies, not to be mistaken for positive discrimination, as it would simply correct what discrimination has caused.

Culture should be considered a private matter just like religion, law is the only set of rules and values that are binding on everybody in a modern society, all the rest is a matter of individual choice. Multiculturalism should be the norm and all cultures should be treated equally and given space to be promoted and preserved. Preserving one's culture is not limited to culinary art and music; it also concerns every other aspect of life. All minority languages have the right to be taught regardless whether they are the official state language or not. The existence of a *lingua franca* does not imply the disappearance of every other language. Political representation should be granted to all residents, one should not have all the obligations without having all the rights. The concept of a citizen should become colorless and cultureless. Not only justice should be blind, but also police, administration, school directors, employers and landlords.

At the same time, and on another level, Europe should exorcise its demons and deal with Islam like it deals with any other religion. Islam will forever be a part of European culture. It has contributed enormously to the foundation of European civilization, and can still contribute. Europeans of Arab and Muslim descent can and should become a bridge for better understanding between two of the greatest civilizations in history. Europe needs our help to dissociate itself from American hegemonic ambitions and to sail onto its own course. And we need Europe's help to break the international stagnation of our rightful cause in Palestine, and to ease the suffering of the Iraqi people under the criminal and illegal embargo.

The academic community in Belgium is now reexamining the two articles that the Arab European League published in May 2000, which caused a huge controversy. After taking our permission, the University of Antwerp decided to publish them in a special book in French and Dutch, together with other articles that were written in response to them. What was politically incorrect less than two years ago is now becoming academic material, and even politicians are admitting that they have missed the point on certain issues. This gives us hope for the future and makes us continue to believe in dialogue. A dialogue, however, cannot take the form of a dictate, and cannot be held if avoiding facts whenever they are hard to accept. Only an honest and frank dialogue will lead to results. Only the truth can and will save us.

Cultural Coexistence and the Absence of Law*

by Mohamed el-Sayed Said

The U.S. administration and other Western governments have made remarkable efforts to seize the responsables for the September 11 events, and to avoid extending the charge to include Muslims and Islam. They announced their rejection of the ideas of clash of civilizations and religious wars. Indeed, they tried to win Arab and Muslim public opinion over to their side in what they called a war against terrorism, and assured that the war should not – nor could it - be interpreted as a war against Islam. Moreover, they rallied to make declarations clearing Islam of any link to terrorism, and advocated a correct understanding, describing it as a religion of peace, coexistence and friendship between peoples.

In response, Arab governments made remarkable efforts to justify any ambiguity about their stand against terrorism in general, and the operations of September 11 and their perpetrators in particular. They assured that they had been the first to call for a global coalition against terrorism, for the equal treatment of terrorism -- in all its forms -- as a security threat to all countries, and for the creation of an international treaty to achieve its complete eradication. They also declared that there is a distinction between terrorism and legitimate struggles against occupation, but did not consider September 11 to be among the latter. On the contrary, all Arab and Muslim authorities, religious as well as political, rejected the attacks as a serious offense to Islam. In general, there was abundant political will to avoid sliding into such religious wars.

However, the fears of igniting public opinion in the Arab and Muslim worlds against the United States and the West, and of the situation getting out of control--starting with the American military operations in Afghanistan, did not prove right, and disappeared with time. Indeed, considerable segments of public opinion in a number of Muslim countries like Pakistan, Indonesia and Egypt, did protest. However, expressions of popular the rejection of this war did not in any way amount to calling for war or for launching an enormous wave of hatred that would have evolved into clashes. Nevertheless, the extent of anger against and rejection of the Taliban-system that rapidly emerged inside Afghanistan itself did play a role in calming down the vehemence of the legitimate popular uprising against the war in the Arab-Muslim world.

* This paper was translated from Arabic by Åshild Kjøek and Omnia Mehanna.

However, all of this does not mean that the probability of the outbreak of a bitter cultural clash, prompting extreme political congestion and military and economic struggles between Arab and Muslim countries and peoples on the one hand, and the United States and the West on the other, is over. And it is not possible to feel reassured by the claim that what might happen is a clash of ignorances rather than a clash of civilizations, as a prominent scholar like Dr. Edward Said says.

We do not know the exact meaning of the term "clash of civilizations". However, we do know that its intent is a series of cold -- possibly even hot -- wars that are triggered by or at least include cultural and religious struggles, i.e. that its motive is either a collision between meaning systems and world visions, or that its goal is the purification or damaging or subjection of one religious or cultural system to the benefit of the other.

Most great historical conflicts have invoked this cultural collision, even when it was not their original motive. This did not necessarily result from a genuine contradiction between then highest ideals and the actual expressions of those cultures, but rather from a misunderstanding and firm hostility, and stereotypes that might not have anything to do with the truth, which are often spread among the fanatic partisans of any culture or among masses that are ready to accept the worst kinds of propaganda and instigation. Cultures do normally not clash through a contest between philosophers and scientists, even when they have been mobilized in the furnace of clashes; but rather between enthusiasts with a fervent desire to exalt their religions and cultures without having the faintest understanding of the religions and cultures of others, or even of their own. Thus in reality, the most common way throughout history for cultures to fight in the political field has been the "clash of dialogues".

So is it possible to say that the fanatic crowds and those thirsty for violence against the other have become fewer on either side, or started to reexamine their ideas after the events of September 11 or the end of the war against Afghanistan with its known results? Definitely not.

The probability of sliding into the abyss of cultural struggle and of a clash between the Western and Arabic-Islamic civilizations will not end in the near or intermediate future, because the basic elements that led to the misunderstanding, and to the constant instigation and hatred between the sons of these two cultural systems, are still present and alert. In general, we can talk about certain inflammatory elements. First, there are actors on both sides who pursue and have an interest in instigating culture-based violence against the other. Moreover, there is a real agenda, i.e. topics of strong and acute conflict between the two worlds or political-cultural systems. There are also ideological-cultural conditions prompting violence and preparing public opinion for enmity, hatred and mutual rejection.

Since we analyzed these elements in the previous issue⁽¹⁾, our main concern here will not only be how to avert the outbreak of a cultural war, but more importantly how to attain sustainable relations between the two politico-cultural systems on the basis of peace, mutual acceptance and the common welfare of all humanity.

⁽¹⁾The paper has previously been published in CIHRS' journal "Rowaq Arabi" issue no.24, 2001.

I believe that the principal and most pressing task is to find a fast and effective solution to controversial issues and disputes, of which the most important -- in my opinion -- is the Arab-Israeli conflict and the inalienable rights of the Palestinian people.

This dispute is above all political. Nevertheless, its general environment, justifications, messages, language and organizations are all cultural. It seems to me that ways to eliminate confusion and avoid a complete cultural clash should be the starting points of any discussion, and also of any solution to the conflict between the Arabs and Muslims on the one hand, and America and the West on the other.

Law of Coexistence

It is natural that there are important differences in the cultural constitutions of the two parties. At the moment the West achieved its historical victory over the Soviet Union and the Communist Block, it is logical that the feelings of confidence in the basic values and norms of the Western world intensified when confronting other civilizations and cultures. This culture reached certainty of the correctness of the slogans and projects created by the main forces of its societies, such as globalization, privatization, market economy, etc. In response, it is also logical that the fear of other cultures and civilizations increased when confronted with the pressures that the West exerted upon them to accept all these projects as well as their legitimacy, without any discussion.

If differences in the readiness to accept or refuse or modify any idea concerning people's social and economic life are entirely logic and legitimate, what about a long list of concepts and ideas extending to areas that touch more upon privacy, and have a greater impact on personal and social life, such as the meaning of the family and its internal structure and relations, and the labor market and its standards. Humanity has demonstrated a legitimate fear of playing with our biological inheritance, and it is natural that various peoples and cultures demonstrate similar fears of spontaneous changes pressuring cultural inheritance, especially in periods of anxiety and insecurity and collapse of the trust in others, and sometimes even in the national identity. The Arab-Muslim world currently experiences a moment of turbulence caused by such fears and lack of confidence, which makes it consider with apprehension and tend to refuse the new standards that the West is imposing on it, starting with globalization, followed by market economy and arriving at women's rights, the way Westerners see them. Moreover, it is logical that it insists and concentrates its defenses on some of the cultural inheritance and recommendations that it considers to be the most essential to its environment and identity, or even to its will. Such disagreements or differences lead to tensions and congestions in the various junctions where the two civilizations meet:

However, such differences also exist between Western civilization and any other cultural system or civilization, such as Confucianism, Hinduism, Buddhism and others, without engendering bitterness or complaints or acute conflicts to the same extent that it has done in the relationship of the Arabs and Muslims to the West.

Despite the importance of these differences and disagreements, which do have a cultural content or incentive, it is doubtful that they are the reason for all the fervor and tension in this relationship, which September 11 reflected in a perverted way.

In any case, it is necessary to search for a peaceful and tolerant "law of coexistence" or for mutual acceptance between different cultures. It is clear that the most important basis for this law should be the organization of relations between the members of various cultures and cultural systems.

Another way of putting it, it may be acceptable for a culture to apply its own rules to relations between its own members, whether these rules are accepted by the members of other cultures or not. But it is not possible in practice, nor morally and fundamentally acceptable, for a civilization or culture to build its relations and interaction with others on the basis of complete cultural or moral relativity, as coexistence is impossible unless an agreement on shared values is reached. Peaceful coexistence is also impossible unless these shared values and norms are translated into a common law that is implementable and its principles are respected. Finally, there must be a generally accepted frame of reference, gaining universal respect, to settle disagreements between countries and peoples.

Are these not the minimum standards that constitute the substance and meaning of the idea of law, which represents the essential difference between civilization and barbarism or order and anarchy?

Naturally, an agreement on these meanings actually exists on the theoretical level otherwise there would not be current international system nor a certain formal respect at least for the organization of the United Nations and its Charter; and all actors, even on the edge of war, would not care to reassure their respect for this charter and accuse others of breaking its texts and principles.

Nonetheless, this formal agreement has not saved the world from the outbreak of tens of wars since the founding of the United Nations. Indeed, its "formality" and lack of actual implementation or the evident elusion of implementation it, is what has led to the current congestion between the Western and Arabic-Islamic civilizations, or between the Arabs and Muslims on the one hand, and the United States on the other.

This means that the formal agreement comprises disagreements and profound violations of the basic requirements of the idea of law and order, as outlined in the preceding paragraphs. We can add that important components of the two cultural systems, the Western and the Arabic-Islamic, could be interpreted by extremist forces in a way leading to serious incompatibility with these requirements and meanings. Nevertheless, it is not possible to equalize the significance of the serious violations of the requirements of peaceful coexistence or even the violent crimes that these contradictions might comprise, to crimes against humanity. Maybe we can demonstrate this in more detail as follows:

1) The idea of universal moral and values.

As soon as we start talking about cultural systems as human products, there is a very strong basis for asserting that universal moral and values exist. Actually, we find that every

culture has a certain understanding of "man", will, goodness, justice and the meaning of freedom.

There is no culture that describes itself as inferior to others or attributes such a position to itself. On the contrary, every culture has an inclination to describe itself as better than others, and attribute a value to "their people" as better than and superior to others. Kant's statement that "moral" is universal by nature might therefore collide with a firm barrier, exemplified by a tendency to focus on cultural or ethnic identity.

Moreover, relationships of strength intervene on all levels of interaction between the collective self and the other, and this is what fetters the principle of equality in different cultures, and doubles the doubts in the feasibility of the concepts of rights and law and their implementation on the international level, if not on all social relational levels.

Even when it comes to finer ways of expressing culture, it is usually easy to point to the primitive sources that are hidden in their depths or even apparent in them. And if we limit ourselves here to the Western and Arabic-Islamic civilizations, it will not be difficult to deduct profound common values and morals. But it will also not be difficult to point to contrary tendencies.

As a matter of fact, Western culture considers all other cultural systems, including the Arabic-Islamic, to be at best underdeveloped compared to itself, since Western culture represents the apex of evolution. Indeed, some look upon it as the final stage of evolution, and this is what makes "Western man" the "final man" in the Hegelian sense, as Fukuyama tried to prove.

In response, there is certainly a kind of confusion in Arab culture's position towards the West. Nearly everybody agrees that there is an "inferiority complex" that characterizes the Arab position toward the West. Nonetheless, there are also profound feelings of superiority, which might be rooted in Islam's essential conception of humankind's religious history, affirming that Mohamed was the "Seal of Prophets" and that Islam is the final heavenly message, and therefore of superior value.

As a matter of fact, it is possible to demonstrate the existence of universal moral and values, even though every culture tends to assert its superiority to others. However, the boulder against which the idea of universal moral and values is smashed, is the certainty that some cultures have not only of their own worthiness or merit to superiority as such, but also of their right to invade and change other cultures; and subjugate and modify them in a forced way with the purpose of imposing similarity to the self. In sum, the idea of "the right to invade", not merely "the merit of superiority", is the philosophical antithesis to the idea of "universal moral", as the former comprises all the outcomes and ideological and historical consequences of the most violent manifestations of moral relativity.

The fear of Islam is at least partially based on the perception that Muslims attribute the right to invade "other peoples and cultures" to themselves. Indeed, some of the propaganda that has been spread by "the Afghan Arabs" partially justifies these fears. These people did not stop at merely pointing to the Americans and other Westerners as 'forces of global arrogance' or even as "infidels", but also stressed their resemblance to Byzantine imperialism, which was overthrown by Islamic Jihad.

The philosophy of the “jihadic trends” of the new Islamiist movement is generally based on something very far from Islam’s missionary call. Men like Mawdudi, Sayyed Qutb and Abdel Salam Farag insisted that jihad consists of a mandatory, religious duty to erect an “Islamic system” in all corners of the world, not merely to spread the message of Islam to all peoples. This idea is probably the cornerstone of the practices of men like Osama Ben Laden, Ayman el-Zawahari and other leaders of al-Qaeda to whom the United States ascribe the responsibility for the planning of September 11.

We must acknowledge -- on our hand -- that there is a certain ambiguity that justifies the others’ fear. On the one hand, the ideas defended by extremists such as Mawdudi and Sayyed Qutb are hardly reflected in the minds of the overwhelming majority of Muslims. From the political perspective, merely suggesting a Muslim “invasion” of the West seems to cause almost everyone’s surprise here in the Arab and Muslim worlds, as we are barely liberated from Western colonization and still feel the Western countries’ hammers above our heads. There is no room for measuring strength between the Arabs-Muslims and the West.

But on the other hand, this extremist interpretation of the religion has not completely abated, and it is not possible to claim that its roots and some of its dangerous outcomes do no longer exist in religious practices or even in “missionary work”. Religious, intellectual, and cultural leaders and opinion makers in the Arab and Muslim worlds should announce a complete rupture with this perspective. Jihad is a purely defensive concept and Muslims’ duty to call others to their religion is definitely limited to “exhortation” and does not include any kind of coercion or violence, neither internally nor externally. The most important thing is that Islam calls its followers to accept the religious other, and for peaceful coexistence with others.

As a matter of fact, this is how the overwhelming majority of Muslims all over the world understand Islam. Even though there is an extremely small minority exercising violence against the religious other in the name of jihad, it has no right nor worthiness to speak in the name of Islam.

While those advocating violence against the other in the name of Islamic Jihad are an extremely small minority in the wider framework of current Arab-Muslim culture, those speaking of the Westernization of non-Western peoples constitute the majority and represent the mainstream or the main way of thinking about other cultures in the Western world. Even though none but a small minority in the West insists on calling for Westernization by means of force or violence or invasion or occupation, this perspective itself implicates a great deal of symbolic and indirect violence, as Western culture has reached a stage where its members perceive it not only as the most developed and superior, but even as “the culture” or “the civilization”. Thus, we find that the “war against terrorism” –slogan raised by the Bush administration has a parallel in “defending civilization”, as the West and civilization have become synonymous. Facing such contradictory perspectives, it will not be possible to save the world but through the idea of shared values and universal moral, and this is an idea that tolerates and even defends multiculturalism without drowning the common fate in the seas of relativity.

From my perspective, I believe there is a real threat to common human civilization, specifically understood as the material embodiment of universal moral and shared values.

There is thus a real need for a international alliance not only for the sake of defending civilization, but also for developing it. If it is considered acceptable to deal with the responsables for the September 11 events and the Taliban and other extremist Islamit movements as opponents and threats to civilization, it is also a duty to deal with all fundamentalisms and similar fundamentalist violent trends in other cultural systems – including the West itself – in the same way, i.e. by considering them as opponents and threats to civilization.

In particular, Muslims all over the world would accept to join a global coalition against terrorism, violence and extremism if the world and the West in particular would deal with Zionism as one of the most important manifestations of contemporary terrorism, violence and extremism.

It seems that our problem with the West as Arabs particularly lies in that it adopts, consolidates, defends and protects Zionism and creates the foundations for its aggression despite its being a fundamentalist ideology, extremist and violent; and primitive and barbarian in essence. It is not possible to defend Zionism just because Israel is “democratic”, according to what Westerners say, in the same way that it is not possible to justify the dissolved apartheid system in South Africa merely because it was “democratic”.

Zionism is an anti-universal ideology, based on the mythological idea of the genius of the Jewish people or its being “God’s chosen people”, demanding a privileged position above humanity for itself. The core of the Zionist doctrine is to establish a nation and a state on the basis of religion, and it denies the possibility of integration between peoples, not seeing a possibility for a solution to what it calls “the Jewish Question” but through the secession of Jews from all other peoples to which they belong, and their uniting to form a state seizing its territory from a completely different people that have lived on it throughout recorded history, i.e. the Palestinian people.

2) *The Idea of International Law*

Law is the crucial difference between barbarism and civilization, just as international law represents the crucial difference between coexistence and war, order and anarchy, and justice and injustice or power politics. Where does both civilizations’ problem of perceiving law in general, and international law in particular, especially in the relationship between them, lie? The Arab-Muslim culture is certainly based on the central status and the strict meaning of the law that is called Shar’ia, which indicates its religious content and holy authority.

Pure Islamic culture has a real problem with manmade law, which has become Muslim countries’ dominant pattern of legal systems. The national elites and dominant judicial schools of thought in these countries have strived to harmonize manmade legislation to what is called Islamic shar’ia to a very large extent. Nevertheless, miniscule differences provoke a broad segment of the population calling itself the Islamic movement. Unfortunately, this movement sees manmade law as an expression of serious deviation, reaching the degree of infidelity. There are numerous approaches to this position, starting

from the most moderate to the most extreme. The former contends itself with suggesting simple additions to the legislation, while the latter suggests to cancel manmade law completely and replace the constitution with the Koran.

The experience of the Iranian Revolution, which adopted the latter approach, indicates serious violations of human rights and certain basic fundamentals of the principle of abstract or comparative law. Naturally, this question constitutes one of the sources of the hostility Islamists harbor toward the West, under the presumption that it is the direct source of the “manmade” legislation implemented in most Muslim societies.

However, the contradiction may be greater and even more important in the field of international law. A relatively long time ago, during the first days of Islam, Muslim jurists established a theory differentiating between “the land of war” (*dar al-harb*) and “the land of peace” (*dar al-salam*). Even though they elaborated upon the very general rules guiding the laws of war established in the Koran, which may be considered the most important development of what is called international humanitarian law during the Middle Ages, war still represented the general nature of the relationship between Muslims and non-Muslims.

Both thinking and reality have overtaken this theory, as the concept of “reciprocity” has been widely established as the basis for handling international relations between the two parties. In the last two centuries, when international law – originating in the West - became dominant, the overwhelming majority of Muslim societies did not have any real problem with accepting it and looking upon it as an accepted arbitrator of international relations.

However, Islamist trends that never openly accepted the idea of international law as a law for obtaining peace between peoples and nations, were always ready to point to the actual violations of the basic rules of the international legal system on part of the powerful Western countries to justify their “disengagement” from it.

In general, the Islamist trend considered Western international law to be closer to hypocrisy than reality, due to the many violations of this law when it conflicted with the interests of the dominant Western countries.

The most important problem with the Islamists’ perception of international law emerges in their ambition to secede Muslims all over the world from the countries to which they belong, and unite them in a “state” or rather an Islamic “caliphate”. As a matter of fact, this perception has begun to penetrate the public consciousness in Arab and Muslim societies to some degree, and leads to unrestrained support for secessionist movements. This creates a big chasm in the idea of international law, as this perception is contrary to some of the basic fundamentals of international law, by making religion rather than nationality or sovereignty the organizing principle of belonging and of political and legal allegiance.

Western civilization has greatly bypassed the idea of Divine Law (which is the essence of the concept of *shar’ia*). Democratic principles based on the prevalence of security, the rule of law and representative and civil institutions, have become the final arbiter and the basis for political stability in these societies.

However, the degree of rupture with religious sources created by modern manmade law in most Western states might be exaggerated. Nonetheless, these societies’ attempts to

export their legal philosophies to the outside world in general, and to Arab-Muslim societies in particular, is more important, and what causes the congestion and anxiety in sectors of these societies to which we have pointed.

Nonetheless, the actual and principal source, which cannot be overestimated, of this tension and contradiction is inherent in Western civilization 's paradoxical position towards "international law". When the idea of modern international law was first introduced in the 16th and 17th centuries, its geographic jurisdiction was referred to as "the civilized countries", and similar expressions excluding everything that is not Western. These countries considered it their right to colonize the lands of others without discussion, and this concept is even much less developed than the first Muslims' concept of "Land of War" (*dar al-harb*). There is no doubt that until very recently, Westerners' position toward the non-Western world was shaped by strong taints of racism.

In the post-colonial era it is no longer possible to boast of or acquiesce to a racist perception of the world. But we may talk with great authority and clarity about the betrayal of the West as a whole, and of the United States in particular, of the project and defense of implementing international law in an integral, fair and unbiased way.

Put simply, the Arab world was among the areas that fell victim to the betrayal of the West and its hypocrisy toward international law. In this context, we will concern ourselves with pointing at some general formulations that serve to justify this betrayal, from the practical or even principal point of view.

American universities and Western academia in general teach the science of international relations starting from the concepts of power and its relations. In this science, any systematical analysis would begin with pointing at the inherent "anarchy" of the international system, rather than at the characteristics of the system itself or the theory of international law. What is surprising is that this analysis is transformed into a kind of "self-fulfilling prophecy". There is no state or power more qualified than the United States -- the greatest power, and therefore the only -- to guard due respect for international law, and ensure the possibility for its implementation. By pointing to this "anarchy", it gives a justification to itself for not venturing to adopt its implementation as the highest level of defending civilization.

When being familiar with the permanent criticism voiced by some Americans against the United Nations, it is possible for us to understand why the United States does not take upon itself to defend international law as a reality, or at least a project. It is clear from this criticism targeting what the Americans call "an automatic majority", i.e. that the Third World, which constitutes the majority of the world's countries, imposes what it sees fit on the United States, although this majority's authority is limited to the General Assembly.

We would like to point out that Arabs in particular were victims of the United States' betrayal or abandonment of international law, which in this case appears by granting Israel a privilege to violate international law without any fear of punishment, a privilege that forms part of a permanent support.

The list of Israel's violations of international law in general and United Nations resolutions in particular would fill many volumes. Here, we will be concerned with those

violations that should be subjects of profound thinking and continuous dialogue between the Arabs and the West.

Violation #1: the foundation of a state on the basis of Divine Right or a religious mandate, which is entirely contrary to the simplest basics of modern international law.

Violation # 2: the destruction of the Palestinian people; the disavowal of it; the forcible seizure of its lands, property, name and cultural inheritance; the forced refuge of the greater part of this people outside its country, and the imposition of an extremely cruel system of occupation on the remainder.

Violation # 3: the acquisition -- or seizure -- of the lands of others by force and means of wars. Syrian territory is still occupied until now; and Egyptian and Lebanese territories were occupied until recently.

Violation # 4: the violation of -- and disregard for implementing -- all the international resolutions related to the inalienable rights of the Palestinian people.

We can add a long series of violations that are not directly related to Arabs, such as acts of international terrorism, dealing in the international black market for weapons, circumstantial support for numerous governments and/or rebel movements in the state of civil war for the purpose of gaining economic and political profit.

These violations would not in themselves inevitably lead to a huge chasm in the relationship between Arabs and Muslims on the one hand, and the United States and the West in general on the other, if it were not for the latter's bias in favor of and protection and support for Israel and their cover up of its crimes, thus encouraging it to continue its violations of international law and the destruction of the Palestinian people.

This has led to a collapse in all Arabs' faith in the United States' sincerity toward international law as a principle and idea. Regardless of their political, religious or denominational belonging, Arabs all over the world agree that the United States practices dual policies and uses double standards. The extremist sectors of society and the political leadership in the Arab world utilize this betrayal of international law in order to prove that there was never such a thing as international law, or to undermine its credibility.

It is necessary to conduct a profound dialogue reestablishing the respect for international law and its universality, and its merit to be implemented on the international level in an impartial and reliable way.

3) A Frame of Reference for Settling Disputes: The International Justice System

Everyone realizes that the legal theory prevailing in the United States is about the only one in the world defending the "duality of law", since American thought distances itself from blind implementation of international law or considering it with due respect. This standpoint constitutes one of the most important reasons for the "betrayal" of international law, especially in cases pertaining to conflicts between the West -- or its alleged extensions, such as Israel -- on the one hand, and the Third World in general and the Arab World in particular on the other.

Nevertheless, the United States does not explain its abandonment of international law, particularly in the above-mentioned cases, as anything but mere disagreements on diagnosis, responsibilities and procedural details. For instance, it believes that Israel was in a state of "self defense" when launching the 1967 War. America also concurs to Israel's strange theory that Resolution 242 does not decree a withdrawal from all the territories occupied in 1967, but only from "occupied territories", which necessitates negotiations to solve the conflict. The United States was and still is covering Israel's responsibility for the forced migration of the Palestinian people and for imposing a state of refuge on it, and has therefore sent delegation after delegation to persuade the Arabs and Palestinians to settle and naturalize the refugees in Arab countries other than their own. Thus, the matter does not appear as a disagreement on established legal principles, even though it really is, but rather as a disagreement on procedural and historical details.

As a matter of fact, all differences on the basic meaning of law and rights are usually depicted to concern procedures and details rather than betrayal or abandonment of principles by some party. A thief rarely admits to have stolen anything that does not belong to him. Therefore, culture or civilization must acknowledge the specific significance of the authority of the justice system, and in this case the authority of the international justice system.

The confusion appears as a mere procedural problem. But in reality it is not. According to Arabs and Muslims, there is nothing in their culture that makes them deny the need for an international justice system. But there is also nothing that makes them demand anything but simple arbitration. If we set aside the problem of the justice system's impartiality, there appears to be an even more profound problem with very fundamental characteristics, i.e. the nature of universal values and of the judicial authority interpreting them to which disputes are referred. If there is no truly international authority, and if the legal text is not founded on shared and clearly defined values-- implementable in all analogous cases -- and on prior approval by everyone, the acceptance of rulings issued even by the most sincere judges will not be possible. As we have pointed out before, there are some hiatuses in Arab-Muslim culture as to the explicit recognition of universal values and the supreme judicial authority, when it comes to handling disputes between themselves and other peoples, or between Muslims and non-Muslims.

It has never happened in modern history that a state has opposed the legal system as a whole, or the entire contents of a legal text. Though some Arab countries have derogated from certain treaties or agreements and others have made reservations, other countries have certainly done this as well. The important thing is that it is not possible to say that the Arabs and Muslims openly opposed the idea of universal values or a common frame of reference for international law, even though it is a manmade law.

As an extension of this, the Arabs never rejected the international judicial system or the judicial authority of relevant UN bodies, in particular the International Court of Justice. They were not among the opponents to broadening the jurisdiction of the international legal system, though they were not among the countries that were most enthusiastic about it. The approach appears to be very different in the West, and in the United States in particular, as the United States itself exercised and imposed international judicial authority in the aftermath of the Second World War, for instance in "the Nuremberg Trials", in its capacity as a victorious state. In fact, this was a kind of encroachment on the assumed authority of the international judicial system or a mixing up of the judicial system of the winner of

international wars with the international judicial system, which should enjoy complete impartiality.

The United States has preferred to rely on special courts inflicting punishments on those it perceives to be war criminals, as it happened in the case of the conflicts in Bosnia-Herzegovina and Kosovo, while opposing the establishment of an international judicial authority with the task of settling disputes in peaceful ways, according to international law, expressing the authority of the international community regarding disagreements, disputes and armed conflicts.

As a matter of fact, many great conflicts could have been averted, if the United States in particular had believed in or been enthusiastic about the authority of the international judicial system, compared to any other decision-making structure. The Security Council has a certain judicial function when conflicts that threaten international peace and security are brought before it, but it does not exercise this function on the basis of judicial authority, including the authority of the Charter that is binding upon it, but rather issues its resolutions in a political way, and depending on the countries' voting according to their direct interests.

In the past ten years, the United States has preferred to work basically through individual action or NATO. This has resulted in the marginalization even the Security Council, where the United States enjoys veto power and actual leadership.

What invokes astonishment is that the United States was the party that started advocating the setting up of a new international system, without presenting any idea on the legal foundations for this system. Therefore, though there is a UN committee set up to receive suggestions on reforming the UN system, nobody expects fast changes, especially when it comes to the role of the International Court of Justice.

From this perspective, it becomes clear that the United States in particular and the great Western countries in general, carry the responsibility for wasting precious opportunities to reform the United Nations system, and to found a new structure for implementing international law through a neutral judicial mechanism.

America and the West prefer political methods for making international decisions to legal methods, they prefer structures based on alliances such as NATO to structures based on discipline and inclusiveness such as the United Nations, and they prefer closed-membership forums such as the Security Council compared to open-membership forums structures such as the General Assembly. Put differently, the strong countries prefer to benefit from the advantages of strength to consolidating the authority of law.

And for this reason, i.e. the absence of an international judicial authority or of an impartial international authority implementing international law and resolutions, the Arabs have paid an exorbitant price. The injustice that has befallen the Palestinian people is twofold, as the international resolution was not just enough in itself to stop the horrendous destruction that has happened to this people on the part of Israel, and secondly, as this insufficient international resolution was not even implemented due to resistance from Israel and America, and sometimes the entire West, which takes us back to the issue of the international legal system or its absence.

Annexes
I) Additional Papers

Clash of Civilizations A Fateful Prophecy that May Come True*

by Mohamed el-Sayed Said

The 11th of September 2001 terrorist attacks against the United States claimed the lives of thousands and had a significant impact on the strategic and political dimensions of international relations.

The US military operations against Afghanistan that started on the 8th of October 2001 resulted in the death of thousands of innocent victims, and have also caused drastic changes and storms in the strategic and political dimensions of international relations, but the fact that it has detonate

However, it is not the humanitarian, political and strategic consequences of these events that distinguish this from other crises and conflicts since World War II, but the fact that in one stroke it opened the chapter of the clash of religions and cultures, Islam and the contemporary western civilization in particular. Such a clash is no more a mere theory, assumption or ominous prophecy. It has come close to being real.

The consequences of its turning into reality would be like the clefts in the Earth's crust, which came into being one moment in the history of the universe rupturing continents and separating them by oceans, gulfs and long stretches that can be crossed only in months and years of arduous travel. If at any moment in the future of humanity such clefts between cultures and religions were to come into existence, the divisions will not be of water but fire. Traveling across cultures and religions will be impossible no matter what comfortable means of transport are available. Most probably, symbolic or physical annihilation would be the prevailing view and guiding paradigm.

Is this an overestimation of the danger these events represent? Perhaps, as in the here and now the Arab and US leaders attempt to suppress the belief that the terrorist attack on the US is a prelude to a religious war. The US president and his senior assistants asserted that the war against Afghanistan is not a war against Islam or Muslims but rather a war against terrorism. They called upon the US citizens to abstain

* This paper has previously been published as an editorial in Rowaq Arabi (CIHRS' journal), issue no.23, 2001

from revenge attacks against Arab or Muslim Americans, and to distinguish between Islam and terrorism, which they argued belonged not to any one country or religion.

On the other hand, almost all Arab and Islamic states fell over each other to provide all forms of assistance to the US in hunting down the perpetrators and in the so-called 'war against terrorism.' Some of these states provided significant logistic leverage to the US military operations against Afghanistan, among them were the Gulf States, which had signed joint defense agreements with the US. Arab and Islamic states sought in this way to avoid the division into Muslim and non-Muslim camps, and thus to rebut the clash of civilizations theory and preclude the materialization of the predicted conflict of religions and cultures.

Aside from agreement or opposition to the measures taken by the Arab, Muslim and Western states, at the head of which came the US, these measures helped prevent the specter of war between cultures, religions and civilizations from dominating the international intellectual and political arena, in the immediate future.

Perhaps all of this calls on us to not inflate the danger, for so often does a prophecy fulfill itself by the power of suggestion and repetition rather than being true in itself. However, honest observers of the event, especially those starting from a true humanitarian perspective, cannot callously underestimate or deny the impending threat.

There are some unmistakable signs of danger. Setting aside scenes that do not directly relate to the recent events, and limiting ourselves to examining the world scene in the wake of the terrorist attack on NY and Washington D.C., we will find many disquieting indications.

Concerning the US and the West at large, no one can belittle the spread of Islamophobia as a reaction to the attack on Washington and New York. We are not concerned here with a "slip of the tongue" by some major European and American politicians as President Bush (talking of a crusade against terrorism), the Italian Prime Minister (who blamed Islam for the incident) or the former British Prime Minister Margaret Thatcher (who blamed Islamic leaderships in Britain and Europe for not condemning these incidents enough). We are more concerned here with the profundity of the horror, the hatred perhaps, that manifested itself in the reactions of a broad sector of Europeans and Americans.

Many believe that these manifestations will fade away or perhaps die out after the September 11 shock ends. However, these expectations are not guarantees in themselves. Indeed anti-Islamic or anti-Muslims sentiments may continue to grow deeper, even if less overt, unless tackled actively and with due concern.

On the Arab and Islamic side in general, one can not belittle the extent of the feeling of happiness expressed by a large sector of the public in response to September 11th. They supported the attack, implicitly or explicitly, as divine justice or legitimate reprisal for the United States' blind bias to Israel and other features of its brutal policy towards Islamic and Arab states like Iraq, Sudan and Libya.

In fact, the variance between the United States and public opinion in the Arab and Islamic worlds is nothing new. Nor are the scenes of conflict between the United States and a large number of Arab and Islamic countries. Many fierce struggles erupted since the Americans made their forceful entrance onto the Arab regional arena as the heir to the traditional colonial power in the region. Popular rejection of the US policies is considered one of the permanent features of political life in Arab and Islamic countries since the beginning of the fifties at least.

Nevertheless, the representation of such contradiction and struggle was limited to two basic forms: nationalism on the one hand and imperialism on the other. This means that the understanding of the nature of the conflict was based, in essence, on national consciousness itself and was fused with the national identity that had been passed down from the era of struggle against European colonialism. From this perspective, the US was not regarded as a Christian or religious fanatic state, but as the hegemonic power in the world order or the leader of world capitalism or other terms denoting "interests" not fixed "beliefs." In this sense, "imperialism" is not meant to refer to specific people or certain religious or non-religious intentions, creeds or beliefs, but rather a social formation driven by profit, the economy and strategic interests.

On the US side, the driving force was not, at least *prima facie*, a struggle against 'Arabs' or 'Muslims' as such or because of their religious or national identity. Quite the contrary. The American policy in the region remained based on an essentially geopolitical perspective. It considered the Arab region as a fundamental area in the framework of its policies to curtail communism. Hence, Islam was seen as an indispensable ally in the confrontation with the USSR and the danger of the spread of communism in general. Therefore the alliance with states that are religious by their very nature, such as Pakistan and Saudi Arabia, constituted the cornerstone of the US policies in the region and the whole world during the cold war. This alliance took form in several successive links in which the war against the Soviet presence in Afghanistan was among the most important.

This alliance between the United States and conservative "Islamist" tendencies in the Arab and Islamic worlds was based on an awareness completely different from, and contradictory to, the Arab nationalist consciousness. For fifty successive years, up till the mid-nineties, the Americans employed the ideology of political Islam with notable "success." It was employed not only against Soviet and Chinese communism, but also in confrontation with nationalist movements, especially those that had a progressive nature ensuing from their experience with the West, and the US in particular. The US utilized this ideology far beyond the borders of the Arab World. For instance, the Suharto 1966 coup d'etat was loaded with "Islamic" denotations as justification for the ghastly massacres perpetrated by the military in Indonesia after the coup that suspended and later overthrew Sukarno and his regime. It is well known that this coup enjoyed the US blessings. Many "Islamic" states supported the United States against Nasserism and other pan-Arab movements in the Arab world. They even fought

with the US in hot wars like the War of Yemen, 1962-67. Such states rendered their unconditional support to American schemes to form military alliances connected to the US and NATO against communism and against national, progressive and pan-Arab movements in Egypt, Syria and Iraq.

The US remained benumbed by the traditions of its alliance with "political Islam" even after parting way with some movements that hoist the banner of this ideology, in particular the Arab Afghans, since the mid-nineties or a little earlier. For example, the Americans provided a strong "evidence" of their continued trust in this alliance in their strong support of the independence of Bosnia, Herzegovina and Kosovo against the European position. The Americans even refer to the services they rendered to the "Muslims" in waging a full-scale war against Serbia in support of the Albanian Muslims in Kosovo.

Indeed the US positions in these cases were to an extent considered "satisfactory" by the Arab governments that uphold the banner of Islam as the basis of their political legitimacy. However, these positions were far from enough to stem the tide of anger on the part of the Arab peoples as well as the new political Islam movements, in particular "the Arab Afghans."

From the viewpoint of the Arab peoples and some "moderate" governments in the region, the moves by the US, here and there, in support of the rights of the "Muslims" were no acceptable consolation for the continued, profound and blind American bias to Israel. It was also no recompense for the defective and failed US peace diplomacy in the region and its deviation from the principles of equity and the resolutions of the United Nations and international law.

The Arab peoples and most "moderate" Arab governments perceived this bias in terms of 'nationalism' and 'pan-Arabism' versus 'imperialism' and 'domination'. However, a new current has been steadily growing inside Arab societies pulling public opinion towards "an alternative vision" of the US. This vision replaces the view of the US as a superpower or an imperialist state with a view of it as a "Christian state," a state that defines itself as part of or leader of a cultural region or civilization that it calls "Judaic-Christian."

We may not be able here to make a profound analysis of the mechanisms of this change in the vision of the 'American Other' that plays an overwhelming political, strategic and economic role in this part of the world. For the purpose of this editorial, it suffices here to touch on two mechanisms only:

The first mechanism is national despair. Feelings of despair and the absence of hope to reach a just and comprehensive solution to the struggle with Israel have deep their roots. In addition, the length of the period in which the Arabs attempted fervently to persuade the US to work expeditiously on arriving at such a solution to no avail in itself represented a significant dimension in the steady accumulation of feelings of desperation among the ranks of both the governments and the peoples.

Arabs have been 'chasing' the US requesting a lasting, comprehensive and just peace at least since 1974, but in vain. A large number of Arab governments have 'taken off' their radical and pan-Arab ideological mantles and moved to objectively pro-American ideologies, policies and orientations. Thus, they had to conclude that the American bias does not stem from 'interests' and 'policies' but rather from 'dogmas,' i.e. from culture and religion. Consequently, the representation of the US changed from the language of interests and strategic positions to the language of religion and culture.

The second mechanism relates to the ideological-cultural translation of the dramatic changes in the Arab socio-political formations in themselves. From here we move directly to discussing a general 'law' for these changes and their pursuant ideological mantles. This general law can be briefed as follows: "Throughout two centuries, two main ideologies competed for the Arab mind: fundamentalist religious ideology on one hand and modern nationalism on the other" Whenever the latter is defeated, the first comes to the fore. This was what happened, in an accumulating, yet rapid, way after the 1967 defeat and even more dramatically after the Israeli invasion of Lebanon in 1982.

In general, fundamentalist ideologies, which join together in politicizing Islam, took the lead in the Arab political arena with the growth of frustration and desperation and frustration regarding the making of a lasting, just and comprehensive peace in the region. The Arab-Israeli conflict has been the dramatic condenser of all ideological and political struggles in the Arab arena, and may be in the entire Islamic world. Frustration reaching its peak last year, with the eruption of the Palestinian Intifada (uprising) and the escalation of the brutal Israeli oppression, the position of political Islamic movements at the forefront of ideologies was reinforced.

Though the movement of Arab Afghans has never contributed in the Arab and Palestinian national struggle against Israel, they reaped the grapes of despair from this very issue. It was relatively easy to justify the terrorist attack against the United States as some sort of reprisal against the superpower that have become a (Christian) ally to the Jews in their religious war against Islam itself.

The United States has traditionally treated the progressive, national and pan-Arab movements with animosity, and paved the way for Islamic fundamentalism to seize the political initiative in the Arab world. In this way the Americans have 'defeated' national, pan-Arab, radical and moderate ideologies alike. By their failure to recognize that working towards a just, comprehensive and lasting solution to the Arab-Israeli conflict is unavoidable, the Americans handed over the lead to the ideology of both radical and moderate political Islam. Those who the Americans thought were their allies by necessity turned out to be their enemy and foe. The Arab Afghans were not but the historical intermediary of this change from alliance to enmity, from the language of interests and political thinking to that of faith and religion.

The influence of political Islam has increased swiftly and held the political initiative in a significant number of Arab states, benefiting from the frustration from the

failure of Arab nationalist regimes in putting an end to the continued Israeli aggression and reaching a solution for the issue of the Palestinian people.

During almost the same period, the influence of political Christianity, tainted with Zionism (Zionist Christianity), has increased as quickly and acquired considerable bases of power in the US. This trend has succeeded in influencing decision-making of the American foreign policy, in particular under Ronald Reagan. Currently, this tendency receded to some extent but still has a significant influence in forming the attitudes of a considerable sector of the American people and a number of senior officials in Republican administrations, including the current administration of G. W. Bush junior.

Though vastly different in substance, the movements of political Islam in the Arab and Islamic worlds and political Christianity in the US share many distinctive characteristics in their worldview and their understanding of world cultural and political realities.

We are specifically concerned here with comparing the outlook of the more extreme trend of the Islamic movement to that of such trends and groups of political Christianity as the Saved, the Moral Majority, and the Born-Again in the United States. Each of these trends, far as they maybe in geographical and cultural distance, depicts the international cultural/political realities in terms of the dichotomy of the believer/the disbeliever. From the viewpoint of extremist Islamists all those who are not Muslims are infidels. Likewise, whoever does not embrace the Christian creed of Zionist Christians is an infidel. Each trend sees itself as the only true and admissible religion/faith. This dichotomy works in an extreme form: the sacred mission for each of them is to restore the one true faith to the whole world whether through *tableegh* (proselytizing) / Jihad or missionary work/war.

Each of these trends starts from the prophecy of inheriting the earth. Osama Bin Laden and Ayman el-Zawahiry are mobilizing, religiously and politically, the "Mohammedan army" to inherit the Eastern and Western Empires by analogy to the historical moment when the armies of the Muslim Arabs inherited the Roman and Persian empires in the middle of the seventh century AD. The "Mohammedan army" crossed half the way by defeating the Soviet Empire. It only remains now to finish the American Empire and Islam would inherit the earth.

On the other hand, the beliefs of such groups as the Moral Majority and the Saved are based on the prophecy of the second coming of Christ to inherit the earth and rule over it for a millenium before the Day of Judgment. The disbelievers will be annihilated in the gigantic battle of Armageddon. To fulfill such prophecy/ promise, each side sanctions violence against the other. They even consider violence the midwife of this prophecy. Thus terrorism is seen by the Arab Afghans to be jihad, which is considered an "individual duty", in other words an obligation on all Muslims.

As to Zionist Christianity, violence is even more brutal and manifests itself in the wars that prepare for the coming of Christ and conquering his enemies. Material and

symbolic violence is seen to its ultimate in the prophecy of the apocalypse and the end of life on earth.

For each of them, Palestine appears in the discourse of violence and the prophecy of inheritance as a symbol and a location with special message. In fact, the role played by Palestine is not defined unequivocally in the thought of the Islamist extremists. The belief in the inheritance of the earth endows the project of the "Arab Afghans" and other extremist currents inside the Islamist movement with an offensive nature that goes much further than the "liberation of Palestine" or driving "the infidels" out of the Arab peninsula. They chose the "heart of the empire," the US itself, as a battlefield for their most ferocious battle: the 11th of September 2000. In fact, the Arab Afghans have never engaged directly with the Palestinian question. Indeed, their emergence in the Arab and international arena was associated with a great paradox. At the time when the Palestinian question was ablaze, thousands of young men from Mauritania and Morocco to Kuwait and Saudi Arabia opted to fight in Afghanistan against the "infidels" (the Soviets) who were the main source of strategic support and arms to the Palestinian national movement. Soon they transferred their jihad temporarily from Afghanistan to their homelands where they created unlimited panic that is still blazing in Algeria, Yemen and Sudan. They even covered longer distances to wage war in Bosnia, Herzegovina and Chechnya leaving the Arab/Israeli struggle for others.

Despite this crystal-clear paradox, Palestine has played a central role in forming the awareness of these leaders. Perhaps the tragic conditions that followed from the Israeli aggression were what spurred them in the first place to such extreme reaction as they held the US responsible for these conditions. Perhaps these conditions have also led them to come up with a simplistic notion to the effect that pushing the "American Empire" towards its downfall would consequently result in the mechanical collapse of its dependents such as Israel.

The statement by Osama Bin Laden on Al-Jazira station at the beginning of the US military operations against Afghanistan would not have had any significant influence on the Arab and Islamic public opinion had Bin Laden not invoked the Palestinian question and the painful memories impressed in the minds and souls of all Arabs and Muslims. In other words, even if Palestine is not the battlefield for the offensive by extremist Islamist leaders, it remains crucial in the advocacy of their project and, certainly, in shaping their awareness itself.

For the political Christian movements in the United States, Palestine is the arena for the offensive (against Arabs and Muslims of course) and the place that represents and signifies the prophecy of resurrection. Thus it was only natural that these movements constitute a pro-Israeli reserve army in the United States, perhaps more so than the Jewish communities and Zionist organizations themselves, especially in the last two decades.

This astonishing symmetry or equivalence in the mental make-up and attitudes should not of course conceal the immediate contrast. There is a sort of objective

alliance between both parties to drive the region and the whole world into the fires of religious war, yet they represent the direct opposites. More importantly, they represent the hubs of the fateful prophecy: religious and cultural wars.

So far I have tackled two basic elements of the scenario of religious and cultural war: firstly, the formation of strong traditions of employing religion in both the Arab/Islamic world and the US/the West, and secondly the growth of influential extremist movements putting forth an aggressive offensive project that aims at changing the world and casting it in dogmatic, monolithic, religious visions.

The mere existence of both elements would not have in itself constituted a sufficient momentum for the ominous prophecy (religious war and clash of civilizations). In fact, the direct problem begins when these political powers with their vested interests lay their hands on ready-made mediums that are relatively easy to utilize. Such mediums are available in a plethora of mirror-image stereotypes and culturally rooted attitudes. They are fueled by some existing and expected facts that are manipulated politically and in the media so as to reinforce the stereotypes and ready attitudes that each side holds towards the other.

Here we must assert, clearly and frankly, that the American stereotypes and apprehensive, cynical and aggressive attitudes towards the Arabs are much stronger than those that the Arabs have or had towards the United States and the American society.

Perhaps the matter is even more serious. Modernist Arabs started their wide-ranging relations with the US with a great deal of positive stereotypes and good-intentioned attitudes, which were not reaffirmed by the solid facts.

The Arabs did not hold a grudge against the US while they held accumulated resentment of Western Europe, in particular the countries of classical colonialism such as Britain, France, Belgium, and to a lesser degree, Russia and Spain. On the contrary, Arabs regarded with great optimism the US whose president, Wilson, had declared his 14 principles, including the right to self-determination. Long after the end of World War II the Arabs looked towards the United States with great interest as a potential supporter in their national struggle and as a possible escape from the predicament of western imperialism. These aspirations were first frustrated when the US voted against the discussion of Egypt's independence in the Security Council in 1946.

Frustration doubled when the US expressed strong support for the establishment of Israel at the expense of Arab's rights in 1947 and 1948. Before long, the US clashed with national and liberation movements in the Arab world in its attempts to convince the Arabs that the real threat to their security, i.e. their enemy, is the Soviet Union, right there thousands of miles away. This was at a time when the Arabs were bearing the brunt of European colonialism and Israel was laying the stones of its expansionist project at the expense of the Palestinian people in their midst.

Our purpose here is not to review history. The important point is that the Arabs came to the conclusion that the US was set on using the Arab world to her benefit and

imposing her agenda on the Arab peoples regardless of, and even at the expense of, their interests and visions.

In their long-standing relations with the US, that have been tense since then, the Arabs formed a stereotype of the American society as being racist, arrogant, one track minded, and aggressive in general. Because of the rise of the Islamic movements to the forefront of cultural and political opposition in the Arab world, other characteristics were added to this stereotype. They were imbued with religious hues and included such features as social and moral dissolution, decadence and indulgence in materialism and sensual pleasures, and egotism.

However, the US maintained credits of good intentions among broad sectors of Arab societies who were impressed by the American model or dream. The dream of wealth based on hard and serious work, professionalism, the tendency to encourage excellence, science, knowledge and technology in addition to democracy, the respect for the individual human being and personal and public freedoms.

It seems that the Americans had an opposite image of the Arabs and Muslims in general. The Americans inherited from the Europeans a greatly distorted image of the Arabs whereby the latter are backward nomads committed to nothing but their traditional norms. They do not understand the meaning of law. They do not accept modernism, especially democracy. They do not respect individual freedom. They are naturally aggressive and fanatically prejudiced for their race and religion. Finally, they tend to resort to violence and war.

The oil era added to this inherited image a number of characteristics such as wastefulness, foolishness, and irrationality. Arabs are regarded as double-faced and complicated beings, who can not be pleased nor understood. The Americans associate all this with Islam in a negative way. For many of them, Islam seems to be a religion that advocates violence and compulsion, rejects modernism, enslaves women and oppresses children. In general, Islam seems to contradict modernism and the principles of freedom and equality.

The American stereotype of the Arab is exotic: men wearing hair-covers and veiled women who suddenly became rich and throw away their money. At the same time, the Arabs run after pleasures and are wrapped in a mysterious contradiction between the life of the nomads with its aggressiveness and new money with its pursuant irrational spending and distaste for hard work.

This distorted stereotype each side has of the other was promoted in the last twenty-five years by the implicit manipulation and the faking traditions of contemporary media culture and some major political events that were not impartially presented.

Israel's defeat of the Arabs in June 1967 enthused the Americans and boosted their bias towards Israel and their insistence on its support. This was strongly linked to the impressions reinforced by the cold war culture. Although some Arab states played

vital roles in service of the US in the cold war, the American stereotyping placed them all within the Eastern Camp.

More importantly, Israel went down in the American public awareness as part of their civilization, in contrast to the distorted image of the Arab political cultural conditions. Israel is a democratic state based on the rule of law! The Arab world on the other hand, it is dominated by authoritarian regimes, traditional or modern, that despise the law, reject modern liberal values, commit various human rights violations of detention, torture, rigging of public elections, unjust rulings because of the executive's control of the judiciary and so on. At the head of these regimes kings and presidents rule forever with steel and fire through closed elite consisting of military men and police officers. Through spoiling such elite, flooding them with privileges and setting their hands free in trampling over society at large, the rulers ensure the unlimited support of these elites that control all the institutions of society. In these regimes, the only basis for legitimacy is flaring up hostilities abroad directing feelings of popular frustration towards the foreign sources of threat. Therefore the social systems remain hopelessly backward. The economic system is characterized by inefficiency and squandering the already rare resources in extravagance and cheap display or in futile projects.

In this context, Americans and Westerners interpret the Arab struggle against Zionism as a result of religious and political manipulation of the popular feelings and steering them, through directed propaganda, towards a foreign enemy, that is Zionism and the West. Since Arab armies have not been established on the basis of modern political and professional legitimacy, the Arabs prefer terrorism as a means of pressure on the West, especially as regards Israel.

These are the general features of the US image of Arabs. Because this image is so established acts of violence Palestinians committed in Europe, such as hijacking airplanes, taking hostages and shooting athletes in the Munich Olympiad and others were exaggerated so as to reaffirm the image of the Arab as a desperate terrorist controlled by intelligence services that aim to divert the attention of their peoples from their real problems and train it towards a foreign enemy that is Israel or the West in general.

Meanwhile, the Arab and Islamic image of the US slipped into promoting the impression of a complete and innate hostility that is entrenched in character, culture and historical experience. And thus the United States' bias for Israel is not due to its interests or internal political conditions, but because of their 'resemblance.' The American experience is in essence a modern Western colonization that was achieved brutally through crimes of genocide against the indigenous peoples. Like Israel, the social and political traditions, which have an aggressive cultural content, that shaped American society include: settlement, seizure of lands with excessive and generally extreme force, heavy-handed retaliation against any sign of resistance, expulsion of the indigenous people outside the occupied lands, systematic destruction of the organizational, political and social structure of these peoples and resistance movements,

and total corruption of the high and middle layers of resistance leaders through money and drugs.

The US then does not support Israel because of its foreign interests, but because it is an extension of the experience of establishing the US itself.

Many intellectuals in the Arab world believe that links go further than the phenomenon of Zionist Christianity into the religious composite itself. They argue that Protestantism has revived, and has been intensely based on, the Old Testament and thus it is more an extension of Judaism than a Christian creed as such. This means that the US support for Israel stems from a religious bias as well. Taking into consideration the new developments in the international political situation, and specially the emergence of a unipolar system, the New World Order and the terminology of globalization, we will find new characteristics added to the Arab stereotype of the Americans. These phenomena are understood as merely new tools and mechanisms used by the US to control the destinies of peoples, interfere in their internal affairs, shatter their political unity, subjugate them to the American culture and export its worst to the Arab/Islamic world including decadence, sexual perversion, consumerism, unlimited violence in films and TV, extreme individualism, and such attitudes as arrogance and racial superiority, etc.

The outcome of all this is that the minds of the peoples on both sides became ready, because of the role played by politics and the media, to accept the religious incitement which the political religious leaders relentlessly and zealously spread.

However, the catalyst in such process is of no less importance. I mean the acceleration and the spread of a host of political events that could have been regarded as signs and symptoms of internal changes relating to the political and social fabric of each society. However, they were interpreted in a way that promotes fear and reinforces the culture of insecurity. This catalyst is thus represented specifically in reinforcing the feeling of each society that it is prone to a crushing attack by the other – an attack to destroy its internal integrity and perhaps end its very existence.

Undoubtedly, the September 11 terrorist attack on American civilian and military targets presented the Americans with the fiercest threat and strongest challenge in their history since the War of Independence and the civil war. It was even fiercer than the Japanese attack on Pear Harbor as it was directed against civilians in the largest of American cities.

More dangerously, this incident was presented to the Americans as part of a general character of Muslims and Islamic politics in one way or another. This is what is meant here by the catalyst.

The general image of the whole Middle East seemed steeped in explosive conflicts, some almost permanent and others temporary. In the late eighties and most of the nineties, bloody wars and conflicts erupted between Mauritania and Senegal, in Mauritania, between Morocco and the Polizzario (the Western Sahara), in Algeria, between Libya and Chad and in Chad. Bloody struggles were also fought between the

Kurds and Turkey, between Iraq and Kuwait, Iraq and the Kurds, among the Iraqi Kurds themselves, between Iraq and Iran, within Iran, between the Afghans and the Soviet Union and among the Afghans themselves. Civil wars erupted in Yemen, Somalia, Djibouti, Ethiopia, Eritrea and between Eritrea and Somalia. Undoubtedly, the civil war in Sudan is considered one of the most protracted civil wars in the world. In addition, destructive international and civil wars were waged in Bosnia and Herzegovina, between Bosnia and Herzegovina and former Yugoslavia and in Macedonia and Cyprus. In addition to the civil wars in Kazakhstan, Tajikistan, Uzbekistan, the war between Chechnya and the Russian Federation and in the Philippines and Burma. In all these wars, armed groups or armed Islamist groups played some role of a different degree or scope.

Generally speaking, Muslims played a key part in some fifty-five international or civil wars since the end of the fifties. These struggles lasted for a considerable period of time and witnessed a high level of violence.

What is important in this tapestry is that "Islam" was invoked, one way or another, in the majority, if not all, of these struggles. This means that since the independence of the third world, or since 1960, the media has linked Islam and violence in the form of international and civil wars. In fact, the sweeping majority of these conflicts were among Muslims. Most of the remaining struggles involved non-Muslims as the majority of the population or as oppressive regimes that forced Muslim minorities to raise arms in defense of their most rudimentary political and human rights.

However, the popular wisdom outside the Islamic world usually ends up associating violence with Islam (as exercised by Muslims). This reinforces the acute feeling of threat in countries such as the United States when devastating violence is carried out in the name of Islam.

On the other hand, Arabs and Muslims are not in want of evidence of American violence. Since World War II, the Americans have engaged in conflictual relations employing violence in various forms, from plotting military coups and armed insurrection to outright war.

Such instances can be counted in the dozens. Some of them were of the most violent and murderous international struggles like the Korean and Vietnam wars. Without doubt the Arab's share of these instances was nothing to sniff at. In the last decade only, the Americans waged direct wars against Libya and Iraq, and subjected both countries, in addition to Sudan, to a sanctions regime using UN Security Council resolutions.

Most critical though in supporting the Arab and Muslim stereotyping of the Americans is the United States' unqualified support of Israel, which shows itself most severely and humiliatingly in the Israeli wars against the Arab countries and the Palestinian people since the 1967 war.

At the moment, the prevalent theory among Arabs and Muslims from all nations, classes, ideologies, schools of thought, and political shades is that the Americans aim at

the political destruction of the Arabs and seek to hold Muslims in an inferior status among the nations of the world.

Even if we set aside, for now, the negative stereotypes, the ready attitudes, the overwhelming fear and feelings of insecurity that Arabs and Americans hold toward each other, we will still face an objective reality without which the problematic could not be understood. This reality relates to the relative position of each party in the world order and how the givens of such positions are managed. The US represents the top of the world order with its unparalleled strength and hegemony. The US seems determined to shape this order as to tally with her interests and exclusive leadership. On the contrary, Muslims and Arabs find themselves either at the bottom of the world order or near it in the category of middle developing, low-income countries, with the exception of a handful of very rich and under-populated countries in the Arab Gulf and some isolated islands like Brunei. For the overwhelming majority of Arabs and Muslims, nothing in the current world order affords them the slightest hope of progress, justice, advance or development.

In this sense, Arabs and Muslims are part of the vast world periphery suffering from poverty, social disintegration, as well as internal and external political oppression. This periphery used to supply the advanced capitalist centers with some of its essential requirements. However, it has become now almost irrelevant to the centers and the services it provided have become far less important. The periphery now suffers from omission rather than exploitation. And thus it has nothing to defend in the current world order. Nor does it fear the world order any more. Oppression, political and economic sanctions scare the periphery no more.

On the other hand, the US and the advanced rich countries have become more like isolated islands within this world periphery, which objectively instills in them a fatal fear complex from such periphery. The rich countries believe they might be submerged in it. In other words, the growing culture of fear within the wealthy nations, including the US, is of the same kind of pathological symptoms that appear in the relations between the historical imperial centers and their vast, underdeveloped and poor periphery. These centers fell in succession as a result of continuous blows by their vast and backward social periphery. It took a long time until such blows succeeded in bringing down these imperial centers. These centers weakened from within and lost their ability to control their periphery when they refused, or failed, to elevate it to their economic, social and cultural level.

The Americans and Europeans fear that their civilization would fall victim to the third world poor periphery ravished by various social and cultural ills as Rome fell to the blows of the Han tribes and Baghdad to the raids of the Tartars and Mongols. This feeling is deepened with the rise of a new agenda that shapes the relations of the advanced industrialized North and its views towards the third world. It includes such items as drugs, immigration, political and economic asylum, organized and unorganized crime, new epidemic diseases, the environment, women's rights and human rights in general, and finally, violence and terrorism.

In this context, mutual fear, that rises sharply specially in the relations between the Arabs and the West, and the US in particular, is merely a special form of the failed and crisis-ridden relation between the South and the North in general. The theory of a "clash of civilizations" emerged in the epicenter of this strained relation.

The essential ingredients for a religious struggle between the Arabs and the US are ready. What stops it from eruption until now?

In fact, the prophecy of the "big bang" with its apocalyptic proportions is not but one form of the movement of this contradiction or conflict. Human history abounds with other possible forms.

In addition, this struggle may not inevitably impose itself unless human awareness, thought and political reason on both sides failed to resolve it in a peaceful and progressive way.

The Impact of September 11 on Palestine

by Azmi Bishara*

The best option for progressive forces that believe in universal values, including human rights organizations, is to leave the framework of the NGO- movement and become a social movement. We had a hope that the Durban Conference was the beginning of such a movement; and we were already thinking about arranging an international follow up conference on Israeli apartheid in South Africa, when September came.

Our mode of political action and the mode that was, let us say driven to its last consequence with the attacks on the World Trade Center, are two very contradictory political cultures and ways of thinking. I think that September 11 marks the beginning of a crisis and that our mode of work, which was with us in the 1980s and 1990s, is now beginning to decline. I do have some evidence to support these beliefs, but unfortunately, we do not have enough time for that.

A political demonstration like Durban, because it was not really a conference, is not sufficient to reverse previous ways of working. We had a debate about the possibilities for a new political culture for the Third World, and for its relationship with for example democratic organizations in the West, concerning different issues. But it was merely a demonstration. That is why it will not be enough to build on for the future. What happened in Durban was very important as to the number of organizations and the variety that was there. It did indicate something new, a parallel to the anti-globalization movement, and a new kind of political culture. But as I said, September 11 cut everything.

A second point is the Palestinians' methods or means of struggle. Many Palestinians have spoken about peaceful ways of struggle, such as civil disobedience and passive resistance. For instance, an institute that was established in Palestine in the middle of the 1980s, before the first intifada, presented and used examples from India and India's experience, so these issues were debated in Palestine. But I don't think that means of struggle are a matter of conviction or persuasion. We cannot simply sit down

* Azmi Bishara gave an oral presentation at the symposium, but did not submit a paper. This summary is based on a transcript of his presentation, and has been prepared by Cairo Institute for Human Rights Studies.

in a conference and discuss how to change them, because, as you know, methods of struggle have a tradition, of methods, symbols, heroes, etc., etc. These symbols have their own dynamic, and you cannot just decide to change them. Young people need symbols from the history of Palestine. If you want to mobilize the masses, you must draw upon this tradition.

First, we should keep in mind that the case of Palestine is similar to those of Algeria and South Africa, and not so similar to other places. Let me give you two reasons. The first is that we are talking about settler colonialism. That is the most important issue. It is not a question of foreign colonialism, which will withdraw if you do not cooperate with it, as it is coming for economic benefits that will disappear with civil disobedience. Here you do not have that, you do not have a colonial power sending its troops overseas to exploit, etc., the way we understood previous colonialism. Here we have a settler colonialism, which seeks to replace one people with another. This is not something that you can make unprofitable, so that the colonial power will withdraw as a result of economic mechanisms. There are some cases in the Third World where colonial powers withdrew without resistance, as they were convinced that the project was no longer worth the effort, due to the development of production forces in these states, and to capitalism itself. But this is settler colonialism. And settler colonialism is violent. You can't boycott the products of Israel, since they are not made for you at all. This is very important, but we tend to forget it.

Second, the fact that the Palestinian national liberation movement started as a refugee movement outside the country is very significant. The refugees had to pass borders in order to struggle. These were people who had fled their country because of foreign occupation, and who could not resist it simply by not cooperating with it. You had an oppressed people outside the occupied land, which had to become an intruder, to pass borders and fight inside, in order to confront the occupant. This movement was not subdued to a political power, since it consisted of refugees. What does it mean whether they should use civil and peaceful means to struggle against the Israeli occupation in Beirut? Nobody understands what it means. They were on the outside, and had to come inside to fight. This is something unique. Now, of course we should discuss their methods. One should always look for options. As a matter of fact, this is already being done naturally through the experience itself, and most of the time, the Palestinians are very busy writing articles about their choice of strategies. I don't think there is any other people that wrote more about its strategies, and that have more research institutes studying effective ways of struggle.

But reality produces suicide bombers. Hamas and Jihad will tell you that they have no problem at all recruiting suicide bombers. This is something new in Palestinian history. Palestinians do not have a tradition of suicide attacks, like the Japanese kamikaze. As a matter of fact, it is not Palestinian at all. The first suicide act that I know about in political theology is Samson from the Old Testament, which I studied back in school. It's from Hebrew theology. However, I do not think that suicide attacks have anything to do with culture. But I see a reality that produces suicide bombers.

Today, as I heard in the news, it was a girl. A young girl in Jerusalem. Why? What we have to discuss is why Palestinian youngsters loose their sense and meaning of life? Why is somebody ready to die, and to kill as many as he/she can with him? How does this happen? Why do people do such things? That's what we have to discuss. Let us check their biographies; let us check what is going on here. The way we usually check people. Social sciences were made to check patterns of behavior. Why do all the social sciences and research institutes suddenly shut up? Where is all the money, which is usually given for social sciences, exactly for these purposes? We suddenly formalize and legalize everything; there is a terror act, it should be punished, etc.

We may discuss how moral these actions are, but I do not think that such debates are very useful. It would be more productive to discuss the fact that they are counter-productive, since they are not thought about in a strategic sense, and do not integrate in any strategy for liberation. I do not think our morality discussions would meet a receptive audience in the refugee camps. I do not think they would listen to middle class Palestinian intellectuals telling them that it is not moral. We are able to conduct such discussions, because we are still not desperate.

On Terrorism Again, Before We Go to War*

By Azmi Bishara

In 1976, Jorge Videla assumed power in Argentina after overthrowing Isabel Perón, ushering in one of the bloodiest dictatorships that country had ever experienced. More than 15,000 leftists, human rights activists and other innocent civilians were killed or disappeared. Not a single European democracy was without its share of Argentinean refugees, as well as refugees from Chile, Uruguay and Guatemala, who brought with them their ways of life, their songs, and their vigour and spontaneity. The impact on left-wing European culture was tremendous. The word "dictatorship" at the time immediately evoked Latin America, an image reinforced by Marquez's Autumn of the Patriarch and a prolific body of Latin American literature that also directly influenced the "autocracy literature" that began to appear in the Arab world in the 1980s and 1990s.

During this period I was a student at the Hebrew University in Jerusalem. Like people on the left around the world, we communed with the plight of Latin Americans through pictures of Che Guevara, the songs of Victor Jara and the writings of Régis Debray. We condemned the United States, and specifically Secretary of State Kissinger, for supporting the bloodthirsty Latin American juntas.

It was at this point in my political coming-of-age that I met the first Jewish refugees from Latin America -- many of them from Argentina -- in Israel. They were students at the Universities of Haifa and Jerusalem, leftists who had fled to escape the persecution of the left in Latin America. For a significant portion of these refugees, Zionism had little or no meaning, and as soon as circumstances improved back home they returned to their country. Another set of these refugees felt unable to reconcile their presence in the Zionist state with their left-wing beliefs, and emigrated to France -- Paris was a focal point for left-wing South American refugees at the time -- even before the circumstances improved in their native countries. Yet a third contingent of these students became Zionists and stayed, although they were dismayed by the Israeli government's indifference to the fate of young Jewish leftists exposed to torture and abuse in the prisons of the Latin American dictatorships.

* This article has previously been published in Al - Ahran Weekly , January 17 - 22, 2002, issue no. 569.

In general, however, these students were more receptive to the language of usurped rights -- our medium for addressing Jewish students when we first started to organise an Arab student movement with ties to the Jewish left in the universities. Culturally, we were miles apart. The discourse of Arab nationalism and the Palestinian national

movement was alien to their intellectual world, which centred exclusively on the debates concerning the Latin American left. We did converge in our anti-Americanism, on the other hand. They were the only non-communist and non-Soviet segment of the Israeli left that was opposed to the United States. One of our long-standing objections to the Israel left was that it was the only such political movement in the world to believe that its country's relations with the United States would temper the injustices perpetrated by its government. We were thus able to draw on the experiences and views of these students as we discussed American policy and enumerated the crimes perpetuated by the United States and Kissinger -- "the professor of death" -- against Cyprus, Chile, Argentina and other countries. The Arab right and Zionist left, meanwhile, smiled smugly down at our youthful ardour and our purportedly unsubstantiated clichés.

Those days came back to me as I read the reactions to U.S. State Department documents on Argentina that were recently declassified even as Washington forged ahead with its war on "terrorism," which has redrawn the lines between good and evil in the dominant global political culture. That these State Department documents were released in accordance with provisions of democratic transparency brings to mind other notions of good and evil, not all of which are enshrined in the naive clichés of enthusiastic young students. Among the virtues of the institutionalised traditions of the modern state is their perpetuation regardless of the shifting political mood or temporary interests. Because of this dynamic, the State Department went ahead and declassified these documents, although they contain information flagrantly at odds with the image the United States is trying to create for itself in its battle against terrorism.

These documents reveal that the U.S. State Department fully and unreservedly backed the Videla government, which had unleashed an intensive campaign of repression involving the disappearance, torture and assassination of at least 15,000 people. The documents contain correspondence between Robert Hill, then U.S. ambassador to Argentina, and Kissinger, exposing the latter's complicity in the crimes perpetrated by the junta in Buenos Aires through his meetings with then Argentinean Foreign Minister Admiral Cesar Guzzetti. In these meetings, Kissinger essentially reassured Guzzetti that, if Argentina could solve its "terrorist problem" (the junta's label for its repression of the opposition, human rights activists and the left), the United States would not bring up Argentina's human rights practices. Ambassador Hill was outraged that his superiors in Washington were undermining his efforts to persuade the Argentinean government to respect human rights, and he complained bitterly that Guzzetti, following his meetings with top U.S. officials in Washington in October 1976, returned to Buenos Aires "in a state of jubilation."

A nice bit of information, is it not? It is important nonetheless. First, it helps keep the compass on course for those who have always maintained that the United States' concern for human rights is a sham and that U.S. foreign policy has consistently fostered human rights atrocities around the globe. Second, it helps us bear in mind the discrepancy between the information presented in the left-wing press at the time of the Cold War, upon which we based our political attitudes, and the "bare facts" as couched in the language of U.S. diplomacy and official documents. There is no reason why we should rejoice that the horrendous truth has come to light, apart from the very human satisfaction one derives from being able to say, "I told you so." The United States was, indeed, involved in the perpetration of terror against the citizens of many countries as it sought to outmanoeuvre the Soviet Union and reduce Soviet influence. The United States pursued its Cold War strategies under many rubrics, from the fight against terrorism and the struggle against "extremist" national regimes to the defence of peace, security and the vital interests of the United States and the democratic camp.

The recently declassified State Department documents show only the smallest corner of a vast tapestry. For U.S. foreign policy, the notion of civilians encompasses only the citizens of the United States, NATO countries and Israel. The abuse, punishment or elimination of other peoples for political reasons does not count as terrorism. Yet, this counts as an improvement. In the darker phases of American history the concept of citizenship did not extend to African Americans, left-wing activists or trade union organisers. They could be repressed with no reference to codes of liberal rights, which applied only to middle and upper class whites.

Today we live in another world, one in which there is universal awareness of human rights standards, rights of citizenship and societies' need for these rights. In this world, the United States has posited "terrorism" more forcefully than ever as its *casus belli* to target forces it deems hostile to its strategic and material interests as it perceives them.

Moreover, it is constantly expanding its definition. If, in the 1970s, Washington branded the Argentinean opposition "terrorist," today it is pushing to affix this label to the Palestinian and Lebanese resistance movements.

The global political climate today, however, is no longer that of the '50s, '60s and '70s, when millions of human beings, civilians and non-civilians alike, were crushed in the wars and coups generated by the Cold War and the shifting alliances between the two camps. The Cold War has ended, and civil rights culture has attained a universal status independent from conflicting political ideologies, which is to say outside the bounds of the question: in whose interest are human and civil rights being abused?

Today, it is difficult to accuse "overenthusiastic students" chanting anti-American slogans of serving the Soviet Union or of being duped by anti-Western Soviet propaganda. Moreover, it is possible to formulate a discourse based on solid facts and reasonable arguments charging the United States and Israel with perpetrating terrorism. Hence the need to refer to the U.S. State Department documents which

corroborate the U.S. foreign policy tradition of supporting terrorist governments and fostering the mistreatment, torture and murder of civilians.

However we stretch our imagination to grasp the horror of the events that took place in the United States on 11 September, and however chilling the accounts of the murder of innocent civilians, our imagination will produce nothing on the scale of the most appalling military operation perpetrated against a civilian populace in modern history.

The U.S. decision to drop the atomic bomb on Hiroshima and Nagasaki was taken for a purely political expedient -- to hasten the capitulation of the government of Japan, even though the war had already been resolved in the United States' favour. Perhaps, too, there was another political motive, which was to demonstrate America's nuclear might to the post-World War II world. This military operation was the most massive terrorist act in modern history and should, therefore, provide an introduction to any discussion of terrorism -- which should then go on to consider Vietnam, Chile, Cyprus, Argentina, East Timor, Lebanon, Palestine and Iraq.

It is important to open this discussion at the global level, avoiding exaggerations that will discredit the overall narrative while substantiating it thoroughly. The documents we rely on for this purpose may seem to diminish the catastrophes that befell the people of these countries, but they will raise a thousand questions as to the credibility of the war against terrorism and its political motives.

II) Symposium Documents

A Cairo-based International Symposium on Terrorism & Human Rights

Press Release

January 21, 2002

In collaboration with the International Federation for Human Rights (FIDH) and the Euro-Mediterranean Human Rights Network (EMHRN), Cairo Institute For Human Rights Studies will organize an international symposium on "Terrorism & Human Rights," on January 26-28. The proceedings of the symposium will be opened by speeches of the UN High Commissioner for Human Rights and the Secretary General of the Arab League.

The symposium gathers a number of representatives of Arab, Egyptian and international human rights NGOs and experts from 20 African, Asian, European, Latin American and North American states.

The symposium aims at reaching a universal approach to combat terrorism and protect human rights. The three-day-symposium will treat the following themes:

- Clash or coexistence of cultures.
- Legitimacy of the ongoing war against terrorism and the future role of the United Nations.
- Disregard for International Humanitarian Law and prisoners of war in Afghanistan.
- International law & the phenomenon of terrorism.
- Adverse effects of September 11 attacks on the universality of human rights and the human rights movement.
- Status and future of civil liberties and freedom of the media in Europe, the United States, the Arab world and Palestine.
- Islamophobia and Westophobia
- Impacts of the September 11 attacks on the status of Arabs and Muslims in Europe and the United States.

The Symposium will be held in Conrad Hotel. Proceedings of the symposium will be in Arabic & English. Simultaneous interpretation is available.

Terrorism & Human Rights

“Towards a Universal Approach for Combating
Terrorism and Protecting Human Rights”

Organized By

Cairo Institute for Human Rights Studies

In Collaboration with

**International
Federation for Human Rights**

**Euro-Mediterranean
Human Rights Network**

Agenda of the Symposium

January 26-28, 2002

Cairo

Saturday, January 26, 2002

5:00-7:00 pm: Registration for Participants, Observers
and Journalists

(Conference Secretariat)

6:00-8:30 pm: Opening Ceremony (Hotel Conrad)

Sunday, January 27, 2002

7:00-9:00 am: Registration for Participants, Observers and
Journalists
(Conference Secretariat)

9:00 – 11:00 am: *First Session - The Foundations for Cultural
Coexistence*

Chairperson: Chandra Muzaffar, Malaysia,
President of the International Movement
for a Just World

1. *Coexistence and the Question of Law in Arab and Western Cultures*,
by Mohamed el-Sayyed Said, Egypt, Deputy Director of Al-Ahram Center
for Political and Strategic Studies and Academic Advisor to Cairo Institute
for Human Rights Studies

2. *The Moral and Practical Imperatives of International Relations after
September 11*,
by Marwan Bishara, Palestine, Palestine 47 and Political Science Professor
at the American University of Paris

11:00-11:30 am: Tea Break

11:30 am – 1:30 pm: *Second Session: The Legitimacy of the
War Against Terrorism*

Chairperson: Andres Sanchez Thorin, Colombia
Legal Expert on the Question of
Terrorism and Human Rights

1. *Avoiding War: Using International Law to Compel a
Problem-Solving Approach*,
by Brian Foley, U.S.A., Lawyers Against the War.

2. *The Use of Force in Afghanistan and International Humanitarian,
Human Rights, Diplomatic and Criminal*,
by Curtis Doebbler, U.S.A., International Legal Expert and Human Rights
Lecturer at the American University in Cairo.

1:30 – 3:00 pm: Lunch

3:00 – 5:00 pm: *Third Session: Terrorism and the Human
Rights Movement*

Chairperson: Ghassan Moukheber, Lebanon
Head of the Society for the Defense of Rights and
Freedoms and reporter for the Bar Association's
Human Rights Committee

1. *Responding to Terrorism within the Framework of International Law*,
by Helen Duffy, Great Britain, Legal Director, INTERIGHTS

2. *The Challenge of the September 11 Attack and its Impact on the
Universality of Human Rights and the Human Rights Movement*,
by Irene Khan, Bangladesh, Secretary General of Amnesty International

5:00 – 5:30 pm: Tea Break

5:30-7:30 pm: *Fourth Session: Human Rights in the Middle East*

Chairperson: Khedr Shkirat, Palestine, General Director of LAW

1. *The Impact of the September 11 Attacks on the Human Rights Situation in the Middle East,*

by Joe Stork, U.S.A., Head of Human Rights Watch's Washington Office for the Middle East and South Africa

2. *The Impact of the September 11 Attacks on the Human Rights Situation in Palestine*

by Azmi Bishara, Israel, Palestine 47, Member of Knesset and Philosophy Professor at Bir Zeit University

Monday, January 28, 2002

9.00-11:00 am: *Fifth Session: Media, Islamophobia and Westophobia*

Chairperson: Karim el-Etassy, Syria
External Relations Officer, UN High Commissioner for Refugees

1. *The Impact of the September 11 Attacks on Freedom of the Media Worldwide*

by Toby Mendel, Great Britain, Legal Studies' Director for ARTICLE 19

2. *The September 11 Attacks and Westophobia,*

by Gamal Abdel Gawad, Egypt, Head of the International Relations Unit, Al-Ahram Center for Political and Strategic Studies

3. *Assimilation and Deportation: Arabs in Europe and their Struggle for Civil Rights,*

by Dyab Abou Jahjah, Lebanon, President of the Arab European League

11:00 – 11:30 am: Tea Break

11:30 am – 1:30 pm: *Sixth Session: The Future of Civil Liberties in U.S.A. and Europe*

Chairperson: Duxita Mistry, South Africa
Senior Researcher at the Institute for Human Rights And Criminal Justice, Technikon South Africa

1. *The Impact of the September 11 Attacks on Civil Liberties in U.S.A.*,
by Neil Hicks, U.S.A., Director of the Human Rights Defenders' Protection
Program at the Lawyers Committee for Human Rights.

2. *The Impact of the September 11 Attacks on Civil Liberties in Europe*,
by Driss el-Yazami, Morocco, Secretary General of the International
Federation for Human Rights

1:30 – 3:00 pm: Lunch

3:00-5:00 pm: *Concluding Session: Towards a Universal Approach
for Combating Terrorism and Protecting Human Rights*

Chairperson: Kevin Boyle,
Senior Advisor for the UN High Commissioner
for Human Rights

Professional Backgrounds

Azmi Bishara

Azmi Bishara is a Member of Knesset and a Philosophy Professor at Bir Zeit University. He is Arab Israeli.

Marwan Bishara

Marwan Bishara is a lecturer at the American University in Paris, and a researcher at L'Ecole de Hautes Etudes en Sciences Sociales. He is Arab Israeli.

Curtis Doebbler

Curtis Doebbler teaches international human rights, humanitarian and criminal law at the American University in Cairo. He served as a legal advisor to the Taliban-government. He is also a practitioner of international law, and the legal representative of several individuals whose rights have been violated in the armed conflict. He is American.

Helen Duffy

Helen Duffy is the Legal Director of INTERRIGHTS in London. She is British.

Brian Foley

Brian J. Foley is a professor at the Widener University School of Law in Wilmington, Delaware, U.S.A. He also represents Lawyers Against War, a group of lawyers and legal scholars from eight different nations. He is American.

Gamal Abdel Gawad Sultan

Gamal Abdel Gawad is the Head of the International Relations Unit at Al-Ahram Center for Political and Strategic Studies. He is Egyptian.

Bahey el-Din Hassan

Bahey el-Din Hassan is the Director of Cairo Institute for Human Rights Studies. He is Egyptian, member of the Executive Committee of EMHRN and member of the International Council on Human Rights Policy.

Neil Hicks

Neil Hicks is the Director of the Human Rights Defenders' Protection Program at the Lawyers Committee for Human Rights. He is British.

Dyab Abou Jahjah

Dyab Abou Jahjah is the president of the Arab European League, and a researcher at Louvain-la-Neuve University, specializing in security issues, international relations and nationalism.

Irene Khan

Irene Khan is the Secretary General of Amnesty International. She is Bangladeshi.

Åshild Kjok

Åshild Kjok is a graduate student at Columbia University's School of International and Public Affairs, New York, U.S.A. She is concentrating on the Middle East, and did an internship at Cairo Institute for Human Rights Studies during the summer of 2002. She is Norwegian.

Toby Mendel

Toby Mendel is the Head of ARTICLE 19's Law Program, and is currently completing a PhD in international refugee law at Cambridge University. He is British.

Mohamed el-Sayyid Said

Mohamed el-Sayyid Said was the Deputy Director of Al-Ahram Center for Political and Strategic Studies at the time of the symposium, but has later been appointed Director of Al-Ahram's Correspondent Office in Washington, U.S.A. He serves as well as Cairo Institute for Human Rights Studies' Academic Advisor. He is Egyptian.

Joe Stork

Joe Stork is the Head of Human Rights Watch's Washington Office for the Middle East and North Africa. He is American.

Jaber Wishah

Jaber Wishah is the Deputy Director of the Palestinian Centre for Human Rights in the Gaza Strip, the Occupied Palestinian Territories. He is Palestinian.

Driss el-Yazami

Driss el-Yazami is the Secretary General of the International Federation for Human Rights (FIDH), the Vice-President of the French League for Human Rights, and a member of the Euro-Mediterranean Human Rights Network's Executive Committee. He is also the director of "Génériques", a private association focusing on the history of immigration in France. He is Moroccan.

List Of Participants

Ghassan Abdallah

Programs Coordinator at the Palestinian Organization for Human Rights in Lebanon, (Palestinian)

Samir el-Abdely

General Director of the Democratic Development Group (Yemeni)

ELHabib Belkoush

Director of Rabat Center for Documentation ,Formation of Human Rights (Moroccan)

Ahmed Shawky Benoob

Vice-President of the Moroccan Organization for Human Rights (Moroccan)

Azmi Bishara

Member of Knesset and Professor of Philosophy (Arab Israeli)

Marwan Bishara

Lecturer at the American University of Paris and Researcher at L'Ecole de Hautes Etudes en Sciences Sociales. (Arab Israeli)

Barbara E. Harrell Bond

Visiting Professor, Makerere University, Kampala and Distinguished Adjunct Professor, American University in Cairo (American)

Kevin Boyle

Senior Advisor, of the UN High Commissioner for Human Rights (Irish)

Curtis Doebbler

Law and Politics Professor at the American University in Cairo (American)

Helen Duffy

Legal Director, INTERIGHTS (British)

Karim el-Etassy

External Relations Officer, UN High Commissioner for Refugees, Cairo office
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Brian Foley

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Marilyn Piety Foley

Assistant Professor of philosophy, Drexel University (American)

Neil Hicks

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Irene Khan

Secretary General, Amnesty International (Bangladeshi)

Toby Mendel

Head of ARTICLE 19's Law Program, London, (Canadian)

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Faculty of Public Safety and Criminal Justice at Technikon South Africa (South
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Ghassan Moukheber

Head of the Society for the Defense of Rights and Freedom; Rapporteur for the Bar
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Yousry Mostafa

Former Program coordinator of CIHRS (Egyptian)

Chandra Muzaffar

Director of the Center for Civil Dialogue at the University of Malaya. President of the International Movement for a Just World (Malaysian)

Christina Papadopoulou

Program Director for the Middle East and North-Africa, International Rehabilitation Council for Torture Victims (Grecian)

Marc Schade Poulsen

Executive Director of the Euro-Mediterranean Human Rights Network (Danish)

Mahmoud Rashed

Secretary of the Permanent Human Rights Committee at the Arab League (Djiboutian)

June Ray

Director of the Middle East and North-Africa Section, Amnesty International's International Secretariat in London (British)

Gasser Abdel Razek

Former Director of Hisham Mubarak Law Center (Egyptian)

Nadia el-Sabty

Programs Coordinator, Rabat Center for Documentation, Formation of Human Rights (Moroccan)

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Deputy Director of Al-Ahram Center for Political and Strategic Studies & Academic Advisor for Cairo Institute for Human Rights Studies (Egyptian)

Wolfgang Sachesenzodek

Director of the Middle East regional office of Friedrich Naumann Foundation (German)

Wolfgang Scheifer

Assistant Regional Representative of UNODCCP, Cairo office (German)

Said el-Selmy

Executive Director of the Center of Freedom of the Press in the Middle East and North-Africa (Moroccan)

Khedr Shkirat

Director and Founder of LAW Society, Jerusalem, and member of the executive committee of EMHRN (Palestinian)

Gamal Abdel Gawad

Head of the International Relations Unit, Al-Ahram Center for Political and Strategic Studies (Egyptian)

Joe Stork

Head of Human Rights Watch's Washington Office for the Middle East and North Africa (American)

Andres Sanchez Thorin

Legal Advisor to the Colombian Commission of Jurists (Columbian)

Elin Wrzonchi

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Driss el-Yazami

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Mohamed Zaraq

General Director, Human Rights Center for the Assistance of Prisoners (Egyptian)

International Symposium on Terrorism and Human Rights

'Towards A Universal Approach for Protecting Human Rights and Combating Terrorism'
Cairo, 26-28 January 2002

Organized By
Cairo Institute for Human Rights Studies
In Collaboration with

**International
Federation for Human Rights**

**Euro-Mediterranean
Human Rights Network**

Final Report

The symposium provided an opportunity, the first of its kind, to consider the human rights movement's responses to the events of September 11. Themes and issues raised by participants and suggestions made were as follows:

Causes of Terrorism

- That the international community, all in all, has failed to respond adequately or effectively to terrorism over many decades;
- That the North is marginalizing the South, and that the growing neglect of the poor and underdeveloped may lead not only to a 'clash of civilizations', but to a potentially disastrous clash of interests;
- That there has been a short-sighted and misguided emphasis by the North on economic rather than political forces in determining the development of the world over the last decades;
- That there is a continuing and expanding gap between power and the rule of international law, and a keenness by some northern States to exploit this gap in furthering its interests across the globe;
- That there is a sharp contradiction in the North's foreign policy, in particular in regards to:

This report has been prepared by the sponsoring organizations to reflect the range of themes and ideas raised in the two day meeting. It is not intended to be exhaustive. The report is a record of the points made in the Symposium. It does not necessarily represent the collective views of all participating organizations.

- ❖ Palestinian rights, especially the United States' blind support of Israel in the Middle-East conflict
- ❖ The support of some corrupt and despotic regimes in the pursuit of self interest, profit and geo-political power
- ❖ The undermining of economic, social and political human rights in the South.
 - That many other states in the south as well as the north were following this example, and adopting a similar approach of double standards in their foreign and human rights policies

Failure of the International Community to respond properly to the consequences of September 11

- The international community has, following September 11, failed to ensure that highly questionable actions, both in the domestic and international spheres, by its members against terrorism are consistent with the clearly established principles, rules, and procedures of international law of human rights, laws of armed conflict and refugee law.
- Although Security Council Resolution 1373 talks of the elimination of terrorism, it is not possible to eliminate terrorism by military means alone, neither immediately nor in the long term
- The international community should be more critical of U.S. actions, and should not collude in current open-ended U.S. policies on terrorism
- The United States and its allies' marginalisation of the United Nations and their failure to respect the principles of international law have demonstrated a failure on their part to respond correctly to the crisis
- The international community should come to a common consensus on the definition of terrorism. The absence of a definition is being exploited for human rights abuses against dissenting voices
- The United States should define and limit its war on terrorism.
- The international community should recognize that security and respect for human rights are directly inter-related and ensure that fundamental human rights are protected, in line with international standards.

The Dangers that now face us

- Failure of the international community to support human rights in a time of crisis entails many dangers. Participants voiced different fears including:
- The escalation of human rights abuses in the United States and Europe and the rest of the world such as arbitrary detention, trial by military tribunals and deportation of suspected terrorist sympathisers. Condemnation of the already apparent abuses that are taking place under the pretext of anti-terrorism actions, such as arbitrary detention, unfair trials and the ill treatment of prisoners, in the United States, but also in Africa, Asia and the Middle East, was expressed. Also, the UN Special Rapporteurs have voiced their concern regarding violations against

“human rights defenders, migrants, asylum seekers and refugees, religious and ethnic minorities, political activists and the media’, it was noted.

- An escalation of violence between India and Pakistan
- A further deterioration of the situation in the Palestinian Occupied Territories and the unjust de-legitimisation of the Palestinian cause by the U.S.-propagated rhetoric delegitimising resistance against occupation and self-defense, branding it as a kind of terrorism.
- An increase in human rights abuses across the globe under the pretence of fighting terrorism
- That the ‘war on terrorism’ will be used as a tool for state control and further violence in conflicts such as Chechnya, Palestine and Turkey
- A global increase of state censorship and continued restrictions on freedom of expression
- That in the current campaign against terrorism, the disregard for international law and domestic human rights abuses by the United States and its allies, will give greater encouragement to other states to do the same.

What should be done?

The following suggestions were made:

Short term

- That the United Nations, and not the United States, should be combating terrorism and that there should be a general move against unilateralism and a unipolar world dominated by the United States.
- That although many acts of terrorism are already addressed by international law, the international community should ratify the Statute of the International Criminal Court as soon as possible. There should be a commitment by Arab states to ratify the statute by the end of 2002.
- That human rights groups should systematically monitor the implementation and administration of anti-terrorism laws in all countries and regions, and make this information available to human rights organizations as well as the Office of the High Commissioner for Human Rights and the Security Council Anti-Terrorism Committee.
- That states should not use Resolution 1373 as a pretext for suppressing legitimate opposition and should condemn those who have already done so
 - The Security Council’s Anti-Terrorism Committee was criticised for its lack of response to requests from the UN High Commissioner for Human Rights and others that it should advise states to comply with international human rights standards
- That the international community draws up a comprehensive UN Convention on Terrorism to include a definition of terrorism. The definition should include state terrorism and ensure that states and non-state actors are not encouraged to abuse human rights. Further that any such definition should be consistent with

the principles of human rights and humanitarian law. Also, this definition should not criminalize national liberation movements.

- Some participants hoped that the mandate of the Convention against Terrorism would cover social, economic and cultural rights as a safeguard against future development of terrorist activities
- In addition to the definition of terrorism by an international convention, some participants called on the Arab states to review the Arab Convention against Terrorism, to further define its definition of terrorism and not to use it as an opportunity to extend state interests at the expense of human rights
- That all states should abide by international law in this time of conflict.
 - Democratic states should use this opportunity to mobilise moral pressure against states that abuse human rights, and not work with such states.
 - The participants agreed that the international community should do everything in its power to immediately halt the conflict in Palestine. They asked that relevant UN resolutions in regards to Israel be implemented, and for immediate withdrawal from the Palestinian Occupied Territories

Long Term

- That the international community should respect and support the institution of the United Nations and help it reassert its role in this time of conflict
- That there is a need for comprehensive reforms of the Security Council and for a strengthening of international judicial institutions, to ensure that international conflicts are brought under judicial review.
- That the participants support and endorse the UN Secretary General's statements that 'in the long term we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism' and that in combating terrorism 'it will be self defeating if we sacrifice other key priorities – such as human rights - in the process'.
- That all states should ensure respect for freedom of speech and curtail censorship in the interest of international debate and discussion and the search for peaceful solutions
 - Media in both the North and the South should take greater responsibility in reporting the conflict, and providing balanced views and analyses.
- That governments must not use refugees and asylum seekers as political scapegoats in the war on terrorism and must ensure that their rights are protected. It would be a bitter irony if refugees fleeing from persecution and conflict around the world should be subject to further persecution due to the war on terrorism.

- Participants stressed that the global fight against terrorism should not weaken the international protection regime
- That the international community must address the long term causes of terrorism, and seek to promote economic and social equality for all
 - Powerful UN member states must listen to and support the poorer and include them as equal partners in the global community
- That participants consider attempts of implementing an international system for the protection of minorities and religious and ethnic groups that could lead to a peaceful and satisfactory solution to such problems. The UN and the Security Council should do more to try and resolve nations' disputes over boundaries and self-determination claims. These are human rights concerns and also raise issues of international peace and security
- That in regards to religious extremism, Muslim, Christian and Jewish, there should be more attempts to find ways in which Westophobia and Islamophobia could be further understood and combated
- That there should be a "Global Coalition On Human Rights" as a counter-balance to the "Global Coalition Against Terrorism", and there should be attempts to find a space where the debate and problems between East and West and North and South could be peacefully resolved

Conclusion

All participants expressed their appreciation of the rich diversity of views presented at the symposium. There was a general consensus that the meeting was useful and that there was a need to meet again to further discuss the issues that were brought up. All participants agreed that governments must uphold principles and rules of international human rights law, international humanitarian law and refugee law in the current global campaign against terrorism, and that a new emphasis should be made on involving human rights activists and other social movements in the prevention of terrorism through working for the prevention of human rights violations and a commitment to the struggle for global social justice. Participants further agreed that it was very important at this time for all parts of the human rights movement to reaffirm their commitment to international solidarity and mutual support based on the principles of universality and indivisibility of human rights and freedoms.

Organizations participating at the Symposium were as follows

- Amnesty International
- Article 19
- Association for Defending Liberties (Lebanon)
- Cairo Institute for Human Rights Studies
- Center for Documentation, Information and Formation of Human Rights (Morocco)
- Center for Media Freedom in the Middle East and North Africa (London and Casablanca)
- Columbian Commission of Jurists
- Euro Mediterranean Human Rights Network
- European Arab League (Belgium)
- Friedrich Naumann Foundation (Middle East Office)
- Human Rights Center for the Assistance of Prisoners (Egypt)
- Human Rights Watch
- Institute for Human Rights and Criminal Justice Studies (South Africa)
- Interights
- International Federation for Human Rights
- International Movement for a Just World (Malaysia)
- International Rehabilitation Council for Torture Victims (Denmark)
- The Palestinian Society for the Protection of Human Rights and Environment (LAW)
- Lawyers Against the War (USA)
- Lawyers Committee for Human Rights
- Moroccan Organization for Human Rights
- Palestinian Organization for Human Rights (Lebanon)
- United Nations High Commissioner on Refugees (Middle East Office)
- United Nations High Commissioner for Human Rights

Finally, the sponsoring organizations express their gratitude for the fruitful participation of the individual experts

For more information, please contact CIHRS at:

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Cairo Institute for Human Rights Studies
(CIHRS)



LIST OF CIHRS PUBLICATIONS

I. Human Rights Debates:

- 1- Human Rights Guarantees Under Palestinian Self-Rule Authority. English & Arabic, Mohamed El Saied Saied (ED) , 1994.
- 2- Palestinian Democracy and Human Rights-The Palestinian Cultural Considerations, Mohamed Khaled Al Azar and others , 1995.
- 3- Human Rights under Totalitarian Religious Regimes: The Case of Sudan 1989.
- 3- Human Rights Guarantees of the Palestinian Refugees under the Current Peace-Process, Mohamed Khaled Al Azar and others, 1998 .
- 4- Stumbling of the Political Liberalization in Egypt and Tunisia, Gamal Abd Elgawad and others, 1998.
- 5- Women Rights between International Instruments and Political Islam. Omar Al Karay and others, 1999.
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- 7- Challenges facing the Arab Human Rights Movement, Bahey El Din Hassan (ED),In Arabic & English, 1997.

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- 1- Freedom of the Press: A Human Rights Perspective, Mohamed El Sayed Said & Bahey El Din Hassan, (ED), 1995.
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- 2- Proceedings of the First Conference for Young Researchers on Scientific Research in the Field of Human Rights, 1995 (A file comprising researches under the supervision of the CIHRS in the Second Training Course for Education on Research on the Field of Human Rights)
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- 3- " Rua'a Mughayera" (or Alternative Visions) in collaboration with Merip (10 issues published)
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X. Human Rights Movement Issues:

- 1- Arabs Caught between Domestic Oppression and Foreign Injustice, Introduced and edited by: Bahey El Din Hassan (Arabic and English)
- 2- Empowerment of the Weak, prepared by Magdi El Na'im.
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- 5- The Rabat Declarations on the Rights of Palestinian Refugees(Arabic and English)
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- 7- Cairo Decleration against Racism(Arabic and English)
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Human Rights Manual (for secondary and primary Levels)

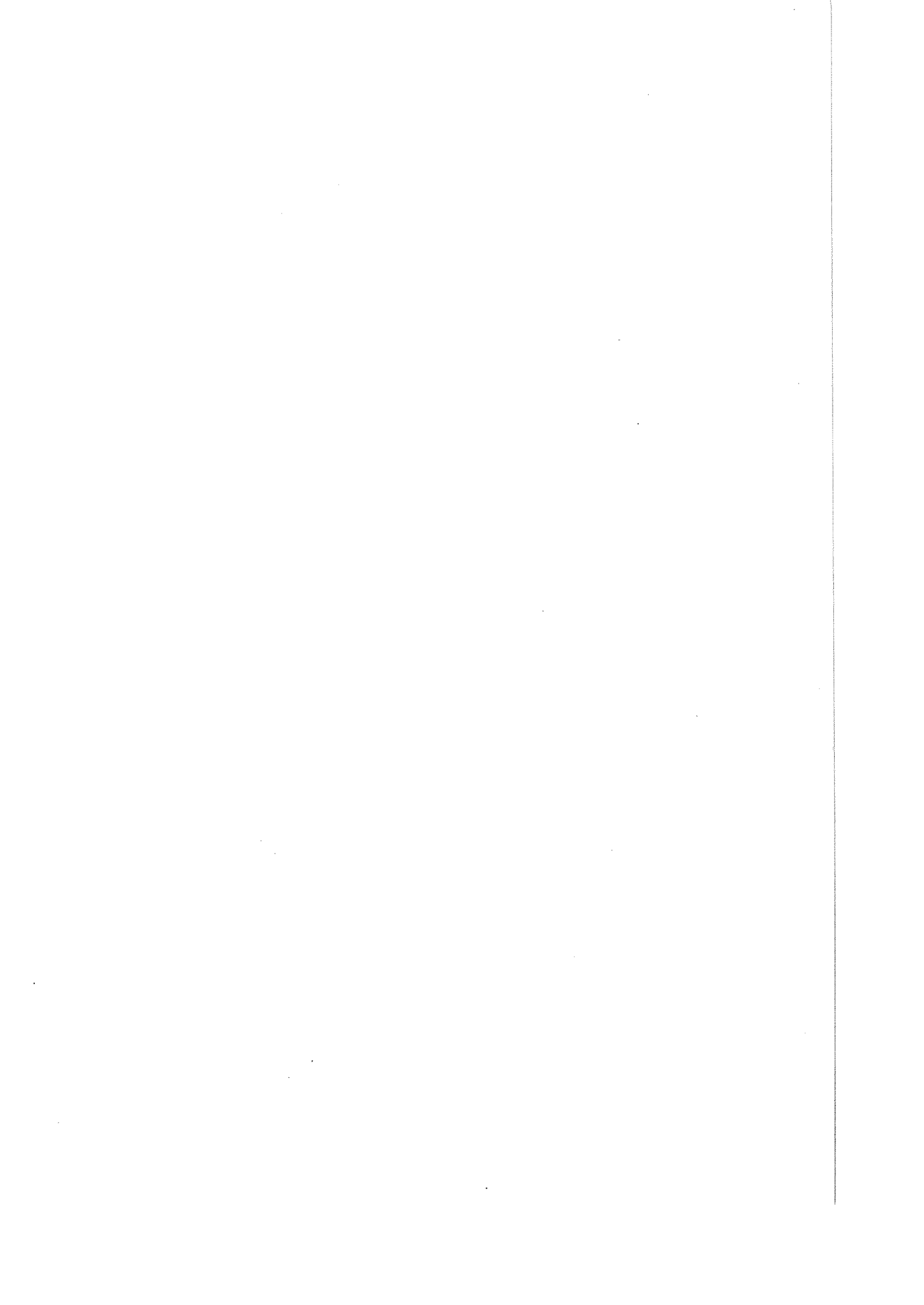
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