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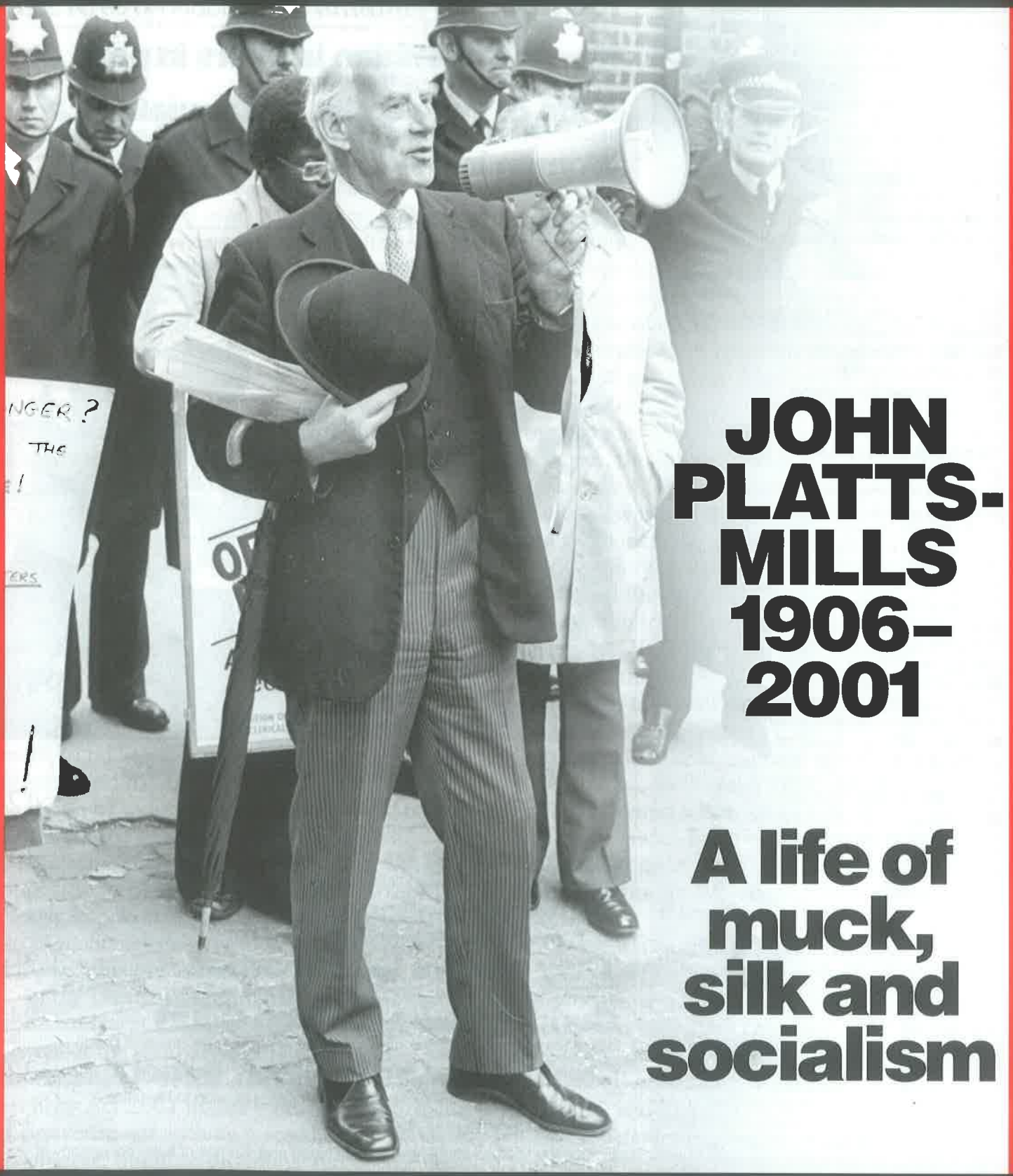

JOHN PLATTS-MILLS 1906–2001

A life of muck, silk and socialism

Responding to 11th September New anti-terrorism Act
Invading Iraq Palestine **International Criminal Court**
Women in the Law Justice For All **Columbia** Gurkhas

Haldane Society of Socialist Lawyers

25a Red Lion Square, Conway Hall,
London WC1R 4RL Tel: 020 7242 2897

The Haldane Society was founded in 1930. It is an organisation which provides a forum for the discussion and analysis of law and the legal system both nationally and internationally, from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, academics or students and legal workers, and it also has trade union and labour movement affiliates.

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Picture: Jim Cronin

Editorial Collective: **Adrian Berry, Catrin Lewis, Hannah Rought-Brooks and Neil McInnes** *Design and layout by* **Andy Smith** *Printed by* **East End Offset**

Stop the war

For socialists everywhere there is one immediate cause, one campaign and one rallying call: stop the war. Since 11th September 2001 the United States and its allies have been engaged in a violent and arbitrary campaign to produce a global order in their own image at the expense of global social and political justice. Through the use, and threat of use, of force people from the Pashtun areas of Afghanistan to Palestine have been coerced and intimidated, killed and injured, in an unprecedented expansion of American power. The result is a profoundly dangerous world where impotent and powerless people are full of political rage at their condition.

As socialists and radicals the members of the Haldane Society and the readers of Socialist Lawyer should be working and organising to build support for the Stop the War campaign. Socialists in Europe and north America must work to build cross-community alliances and groups, and to organise the broadest possible coalition of resistance and dissent. In the United Kingdom the majority of people, from all backgrounds, are opposed to the war. This opposition needs to have coherence, to speak clearly and to make its opposition to war decisive. Socialists have a vital role to play in ensuring this outcome.

In the United Kingdom the New Labour administration has massively strengthened the power of the state over individuals and communities. The Anti-terrorism, Crime and Security Act 2001 marks a new low. It provides the government with an arsenal of lawful means to observe, monitor, discipline and coerce people whilst keeping the courts at arms length. For non-nationals the introduction of internment or administrative detention under the 2001 Act starkly shows the limits of the Human Rights Act 1998 as a source of protection.

The impact of the new laws is most keenly felt by migrant and recently settled communities and people of different ethnic and cultural backgrounds. Race relations have been prejudiced and jeopardised by the stigmatising of some Arab, Pakistani and other Muslim communities as sources of internal threat. Refugees, those most vulnerable and fragile people, have become objects of fear. Yet ironically war in the Middle East is only likely to lead to an increase in the numbers of people seeking safety and refuge in this country.

Around the world the safeguards of law have been shown to be ineffective. Since 11th September 2001 there has been a proliferation and strengthening of U.S. military bases across the Middle East and Central Asia. American troops seize men in states from Bosnia to Pakistan and take them, without following any legal process, to Guantanamo Bay, where there are held beyond the reach of any court. At the same time states are threatened with force and punishment if they do not co-operate with the administration in Washington in its global campaign.

Yet the issue is not whether a particular attack is lawful or not under international law but whether it is an act of violence, force and organised power against weak and oppressed people. Socialists everywhere must resist such attacks and work for international social, economic and political justice. The immediate future is threatening and bleak. However through organising the resistance and the opposition to the war that exists, socialist and radical lawyers can make a decisive intervention and work for a more equal global society.

Columbian lawyers in peril

■ COLOMBIA

The Haldane Society of Socialist Lawyers is gravely concerned for the safety of three Colombian lawyers; Marta Hinestroza, Carlos Sánchez, and Claudia Sampedro. One of the lawyers, Marta, has been placed on a paramilitary 'death list', and all three of them are in grave and continuing physical danger.

The three lawyers visited England in April 2002 to publicise the case against BP. Some will have met them while they were here. On Monday 22nd April 2002, the lawyers met with the Haldane Society. At that meeting, it was agreed that priority must be given to protecting the lawyers' safety. It is felt that the trip has made Marta Hinestroza, in particular, a more high profile target and we are extremely concerned for her safety.

Marta Hinestroza and Carlos Sánchez are representing 200 peasant families who are the victims of environmental and human damage caused by the oil industry, for which, it is asserted, BP is partly responsible. They have been fighting for just compensation for these families for seven years now, in the face of continuing death threats from paramilitary forces, demanding that they drop the case and their claims for compensation. As a result Marta has had to move house three times in the past two months, and continues to receive threats and mysterious phone calls.

The Haldane Society has contacted British lawyers' professional organizations, such as the Bar Council, the Law Society and the Bar Human Rights Committee, in order to request them to petition the authorities in Colombia. The Executive Committee of the Haldane Society now calls upon its membership to make representations to the companies that own, administer and use the OCENSA and ODC pipelines, to the Colombian authorities and to the relevant authorities in Britain as set out in the list of contacts below.

Picture: Michael Gillard

Marta Hinestroza: an inspiring mouthpiece for the campesino community

Who are the lawyers? Marta Hinestroza and Carlos Sanchez work as commercial lawyers based in the city of Medellín, Antioquia. They represent 300 campesinos from Zaragoza in the rural northeast of Antioquia whose livelihoods have been ruined by BP's oil pipeline companies ODC and OCENSA. These campesinos have been claiming adequate compensation for seven years. The families were forced to abandon their farms after two oil pipelines passing through their land caused extensive movements of the water supplies. The families now live in acute poverty, some live on a rubbish tip in a shantytown in Medellín. As a woman who originates from the community she now represents, Marta is an eloquent and inspiring mouthpiece for the campesino community she is fighting for. The two lawyers now also represent other families in the south east of Antioquia whose homes and lands have been damaged by water overrunning the banks of the Guatapé River, as a consequence of a significant hydroelectric project managed by EPM, the Medellín Public Corporation.

Claudia Sampedro Torres is Professor of International Public Law and International Environmental Law at the in Universidad Externado in Bogotá. She is the lead advocate in claims brought under the scheme of Popular Actions to Defend Fundamental Collective Rights, including against the Environment Ministry and US oil corporation Occidental for the destruction of fish ecosystems in Arauca; against the Environment Ministry and BP for the misuse of water supplies in oil exploitation and the contaminatory effects of gas burning in Casanare; against the French company Perenco for oil spills – amongst others. She has also lodged cases against the Environment Ministry concerning the effects of the glysophate fumigation programme of Plan Colombia and for permitting the hunting and export of endangered species. Claudia is an expert on the relationship between natural resources, corruption and violence in Colombia, with special reference to the behaviour of state institutions in granting licences.

● **STOP PRESS!!** Marta's situation has severely deteriorated in recent weeks. She has received more threats and has been in hiding for the past few weeks in order to avoid paramilitary attacks. The Colombia Solidarity Campaign is trying to raise funds to bring her to the UK temporarily until things cool down. The Haldane Society is running an appeal to try and help the Solidarity Campaign to raise funds for Marta and her 14 year-old daughter to come to the UK. We would invite any members who are able, to make contributions towards the Appeal Fund.

If you would like to make a contribution towards safeguarding Marta's personal safety, please support the campaign by sending donations to the Colombia Solidarity Campaign, P.O. Box 8446, London N17, U.K (email: colombia_sc@hotmail.com). Please make your cheques payable to "Colombian Solidarity Campaign" and mark your letter/envelope "Haldane Appeal for Marta Hinestroza".

As a sign of commitment to our Colombian comrades, please copy and use the petition opposite immediately. Our members may also wish to send messages of support and encouragement to Marta, Carlos and Claudia, telling them what action you are taking or what contribution your are making to secure their safety. If you would like to send such a message, which will be forwarded by the Colombian Solidarity Campaign to the lawyers, please send it by e-mail to: justiciaypazuk@yahoo.co.uk

Petition

Columbia: stop the attacks

We are extremely concerned to hear that paramilitaries have made death threats against campesinos in Zaragoza municipality (Antioquia) and their lawyer Marta Hinestroza who has lodged civil suits against the pipeline companies OLEODUCTO CENTRAL S.A "OCENSA" y OLEODUCTO COLOMBIA "ODC". We urgently ask the civil and military authorities to take measures to protect their lives.

Hemos tenido conocimiento de amenazas de muerte por parte de paramilitares contra las vidas de campesinos del Municipio de Zaragoza Antioquia y su apoderada MARTA HINESTROZA quien adelanta demandas civiles contra las sociedades OLEODUCTO CENTRAL S.A "OCENSA" y OLEODUCTO COLOMBIA "ODC", por los daños y perjuicios que fueron ocasionados con la construcciòn de tales oleoductos, por lo que solicitamos enérgicamente que las autoridades civiles y militares les brinden las medidas de seguridad pertinentes para la protecciòn de sus vidas.

Name	Address / Organisation

Please send completed petitions and letters of protest to the following:

■ OCENSA Managing Director, Bogota: MANUEL CASTRO BLANCO, Ocensa, Calle 78 No 11-17 Bogotà, Colombia. Mobile: (+ 573) 3446993; tel. directo (+ 571) 3250345; Switchboard: (+ 571) 325 0202 ext. 0345; fax: (+ 571) 217 4815; email: m_castro@ocensa.com.co

■ Ocensa, local manager in Antioquia:JUAN CARLOS GARCIA, Ocensa, Carretera Troncal frente al aeropuerto, Caucasia, Antioquia. tel. (57 4) 830 8902/ 8903

■ Governor of Antioquia EUGENIO PRIETO SOTO, Gobernador de Antioquia (Encargado), Gobernación de Antioquia, Calle 42 B #52-106, piso 12, Medellín, Colombia. Tel: 0057 4 381 1009 or 0057 4 381 1465 Fax: 00 57 4 381 0052; email: rmartine@gobant.gov.co

■ Ambassador Colombian Embassy, Dr VICTOR RICARDO, 3 Hans Crescent, London SW1X OLN. Tel: 0207 589 9177; Fax: 0207 7581 1829; email: mail@colombianembassy.co.uk

■ Foreign Office Minister, DR. DENIS MACSHANE MP, Under-Secretary of State, The Foreign Office, Whitehall, London SW1. Email: macshaned@parliament.uk

■ B.P., Britannic House,1 Finsbury Circus, London EC2M 7BA United Kingdom. Fax 0207 496 4483

■ BP Colombia, Edificio latinoamericana de seguros, Carrera 9A 99-02, 12 piso, Santafé de Bogotá, Colombia. Email: perezcc@bp.com or: bpcolombialegal@bp.com

In August last year Rebekah Wilson, Secretary of the Haldane Society, interviewed John Platts-Mills on behalf of the Haldane Society. This is her personal account of that interview

A life of 'muck, silk and socialism'

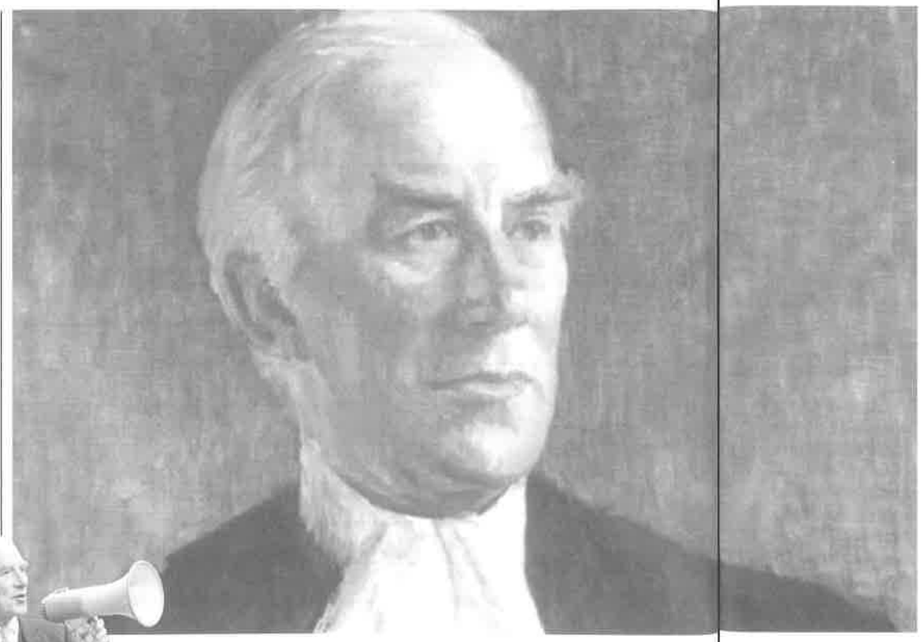
John Platts-Mills had been the Society's supportive and always active President for longer than I could remember and certainly a member long before many of us were born. But even in his nineties he always had time to give to the Society. Given his generous nature it was no surprise then that he agreed to give up a morning to be interviewed for Socialist Lawyer. Aged 95 and busy as ever he was still happy to give an interview to us. Prior to the interview I had spoken to some of John Platts-Mills' colleagues who were in chambers with him at Cloisters. From this I began to understand the breadth of his activities, but nothing could have prepared me for just how vibrant and rich was his contribution throughout the years to law and politics on an international and national basis.

The interview took place in his home in the Temple. His warmth and intelligence was immediately apparent. I asked him about his initial involvement with the Haldane Society.

" I became involved in the Haldane Society in 1936. Mrs Platts-Mills wanted lots of children and time for her painting. She didn't want me hanging around the house in the evening so I found myself something to do. I found the Labour Party, soon joined everything and was fully involved in the Haldane Society. However the Haldane allowed Communists to be members. This gave Jo Gardner a chance to have the society chucked out of the Labour Party. Which it was. Jo Gardner did it because he was ambitious and had his eye on the job of Lord Chancellor which of course he became under Harold Wilson's government".

John Platts-Mills was renowned for his commitment to human rights activism on an international level. He helped to form the International Association of Democratic lawyers, the IADL, and described how at the beginning of the Second World War he helped organize foreign lawyers into being left wing lawyers. The international exchange of ideas and campaigns continues. The Haldane Society remains affiliated to this international organization to which John Platts-Mills gave so much of his time. During the society's recent trip to Cuba for the IADL Congress the week was spent fielding questions from IADL members about John Platts-Mills. Comrades from all the over the world thought so highly of him. It was almost staggering to hear of the impact that he had made internationally.

A successful silk and advocate I wanted to know what inspired this New Zealander to want to practice at the Bar in the UK.



"I had been all set to go to New Zealand when I was finishing my degree at Oxford in 1931. My tutor persuaded me to stay here and practice law. My pupillage was completed at a mixed set. In fact, until I took silk I had only been to the Old Bailey about five times, but then that all changed."

JPM recalls with fondness how his criminal practice took off. "I acted for Ronnie Biggs, one of the Great Train Robbers, in his appeal. There were about 20 barristers and out of all of them I'd managed to think of a new point. Through this one brief I took to crime, then I was at the Old Bailey all of the time. It got to the point that they actually got me lodgings there at the Old Bailey . I practically lived there for five years working on cases the entire time."

JPM was outraged that Biggs is now imprisoned and passionately points out that Haldane members should be doing something about it.

John Platts-Mills combined a political career along with his legal practice from the outset. He was the MP for Finsbury Borough for five years between 1945 and 1950. An outspoken critic of the government he explains how he lost his seat. "Gerrymandering ensured that I didn't get to keep that seat. Part of the constituency was joined with Shoreditch and I lost the majority I had". He goes on to describe with pride the fact that, "I was chucked out of the Labour Party for being too cheeky about the Russians. I was too outspoken for the then Labour Government. Particularly Bevin then Foreign Minister. I asked too many questions of the government and their foreign policies. I had studied the papers very diligently. The Foreign Secretary had suggested I should go back to Moscow. I asked him if he would care to explain this to the house".

John Platts-Mills was seen to be on the hard left of the party. He was the President of the Haldane Society and a member of many other left wing organizations. In 1948 he along with 38 other Labour MPs had signed a congratulatory telegram to Pietro Nenni, leader of the Italian Socialist party. Of course the Labour NEC had already sent a message of support to the non-communist supporting party. John Platts-Mills was the only MP to be expelled from the Party. It wouldn't be until 1969 that he would be allowed back into the Party.

In 1940 he volunteered for the RAF for a few months before he was informed that his services were not required. Probably at the intervention of the Secret Services. However 1941 saw a change in the then Government's stance to this outspoken lawyer and anti-fascist activist. The Germans invaded Russia handing the British an unusual ally. "Winston Churchill sent for me during the war. 'I want you to re-educate people.' Churchill explained, 'Since 1918 we've been teaching British people that Russians are not human, that there is no good in them. I've been teaching the British that they eat their young. For the sake of the war effort change the public perception of them. Do this with Stafford Cripps and do what he tells you.' And so we organized an essay competition for children who were about to leave school. The title of the essay was, 'What I will say next time I meet Stalin'. There were 64,000 essays on the topic. The winning eight went around with their entries and their teachers to Town Halls in London."

I asked John Platts-Mills what he thought of the Bar now, and how he had survived in the early years. He explained, "Scholarships helped in the first few years. Then during pupillage the Road Traffic Act requiring everyone to have road insurance had recently been passed. There was lots of work and I was able to earn a guinea for each case". He described how, quite shockingly, he found the Bar, "The same really, even since 1932. But there are more women, as there ought to be". And with a look of seriousness and perhaps even a hint of regret he pointed out that, "Men should be at home doing the really important work of looking after the children". Quite a remarkable observation from a 95 year old male barrister.

I could have listened for hours but I had to remind myself that this ninety-five year old had lots to do. I was almost overwhelmed by the magnitude of information about John Platts-Mills' political and legal activities. The good news is that he has written his autobiography. He showed me the manuscript with pride. It looks huge but I know it will be a fascinating read when it's published.

■ John Platts-Mills' autobiography *Muck, Silk and Socialism* is published by Paper Publishing and costs £28, ISBN 0-9539949-0-2.

by Michael Mansfield

JPM, as he was affectionately known, was a colleague and friend of mine for the last 30 years, and recently joined my chambers. This will be a treasured memory, because, for many radical spirits at the Bar, he had, beyond anyone else, steadfastly represented the attributes of courage, principle and learning, all securely bound by an incisive wit.

At his 95th birthday celebration, he treated everyone, as ever, to a beautifully crafted and poignant speech, in which it was clear that, if he had been fit enough, he would have been on a plane to Afghanistan to provide a peaceful channel for the resolution of the current conflict – a task he had performed with consummate skill, unrewarded and unrecognised, over the last four decades.

His life story was a history of the 20th century, played out on a domestic and international stage, in which he persistently struggled to secure legal and political justice for those individuals and communities facing oppression and violation of their human rights . As a result, there are few eminent and celebrated political figures who have not been touched by his work.

Wherever he appeared, his intellectual and physical stature provided a magnetic focal point that commanded both respect and attention in equal measure. Only JPM could have turned up to address the demonstrators during the Grunwick dispute in 1977, dressed immaculately in pinstripes and bowler hat! When he spoke, there was a stillness and silence even among the riot shields.

When taken to task at the Old Bailey by Mr Justice Melford Stevenson, about a ground breaking cross-examination – in which he had exposed the fallibilities of forensic science by a masterful demonstration of how a fingerprint could be removed from one surface and placed on another – he conquered all by a dignified and robust composure.

He maintained a tireless commitment and energy until the end. In 1995, he returned to politics as a Common Councilman of the City of London, where he could be seen welcoming the Commonwealth heads of government as well as participating in day-to -day policymaking.

Meanwhile, he kept his deft hand in the courts. At Southwark Crown Court in 1996 he successfully tested officers of the Metropolitan Police Obscene Publications squad about the precise use to which inflatable sheep could be put!

Earlier last year, he was particularly moved by an opportunity to represent three families in the Bloody Sunday inquiry in my absence. When I returned, it was remarked that I was but a shadow of my former self! His is a shadow that will extend over our thoughts for years to come.

The title of his autobiography neatly describes his life, and succinctly provides an epitaph looking back to his Bevin-boy days – *Muck Silk And Socialism*.

■ First published in *The Guardian*.

Women in the law: the current challenge

by Tahmina Mollah

The 100-strong audience applauds the speakers

Do women still face challenges today? Contrary to popular belief, women continue to face many challenges every day of their lives. What are the challenges? Rights of Women and the Haldane Society of Socialist Lawyers had a joint meeting to discuss these very issues titled 'Women in the Law: the Current Challenge'. The speakers were Baroness Helena Kennedy QC, Hannana Siddiqui from the Southall Black Sisters and Liz Davies, Barrister and former member of the Labour N.E.C. Catrin Lewis, chair of the Haldane Society, chaired the meeting, which was attended by over one hundred people.

Helena Kennedy was the first to address the meeting. She pointed out that there were plenty of areas of setbacks for women within the law. Women are often victims at the hands of the law, of the judiciary and courts, even the selection of the judiciary disadvantages women. Helena Kennedy has been arguing for equal treatment for women since the beginning of her career. Some progress has been made, however, there have also been occasions where equal treatment of unequal people has created more inequalities. Male judges still use words appropriate for men without taking into account gender difference. She argued that to recognise difference, one must look at how to create substantive justice, for example, when a marriage comes to an end and a woman has been a primary child carer all her life. Women's lives are different from men's; until the law recognises the substantive differences it will continue to disadvantage women.

From top: Helena Kennedy QC; Liz Davies and Catrin Lewis

Many people were looking towards the Human Rights Act as a possible means of protection. Yet the Act has brought with it a different sort of challenge that of balancing competing rights. Last year Helena Kennedy argued at the House of Lords that a male accused ought not to be allowed to directly question a victim of a sexual offence, the defendant on the other hand, argued that by not allowing the jury to hear the evidence, his right to a fair trial was being violated. The Act requires a balance to be struck between the civil liberties of the accused and the rights of the victim. More often than not, she argued, the law favours men!

Hannana Siddiqui of Southall Black Sisters then spoke powerfully and informatively. She condemned David Blunkett's comments on ethnic minority communities failing to "integrate" into communities, and having to take up British norms of life before becoming a British citizen. She pointed out that the Labour Party claims to give respect to multiculturalism and yet now multiculturalism is being blamed for social problems.

Hannana argued that multiculturalism had also failed black and Asian women. Women from these communities do not receive any support either from their communities or the law. Politicians do not like to comment on community issues for fear of causing offence - to men! Hannana raised the case of Zohra Shah who killed her husband after years of abuse. The Court of Appeal dismissed her appeal remarking 'what honour has the woman to salvage?' In order to understand Ms Shah's case an understanding of multiculturalism is essential. So far though, multiculturalism seems like a trendy concept; it has done nothing to help or further black and Asian women's causes. As a campaigner for women's rights, Ms Siddiqui would like to see the government taking more positive steps in securing rights for women, especially women from ethnic minority communities.

> "Helena Kennedy has been arguing for equal treatment for women since the beginning of her career"

Finally Liz Davies praised ROW and the Haldane Society for organising such an event and observed that women's rights are not spoken about often enough. Liz began by looking at the demands of the 1970s women's liberation movement and what had been achieved so far.

Of the demands that women made in the 70s some improvements have been achieved but not by far enough. Advances had been achieved in relation to free abortion and birth control, women do have more rights that the previous generations but are still left to hold the baby at the end of the day. Of fundamental importance is the serious lack of affordable and accessible childcare which compromises many women's choices in relation to working and family.

Domestic violence has been recognised more than it was 30 years ago. Provocation and abuse is recognised and rape in marriage is now a crime. But has domestic violence stopped? No, one in three women are victims of domestic violence at some point in their lives. In relation to sexuality, although lesbians feel free to come out, there is still no legal recognition of same sex relationships nor prohibition against discrimination on grounds of sexuality. So although significant changes did emanate from the movement, more needs to be done.

In Liz's view the women's movement had achieved a lot. What it had done more than anything was to create an expectation. Women of this generation expect equal treatment and opportunities. However women still earn much less than men in almost all fields. Despite this women try to disassociate themselves from feminism. So how is equality to come about? Feminism is still extremely important in order to shake up society and politics.

Being a former member of Labour N.E.C, Liz Davies knows very well how politicians tackle issues. She agreed that politicians have not done anything for women, rather, 'politicians pick up women's issues and appear to run with them'. Liz expressed her dismay at how this government turned on single mothers. Her argument was to bring domestic violence into the limelight again, and create more refuges. She wants to see men taking childcare just as seriously as women. The old demands are still as relevant today as they were 30 years ago.

In a final question and answer session Ranjit Kaur, director of ROW suggested that organisations work together using their expertise to fight for women's rights. The meeting agreed that the current challenge really is to get women on this generation to fight for their rights and revive their historical demands that still had to be met before women could really be said to have achieved equality.

■ Tahmina Mollah is a volunteer with Rights of Women

Justice for all?

by Claire Bostock

The White Paper, Justice For All, sets out the Government's view as to what should be done to modernise and improve the criminal justice system. The document sets down a wide-ranging programme of reform for the future. One such area of reform relates to jury trial. The proposals in that regard appear, on first reading, far less radical and thus far more acceptable than those contained in the Mode of Trials Bills 1 and 2 and Sir Justice Auld's Review of the Criminal Courts of England and Wales. On closer inspection, however, the proposals in the White Paper are not as innocuous as they first seem. The proposals are an assault on jury trials and will undoubtedly lead to further attacks on this basic fundamental right.

"The proposals are an assault on jury trials and will undoubtedly lead to further attacks on this basic fundamental right"

Under the current system, there is a tripartite division of offences: summary, triable either way and triable on indictment. In the case of triable either way offences, unless the magistrates decide that a case is so serious that it must go to the crown court, the accused has the right to choose whether his trial should be heard in the magistrates' court before a district judge or lay justices, or in the crown court before a judge and jury.

Previous administrations have successfully attempted to reclassify a number of triable either way cases so that cases can be heard in the magistrates' court only; criminal damage is a case in point, where venue is in part determined by the estimated value of damaged alleged. In opposition, Labour opposed moves to curb jury trials. In 1993 when the Royal Commission on Criminal Justice proposed that access to jury trial should be restricted to a limited number of offences, Jack Straw, the former Home Secretary, stated that the reforms were: "Unfair, short-sighted and likely to be ineffective." Jack Straw's words were taken not only to be representative of the Labour Party but also those of the reasonable, right thinking individual who had the interests of justice at heart. Once in power, the views of Jack Straw and those of New Labour changed. Jack Straw's new rhetoric went like this: "Trial by Jury is a key freedom in our democracy but giving the defendants a choice of courts is not. It is frankly eccentric." Shortly thereafter the Government attempted, in the Mode of Trials Bills 1 and 2, to curb the right to trial by jury. An attempt on the part of the Government to rationalise its shift in ideology was met with a far more sophisticated argument in favour of retaining jury trial and the Mode of Trial Bills were overwhelmingly defeated in the House of Lords. The legacy of the Mode of Trail Bills, however, demonstrates one simple fact: a shocking distrust of juries on the part of the Government.

In spite of the defeat, the Government insisted that the jury system required reform; it just needed a way in which to do it. In December 1999, Sir Robin Auld was commissioned by the Lord Chancellor, the Home Secretary and the Attorney General to independently inquire into the practices and procedures of and the rules of evidence applied by the criminal courts at every level. Sir Robin Auld's brief specifically included the issue of jury trial. Sir Robin Auld's report, Review of the Criminal Courts of England and Wales, was published on 8 October 2001.

In his Review, Sir Robin Auld's proposals relating to jury trial were far more radical than those in the Mode of Trial Bills 1 and 2. In Recommendation 32, Sir Robin Auld proposed that magistrates and not defendants should determine trial venue. Lawyers, civil libertarians and other interested parties immediately spoke out against the proposals which were perceived as yet another assault on civil liberties. The campaign against Auld was overwhelming. As a result the Government announced that the recommendations on jury trial would not be enacted; a victory some thought, but then came the White Paper, Justice For All.

The White Paper, Justice For All (Cm 5563), published in July 2002, is the Government's long-awaited response to Sir Robin Auld's Review of the Criminal Courts of England and Wales as well as John Halliday's Report, Making Punishment Work (published on 5 July 2001). The document, over 180 pages in length, is an attempt by the Government to rebalance the criminal justice system in favour of the victim and the community so as to reduce crime and bring more offenders to justice.

Home Secretary David Blunkett spells it out: New Labour will reduce trial by jury

It is not possible in this article to address all of the many proposals in the White Paper, which include the abolition of the double jeopardy rule in serious cases and greater burdens on the defence to make disclosure, but it is clear that careful scrutiny of the proposals will be required, particularly in a climate where minds are focussed on other apparently more pressing issues such as global terrorism.

With respect to jury trial, the Government has indicated that it proposes to allow defendants in the crown court the right to apply to the court for trial by a judge sitting alone (paragraph 4.27 of the White Paper). Given that the choice of trial remains with the defendant, this proposal may be less controversial. The Government has, however, indicated that in certain trials, namely "serious fraud" (paragraph 4.30) and "other organised crime cases where there are similar complex financial and commercial arrangements" (paragraph 4.31), the right to trial by jury will be abolished. At this stage, the latter category, worryingly, has not yet been defined and the scope for a wide interpretation of those cases would be possible. In such cases, a defendant will no longer have the right to choose a jury trial; he or she will face a judge-only trial.

The above proposals are clearly less radical than earlier proposals. For those who vigorously campaigned against the earlier proposals, the White Paper's recommendations may appear acceptable. The apparent backtracking of the Government post the campaign, as reflected in the proposals outlined in the White Paper, is seen as a victory. But is it really? Once the proposals in the White Paper are adopted, the Government will have taken its first step towards the erosion of the right to trial by jury. Jury trial will no longer be available in fraud cases and other "complex cases." If this is the first step we have to ask: what will be next?

The key impact of the proposed reforms is that the accused is denied the right to choose who hears his case. The ramifications on our rights as citizens of the loss of this choice are essentially two-fold. Firstly, there is an automatic increase of power wielded by the state over the individual. Secondly, the public, who currently participate in the jury system and play an indispensable role in such a crucial part of our democracy, is disenfranchised.

The jury system is a very powerful medium through which citizens participate in our democracy. The White Paper reflects a worrying trend towards a significant reduction in jury trials. Reducing the number of jury trials will exclude citizens from the process resulting in their increased alienation, cynicism and disillusionment and similarly for defendants. Given the various legislative onslaughts on civil liberties by successive Governments over the last 20 years (for example, the right to silence, duties on the defence to provide a defence case statement), it would be hoped that a Labour Government would be taking steps to reverse these rather than extend them. Sadly that does not appear to be so.

The jury system has a range of benefits and values that cannot be found in the judiciary. It is likely that a jury is better able to comprehend a course of action that may have been pursued by the defendant. It is often this very understanding to which the accused reaches out when choosing a jury trial. This is particularly the case with dishonesty offences and Public Order Act offences, but might equally be seen where the ordinary person as a juror is asked to make a judgement on a defendant's motivation or mens rea. For example, a jury is better placed to weigh up what act constitutes lawful self-defence and what act should be considered excessive self-defence. It is of paramount constitutional importance that twelve randomly chosen citizens exercise that quasi-legislative role of defining the norms they would expect their own society to abide by. That is why an accused's right to choose trial by judge or jury in any criminal case should be defended.

"Reform which ultimately removes the choice of trial from the defendant is a reform that cannot be supported by socialist lawyers"

In beginning their assault on the jury system, the Government has chosen to remove the right to trial by jury in fraud cases. Its decision to do this could be seen as treating the jury and ordinary citizen's intelligence with contempt. Furthermore, it is in precisely these types of cases - where many facts are not in dispute – that the jury is peculiarly well suited to form a view, for example, whether someone had knowledge of a fraud or participated actively in it, as these are judgements made frequently by careful evaluations of witnesses and evidence. The Government appears to have lost trust in our citizens' abilities to come to such judgements. The experience of practitioners is somewhat different and many feel that the jury is able, with assistance where necessary, to follow lengthy fraud trials.

To date, lawyers, civil libertarians and other interested parties have strongly opposed the Government's proposals to reduce trial by jury, particularly those set out in the Mode of Trial Bills and Sir Justice Auld's Review. In the White Paper the Government's initial proposals have been watered down. That shift appears to have been received as a victory – after all, it is only fraud cases that are now affected and not all cases. There is a danger in treating the White Paper in this way. In effect the White Paper is a blue print for the future: fraud cases today and then why not other cases tomorrow? It is for this reason that those who are opposed to the abolition of jury trials ought to exercise immense caution when assessing the impact of the White Paper. The campaign must live on. Reform as a concept is not opposed. There are many who will welcome the proposal that the defendant be able to choose a crown court trial by judge alone. However, reform which ultimately removes the choice of trial from the defendant is a reform that cannot be supported by socialist lawyers. In a country which does not have a written constitution, and where European human rights case law provides no assistance in safeguarding the right to trial by jury, it is all the more important that inroads into citizens' rights are challenged. We ought not to treat the Government's White Paper as Justice For All.

■ Claire Bostock is a solicitor practising in criminal defence

Carpet bombing by American B52s in Afghanistan last October – will this be Iraq this October?

Invading Iraq would violate US and international law

by Marjorie Cohn

Despite opposition by many prominent Republicans, Dick Cheney and George W. Bush are mounting an intensive public relations campaign to justify their pre-ordained invasion of Iraq. A pre-emptive strike against Iraq would violate the US Constitution and the United Nations Charter.

Article I, section 8 of the US Constitution empowers Congress, not the President, to debate and decide to declare war on another country. The War Powers Resolution provides that the constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorisation, or (3) a national emergency created by attack upon the United States, its territories, or possessions or its armed forces.

Congress has not declared war on Iraq, no statute authorises an invasion and Iraq has not attacked the United States, its territories, possessions or armed forces. President Bush's lawyers have concluded that he needs no new approval from Congress. They cite a 1991 Congressional resolution authorising the use of force in the Persian Gulf, and the September 14, 2001 Congressional resolution authorising the use of force against those responsible for the September 11th attacks.

These two resolutions do not provide a basis to circumvent Congressional approval for attacking Iraq. The 12th January 1991 Persian Gulf Resolution authorised the use of force pursuant to U.N. Security Council Resolution 678, which was directed at ensuring the withdrawal of Iraq from Kuwait. That license ended on 6th April 1991, when Iraq formalised a cease-fire and notified the Security Council. The 14th September 2001 resolution authorised the use of armed force against those responsible for the recent [September 11th] attacks against the United States. There is no evidence that Iraq was responsible for the September 11th attacks.

A pre-emptive invasion of Iraq would also violate the United Nations Charter, which is a treaty and part of the supreme law of the United States under Article 6, clause 2 of the Constitution. It requires the United States to settle all disputes by peaceful means and not use military force in the absence of an armed attack. The UN Charter empowers only the Security Council to authorise the use of force, unless a member state is acting in individual or collective self-defence. Iraq has not attacked this country, or any other country in the past 11 years. None of Iraq's neighbours have appealed to the Security Council to protect them from an imminent attack by Iraq, because they do not feel threatened.

Cheney and Bush cite the possibility that Iraq is developing weapons of mass destruction as the rationale for a pre-emptive strike. Iraq is in violation of Security Council Resolution 687, which requires full cooperation with UN weapons inspectors. But this issue involves the Iraqi government and the United Nations. The Security Council did not specify any enforcement mechanisms in that or subsequent resolutions. Only the Security Council is empowered to take further steps as may be required for the implementation of the resolution. Although the Security Council warned Iraq, in Resolution 1154, of the 'severest consequences' if it continued its refusal to comply, the Council declared that only it had the authority to ensure implementation of this resolution and peace and security in the area.

Articles 41 and 42 of the UN Charter declare that no member state has the right to enforce any resolution with armed force unless the Security Council decides there has been a material breach of it resolution, and determines that all non-military means of enforcement have been exhausted. Then, the Council must specifically authorise the use of military force, as it did in November 1990 with Resolution 678, in response to Iraq's occupation of Kuwait in violation of Security Council resolutions passed the previous August. The Security Council has not authorised any use of force for subsequent violations involving Iraq.

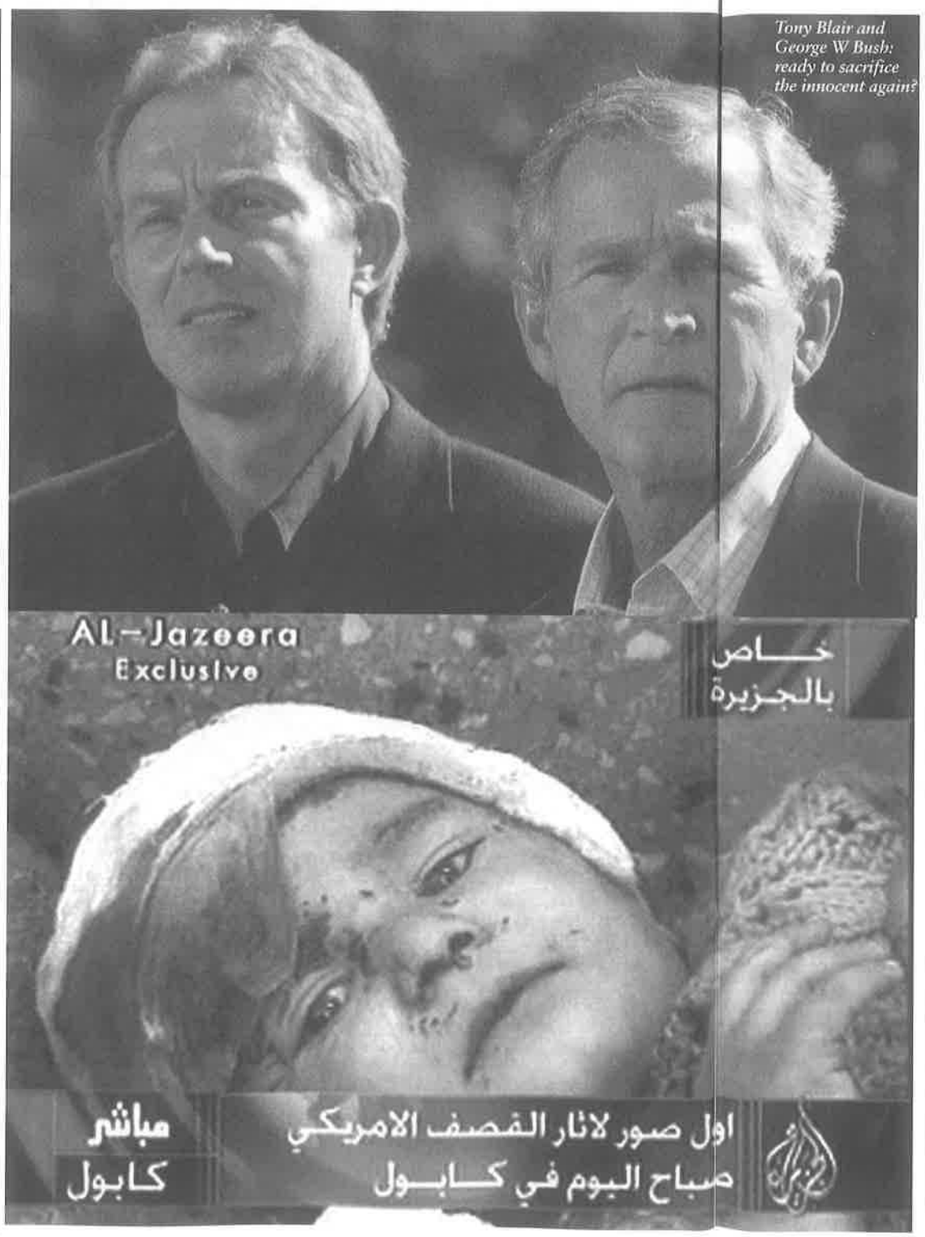
Moreover, the claim by Cheney and Bush that Iraq has developed weapons of mass destruction is spurious. Scott Ritter, who spent seven years in Iraq with the UNSCOM weapons inspection teams, has said, "There is absolutely no reason to believe that Iraq could have meaningfully reconstituted any element of its [weapons of mass destruction] capabilities." Ritter, a twelve-year Marine Corps veteran who served under General Norman Schwarzkopf in the Gulf War, maintains that the Iraqis never succeeded in developing their chemical and biological agents to enable them to be sprayed over a large area. It is undisputed that Iraq has not developed nuclear capabilities.

There is no legal justification for a pre-emptive attack on Iraq. Only Congress can authorise the use of United States armed forces, and only the Security Council can sanction the use of force by a UN member state. Both are necessary; neither has been forthcoming.

■ Marjorie Cohn, an associate professor at Thomas Jefferson School of Law in San Diego, is on the national executive committee of the National Lawyers Guild.

Responding to 11th September 2001: the framework for international law

This piece is a much edited version (by Adrian Berry) of a paper by **Helen Duffy**, Legal Director of Interights. For a fuller and better treatment of the law, readers are advised to look at the original (it can be found at www.interights.org)



Tony Blair and George W Bush: ready to sacrifice the innocent again?

A. THE OBLIGATION TO RESOLVE DISPUTES BY PEACEFUL MEANS

States must bear in mind the obligation to resolve disputes by peaceful means. Article 2(3) of the UN Charter 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.

This includes arbitration, judicial settlement through the International Court of Justice (ICJ), negotiation and settlement under the auspices of the UN.

The question of the lawfulness of the use of force only arises 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.

B. THE USE OF FORCE

The legality of the use of force under international law is called 'jus ad bellum'. The general rule, in Article 2(4) of the UN Charter, is that the use of force is prohibited. Article 2(4) obliges all Members of the UN to: refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations. Certain exceptions to the prohibition on the use of force are contemplated. 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 it necessary for the maintenance or restoration of international peace and security.

B. (I) Self Defence

Article 51 of the UN Charter states: '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....' Defence is distinguished from prohibited reprisal. The threat to the state must be imminent and identifiable. All measures must be necessary to remove or counter the threat, and proportionate to it.

B. (I) (i) Individual or Collective Self Defence

Self defence can be individual or collective. The scope of 'collective' self defence may be relevant to the legitimacy of the use of force by states which were not the victims of the 'armed attack'. The recognition of the collective nature of the right is reflected in Article 5 of the NATO treaty.

B. (I) (ii) Conditions for the Exercise of Self Defence

Armed attack. Article 51 contemplates self defence 'if an armed attack occurs against a Member of the United Nations'. Armed attack is an attack against the territorial integrity or political independence of a state. Security Council Resolutions 1368 and 1373 which condemn the attacks of September 11 and call for action short of the use of force to be taken in response, reiterate the right of 'self defence.' This presupposes that the events of September 11 constitute an 'armed attack' for the purposes of Article 51.

● State v. individual responsibility for the attack

Numerous writers assert that state involvement is necessary for self defence to be justified and that acts of individuals or groups must be imputed to the state so as to engage state responsibility. Others assume that a state itself must be involved in the armed attack. The question of whether a State is responsible for the armed attack is relevant to the lawfulness of a coercive response towards that state.

An attack in self defence must be necessary and proportionate and premised on a clear link between the target of 'defensive action' and the threat being defended against.

Necessity and Proportionality

There must be an imminent threat of force or continuing attack. Any response must be necessary to avert that threat and proportionate. These factors, unlike the armed attack requirement, are prospective as opposed to retrospective, and are critical in distinguishing self defence from reprisals.

The necessity of force presupposes that all alternative, peaceful means have been exhausted, are lacking or would be ineffective as against the anticipated threat. A relevant question in determining the right to self defence is the effectiveness of any proposed measure. Proportionality requires that the force used be no more than necessary to meet the threat of an imminent second attack or a continuing attack.

● Security Council takes over

A final requirement for self defence is that any measure must be immediately reported to the Security Council under Article 51 of the UN Charter. Although Security Council Resolutions 1368 and 1373 reiterate the right of self defence, the obligation to report any self defence measures to the Council remains; following which the Council must then decide how to act for peace and security.

B. I (iii) Reprisals distinguished from Self Defence

The legal distinction between self defence and reprisals, which are responsive and largely punitive, is important. Reprisal action is considered not to justify the use of force under international law.

B. (II) Security Council: Maintenance of International Peace and Security

Where self defence cannot be justified, the only legitimate use of force is that authorised by the Security Council. It 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.

Article 42 confers on the Security Council unique powers to mandate enforcement action. It enshrines the power to 'make recommendations, or decide what measures shall be taken...to maintain or restore international peace and security.'

Non-forceful measures have included the establishment of ad hoc criminal tribunals. One context in which the use of force has been mandated was to secure the arrest of suspected criminals.

The Security Council may decide not to take the forceful action itself, but may nominate others to do so. Resolution 678 of 19 November 1990 during the Gulf conflict stated that: 'the Security Council authorises member states co-operating with the government of Kuwait to use all necessary means to uphold and implement Resolution 660.'

The language of Resolution 678 was considered to authorise the use of force and contrasts with the language of the resolutions after of September 11. Both Resolutions 1368 (2001) of 12 September 2001 and Resolution 1373 (2001) of 28 September 2001 classified the situation as a threat to international peace and security. While Resolution 1368 called on states to take measures to co-operate to bring to justice those responsible, Resolution 1373 'decided' concrete, wide ranging measures that member states are obliged to take. It also 'called on' states to take other steps to prevent and suppress terrorist attacks. However its operative clauses stopped short of authorising the use of force or 'all necessary measures' to be taken as it has on previous occasions. The legitimacy of force therefore must ultimately depend on the Security Council subsequently agreeing to take, or to authorise, such force.

C. STATE RESPONSIBILITY

State responsibility is relevant to the use of force and to determining against whom force might lawfully be deployed. On one view, a state must be involved in an on-going or imminent attack in order to justify the use of self defence against that state.

States can be responsible for international wrongs directly or vicariously. Where private individuals or groups are responsible, the question is whether the state exercises 'effective control' over their actions. Whether encouragement or even passive acquiescence in wrongs is sufficient to render a state responsible depends upon the ability of the state to prevent or control the wrong in question. The rejection of strict liability for a state on whose territory crimes are orchestrated has been long established.

D. THE JUSTICE PARADIGM: INTERNATIONAL CRIMINAL LAW

D. (I) Individual Responsibility

To the extent that the events of September 11 constitute crimes those responsible are susceptible to investigation and prosecution. The work of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda ('ICTY' and 'ICTR' or 'the ad hoc tribunals'), the elaboration by consensus of the International Criminal Court ('ICC') Statute and innovations in domestic law and practice have been the principal contributors to the system of international justice.

D. (II) Crimes under International and National Law

D. (II) (i) Crimes against Humanity

'Crimes against humanity' consist of acts, such as murder, torture or inhumane acts, which form part of a widespread or systematic attack directed against the civilian population. Crimes against humanity are crimes under customary international law, prohibited by all persons irrespective of nationality or national laws.

Murder and inhumane acts

These are among the acts that may amount to crimes against humanity. Murder has been held in an international context to consist of killing with 'an intention on the part of the accused to kill or inflict serious injury in reckless disregard of human life.'

Widespread or systematic attack

Crimes against humanity must be 'widespread or systematic'. The conduct of a particular perpetrator need not be 'widespread or systematic.' Even a single act by a perpetrator may constitute a crime against humanity, provided it forms a part of a broader, widespread or systematic, attack. The attack need not be both widespread and systematic. The attack must be directed against the civilian, as opposed to a military, population. Crimes against humanity can be committed in times of armed conflict or in times of 'peace'.

D. (II) (ii) War Crimes

As the name suggests, war crimes must take place in war or armed conflict. The ICTY definition of 'armed conflict' states: "...an armed conflict exists whenever there is a resort to armed force between

Responding to 11th September: the framework of international law

States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts..."

If a state is responsible for the use of armed force on September 11, then that event may amount to the initiation of armed conflict between states. The acts of violence may amount to grave breaches of the Geneva Conventions, which consist of certain very serious crimes, 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. If the conflict is not considered to emanate from groups 'within a state' it may be that the events of September 11 highlight a new hybrid type of armed conflict between organised groups and foreign States.

War crimes are those serious violations of international humanitarian law ("IHL") which entail under customary or conventional law the individual criminal responsibility of individuals. They include crimes relating such as deliberate attacks on civilians or the use of weapons that cause unnecessary suffering, and crimes against protected persons, such as torture or cruel treatment carried out against person taking no part in hostilities.

D. (II) (iii) Terrorism

There is no accepted definition of 'terrorism'. This reflects in part the saying that one person's terrorist is another's freedom fighter, as well as the question of whether actors, such as states, can be responsible for terrorism. Applying the principles of legality and certainty in criminal matters, it is difficult to see how terrorism, being undefined, could be said to constitute a crime under customary international law.

Certain acts of terrorism are defined through specific criminal offences in treaties that are binding on the states party to them and which oblige particular states parties to exercise jurisdiction over the crimes covered.

D. (II) (iv) Other Crimes

Conventions relating to hijacking have been incorporated into United States law and the U.S. has in the past exercised jurisdiction in a number of cases on that basis.

Murder, whether as a crime against humanity or not, is a crime in most domestic jurisdictions. It remains an option to prosecute in a domestic court as a common crime. As a crime of universal jurisdiction, all states should be able to exercise their jurisdiction on the basis of the prosecution of mass murder.

D. (III) Direct and Indirect Individual Criminal Responsibility

If the events of September 11 amount to crimes under international law, then the perpetrators can be held responsible. Those directly responsible are not only those who hijacked the planes but also the networks of persons who assisted.

People may be responsible not only for ordering or instigating crimes but also 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 knew or should have known that the crime would be committed and failed to take necessary and reasonable measures to prevent it.

D. (IV) Jurisdiction To Prosecute

D. (IV) (i) National Courts

Certain states may exercise criminal jurisdiction. These are 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 provides for any state to exercise jurisdiction over crimes such as murder, crimes against humanity and war crimes. In addition, certain international agreements have provided for jurisdiction over these and other crimes. Some states have universal jurisdiction laws in place, to ensure that they can exercise this form of jurisdiction.

States that do not yet have such legislation in place could still enact legislation to confer universal jurisdiction and could prosecute in respect of September 11, provided the crimes existed at the date of commission. The principle of legality and non-retroactivity in criminal law requires that the conduct be criminal at the date when it was carried out, not that jurisdiction over the conduct be established at that time.

D. (IV) (ii) International 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.

International experience also points to several hybrid models of quasi-international justice that have emerged from negotiation and agreement. An agreement between the UN and Sierra Leone lead to the Statute of the Special Court for Sierra Leone, which combines elements of national law, procedure and personnel with international components.

D. (V) Implementing Justice

International co-operation with any judicial forum is essential for the purposes of, for example, arresting suspects, freezing assets and securing evidence. A complex body of agreements governs co-operation between states in matters of extradition and mutual assistance with criminal investigations. Where a crime is believed to be state sponsored or where the urgency of the situation demands swift action, another method of enforcement can be invoked by the Security Council. It can circumvent obstacles to speedy transfer of suspects by authorising enforcement action, where necessary through the use of force.

E. LAWS APPLICABLE IN ARMED CONFLICT

These are the rules that apply in the context of armed conflict, once there has been a resort to force. The rules (the jus in bello) apply irrespective of whether the use of force is itself lawful (according to the jus ad bellum)

E. (I) International Humanitarian Law

International humanitarian law ("IHL") imposes constraints on how war may be waged. Its objective is to protect certain persons who do not (or no longer) take part in hostilities and to limit the methods and means of warfare for the benefit of all. It applies in time of 'armed conflict.'

E. (II) When and where IHL applies

E. (II) (i) Armed conflict: international or non-international

An armed conflict is international if it involves the use of force by one state directed against another. It also arises where a state or states intervene in an internal conflict, with its own troops or by having other participants act on its behalf. Total or partial military occupation, where there is no armed resistance, is an international conflict for the purposes of IHL.

E. (II) (ii) Territorial and temporal scope of IHL

In the event of an armed conflict IHL applies in the whole territory of the warring States. It applies from the initiation of an armed conflict and extends beyond the cessation of hostilities until a general conclusion of peace is reached.

E. (III) Treaty law

The applicable treaty law is contained in instruments such as the Hague Convention 1907, the four Geneva Conventions of 1949 and the First Additional Protocol ("AP1") of 1977. By contrast, non-international armed conflicts are regulated by a skeletal body of treaty law. Non-observance of particular rules by one party does not justify violations by another.

E. (IV) Customary law

Principles such as humanity and military necessity, from which the more particular principles of distinction, proportionality and the prohibition on causing unnecessary suffering derive, are considered customary international law applicable to all conflicts. The treaties mentioned reflect or provide evidence of customary law. In addition, a 'common core' of customary IHL applies whether the conflict is non-international or international.

F. RULES OF INTERNATIONAL HUMANITARIAN LAW

F (I) Targeting: The Principle of Distinction and Proportionality

IHL regulates who and what may be the legitimate target of military action during armed conflict. This reflects the principle of distinction that counters the notion of total war. Attacks against civilians and civilian objects are unlawful. If any doubt arises as to whether someone is a combatant or a civilian, he must be presumed a civilian.

Under IHL, only 'military objectives' may be the object of legitimate attack. Military objectives consist of 'combatants', and certain objects that make a contribution to the adversary's military capability.

'Combatants' include irregular groups that fight alongside regular troops. Killing those who fight with the adversary's armed forces, which may amount to murder if there is no armed conflict, is considered lawful in time of conflict under IHL. If however, combatants are hors de combat (out of military action) through surrender or illness, they are no longer military objectives but become entitled to the protection of the law.

Attacks against the civilian population are prohibited where they are deliberately directed against the civilian population, and where they are aimed at military and civilian objectives without distinction or directed at legitimate objectives, but cause civilian losses disproportionate to the military advantage anticipated. As regards objects that may be targeted, Article 52 of Additional Protocol 1 ("AP1"), states: In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.

F. (II) Methods and Means of Warfare: Unnecessary Suffering

The prohibition on waging war in a manner that causes 'unnecessary suffering' is accepted as part of customary international law. 'Unnecessary suffering' is used in a number of legal instruments.

In addition to the specific treaty provisions that regulate the use of weapons, certain weapons are deemed by their nature to cause 'unnecessary suffering' and therefore to be prohibited under customary law. While the issues remain unsettled as a matter of law, serious questions have been raised as to the lawfulness of the use of cluster bombs on the basis of their indiscriminate effects.

F. (III) Humanitarian Protection

IHL governs not only the conduct of hostilities on the battlefield but also affords protection to persons in the hands of 'the enemy', namely prisoners of war, the sick and wounded, and civilians who find themselves in territory controlled by opposing forces.

Article 3, common to the four Geneva Conventions of 1949, which is also customary international law, provides that such persons must be treated humanely, without discrimination, and specifically prohibits violence to life and person, including cruel treatment, hostage-taking, outrages upon personal dignity and carrying out of sentencing and executions without certain judicial guarantees.

The duty to protect the civilian population is at the heart of IHL. The Fourth Geneva Convention, which applies to civilians and Additional Protocol 1 ("AP1") set out humanitarian protections.

The moment that a person surrenders or is rendered hors de combat, he or she becomes a prisoner of war ("POWs") or a sick and wounded person, entitled to protection. That protection is provided for in common Article 3 and the First and Third Geneva Conventions.

Among the most basic protections owed to POWs is the duty to keep them from danger and to supply them with food and medical care. POWs may not be subject to any punishment, or reprisal for action taken by the forces on whose side they fought. AP1 deems this protection to cover civilians and others in medical need.

F (IV) Responsibility for Violations of International Humanitarian Law

Parties to an armed conflict are bound to respect the applicable rules of IHL. They are responsible for violations of those rules by their armed forces, and for violations by other irregular forces under their 'overall control'; such control arises where the Party 'has a role in organising, co-ordinating or planning the military actions of the military group.'

Finally, while not all violations of IHL carry individual criminal responsibility, serious violations may also amount to war crimes for which individuals can be held to account before national or international courts.

G. INTERNATIONAL HUMAN RIGHTS LAW IN ARMED CONFLICT

International human rights treaty and customary law protects a range of human rights, including the rights to life and liberty. These obligations apply to all those in a state's territory. This extends beyond a state's borders where that state has de facto control over another state's territory. It applies to nationals and aliens alike.

No circumstances, however extreme, render human rights law redundant. Human rights protections are most important in times of national and international strain. However, the law does have the inherent flexibility to adjust to extreme situations. In times of 'public emergency' a range of rights may be derogated' from.

G. (I) Derogation

The derogation clauses in treaties such as the European Convention on Human Rights ("ECHR") govern the conditions that states are bound to comply with in order to derogate and the 'core' of human rights that is non-derogable.

The law governing derogation, and the obligation to respect the non-derogable core of human rights, provide the litmus test for assessing the lawfulness of any civil liberties infringements that may result from measures adopted under 'anti-terrorism' legislation. For a derogation the ECHR requires the existence of a 'public emergency threatening the life of a nation.' The derogation must be strictly construed. The need to derogate must be based on an accurate examination of the situation in the country, not mere predictions of future attack. The standard is intentionally high. Measures that violate derogated rights must be both strictly necessary and proportionate to the emergency in question. Whether other safeguards are in place, including habeas corpus and legal representation, will also be relevant. Non-derogable' rights under ECHR include are the right to life and freedom from torture and inhuman and degrading treatment or punishment.

G. (II) Customary law

Customary international law obliges all states, regardless of whether they have ratified a relevant international or regional treaty, to respect certain rights and freedoms.

The customary doctrines of 'state of necessity' and 'force majeure' provide that, in very exceptional circumstances, a state's failure to comply with its human rights obligations is not unlawful. However, rights which have 'jus cogens' status, as pre-emptory norms, can never be abrogated, whether by customary doctrine or treaty provisions.

G. (III) Relationship between International Humanitarian Law and Human Rights Law

IHL comes into operation during armed conflict and applies until a final resolution of peace. International human rights law applies at all times. The two strands of law therefore overlap and apply simultaneously during armed conflict.

Human rights and IHL together form international criminal law, by virtue of which individuals may be responsible for serious violations amounting to crimes such as genocide, crimes against humanity, whether committed in time of peace or war, or war crimes. ■

Pictures: Jim Cronin

by Adrian Berry

Tough act follows

In response to the attacks in New York and Washington on September 11th 2001 the Government has introduced the Anti-terrorism, Crime and Security Act 2001, the "Anti-terrorism Act 2001". As readers of Socialist Lawyer and members of the Haldane Society will be aware, it is not long since the Terrorism Act 2000 massively strengthened the power of the police and state authorities by giving them a range of powers and over and above those available under the ordinary criminal law. Following hard on the heels of that Act, the Anti-terrorism Act 2001 has been brought forward as another, additional, set of responses to strengthen the power of the government, the police and the intelligence services.

Two-tier Criminal Justice

The new Act repeats the folly of the Terrorism Act 2000 by furthering the development of a two-tier criminal justice system that distinguishes between the civil liberties, police powers and offences provided for under the ordinary criminal law and those that obtain when terrorism law replaces ordinary criminal law. This ought to be opposed as a matter of principle as unnecessary and discriminatory. Under Part IV of the Anti-terrorism Act 2001 foreign nationals certified by the Secretary of State to be a risk to national security and who are suspected of being terrorists may be detained indefinitely if it proves impossible to deport them. A person may be impossible to remove where there is a real risk of torture or inhuman treatment in the receiving state, and thus a potential breach of international human rights law or, where removal is not practically possible. A challenge to this detention without charge, or internment, cannot be brought before the High Court but must be made to the Special Immigration Appeals Commission,"SIAC".

The new provisions in the Anti-terrorism Act 2001 build on the raft of terrorism offences introduced by the Terrorism Act 2000. These offences included those of membership and support of a terrorist organisation, fund raising, weapons training, directing a terrorist organisation, collecting information of use to terrorists, inciting terrorism and bombing overseas. This is quite a collection. If one considers that the scope of the ordinary criminal law also provides for prosecutions based on conspiracy and attempt offences, the comprehensive nature of terrorist offences is clear.

The Terrorism Act 2000 only came into force early in 2001. There had been very little time between the provisions of the Act coming into force and the events of September 11th 2001. Whatever your opinion of this Act, there has been no opportunity for the provisions of the Act to be tested and found wanting. Accordingly, the need for further legislation in the form of the provisions of the Anti-terrorism Act 2001 that provide for internment without trial has not been established.

Indeed, it is extremely hard for the Government to argue that the Terrorism Act 2000 is inadequate and that further legislative restrictions on civil liberties and human rights under the Anti-terrorism Act 2001 are required. The Terrorism Act 2000 was the culmination of a process that began with Lord Lloyd's Inquiry Into Legislation Against Terrorism (Cm 3420) in 1996, and continued with a Consultation Paper Legislation Against Terrorism (Cm 4178) in 1998. This process aimed at putting terrorism law into effect on a permanent rather than a temporary basis and extended terrorism law to cover behaviour not previously defined as terrorist.

The Inquiry undertaken by Lord Lloyd led to submissions being made by a wide range of organisations including the US State Department and Department of Justice, MI5, MI6, the German Ministry of the Interior, the Canadian Security Intelligence Service and Army Headquarters Northern Ireland. The Terrorism Act 2000 was designed to cover an extremely wide range of international situations not previously considered a proper subject for municipal legislation. It was designed to cover the unexpected in international affairs. When it came into force the Government made political capital out of its muscular provisions. Now, with the Anti-terrorism Act 2001 it seems that the Terrorism Act 2000 and the process that led up to it are considered inadequate. Yet as we have noted, the powers and offences created by the Terrorism Act 2000 have never been properly tested and found wanting.

The Rationale behind the Anti-terrorism Act 2001

The new Act amends a wide range of legislation. There are provisions that apply to the security of pathogens and toxins and the security of the nuclear industry among others. Some parts, for example those that apply to the control of weapons of mass destruction, are sensible. Other parts of the Act see the introduction of further unnecessary state powers that would not enjoy wide political support in a less volatile political climate. The provisions relating to the retention of communications data and the detention without trial of foreign nationals who are suspected international terrorists fall into this latter category.

The Anti-terrorism Act 2001 in so far as it relates to foreign nationals is a wholly unwarranted breach of human rights. It is a prime example of mistaking legislation for action. It is reasonable to expect a government to take measures to provide effective security for its citizens and the foreign nationals for whom it has responsibility after 11th September 2001. However, what is required relates to the scrutiny of intelligence methods, fresh assessments of any threat and a review of the policies in place to provide security, so that the state can make effective use of the extensive powers and criminal offences already at its disposal.

A moment's pause for reflection demonstrates the absurdity of claiming that the indefinite detention of foreign nationals under the Anti-terrorism Act 2001 is necessary while citizens are subject to only to the police powers and criminal offences made under the Terrorism Act 2000 and the ordinary criminal justice laws. Let us work for the moment on the assumption that there are people resident in the United Kingdom who pose a risk to national security and who may engage in acts of terrorism. What basis is there for considering that there is some practical distinction between those that hold British citizenship and those that do not? As a matter of practicality rather than law the threat, such as it is, must hail from a collection of people some of whom, have citizenship and some of whom do not. These people will be a mix of (1) particular foreign nationals integrated into community life, (2) particular British citizens from ethnic minority communities whose parents or grandparents migrated to and settled in Britain, and (3) particular British citizens who are ethnically English, Scots, Welsh or Irish and who have taken up a radical form of politics that uses methods including violence. Measures taken to combat this threat must be sufficient and no more than is necessary to deal with the matter. The government position on its own citizens, that is people in categories (2) and (3), is that the pre-Anti-terrorism Act 2001 measures are sufficient. Given the substantial powers of surveillance exercised by the security services, the number of powers awarded to the police and the extensive range of terrorist criminal offences available this is hardly surprising. What then is the practical need, as opposed to legal and political possibility, to legislate as if foreign nationals, or category (1) people, pose a threat that people in categories (2) and (3) do not and which therefore justifies internment? There is no satisfactory answer. This law is discriminatory at its core. It takes legal status, or civil and political entitlement, as the basis for distinguishing between people when formulating the legal basis for state coercion, rather than examining what precautions are needed and developing a uniform policy accordingly.

By providing for indefinite detention for foreign nationals the government has made a firm distinction between the human rights of its citizens and the human rights of foreign nationals within its jurisdiction. This distinction is discriminatory, oppressive and unnecessary. Unfortunately, international human rights conventions and jurisprudence have facilitated the ability of states to create a two-tier system of rights protection that privileges a state's own citizens over foreign nationals. Human rights as a political concept ought to apply universally to all humans on the assumption that all humans are free and equal in dignity and rights. However, when human rights are enacted into legislation by states a distinction creeps in between citizens and foreign nationals. Rights cease to be universal and become a set of privileges afforded to citizen-members of a given state.

The practical and discriminatory allocation of rights by a state, such as the United Kingdom, on the basis of privileged citizenship applies widely across a range of rights, as the restrictions on the liberty of foreign nationals under the Anti-terrorism Act 2001 show, and does not simply apply or refer to the exclusive right of a citizen to enter her own state. When discrimination in the allocation of rights happens, the principle of equality upon which human rights are based is undermined. Equality ceases to apply universally and becomes restricted to a principle applying between those people, citizens, who constitute the democratic political society of the state.

However, it is foreign nationals rather than citizens who are most in need of the protection of human rights in a state. The distinction between citizens and foreign nationals is based on civil and political entitlement. A citizen may participate in and influence the formal political process and is a recognised member of the community by virtue of status. Although a citizen has cause to be grateful for the protection of human rights laws, she also has a number of other political and legal tools to protect her. The foreign national, who has no such purchase on the political process but is nonetheless subject to it, falls back on human rights as her primary defence against the coercive power of the state. It is ironic then, given the greater need of the foreign national for human rights protection, that she should be subject to an artificial distinction that renders her rather than her citizen neighbour as liable to indefinite detention.

The Special Immigration Appeals Commission ("SIAC")

Appeals and reviews of the internment of foreign nationals will be heard by SIAC. This court will consider the decisions to treat people as a threat to national security and as suspected international terrorists and thus to intern them. It already has jurisdiction to hear certain cases where deportation is considered conducive to the public good as being in the interests of national security. Under the Anti-terrorism Act 2001 it is now a superior court of record on a par with the High Court. That, however, is where the similarities end.

As a court it represents the fusion, as opposed to separation, of powers so characteristic of the British political system. In past cases a member of SIAC (sitting as a three person court) has included a person with experience of national security and intelligence matters. A concern for safeguarding intelligence and the discretionary power of the government characterises SIAC. When the decision to certify and intern a foreign national as a threat to national security is made by the Secretary of State, it signifies another silent decision not to proceed via the ordinary route of prosecution for terrorist offences. Thus one may assume that there is not the evidence for a charge based on conspiracy or incitement or no desire by the government for a trial of the material that exists. Instead of evidence gathered through police work and presented in a criminal court as the basis for prosecution, in SIAC intelligence from security services may be presented as providing reasonable grounds for the Secretary of State's belief that an individual poses a risk. Proof of any past wrong-doing is not required. The process is evaluative as to future prospects. Some of the material presented by the government may be withheld from the person detained and his lawyers on grounds that the government objects to its disclosure. In such a circumstance it can only be tested by an independent special advocate.

The legal concepts around the SIAC process give the government a dominant position in the proceedings. Firstly, the definition of ▶

Picture: Jim Cronin

'Terrorism' to be found in section 1 of the Terrorism Act 2000 and applied in that Act and the Anti-terrorism Act 2001 is so wide that it can cover a range of people who ordinary people and political scientists alike would not consider as terrorists. It can include foreign nationals who are engaged in lawful struggles of resistance against the occupation of their country and those who seek to overthrow an authoritarian regime that itself engages in gross violations of international humanitarian and human rights law.

Secondly the term 'National Security' is now very widely defined. A terrorist threat to a state which occupies someone else's country or a threat to an authoritarian regime may now be deemed a threat to the national security of the United Kingdom because of the international, more properly inter-state, interest in combating terrorism in any form. This is the promotion of international order at the expense of international justice. It is not difficult in these circumstances to envisage information from the security service of an authoritarian regime being used to justify the internment in the United Kingdom of someone who struggles against that regime and who is considered a suspected international terrorist in consequence. In such a situation the United Kingdom would have moved from offering a foreign national a place of protection from an authoritarian regime, under the Refugee Convention, to acting, in part, as that regime's agent.

Finally, under the Anti-terrorism Act 2001 it is the Secretary of State's reasonable belief that a person is a risk to national security and his suspicion that he is a terrorist that leads to certification and internment. A subsequent appeal through SIAC is predominantly concerned not with whether a person is a risk to national security but whether the Secretary of State has reasonable grounds for so believing. This provision makes it much easier for the government to succeed.

There are many more provisions in the Anti-terrorism Act 2001 that make for depressing reading and which ought to be opposed. One trend in the law as it relates to criminal justice, terrorism offences and the coercive power of the state has become apparent: that is the discrimination between foreign nationals and citizens. Such a distinction is specious in a heterogeneous society such as ours, unjustifiable in terms of needs, and serves to undermine the universal nature of human rights and the principle of equality. Given the recent creation of terrorist offences, as yet largely untested, in the Terrorism Act 2000, which are implicitly considered sufficient by the government for controlling British citizens, the legislative provision for interning foreign nationals is unsound and should be repealed.

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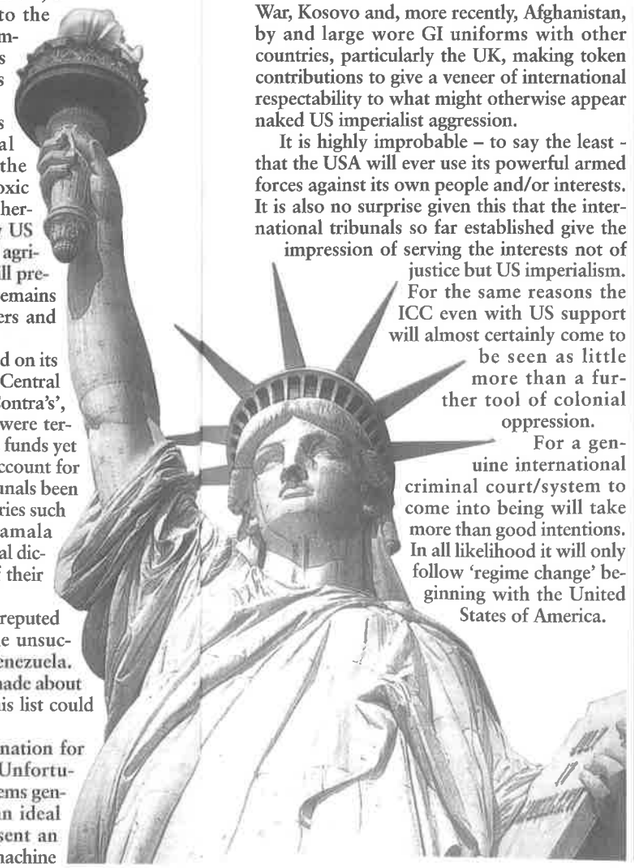
There is a simple explanation for this apparent hypocrisy. Unfortunately, courts and legal systems generally do not operate in an ideal liberal world. They represent an important part of the state machine which exists not for reasons of justice but instead to serve the interests of the ruling regime. Further, as Lenin correctly explained, the state in the final analysis can be reduced to,

"…..special bodies of armed men which have prisons etc. at their command." (State and Revolution Chapter 1)

There is no world state. Instead, the world's de facto policeman is also its strongest military power, namely the USA. Only recently, Colin Powell, the 'moderate' US Secretary of State, admitted in a BBC interview that, "the US has enormous military power – the capacity to do whatever we want to do."

The armed bodies of men used in the Gulf War, Kosovo and, more recently, Afghanistan, by and large wore GI uniforms with other countries, particularly the UK, making token contributions to give a veneer of international respectability to what might otherwise appear naked US imperialist aggression.

It is highly improbable – to say the least - that the USA will ever use its powerful armed forces against its own people and/or interests. It is also no surprise given this that the international tribunals so far established give the impression of serving the interests not of justice but US imperialism. For the same reasons the ICC even with US support will almost certainly come to be seen as little more than a further tool of colonial oppression. For a genuine international criminal court/system to come into being will take more than good intentions. In all likelihood it will only follow 'regime change' beginning with the United States of America.



Gurkhas battle in High Court

by Gopal Siwakoti 'Chintan' Public Interest Lawyers, Nepal

The Gurkhas from the mountain-hills of the Kingdom of Nepal are well-known warriors. They are praised for their bravery, honesty and loyalty in the battlefields. They have served the British imperial interest for about 200 years and have won 13 Victoria Crosses. This is the highest honour as equal to British citizenship. The British Gurkhas soldiers have always been portrayed as the top force of the British Armed Forces and they have proved it in two horrific World Wars, the wars in East Asia, the Falklands and others.

Over half a million Gurkhas have served the British Army. Out of which, 50 to 60 thousands soldiers have given their lives in the bloodsheds. There are still families who are waiting for information of the whereabouts of thousands of their loved ones. Several thousands of them were wounded and mutilated. There are over 500 former Japanese Prisoners of War (POW) who are still alive in Nepal. There are hundreds of widows. Over 11,000 made redundant and those who were sent back home with empty hands with no pension or gratuity after the wars were over. Many of them had served as child soldiers for the British Empire.

The Gurkhas, most of them coming from the ethnic and indigenous communities of Nepal, did not necessarily join the British Army out of their economic needs. In the past decades, Nepal was well-off economically. But it was the arrangement of the British-India Company and the then Rana regime of Nepal to force the Nepali youth to serve the British force. But in recent decades, Nepali youths are attracted to join the British Army due to unemployment as well as their desire of seeing the world. At the same time, their main dream is to guarantee a better living standard in Nepal or elsewhere after retirement.

The Gurkhas are neither slaves nor mercenaries. They are an integral part of the British Army under the same flag and an oath to the Queen. They did not simply fight for the British for medals or anything else but for a secured life. However, they have been mistreated in the camps on racial grounds, treated as servants, exploited as slaves and paid like mercenaries. They have been separated from their families for over 12 years out of their 15 years of minimum service. They are paid eight to tenth times less than their British counterparts in basic pay and pension on the ground that they have a very low living standard back home and that they are still better off than other Nepalis.

The question is what right does the British Government have to decide what living standards the Gurkhas have and where? What right does it have to send them back to Nepal after serving for life in the British Army? What justification is there for still subjecting them to racial discrimination and human rights violations? If it is to refer to the 1947 Tri-Partite Agreement on the Recruitment of Gurkhas (Britain, India and Nepal), it does not provide for any differential treatment. Instead, it guaranteed equality, and not treatment as mercenaries. Even if such a treaty did not exist, the world has changed so much that such discriminatory practices could not be justified on any grounds either under existing British military and civil laws or international human rights standards.

Some of the bright ex-Gurkhas who were retired from the British Army with insult, humiliation and discrimination, decided to form an association in 1992, called the Gurkha Army Ex-Servicemen Organisation (GAESO), and began to discuss about what they could do to redress their grievances. GAESO has grown up so fast that it has drawn over 15,000 active members and about 25,000 as regular members and sympathizers. GAESO now represents about 80% of the ex-Gurkhas and their families. In 1994, they came up with four major demands (equality in pay and pension; equal access and benefits to families, including education for children; compensation to war veterans, POWs and those made redundant; and residential visas, including citizenship as applicable) and formally submitted them to the Tony Blair government in 1997. In the same year they were also able to have the Foreign Affairs and Human Rights Committee of Nepali Parliament hear their grievances, investigate the problems and make a series of instructions and recommendations to the Nepali Government for the fulfillment of Gurkhas' just demands through diplomatic efforts.

Despite this their voices were still not heard so they started organising peaceful protests and demonstrations both in the streets of Kathmandu and to the 2001 UN World Conference against Racism in South Africa. They also made their submissions before the UN human rights bodies and the International Labour Organisation for the violations of international treaty obligations by the British Government. GAESO also held two international conferences of human rights lawyers and activists in 1999 and 2001 and adopted the Kathmandu Declaration and Plan of Action towards the elimination of all forms of racial discrimination against the British Gurkhas and their families. The relationship between the British Gurkha Headquarters Nepal Office and

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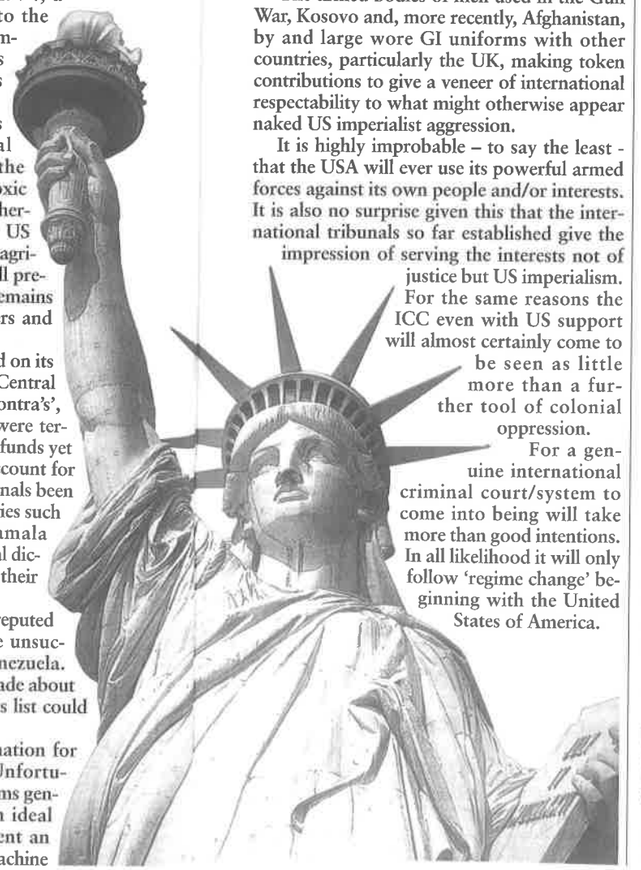

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The question is what right does the British Government have to decide what living standards the Gurkhas have and where? What right does it have to send them back to Nepal after serving for life in the British Army? What justification is there for still subjecting them to racial discrimination and human rights violations? If it is to refer to the 1947 Tri-Partite Agreement on the Recruitment of Gurkhas (Britain, India and Nepal), it does not provide for any differential treatment. Instead, it guaranteed equality, and not treatment as mercenaries. Even if such a treaty did not exist, the world has changed so much that such discriminatory practices could not be justified on any grounds either under existing British military and civil laws or international human rights standards.

Some of the bright ex-Gurkhas who were retired from the British Army with insult, humiliation and discrimination, decided to form an association in 1992, called the Gurkha Army Ex-Servicemen Organisation (GAESO), and began to discuss about what they could do to redress their grievances. GAESO has grown up so fast that it has drawn over 15,000 active members and about 25,000 as regular members and sympathizers. GAESO now represents about 80% of the ex-Gurkhas and their families. In 1994, they came up with four major demands (equality in pay and pension; equal access and benefits to families, including education for children; compensation to war veterans, POWs and those made redundant; and residential visas, including citizenship as applicable) and formally submitted them to the Tony Blair government in 1997. In the same year they were also able to have the Foreign Affairs and Human Rights Committee of Nepali Parliament hear their grievances, investigate the problems and make a series of instructions and recommendations to the Nepali Government for the fulfillment of Gurkhas' just demands through diplomatic efforts.

Despite this their voices were still not heard so they started organising peaceful protests and demonstrations both in the streets of Kathmandu and to the 2001 UN World Conference against Racism in South Africa. They also made their submissions before the UN human rights bodies and the International Labour Organisation for the violations of international treaty obligations by the British Government. GAESO also held two international conferences of human rights lawyers and activists in 1999 and 2001 and adopted the Kathmandu Declaration and Plan of Action towards the elimination of all forms of racial discrimination against the British Gurkhas and their families. The relationship between the British Gurkha Headquarters Nepal Office and ▶

GAESO became so close that Colonel Mark Dowdle, the then Commanding Officer and now the man at Ministry of Defence, even instructed the local pension paying offices in Nepal not to allow GAESO members to visit their premises and stopped paying pensions. These Gurkhas were asked to provide proper bank accounts for money transfer, and were further told that they would lose their welfare benefits if they continued doing GAESO work. A case filed by GAESO officials against Dowdle's illegal and discriminatory orders is in the final stage at the Nepali Supreme Court.

As the last resort for their grievances GAESO filed cases before London High Court. This took place on 8th May with the help of Cherie Booth QC and two other Barristers from Matrix Chambers, Kate Cook and Aileen McColgan. Birmingham-based Phil Shiner of Public Interest Lawyers prepared the cases with the help of Kathmandu-based Nepali lawyers. The 24 cases filed on 8th May range from equal access to families and benefits to equality in basic pay and pension. The other demands include compensation for a series of discriminatory practices in the camps and outside, as well as compensation and/or decent welfare provisions for war veterans, the families of the 'disappeared', the widows and those made redundant. The High Court granted permission for full judicial review hearings on past and present discrimination against the Gurkhas and their families as well as compensation to ex-POWs.

These are only test cases. If the claimants and their representative organisation, GAESO, do not have a positive response from the Ministry of Defence soon then they will be preparing for over 30,000 cases to follow in the future. There is also the issue of the denial of compensation of £10,000 to each former Japanese POW reportedly received by the UK government from Japan. If GAESO are not satisfied with the response from the British Foreign Office there will be another 500 cases of POWs applying for judicial review. An application has already been made for this purpose.

The Gurkhas love British people and vice versa. They trust their human rights commitment and respect for the principles of the rule of law. The Gurkhas cannot even think that their case will be unheard by the British people and their judicial system. The Gurkhas regret that they had to bring law suits against the UK Government for its practice of racial discrimination. The Gurkhas are also aware of the fact that the British people are not fully informed of their grievances.

GAESO hopes that the British Government will come to a point of negotiation as soon as possible. GAESO's Solicitor Phil Shiner says they have a strong 'air-tight case' in the Court. GAESO President and former British child soldier who fought in Malaya, Padam Bahadur Gurung, says that he is not going to leave the UK until their demands are met either through negotiation or through judicial proceedings. Mr. Gurung is now running his GAESO office in London with the support of UK-based Gurkhas and other well-wishers.

■ The author is a Kathmandu-based Public Interest Lawyer working for GAESO, chrhl@ntc.net.np

Can the law act against Israel?

A group of UK lawyers, organised through Lawyers for Palestinian Human Rights, went on a human rights evidence-gathering mission to the Palestinian occupied territories in May. **Lucy Anderson**, who works on employment rights and equality policy issues at the TUC, and **Raj Chada** a criminal specialist at Hodge Jones & Allen, report in a personal capacity

Since 1967 Israel has been recognised by the international community as an occupier of the Palestinian territories of the West Bank and Gaza Strip. The potential consequences of this fact under international law have been ignored or under-utilised by those states that should, or claim to, condemn Israel's actions. Many concerned states and human rights organisations have denounced the suicide bombings inside Israel. But Israeli human rights abuses of Palestinian civilians, including economic oppression and denial of the right to work, are not being brought to account.

One focus for local non-governmental organisations (NGOs) in the occupied territories is to investigate possible war crimes and grave breaches of the Fourth Geneva Convention as a result of the Israeli actions in Jenin and other West Bank towns. We spent five days in Jenin with Palestinian translators, field researchers and lawyers. We took evidence about the April 2002 invasion by Israel, which resulted in at least 56 Palestinian deaths. Most of those killed had never been involved in armed action against Israel. The testimony taken included; witnesses to executions of unarmed civilians, relatives of those said to have been bulldozed to death in the rubble of the refugee camp and accounts of elderly people dying because they were apparently denied access to medical assistance by Israeli soldiers. International institutions such as the World Bank and European Union have estimated the cost of the damage in Jenin at $361 million (£247 million).

In international criminal proceedings, Palestinian legal NGOs have focused on the principle of universal jurisdiction, highlighted in particular by the case against Ariel Sharon in the Belgian courts. According to the International Committee of the Red Cross Guide to International Humanitarian Law, States are "required to seek out and punish any person who has committed a grave breach, irrespective of his nationality or the place where the offence was committed".

But most states are not willing to make use of this principle. The United Kingdom has traditionally been reluctant to comply with its international obligations in this respect. For future human rights breaches, the jurisdiction of the International Criminal Court (ICC), which came into being on 1st July, is a possibility, but this option is unlikely to apply to Israel, since it has not ratified the ICC statute.

When you look at the economic impact of the Israeli military actions, unemployment in the occupied territories over the past two years has rocketed, it now stands at 50 per cent. The percentage of Palestinians living in poverty increased from 32 per cent at the beginning of 2001 to 50 per cent today. Israeli checkpoints, roadblocks, closures, curfews and road infrastructure demolition have ensured that there is little freedom of movement of the population, for workers or anyone else. The Israelis have divided the West Bank into eight areas, with permits to travel for Palestinians between areas being very difficult to obtain, renewable each month and valid only until 7pm.

Under international human rights principles these policies arguably amount to oppression and harassment of the Palestinian population, especially when linked with the escalating illegal settlement of Palestinian territories by Israelis. The policy of Israeli compulsory acquisition and settlement of Palestinian land is a continuing breach of Article 4 of the Fourth Geneva Convention. A recent report by the Israeli human rights organisation B'tselem found that a total of 41.9 per cent of the West Bank is effectively controlled by the settlements. Numbers of Israeli settlers have increased by more than 100 per cent since 1993.

Such activity arguably puts Israel in breach of the "right to work" provision of the Universal Declaration of Human Rights, and the self-determination principles of the International Covenant on Economic, Social and Cultural Rights. Further International Labour Organisation investigations into Israeli policies should also be a priority. The Confederation of Palestinian Trade Unions has extensive documentation of thousands of cases of loss of livelihood, and is seeking help with legal action on behalf of Palestinian workers.

For now, the legal investigations and case preparation will continue. On a political level, there is rightly much attention on the urgent need for progress towards peace. But this must not ignore human rights violations, including the conditions Palestinians in the occupied territories are living under. As an international community, we are all responsible for making the upholding of human rights in conflict situations more than just a pious aspiration.

Thinking globally

Empire by Michael Hardt and Antonio Negri Cambridge, MA: Harvard 0674006712 $18.95/£12.95

In the aftermath of the attacks of September 11th 2001 there has been a great deal of discussion on the interconnectedness of political life around the world. The narrative of events has moved from New York, through Ramallah, to Kabul and on again with such rapidity that the notion of distance between places and cultures has evaporated; reinforcing the fact that we share a common political space as part of a common humanity.

As it becomes more apparent that an event or action in one part of the world has an immediate and tangible consequence or reaction in another part, there is a need for works that contribute to a greater historical understanding of contemporary politics. *Empire* examines the processes of globalisation in its various forms. It seeks to account for the way that power functions to create forms of domination and oppression across the globe. More importantly, having analysed the systems of power it draws the radical and optimistic conclusion that such systems can be overcome and the power of people or the 'multitude' can be realised.

Hardt and Negri have produced a book that draws on Marxist theories of imperialism for inspiration but builds a theoretical apparatus that explains political and social forms in terms of sovereignty and power. For them traditional forms of empire, such as the British and French, have been replaced by more diffuse forms. In our contemporary world sovereignty rests in a variety of institutions such as the World Bank, the IMF, trans-national corporations, and the United States. There is no single centre. The power that these institutions have however comes from the people or 'multitude' and represents the potential of the multitude. In so far as globalisation has created unprecedented forms of exploitation, globalisation as a process also makes change possible across the globe. Local action has a global impact and strikes at the heart of the system of power wherever it takes place. Globalisation permits the current system of Empire but also provides the conditions for counter-Empire to be realised.

In formulating key aspects of this theory Hardt and Negri draw heavily on theories of republican liberty from English and American political theory rather than Marxism. In addition, perhaps the central contribution of this book is the way it seeks to account for the role and power of the United States across the globe. In seeking to understand and explain the role of America, they offer an account of American behaviour that takes account of its singularity, both internally as well as externally, without lapsing into clichés about American exceptionalism.

Empire is a book of considerable explanatory power. It is not without flaws and some of the analogies drawn can seem forced and bent out of shape as they are tempered to fit the shape of the argument. Nonetheless it provokes, informs and engages critically with key issues of contemporary politics and society. It is a welcome contribution to radical politics.

■ **Adrian Berry**

Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity Amnesty International Publications 2001 £9.99 ISBN 0-86210-302-9

Part of Amnesty's worldwide campaign against torture, *Crimes of hate, conspiracy of silence* provides a harrowing but necessary insight into the reality of human rights abuses based on sexual identity around the world. It covers specific areas of concern and draws on numerous examples of ill-treatment in prison, at the hands of the police and within communities.

There is also coverage of the difficulties that lesbian, gay, bisexual and transgender people face when seeking to claim asylum from persecution. In the tradition of Amnesty reports there is meticulous detail and careful presentation of the key facts. Furthermore, there is sensitive consideration given to the issues raised. This approach recognises that some readers, including those who are committed to defending human rights, may not have fully understood the difficulties of those persecuted on the basis of sexual identity.

The report considers links with other forms of oppression and discrimination. It concludes with recommendations specific to sexual identity and Amnesty's wider 12-Point Program for the Prevention of Torture by state agents. This report is an important contribution to the discussion of human rights on the international plane. Furthermore, it makes clear that the extent of oppression on the basis of sexual identity, around the world, requires immediate action. It is a clarion call to Amnesty's membership and those who serve the cause of human rights.

■ **John S Hobson**

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