International Association of People's Lawyers

DISSENT

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EDITORIAL

Post 9/11 World

America today struts and swaggers on the world stage and issues peremptory commands to the countries of the world and international institutions including the United Nations. The USA has dominated the world ever since the collapse of the Soviet Union. However the events of 9/11 have brought the dominance and arrogance of America into sharper relief. Imperialism may have changed its modus operandi but its essential features remain the same: exercise and/or threat of violence and the extraction of world resources.

George Bush claims that his country has launched a war against international terrorism and will fight it to the finish, come what may. It is important to know in this respect what terrorism actually means. There is a US military manual which defines terrorism: "The calculated use of violence or threat of violence to attain goals that are political, religious or ideological in nature (carried out) through intimidation, coercion or instilling fear." If one applies this definition to the words and actions of the US government, then the United States comes out as an unadulterated terrorist state. It dictates to the countries of the world what they should or should not do, non compliance invites retribution and annihilation. The American jets rained bombs in the Balkans; bombed Afghanistan to a state of medieval existence and now threatens Iraq with war unless Saddam Hussein quits. And other countries in the world either collaborate with the US or look on transfixed.

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For copies contact:

Hildebranddreef 13
3561 VD Utrecht, Netherlands
Fax: +31-30-2716533
Email: secretariat@iapl.net
Web: www.iapl.net/index.htm

An impartial analysis of America's track record in the case of terrorism will debunk the US claim of fighting terrorism. Some twenty years ago, the Reagan administration came to power claiming that the struggle against international terrorism would be the core of US foreign policy. One of the highlights of this policy was organizing terrorist gangs against the Sandinista government in Nicaragua. Nicaragua appealed to the Security Council and the World Court for the enforcement of the international law. The Security Council passed a resolution calling on all states to observe the international law, only to be vetoed by the US. The World Court condemned the US acts as "unlawful use of force" and ordered the US to desist from and put an end to the crime of international terrorism and pay substantial reparation to Nicaragua. The US dismissed the World Court judgment with contempt and escalated the terrorist war and ordered the mercenary army to avoid combat and attack undefended civilian targets.

The US logic is this: Terrorism is terrorism that is directed against the United States and its friends and allies. History tells us that the Nazis bitterly condemned terrorism and conducted what they called counter-terrorism against terrorist partisans. The US drew from the Nazi model and consulted Wehrmacht officers.

The nucleus of the world conflict is at present situated in the Middle East. There does not seem to be any end to the struggle of the Palestinians to recover their homeland and to live with self-respect. Iraq has now become the focus of American ire and its policy of aggression.

There are basically four reasons given for US belligerence against Iraq: 1) Iraq has weapons of mass destruction; 2) Iraq has violated the UN resolutions; 3) Saddam Hussein is a dictator; and 4) Iraq promoted terrorism. The reasons have to be substantiated.

The UN Special Committee (UNSCOM) and the International Atomic Energy Agency spent more than six years in Iraq and visited suspect weapons sites. On April 13, 1998, IAEA certified that Iraq had compiled a full, final and complete account of its previous nuclear projects and that there was no evidence of any prohibited activity. Contrary to American propaganda, in December 1998, UNSCOM voluntarily pulled out of Iraq on the eve of the US attack codenamed 'Operation Desert Fox'. In the last month of its inspections, according to UNSCOM head Richard Butler, the commission carried out as many as 427 inspections and reported Iraqi non-cooperation in only five of them.

President Bush told the UN General Assembly on September 12th, 2002 that Iraq posed a "grave and gathering danger". The intention was to present the attack against Iraq as pre-emptive and within international law. Perhaps the logic of the proverbial wolf works: the lamb has muddied the water upstream.

Expert studies negate the US claims about Iraq's possession of weapons of mass destruction. The prestigious International Institute for Strategic Studies reports that Iraq does not have nuclear / radiological facilities to produce fissile material in sufficient amounts for nuclear weapons. It would require at least several years and extensive foreign assistance to build such fissile material production facilities. Besides, a nuclear country should have the means to deliver bombs. The IISS

DISSENT *is the official publication of the IAPL. The IAPL is an international organization of human rights lawyers, paralegals, law students and legal workers that aims to contribute to the establishment of a just and humane world order and use the legal profession to obtain immediate and concrete gains for the people's struggles for national freedom, social justice, democracy and respect for human rights.*

report says that Iraq has probably retained some 12 missiles with a range of 650 kilometers. The country will require several years and extensive foreign assistance to construct such facilities.

Secondly Bush accuses Iraq of having violated the international law. Every UN resolution mandating Iraqi compliance with disarmament also explicitly states that Iraq's sovereignty has to be respected. The US flouted these resolutions to establish illegal 'no fly zones' over Iraqi airspace and bombed the country hundreds of times in the past decade. In March 2002 Iraq submitted a list of 19 questions to the UN Secretary General. Among them were: 1) Can the UN guarantee the elimination of the two 'no fly zones'? 2) How do you explain the stance of a permanent member of the Security Council which openly calls for the invasion of Iraq? Baghdad has yet to receive an answer.

Not only the US but also the UN has used double standards vis-à-vis Iraq. The UN distinguishes between two sorts of Security Council resolutions – resolutions under Chapter Six and resolutions under Chapter Seven. Those under Chapter Six deal with the peaceful resolution of disputes and entitle the Council to make non-binding recommendations. But those under Chapter Seven give the Council broad powers to take action including warlike action to deal with "threats to the peace, breaches of peace or acts of aggression." All the resolutions concerning Iraq have been passed under Chapter Seven, whereas all the resolutions as regard to Israel have been passed under Chapter Six, even though Israel has committed far more grave crimes against humanity.

For more than half a century, Israel has unleashed unmitigated terror against Palestinians and has rendered some four million of them homeless. Israel uses bulldozers and tanks to raze down Palestinian homes; the Israeli army opens fire to mow down Palestinian protesters. Over the years the UN has upheld the Palestinian's right to statehood, condemned Israel's settlements and called for Israel to withdraw. Israel has thumbed its nose at every UN resolution. Nevertheless, no enforcement action or any other action to implement the UN resolutions and the international law has been ordered by the Security Council. Recently the Israeli army dismantled the headquarters of the Palestinian State in Ramallah and cut off the supply of water and electricity to the residence of Arafat, laid siege to him and his close aides and demanded complete surrender. The UN demanded the immediate lifting of the siege. Israel rebuffed the UN demand. However, unlike in the case of Iraq, Israel was not threatened with war either by the US or the UN.

The US has always sensed the danger to its power in democratic movements and national liberation struggles all over the world. The example of Vietnam is too well known

The number of UN resolutions which the US has violated is legion; the latest instance is the one asking the United Sates to end its 43 year old trade embargo on Cuba. The UN General Assembly overwhelmingly adopted this resolution for the 11th year in succession, criticizing the sanctions imposed against Cuba. The logic of George Bush entitles Cuba to call for the invasion of the United States and the deposing of George Bush. But Cuba is not militarily capable of doing it. So the question is not of who has violated the UN resolutions and the international law, but who has the military might. Washington's policy is based on the assumption that America is the only country who can have weapons of mass destruction.

Thirdly, America claims that it wants to bring about a regime change in Iraq and replace Saddam with a democratic government. What are the credentials of America in this regard? Does the international law permit the US government to carry out such a change anywhere in the world? The declassified US documents attest to the diabolical role which America has played after World War II to thwart the democratic aspirations of the peoples of the world. In 1954 Guatemala's democratically elected President was overthrown at American instigation. What motivated America to do that was that Guatemala's 'agrarian reform was a powerful propaganda weapon; its broad social programme of aiding the workers and peasants in a victorious struggle against the upper classes and large foreign enterprises had a strong appeal to the populations of Central American neighbours where similar conditions prevailed'. A few years later such a threat was to be

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perceived in the case of Cuba. Arthur Schlesinger reported to Kennedy: It is the "spread of the Castro idea of taking matters into one's own hand" which might stimulate "the poor and the underprivileged" elsewhere who "are now demanding opportunities for a decent living." The US has always sensed the danger to its power in democratic movements and national liberation struggles all over the world. The example of Vietnam is too well known. On one side military coups were instigated and even organized against Presidents and Prime Ministers such as Sukarno, Lumumba and Salvador Allende and on the other cruel dictators like Mobutu, Marcos and Duvalier were installed in power. There was only one criterion: whether the governments concerned accepted and promoted the interests of America or not. In 1991, Washington reversed Haiti's hopeful democratic experiment, then undermined the OAS embargo while the military junta tortured and murdered and finally restored the elected president on the condition that he adopt the policies of Washington's defeated candidate in the 1990 elections, who had received 14% of the vote.

As regards the fourth charge, the US has not been able to produce even a shred of evidence to link Iraq with Al Qaeda or any other terrorist organizations and activities. For instance, there are hundreds of gangsters of Cuban origin in Miami who carry out terrorist activities against Fidel Castro and his government with the knowledge and assistance of the American government. Their activities have cost Cuba 3478 lives and left another 2099 Cuban citizens physically disabled. This mafia has hatched over 600 assassination plots against Castro. It is axiomatic that Cuba has every right to take effective measure to protect the lives of its own people, including seeking information from within the terrorist groups themselves. In June 1998, Cuba provided a high level FBI delegation with thick files and audio and video cassette recordings documenting the terrorist plans and actions of the Miami mafia and the FBI promised action. However the action which actually followed was the arrest on September 12, 1998, some three months later, of a group of Cubans who had infiltrated various counter revolutionary organizations at Miami to gather information on their plans for aggression against Cuba.

The whole case against Iraq has been built up on falsehood. America can get away with it because of its grip over the world media and a credulous world population.

Today the USA rules the roost in the world. Others have no space to express themselves. The terrorist acts such as the demolition of the twin towers and the bomb blasts at Bali are political statements made by desperate people in the absence of space for dissenting voices and actions. This is an extremely dangerous situation for America itself. The whole world may explode in its face. #

P.A. Sebastian
IAPL Chairperson

IAPL Board Meets in Antwerp

The Board of Directors of the International Association of People's Lawyers (IAPL) held its plenary meeting on October 11-13, 2002 in Antwerp, Belgium. Chairperson P.A. Sebastian from India presided over the Board meeting.

The board heard and discussed the reports of the human rights situation in different countries especially after the September 11 attacks in the United States. There were country reports on the following: India, Nepal, the Philippines, Turkey, Belgium, Netherlands, UK, and Spain.

The most striking aspect of the situation in all the countries was the fact that standing governments were using the so-called "war against terrorism" to enact and enforce repressive laws and measures. The United States took the lead in enacting the USA PATRIOT ACT and many countries followed suit. Repressive laws which previously could not pass through parliaments because of strong opposition had suddenly found smooth sailing. Right-wingers, it seems, have found a convenient bogey in "terrorism" to ram through their reactionary agenda.

In India, Nepal, Turkey and the Philippines human rights violations committed by government armed forces and police have intensified. Such violations are in the form of warrantless arrests, illegal detention, summary executions, disappearances, indiscriminate bombings and strafing of the civilian population, forced mass evacuations, violent dispersal of peaceful demonstrations, attacks

on workers' picket-lines and so on.

In the US and Europe, there is the alarming trend toward fascism. Governments are institutionalizing measures that intrude into the privacy of citizens and erode their civil liberties. Anti-terrorism laws are being enacted which can be used to suppress legitimate dissent. These repressive measures can easily be used especially against the growing anti-war and anti-globalization movements.

The lawyers had a lively exchange of views on the International Criminal Court.

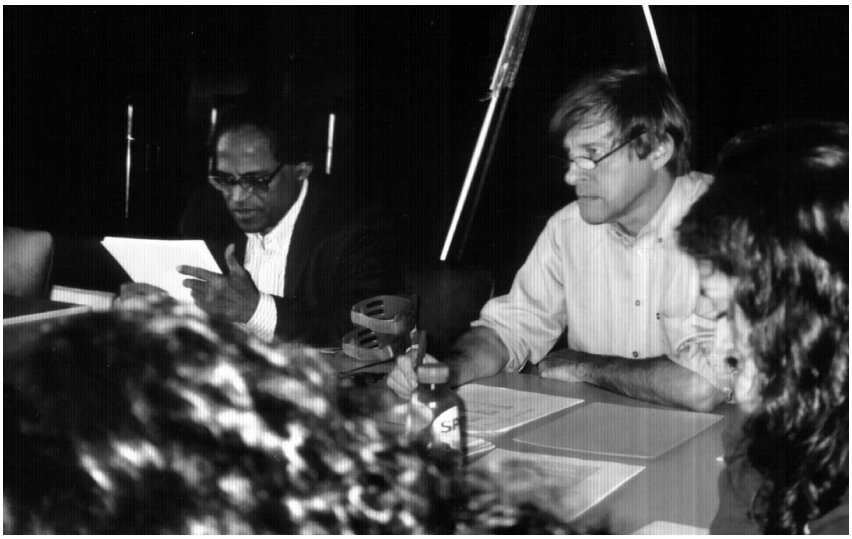
Some of the points raise were the following. The ICC can be considered as a step forward in implementing international humanitarian law inasmuch as its avowed purpose is to try individuals for war crimes and crimes against humanity.

The hypocritical opposition of the US to the ICC and its attempt to get impunity deserves criticism.

Many expressed their doubt concerning the independence and impartiality of the ICC. As in the case of many international institutions, the ICC is also vulnerable to the manipulation and pressure of the big powers. They expressed strong reservations about the ICC because it can be used by the dominant countries against liberation movements

The board decided to put the matter to further study.

There were two guests who spoke before the board meeting. Dr. Rodolfo Davalos Fernandez, a professor of private international law in the University of Havana, spoke about the so-called "Cuban Spy Trial", in which five Cubans have been unjustly convicted of espionage by the US government. Out of patriotism, the five Cubans (two of them US citizens) penetrated extreme right-wing organizations funded by the US government and Anti-Cuba Cubans living in Miami to expose their terrorist activities against Cuba. The board decided to support the campaign to seek justice for the five Cubans.



P.A. Sebastian (left) and Raf Jespers (right) at the IAPL board meeting.

The other guest was from PRIME (an organization in the Netherlands doing support work for asylum seekers and refugees). He pointed to the fact that after September 11, there was a marked trend to restrict the entry of refugees into Europe. In the past year, the number of people given refugee status was almost zero.

He also brought up the case of an Iranian lawyer, Nasser Zarafshan, who is being persecuted for his work as a human rights lawyer. The board approved a resolution to seek justice for Zarafshan.

A resolution was also approved to support the campaign against the action of the US and Dutch governments to place Prof. Jose Maria Sison, the Communist Party of the Philippines (CPP) and New People's Army (NPA) on their terrorist list and the imposition of sanctions against them.

Upon the proposal of Surendra Bushal, the board decided to send a fact-finding mission to Nepal to look into the worsening human rights situation in the country in the wake of the military actions of the Nepalese government against the Maoist revolutionary movement.

The board made a review and assessment of its program and formulated a new program of action for the coming year. It decided to form the General Secretariat composed of Hakan Karakus, as general secretary, and Raf Jespers and Dundar Gurses as members.

Two lawyers from the UK who sat in the meeting as observers signified their intention to join the IAPL. Another observer from Spain expressed interest and promised to inform other lawyers in Spain about the IAPL. The board resolved to make further efforts to expand the membership of the IAPL. #

Anti-terror measures of the European Union (EU):

threat to fundamental rights and criminalizing of the anti-capitalist opposition.

By Raf Jespers

In Europe a strong anti-imperialist movement is developing, the so-called anti-globalists. This is illustrated by the tens of thousands of protesters at summit meetings of the EU and the G8. This movement mobilizes a lot of youth and tries to bridge the gap with the traditional trade unions and moves in an anti-capitalist direction. It is a reaction to the crisis measures of the pro-capitalist governments and to the expansion of a strong Europe which functions in the interest of the European multinationals and banks.

The measures that are being taken in the EU under the flag of "war on terrorism" have to be seen in that framework. Europe wants laws, repressive instruments (such as Europol and Eurojust) and strong measures against protest actions to criminalize the people's resistance and to silence it. Especially the leaders of this people's resistance, the anti-capitalist and left parties are being targeted.

Within eight days after the attacks in the US, the EU Commission proposed two framework decisions for the "war on terrorism": one anti-terrorism law in all EU countries and a European mandate to arrest that will replace extradition procedures. Besides that, laws will be enacted to restrain the free flow of communication through the internet and repressive cooperation with the USA will be considerably increased.

These projects were already planned even before September 11. But September 11 gave the proponents the chance to silence the opposition against these plans. UN High Commissioner for Human Rights Mary Robinson warns against "the erosion of certain freedoms on the old continent."

The list of so-called terrorist organizations is being used to criminalize the anti-capitalist and anti-imperialist people's resistance.

In the beginning of May 2002, the EU made public its list of so-called terrorist organizations. It is remarkable that on that list organizations are mentioned like the Kurdish PKK, the Turkish revolutionary organization DHKP-C, the Colombian freedom movements FARC and ELN and the Palestinian Marxist FPLP (People's Front for the Liberation of Palestine). The Philippine NPA (New People's Army) and the CPP (Communist Party) and Jose Maria Sison consultant to the NDFP (National Democratic Front of the Philippines) has now been placed on the list.

The EU makes an erroneous mix-up of real liberation movements with terrorist movements like Al-Qaeda which ironically was created and supported by the CIA.

The EU list illustrates the intent of the reactionary governments to suppress anti-fascist resistance as well as anti-imperialist and democratic movements.

The European framework decision to fight the "war on terrorism" goes against the resistance of the people against injustice and exploitation in the capitalist countries.

Is an anti-terrorism law in all countries necessary? This evidently is the first question. The answer is negative. Against actions of terror such as in the USA, each EU country carries out the heaviest punishment. At this moment nine of fifteen EU countries do not have a specific anti-terror law: this has never been experienced as a gap.

There are other motives. Article 3 of the EU proposal gives a pure political definition: *Each EU state will take the necessary measures to guarantee that the following facts, defined in accord with national law, committed and premeditated by an individual or a group directed against one or more countries, their institutions or their people with the objective to intimidate them and to change in a serious manner or destroy the political, economic and social structures of a country will be held punishable for criminal acts of a terrorist nature.*

The EU project lists ten specific crimes, that when they are committed with the mentioned objective are terrorism. Will the following crimes be seen as terrorism: attempt to the life of a person; the cause of heavy physical damage, hostage-taking; blackmail; serious damage to state and government property, transport systems, infrastructure with inclusion of information systems and of public places; the hijacking of planes or ships and other means of transportation; fabrication, possession, purchase, transport or supply of weapons,

explosives and nuclear, biological or chemical weapons; spreading of contagious material or the cause of fire, explosion or floods that endanger people, animals or the environment; the obstruction of the distribution of water, electricity or other fundamental basic needs.

The broad definition of terrorism allows many forms of social and political struggle to be criminalized. The EU states in her draft text that urban violence is to be considered within the definition. Will the actions of anti-globalists or revolts of left-out youth punishable as a terrorist act? And what about environmentalists that block the rails where a train transporting poison is supposed to pass, steel workers that turn police cars on their sides while occupying the streets, electrical workers on strike that close down the electric power plants or a website with an anti-capitalist message? Many of these people want another world and want to change society in a "serious manner". The referral to urban violence makes clear that the authors did not merely think of terrorist acts.

Side effects of anti-terrorism laws

As a lawyer it is important to note that the anti-terrorism laws has important side effects. A crime of opinion is introduced to European law. "The support" of a terrorist group is punishable up to seven years imprisonment. For example the publication of press communiqué or the interview with a leader of an organization labeled as terrorist can be interpreted in such a way.

The anti terrorism project fills the need for the exchange and collection of information (article 13) and for more legal and police cooperation (article 12). Based on the broad definition of terrorism the fear is justified that this will lead to political labeling and the invasion of privacy.

Exceptional laws lead to exceptional procedures both on the level of police work and in the courts. This is a legal rule where such terrorist laws exist. In France terrorism is excluded from a trial by jury. In Germany lawyers can be excluded from the defense, to be held incommunicado is possible and secret files are introduced. In Turkey special courts hold trials for such cases.

European mandate To arrest

This is the planned end to the extradition procedures between countries of the EU. That the fight against terrorism is merely an excuse, is shown by the fact that the mandate is applicable to all criminal acts punishable by at least twelve months imprisonment. Two fundamental criminal law principles that now dominate the extradition procedures will disappear: The "double punishability" and the speciality principle. Also legal and political control on the extradition as is still the case in Belgium will belong to the past. Especially in politically loaded cases that control gave the possibility to deny a request for extradition based on the threat of torture or the death penalty or inhumane prison regimes. Two hundred years of legal principles disappear.

The struggle against a minority of terrorists has serious consequences for the fundamental rights of European citizens. Civil liberties and rights such as the freedom of expression, freedom of assembly, the right to strike and the right to privacy are under heavy pressure.

A law that is promoted as a war on terrorism, must be approached very critically. Democratic and left lawyers cannot standby and watch these developments passively. European lawyers launched a petition against this anti terrorism law. It was signed by hundreds of lawyers from all European countries.

Europe is evolving step by step towards a fascist direction. Not just the increasing participation of extreme-right parties in governments (such as in Italy, Austria, Spain...) but more so the official repressive policies of the EU demonstrates this tendency. Lawyers, left and revolutionary parties and trade unions should in these circumstances not stay silent, but must ring the alarm. #

Raf Jespers
Author of "De uitbouw van de Europese repressie".

The broad definition of terrorism allows many forms of social and political struggle to be criminalized.

A "STRONG REPUBLIC" FOR THE OPPRESSORS AND EXPLOITERS:
A Look at the Current Human Rights Situation in the Philippines

Edre U. Olalia
Public Interest Law Center (PILC)
International Association of People's Lawyers (IAPL)

I would like you to travel with me and let me walk you through what is happening lately in the country where I come from and show you what the so-called "Strong Republic" announced proudly by its President is really all about. There you would see how the government of Arroyo is faithfully continuing on an even unprecedented scale the repressive policies and programs towards supposed "terrorists," political activists, critics, and the public in general.

In the Philippines, when one opposes the entry of American troops supposedly to "train, advice and assist" Filipino soldiers, the President calls you an "Abu Sayyaf lover" or "a protector of terrorists," even saying that "only communists oppose US military presence" and that "if you are not for the involvement of Americans, you are not a Filipino." When the Vice-President makes a stand against an agreement that would practically make the Philippines the largest aircraft carrier of American troops, he is also accused as having only communists for clients or supporters.

When an international mission presents solid evidence on the actual involvement of American troops against an unarmed civilian who was fast asleep, after barging inside his house in the dead of the night and shooting him without provocation in the presence of his family and children, the leaders and participants of the said mission are also called "communists" and even "monkeys" by the military and government.

When a militant congressman spearheads the opposition against burdensome and anti-consumer power rates, the President also calls him a "communist." The President would also approve the action of a metropolitan official who openly threatens poor sidewalk vendors with arrests and the pouring of gasoline over their wares because they are "obstructing traffic."

In the Philippines until today, when mass-based legal organizations and a progressive political party raise the awareness of the people, oppose massive militarization, expose violations like massacres, extra-judicial killings and forced evacuations, their members are killed in cold-blood, get disappeared or their offices raided, or they are branded as recruiters or organizers of the New People's Army (NPA).

In fact, when a human rights organization holds a paralegal education and training with church workers and the basic sectors, police and soldiers disrupt the activity and its participants are harassed and threatened with armed force.

When human rights and people's organizations assert their and the lawyers' rights to visit poor farmers arrested and detained at a military camp, they are threatened to be shot because they are considered by the military as their "enemies" and a court order to release the farmers is openly defied.

And almost every day today in the Philippines, mere suspects, from alleged petty thieves of mobile phones to suspected kidnappers are paraded handcuffed in detainees' clothes, presented by the President as trophies in her "peace and order" campaign and publicly declared practically guilty before the glare of cameras. No, in fact, in the Philippines today, the President rushes to the remotest of places, has her cute picture taken grinning in front of freshly-killed bodies of suspected criminals and alleged "terrorists."

There, manifestations and pickets against anti-people policies and programs are broken up because they do not have a permit, and the protesters are beaten up with truncheons. And yes, pickets outside a justice building by victims and relatives - including children - of killings and disappearances are themselves dispersed and beaten up by policemen because of a "no maximum tolerance" national policy.

In the countryside in the Philippines until today, civilians are not allowed by the military to farm in suspected NPA territories and are not allowed to bring more than 3 kilos of rice or carry flashlights at night even as they are required to have their names listed when going to and from their own homes. There, indigenous farmers are arrested by soldiers, accused of being NPA sympathizers, interrogated about supplying food to rebels, tortured, beaten, strangled and burned with cigarettes.

There, military-backed vigilante groups put up continuous paid advertisements in newspapers, plaster the capital's streets with posters and signs libeling human rights and militant people's

organizations and political parties and their leaders as killers, human rights violators, Abu-Sayyaf coddlers, ruthless torturers and pictured as "communists" with horns, fangs and tails and openly inviting and inciting physical violence against them.

There, one is supposedly not punished for the exercise of one's political beliefs and that membership in the Communist Party is no longer a crime. But suspected sympathizers or members and even activists, ordinary farmers and workers, are routinely charged with illegal possession of firearms using false evidence.

In the Philippines until today, one cannot effectively question the legality of one's arrest and detention and ask for release due to a Marcos-vintage court doctrine that says such remedy is unavailable because the subsequent and even dubious filing of charges "cures" any illegality in the arrest. In fact, the same petitions are rendered useless in the cases of those who disappear when security forces simply claim that the person is not in their custody, only to be discovered later that he had been detained and tortured and denied seeing a relative or lawyer for days on end.

And in the Philippines until today, the US government can continue to threaten "dire consequences" if an activist wrongly convicted of the killing of an American intelligence officer is released from prison despite many recommendations for pardon and despite having served out his minimum sentence in good conduct.

This is but a peek at the landscape of the human rights situation today in the country where I come from, where mass activists from Bayan and its allied organizations, members of the progressive political party Bayan Muna and human rights workers from Karapatan are being gunned down, arrested and harassed; where increased militarization has resulted in 37,164 victims of various forms of human rights violations and where violent dispersals of 118 picketlines or worker's strikes have occurred. The government's escalating attack on the mass movement claimed 93 victims of summary executions, 43 of them activists, of which 22 are active members of Bayan Muna.

On the ground, a human rights worker and member of the militant women's group Gabriela was killed by government-formed paramilitary elements in front of her children inside their house. Another human rights worker was abducted and killed by paramilitary troops and his body, retrieved from a shallow grave, bore 22 stab wounds. A young campus writer who was a leader of a human rights group was also summarily executed by military troops even while she lay prostate and begging that her life be spared.

Our struggles and experience have taught us that in the end, the people united, will never be defeated.

Again, on the ground, a 90-year old farmer was killed during a military operation where he died from gunshot and stab wounds in different parts of the body after his house was raided. A Bayan Muna coordinator was left blindfolded during dawn inside a public cemetery, after being abducted by military intelligence agents, held incommunicado, detained in a small unventilated room, and given food only 5 times during his 7-day ordeal. Another 11 year old child would witness with her own eyes how her parents, who were both mass activists, were taken forcibly by hooded armed men, dragged to a nearby place and later shot mercilessly.

In the Philippines until today, the fate of more than 1,600 disappeared remains unknown. Three decades after the first documented case of forced disappearance, 2 cases of political abduction still occur every week in the country. There are 4 victims of unjustified arrests and illegal detention daily. All in all, there are about 272 political prisoners scattered across the country.

In the southern island of Mindanao, indiscriminate aerial bombardment led to massive forced evacuation of at least 180 peasants everyday. In Basilan, abuses abound and scores of Muslims victimized by warrantless arrests --most of them tortured and still languishing in jail. Male residents were usually herded while hooded informants pointed at them. Those singled out were then hogtied and blindfolded, then taken to a military camp. Arrests were also made inside mosques while the victims were praying.

Military and paramilitary units also use children as human shields, force civilians to join the paramilitary and guide them in their operations in the mountains. In one military operation, an indigenous woman was stopped and was forced to undress in front of a phalanx of soldiers searching for her "firearm." In one small island province alone, a total of 1,875 military operations were conducted in six months.

This, in brief, is the backdrop of the human rights situation in the Philippines today, particularly in terms of civil and political rights alone.

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☜ *p.9 ..."Strong Republic"*

Early this year, the US armed forces stationed a thousand troops in southern provinces purportedly for joint military exercises with Filipino troops dubbed as "Balikatan" to resist "terrorist attacks". Next month, 2,665 US soldiers are to be deployed in central provinces near the capital and at least 8 more "joint military exercises" are scheduled this year. The impending shady Mutual Logistics Support Agreement (MLSA) would lead to no other conclusion than the deceitful reestablishment of permanent US military basing rights.

And now Congress, upon the behest of the President, is now rushing at least 7 various antiterrorism bills, whose common features are patterned after the US model and conforming to the so-called US "global war on terror". And yet, there are already subsisting laws and court decisions that seriously endanger and even provide impunity for violations of the people's rights. Now, the government is pushing further with these bills that have overbroad definitions of terrorism that would criminalize even legitimate political activity. They invariably feature draconian measures including expanded authority to intercept almost all forms of communication and inquire into bank deposits and freeze them, even longer periods of detention without charges for arrests without warrant and the inclusion of terrorism as an extraditable offense.

And consistent with all these of course, the peace negotiations with the NDF have been indefinitely recessed by the present government which refuses to continue discussions on social and economic reforms, demonizes and harasses NDF negotiators, staff and consultants, "welcomes" the US demonization of the CPP and NPA and the NDFP Chief Political Consultant as "terrorists". and politically persecutes him further, persists in the capitulation of the revolutionary movement, and reneges on previous agreements.

This, in broad strokes, is the human rights situation in the Philippines today. This is the local milieu within which the attacks on progressive, on militant and on revolutionary individuals and groups should be seen. It must necessarily be understood in the larger context of the arrogant and interventionist policies of the US and its allies, deceptively hiding behind the rhetoric of the "war on terror" and riding on the hysteria of September 11.

This is the "strong republic" that the present government has trumpeted with undisguised pomposity the perpetuation of the oppression, exploitation and repression of the people.

But amidst all these, as we always say, and as history, our struggles and experience have taught us that in the end, the people united, will never be defeated. #

Resolution on the Unjust Conviction of Iranian Lawyer Nasser Zarafshan

The International Association of People's Lawyers condemns in the strongest terms the trial and conviction by a military court and the imposition of harsh punishment on Nasser Zarafshan, lawyer of two of the five victims of assassination perpetrated by the Iranian intelligence service in 1998.

Lawyer Zarafshan has been unjustly convicted and sentenced to five years in prison and 50 lashes on the baseless charge of revealing state secrets and on fabricated charges of illegal possession of firearms and alcohol.

It is very clear that the charges against Zarafshan stem from his public statements challenging the attempts of the Iranian government to cover up the real motive and culprits to the murder of five prominent political figures and writers Dariush and Parvaneh Foruhar, Mohammad Mokhtari, Mohammad Pouyandeh and Majid Sharif.

In an apparent conspiracy to protect the real culprits in high places, the intelligence ministry has admitted to the killings by supposed "rogue agents" and announced the subsequent death of the most senior agent among them, Said Hammami, who was reported by the ministry to have committed suicide but suspected to have been murdered in order to prevent him from revealing the real brains behind the murders.

The conviction of Nasser Zarafshan is clearly a part of this grand conspiracy to cover up the truth.

We demand from the government of Iran the application of the rule of law.

We demand from the government of Iran justice to the victims of the 1998 murders.

We demand the rectification of the injustice inflicted on Nasser Zarafshan by nullifying his conviction and sentence and effecting his immediate release from detention. #

The case of Mr. M. Horuz

Frank Godeschalk
Anne Stuger
AMSTERDAM INTERNATIONAL LAW CLINIC

Dear reader,

Mr. D. Gürses asked the Amsterdam International Law Clinic (hereinafter AILC) for permission to publish the report that is now in front of you. I would like to give you a short introduction to the report in order to avoid any possible misconception as to the pretensions with regards to the report and its desired outcome.

The Amsterdam International Law Clinic works with students in international law at the University of Amsterdam. As they approach the last stage of their studies, students are offered a possibility to gain practice in the field of international law. This is achieved through handling a variety of cases under supervision of the Law Faculty's staff. Over the past few years, the AILC has been able to provide many clients, amongst which Human Rights Watch and established Dutch law firms, with profound reports on issues of e.g. public international and human rights law. It is for this reason that the IAPL asked the AILC for a report with respect to Memik Horuz's case.

As we were asked to produce a report on extreme short notice, the report could not been written in the ultimate and desirable form of a legal opinion. Nevertheless, the IAPL asked the AILC to provide them with a short overview of legal rules and principles, derived from the European Convention of Human Rights and its jurisprudence, regarding the concept of fair trial that are deemed applicable to the case of Memik Horuz. As you will readily appreciate, a timetable of two weeks does not suffice to truly apply the rules to the particular case and to analyse both facts and law in order to make substantial inferences.

As we discussed with the lawyers involved, the preliminary research that was carried out needs a thorough follow up. The AILC will be involved in preparing elements of the Horuz case that will be brought before the European Court of Human Rights this year.

If you wish to have more information on the AILC, please do not hesitate to contact the undersigned or visit our website at www.jur.uva.nl/ailc.

Yours sincerely,

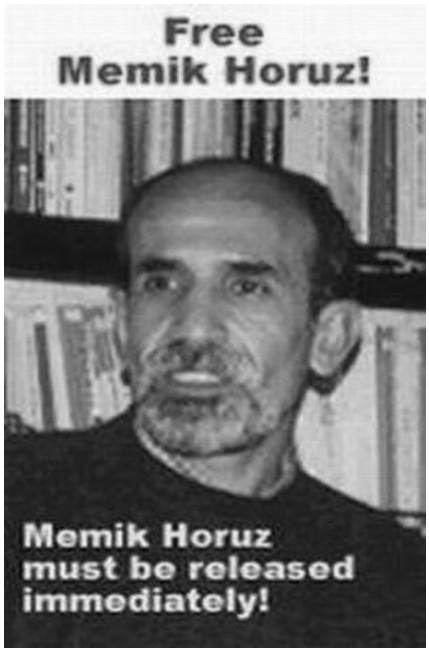
Joost P.J. van Wielink LL.M
Deputy Director
Amsterdam International Law Clinic
wielink@jur.uva.nl

Introduction

This report has been written by the Amsterdam International Law Clinic on the request of mr. D. Gürses a representative of the International Association of People's Lawyers.

The report deals with the questions of fair trail as raised in the case of mr. M. Horuz. The principle question in this case is, if a conviction of an accused based on the testimony of a single witness, the so called 'unus testis, nullus testis' rule, is in conformity with Article 6 European Convention on Human Rights (hereafter the "Convention" or "ECHR"). This question is answered by the examination of the way in which the Court has interpreted article 6 ECHR in his case law and the literature about this topic.

This report is divided into 4 chapters. The first chapter describes the (alleged) facts that leaded to the conviction of Memik Horuz. The second chapter considers the complaints procedure as provided for in the Convention in cases where an individual claims to be a victim of a violation of the treaty provisions. In the third chapter the question of conformity of the 'unus testis' rule with the Convention will be addressed. This chapter furthermore examines whether plea-bargaining complies with the fair trial



requirements, as stated in article 6 of the ECHR. The basic fair trial principles that can be inferred from the case law of the Court and article 6 ECHR are being considered in the last chapter. This chapter also describes and enumerates the rules of evidence as developed by the case law of the Court and provided in article 6 ECHR. In this report, however, those rules, are not applied to the case of Memik Horuz. Nevertheless, for the case of Memik Horuz, the fair trial principles as mentioned in the paragraphs 4.1, 4.2, 4.5, 4.10, 4.13.5, 4.14, 4.15, 4.16 and 4.17 are relevant.

1. The facts

Memik Horuz is a Turkish journalist for the Devrim Yolunda Isçi Köylü Gazetesi. He has been under

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arrest for almost one and a half years. On the 18th of June 2001, he was arrested in Cemberlitas, a district in Istanbul, by the Turkish State security forces.

On the 12th June 2002, the 2d State Security Court (DGM) of Ankara found Memik Horuz guilty, and in accordance with Article 168/2 TCK of the Turkish Code Penal, he was sentenced to 10 years prison. This conviction was then increased by 5 years to 15 years of heavy prison pursuant to Article 5 of Law 3713. The State Security Court based the conviction solely on the statements of an Erol Cetin, the principal witness in this particular case.

Memik Horuz had been accused of being a member of an illegal organisation called TKP/ML-TIKKO. According to the statement of Erol Cetin (alias "Ali Haydar Hakan"), Horuz travelled to the rural area of Tokat in September of 2000. There he allegedly received 15 days of military training under the instruction of members of TKP/ML-TIKKO. This training was allegedly received under the pseudonym of "Zeki Uygun."

During his stay, Horuz allegedly interviewed some of the members of this organisation and took photos of them. Upon his return the accused allegedly published, using the pseudonym "Zeki Uygun", transcripts of the interviews along with some of the photos in Özgür Gelecek ("Free Future") over the period November 2000 to March 2001. The interview with Erol Cetin was published in the fourth edition of the documentary dated 22 December - January 2001.

Horuz declared at the National Security Court No 4 in Istanbul that the interview was sent to the paper by a Mr Metin Akçiçek, who lived in Germany. Akçiçek sent a declaration, certified by the notary public's office, confirming his responsibility for the publishing of the interview, but the Court did not accept this declaration.

Erol Cetin, the main witness, made several contradictory statements in this case. Horuz's attorney has attempted to prove that the statements made by the Cetin and the claims he made in the indictment are false.

Subsequently, the attorney of Memik Horuz- Ms Filiz Kalayci- has produced several pieces of evidence that prove Memik Horuz is not the same person as the writer of the documentary in Özgür Gelecek (Zeki Uygun) and that the he was not in the rural area of Tokat in September 2000.

There is also a statement from one Irfan Durmus (who is presently imprisoned) which was presented by the public prosecuter. Durmus was arrested a long time prior to Memik Horuz. Horuz and Kalayci do not accept the statements of Durmus, which they see as part of a conspiracy engineered by the Security Forces and the Prosecutor.

The 'unus testis, nullus testis' rule which means that an accused cannot be convicted on the basis of merely one statement is recognised in at least one legal system of a party to the Convention, namely the Dutch legal system. This report examines whether this rule complies with the general and specific requirements of fairness embedded in Article 6 of the Convention. This provision protects an accused in both criminal and civil cases against a conviction in the absence of a fair trial. This report then considers whether the use in legal proceedings of a statement obtained through plea-bargaining is in conformity with the Convention. Furthermore, the minimum standard of what constitutes a fair trial and appropriate rules of evidence, as inferred from the case law of the European Court of Human Rights (hereafter the "Court") are described. Finally, it is important to note that for the case of Memik Horuz the fair trial rules as referred to in the last sentence of the introduction are important.

2. The applicability of the ECHR

2.1 Admissibility criteria

Since the 18th of May 1954, Turkey has been a party to the Convention. The complaints procedure established by Article 34 of the Convention grants individuals and other injured parties claiming to be a victim of a violation by a state party of the rights contained in the Convention and protocols, direct access to the Court. According to Article 34 of the Convention, "any person, non-governmental organisation or group of individuals claiming to be a victim of a violation" can file a complaint. Thus, this provision accords standing to natural persons as well as legal persons such as companies, non-governmental organisations, churches and political parties.

2.2 Victims

Three categories of "victim" are allowed to file applications: "actual victims", "potential victims" and "indirect victims". An "actual victim" is defined as one who has already been personally affected by the alleged violation. The mere existence of certain laws can render the applicant a victim, even if the law is not enforced. A person is at risk of being directly affected by a law or an administrative act is classified as a "potential victim". A person or legal entity immediately affected by a violation that directly affects another person is said to be an "indirect victim".

3. Existence of an "unus testis, nullus testis" rule in the ECHR

3.1 The 'unus testis' rules in national legal systems

Certain national legal systems have adopted the "unus testis, nullus testis" rule. This means that an accused cannot be convicted on the basis of the testimony of only one person. For example, this rule has been adopted in the Netherlands in Article 342 of the Dutch Criminal Code.

Article 342 of the Dutch Criminal Code reads:

1. A statement by a witness is understood to be his statement, made in the in-

Certain national legal systems have adopted the "unus testis, nullus testis" rule. This means that an accused cannot be convicted on the basis of the testimony of only one person.

vestigation at the trial, of facts or circumstances, which he himself has seen or experienced.

3. The judge cannot accept as proven that the defendant has committed the act with which he is charged, solely on the statement of one witness.1

In the Dutch context, if proof of only one element of the charge requires acceptance of the evidence of only one person, application of the 'unus testis'-rule does not make that conviction wholly wrongful. However, it does mean that additional circumstantial evidence is needed to secure a conviction.2

3.2 The ECHR

Evidence based on the testimony of one single witness is, in itself, not prohibited under the ECHR, in so far as domestic law of a State does not exclude convictions based on the testimony of only one witness.

The Commission stated in the Kostovski3 case:

'III. Outline of the relevant rules of evidence under Dutch law

a. What constitutes evidence is laid down in Section 339 of the Code of Criminal Procedure:

i) the judge's own observation;

ii) statements made by the suspect;

iii) statements made by a witness;

iv) statements made by an expert;

v) written documents.

b. Section 342 para. 2 of the Code of Criminal Procedure contains the "unus testis nullus testis" rule. Additional evidence is therefore required to corroborate the statement of a single witness.'[emphasis added]

In the case of Schenk v. Switzerland4, the Court stated in paragraph 45:

'45. According to Article 19 (art. 19) of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.' [emphasis added]

From this paragraph it follows that the Court will only marginally assess the application of domestic law to the case at hand. The admissibility of evidence is primarily a matter for regulation by national law. It is for the national courts to assess the evidence before them.5 In its judgement of the Kostovski case, the Court did not refer tot the principle of 'unus testis, nullus testis'. If the Court would have been of the opinion that 'rights and freedoms protected by the Convention' were 'infringed'6 by the Dutch court, based on the 'unus testis, nullus testis' principle, it would have obliged itself to judge accordingly.

The Court further states in the case of Schenk:

'46. While Article 6 (art. 6) of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. The Court therefore cannot exclude, as a matter of principle and in the abstract that unlawfully obtained evidence of the present kind may be admissible. It has only to ascertain whether Mr. Schenk's trial as a whole was fair.' [emphasis added]

It is also important to note what the Court stated in paragraph 48 of the same judgement, with respect to the standard of proof:

'48. The Court also attaches weight to the fact that the recording of the telephone conversation was not the only evidence on which the conviction was based. The Rolle Criminal Court refused to declare the cassette inadmissible in evidence as it would have been sufficient to hear the evidence of Mr. Pauty as a witness in respect of the recording's content (see paragraph 20 above). It also heard evidence from several other witnesses, who were subpoenaed by the court of its own motion - like Mrs. Schenk - or called at the request of the defence (see paragraph 22 above). It carefully stated in several passages of its judgement that it relied on evidence other than the recording but which corroborated the reasons based on the recording for concluding that Mr. Schenk was guilty. Of particular significance in this connection is the following passage: "The court's view is founded partly on the recording of the telephone conversation of 26 June 1981. ... But there is also all the other evidence before the court: [...]. [...] It emerges clearly from this passage that the criminal court took account of a combination of evidential elements before reaching its opinion.' [emphasis added]

When a conviction based on the testimony of only one witness is allowed for in domestic law, at least two other minimum requirements are prescribed by international law for the conduct of a fair trial. These requirements are of a more general nature, but are of utmost importance in this specific situation. First, the defence must be able to cross examine the witness during the trial. Given the weight attached to the witness' statement, the defence must be given the opportunity to test the credibility of the witness. These conditions were formulated by the Court in the case of Unterpertinger7 and also emphasised in the case of Barberà8:

'68. As a general rule, it is for the national courts, and in particular the court of first instance, to assess the evidence before them as well as the relevance of the evidence which the accused seeks to adduce (see the same judgement, p. 15, para. 33, second paragraph in fine). The Court must, however, determine - and in this it agrees with the Commission - whether the proceedings considered as a whole, including the way in which prosecution and defence evidence was taken, were fair as required by Article 6 paragraph 1 (art. 6-1).

[...]

78. Paragraph 1 of Article 6 taken together with paragraph 3(art. 6-1, art. 6-3), also requires the Contracting States to take positive steps, in particular to inform the accused promptly of the nature and cause of the accusation against him, to allow him adequate time and facilities for the preparation of his defence, to secure him the right to defend himself in person or with legal assistance, and to enable him to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The latter right not only entails equal treatment of the prosecution and the defence in this matter (see, mutatis mutandis, the Bönisch judgement of 6 May 1985, Series A no. 92, p. 15, para. 32), but also means that the hearing of witnesses must in general be adversarial. In addition, the object and purpose of Article 6 (art. 6), and the wording of some of the sub-paragraphs in paragraph 3 (art. 6-3), show that a person charged with a criminal offence "is entitled to take part in the hearing and to have his case heard" in his presence by a "tribunal" (see the Colozza judgement of 12 February 1985,Series A no. 89, p. 14, para. 27, and p. 16, para. 32). The Court infers, as the Commission did, that all the evidence must in

This means that the parties must have the same access to the file, must be given the opportunity to oppose each others arguments and must be offered the same opportunity to call witnesses.

principle be produced in the presence of the accused at a public hearing with a view to adversarial argument. It will ascertain whether this was done in the instant case.' [quotations from the case of Barberà] [emphasis added]

Secondly, as stated in Article 6(2) ECHR, a judge must be without prejudice. A suspect does not have to prove his innocence-it is for the prosecution to prove their guilt.

3.3 Plea-bargain

The cases of Schenk9 and Baratelli10 and the report of the commission in the Colak11 case, provide support for the argument that plea bargaining is not in itself prohibited under the ECHR, nor does it provide a basis for challenging the credibility of a witness as such.

The Court also does not exclude the propriety of the plea bargain. Based on what the Court stated in the case of Schenk12, paragraph 45, second sentence:

'45. [...] [I]t is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.' [emphasis added]

In the case of Beratelli v. Italy 13 the plea bargain procedure was cited, but not condemned:

'11. In a judgement of 31 March 1994, the District Court, following the plea-bargain procedure ("applicazione della pena su richiesta delle parti") sentenced the applicant to one year and four months' imprisonment. This decision was filed with the registry only on 19 March 1997. It became final on 6 July 1997.' [emphasis added]

As in the Commission report in the case of Colak v. the Federal Republic of Germany14:

'106. The applicant disagrees with the Government's submission that, in view of the Federal Constitutional Court's decision, he would have been required to introduce the Presiding Judge's statement in the trial if he wished to draw any conclusion therefrom. Contrary to the Government's assertion, confidential agreements between the parties are not foreign to the system of German criminal procedure, and such agreements would be devoid of any meaning if they must subsequently be introduced in the trial. The law does not expressly stipulate that such agreements are inadmissible, nor that they must be introduced in the trial. On the other hand it is provided in the guidelines for criminal procedure (Richtlinien für das Strafverfahren - former version of 1978) that the collaboration with the defence lawyer shall be based on understanding and trust, and legal writers affirm that there are many kinds of gentlemen agreements between the judge and the parties. The applicant also refers to the English and American practice of plea-bargaining. In his submission it is self-evident that such agreements must be complied with in good faith, and he considers that a breach of such agreements makes the trial unfair and constitutes a breach of Article 6 paragraph 1 of the Convention.' [emphasis added]

4. BASIC PRINCIPLES OF FAIR TRIAL

Having thus concluded that the ECHR does not recognise the rule of "unus testis", we will examine the basic principles of relevance to the present case that can be inferred from the ECHR

4.1 The right to fair 'hearing'

Article 6(1) of the ECHR requires a fair hearing. A basic principle that can be derived from this right to fair hearing as provided for in that article is the 'equality of arms' principle. According to the Court, this principle implies:

'That each party must be afforded a reasonable opportunity to present his case, including his evidence - under conditions that do not place him at a substantial disadvantage vis a vis his opponent.'15

This means that the parties must have the same access to the file, must be given the opportunity to oppose each others arguments and must be offered the same opportunity to call witnesses.

4.2 The right to an adversarial trial

This right is closely related to the 'equality of arms' principle. According to the Court, this right means:

'[...] the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other.'16

In the Barberá17 case, the Court also noted:

'All evidence must in principle be produced in the presence of the accused (...) with a view to adversarial argument.'

4.3 The right to a reasoned decision

The right to a reasoned decision is not mentioned explicitly in Article 6(1) but, nevertheless, the Court has inferred this right from the requirement of a fair hearing. The right to a fair hearing also implies that a national court must provide reasons for its judgements. In the Hadjianastassiou 18case, the Court stated:

'The Contracting States enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (art. 6). The national courts must, however, indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him. The Court's task is to consider whether the method adopted in this respect has led in a given case to results which are compatible with the Convention.'

4.4 The right to access to a court

In the Golder 19case, the Court held that Article 6(1) ECHR contained an inherent right of access to a court:

'Taking all the preceding considerations together, it follows that the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1 (art. 6-1). This is not an extensive interpretation forcing new obligations on the Contracting States: it is based on the very terms of the first sentence of Article 6 para. 1 (art. 6-1) read in its context and having regard to the object and purpose of the Convention, a lawmaking treaty (see the Wemhoff judgment of 27 June 1968, Series A no. 7, p. 23, para. 8), and to general principles of law. The Court thus reaches the conclusion, without needing to resort to "supplementary means of interpretation" as envisaged at Article 32 of the Vienna Convention, that Article 6(1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 para. 1 (art. 6-1) as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing. The Court has no need to ascertain in the present case whether and to what extent Article 6(1) further requires a decision on the very substance of the dispute (English "determination", French "décidera").'

4.5 The right to an independent and impartial tribunal established by law

Article 6(1) prescribes that cases are to be heard by an independent and impartial tribunal established by law. In the Belilos20 case, the Court defined such a tribunal as follows:

'According to the Court's case-law, a "tribunal" is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (see, as the most recent authority, the judgment of 30 November 1987 in the case of H v Belgium, Series A no. 127, p. 34, § 50). It must also satisfy a series of further requirements - independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure - several of which appear in the text of Article 6 § 1 (art. 6-1) itself (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 24, § 55).'

In the Campbell21, the Court listed the various factors it will take into account when considering the independence of a tribunal:

'78. In determining whether a body can be considered to be "independent" - notably of the executive and of the parties to the case (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 24, para. 55) -, the Court has had regard to the manner of appointment of its members and the duration of their term of office (ibid., pp. 24-25, para. 57), the existence of guarantees against outside pressures (see the Piersack judgment of 1 October 1982, Series A no. 53, p. 13, para. 27) and the question whether the body presents an appearance of independence (see the Delcourt judgment of 17 January 1970, Series A no. 11, p. 17, para. 31).'

Article 6(1) also requires that tribunals should be impartial. The meaning of impartiality was defined by the Court in the Piersack22 case. The Court also noted that in order for a tribunal to be considered impartial, it must meet the objective and subjective tests:

'30. Whilst impartiality normally denotes absence of prejudice or bias, its existence or otherwise can, notably under Article 6 § 1 (art. 6-1) of the Convention, be tested in various ways. A distinction can be drawn in this context between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect.'

4.6 The right to public hearing

Article 6(1) also requires that hearings be made public-though this requirement is subject to the limitations listed in last sentence of that paragraph. This requirement of publicity applies to proceedings that determine the issue.

In the Axen23 case the Court ruled that this provision was intended to:

'25. [...] protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 para. 1 (art. 6-1) namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36, and also the Lawless judgment of 14 November 1960, Series A no. 1, p. 13).'

In the Fredin24 case, the Court ruled that this requirement may imply a right to an oral hearing:

'21. It is clearly established under the Court's existing case-law that in proceedings before a court of first and only instance the right to a "public hearing" in the sense of Article 6 para. 1 (art. 6-1) may entail an entitlement to an "oral hearing" (see, for instance, the Håkansson and Sturesson v. Sweden judgment of 21 February 1990, Series A no. 171-A, p. 20, para. 64). In the present case the Court sees no need to go beyond an examination of whether, in the particular circumstances, the fact that the applicant was denied an opportunity to present oral argument before the Supreme Administrative Court gave rise to a violation of Article 6 para. 1 (art. 6-1).'

4.7 The right to the public pronouncement of judgment

Article 6(1) requires that a judgment be pronounced orally in open court. This right is not subject to the restrictions mentioned in paragraph 1. It does not require the judgement to be read aloud in Court. In the Pretto25 case, the Court ruled that:

'25. The terms used in the second sentence of Article 6 § 1 (art. 6-1) - "judgment shall be pronounced publicly", "le jugement sera rendu publiquement" - might suggest that a reading out aloud of the judgment is required.'

The Court furthermore held in paragraph 26 of that judgment that:

'[...][T]he form of publicity to be given to judgment (...) must be assessed

in the light of special features of the proceedings in question and by reference to the object and purpose of article 6(1).'

This means that a judgment not read aloud in court but made available to the public through, for example, the court registry is also consistent with the right to have judgment 'pronounced publicly'.

4.8 The right to trial within a reasonable time

This right protects all parties to court proceedings against excessive procedural delays. The reasonableness of the length of time taken will depend on the particular circumstances of the case. As the Court ruled in König26 :

'99. The reasonableness of the duration of proceedings covered by Article 6 para. 1 (art. 6-1) of the Convention must be assessed in each case according to its circumstances. When enquiring into the reasonableness of the duration of criminal proceedings, the Court has had regard, inter alia, to the complexity of the case, to the applicant's conduct and to the manner in which the matter was dealt with by the administrative and judicial authorities (above-mentioned Neumeister judgment, pp. 42-43, paras. 20-21; above-mentioned Ringeisen judgment, p. 45, para. 110). The Court, like those appearing before it, considers that the same criteria must serve in the present case as the basis for its examination of the question whether the duration of the proceedings before the administrative courts exceeded the reasonable time stipulated by Article 6 para. 1 (art. 6-1).'

This right also requires that the Contracting parties:

'[...] organise their legal systems so as to allow the courts to comply with the require ment of article 6 (1).'27

4.9 The right to be present at one's trial

This right was formulated in the Colozza28 case:

'Although this is not expressly mentioned in para. 1 of art. 6, the object and the purpose of the article as a whole show that a person charged with a criminal offence is entitled to take part in the hearing.'

Furthermore the Court appears to indicate in this case that the right to be present at ones trial may be waived:

'28. In the instant case, the Court does not have to determine whether and under what conditions an accused can waive exercise of his right to appear at the hearing since in any event, according to the Court's established case-law, waiver of the exercise of a right guaranteed by the Convention must be established in an unequivocal manner (see the Neumeister judgment of 7 May 1974, Series A no. 1.'

That one may waive their right to be present at their trial was confirmed in the Hakansson29 case. In this case, the Court said:

'The public character of court hearings constitutes a fundamental principle enshrined in paragraph 1 of Article 6 (art. 6-1). Admittedly neither the letter nor the spirit of this provision prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public (see, inter alia, the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 25, para. 59, and the H. v. Belgium judgment of 30 November 1987, Series A no. 127, p. 36, para. 54). However, a waiver must be made in an unequivocal manner and must not run counter to any important public interest.'

4.10 The right to be presumed innocent in criminal cases

Art 6, paragraph 2 provides that an accused shall be presumed innocent until proven guilty according to the law. The words "according to the law" not only refer to domestic law but also to fundamental principles of the rule of law. This so called "presumption of innocence" was formulated by the Court in the Barberà30 case.

'Paragraph 2 embodies the principle of the presumption of innocence. It requires, inter alia that when carrying out their duties, the member of court should not start with the preconceived idea that the accused has committed the offence charged: the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence accordingly, and to adduce evidence sufficient to convict him.'

It follows from this that an accused must be presumed innocent until proven guilty and that he can only be convicted on the basis of evidence put forward during a trial.

4.11 The right to be notified promptly of the accusations

In the Barbera31 case, the Court said:

'Paragraph 1 of Article 6 taken together with paragraph 3 (art. 6-1, art. 6-3), also requires the Contracting States to take positive steps, in particular to inform the accused promptly of the nature and cause of the accusation against him, to allow him adequate time and facilities for the preparation of his defence, to secure him the right to defend himself in person or with legal assistance,(...).'

Article 6(3)(a) was intended to give the accused a right to the information necesary for the preparation of his defence. In the Sipavicius32 case, the Court said:

'27. The Court recalls that the fairness of proceedings must be assessed with regard to the proceedings as a whole. The provisions of paragraph 3 (a) of Article 6 point to the need for special attention to be paid to the notification of the "accusation" to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on written notice of the factual and legal basis of the charges against him. Article 6 § 3 (a) of the Convention affords the defendant the right to be informed not only of the "cause" of the accusation, that is to say the acts he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts. That information should be detailed (Dallos v. Hungary, no. 29082/95, 1.3.2001, § 47).

28. The scope of the above provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention. In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair. In this respect it is to be observed that Article 6 § 3 (a) does not impose any special formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him. The Court further recalls that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the

cause of the accusation must be considered in the light of the accused's right to prepare his defence (Pélissier and Sassi v. France [GC], no. 25444/94, 25.3.1999, § 51, ECHR 1999-II).'

4.12 The right to adequate time and facilities

As the Court held in the Dallos33 case, this right is closely related to the right to be notified promptly.

'The Court further recalls that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence (Pélissier and Sassi v. France judgment, op. cit., §§ 52-54).'

Article 6(3)(b) was intended to protect defendants from the dangers inherent in a 'hasty trial'. It provides that the accused has the right to adequate facilities. According to the Court, this means:

'The opportunity to organise his defence in an appropiate way and without restriction as to the possibility to put all relevant defence arguments before the trial courts.'34

The Court indicated in Cambell and Fell35 case that this provision also includes the right to communicate with one's lawyers:-

'Moreover, a lawyer could scarcely "assist" his client - in terms of sub-paragraph (c) (art. 6-3-c) - unless there had been some previous consultation between them. This latter consideration leads the Court to the conclusion that the "facilities" contemplated by sub-paragraph (b) (art. 6-3-b) were not afforded.'

4.13 Other criminal process guarantees

In the Pakelli36 case, the Court interpreted Article 6(3) as follows:

'31. Article 6 para. 3 (c) (art. 6-3-c) guarantees three rights to a person charged with a criminal offence: to defend himself in person, to defend himself through legal assistance of his own choosing and, on certain conditions, to be given legal assistance free.'

This means that Article 6(3)(c) grants the accused the following rights:

a. the right to defend oneself in person
b. the right to legal representation
c. the rigth to free assistance

4.13.1 The right to defend oneself in person

The Court held in the Kremzow37 that the gravity of the proccedings in that case required the accused to be present at the hearing of his application:

'These proceedings were thus of crucial importance for the applicant and involved not only an assessment of his character and state of mind at the time of the offence but also his motive. In circumstances such as those of the present case, where evaluations of this kind were to play such a significant role and where their outcome could be of major detriment to him, it was essential to the fairness of the proceedings that he be present during the hearing of the appeals and afforded the opportunity to participate in it together with his counsel.'

'The opportunity to organise his defence in an appropiate way and without restriction as to the possibility to put all relevant defence arguments before the trial courts.

This does not mean that an accused is free to choose to defend himself in person. National law may hold that the interests of justice require a lawyer to assist the accused at the trial stage.

4.13.2 The right to legal representation

The accused is entitled to legal assistance if he does not wish to defend himself in person. However, according to the Court, the right to legal assistance is not absolute. The right to legal representation was formulated in the Croissant38 case:

'[...] it is true that Article 6 para. 3 (c) (art. 6-3-c) entitles "everyone charged with a criminal offence" to be defended by counsel of his own choosing (see the Pakelli v. Germany judgment of 25 April 1983, Series A no. 64, p. 15, para. 31). Nevertheless, and notwithstanding the importance of a relationship of confidence between lawyer and client, this right cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where, as in the present case, it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes; indeed, German law contemplates such a course (Article 142 of the Code of Criminal Procedure; see paragraph 20 above). However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice. '

This right is not dependent upon the presence of the defendant at the trial. This was the case in the Lala and Pelladoah39 case in paragraph 33 where the court held:

'In the Court's view the latter interest prevails. Consequently, the fact that the defendant, in spite of having been properly summoned, does not appear, cannot - even in the absence of an excuse - justify depriving him of his right under Article 6 para. 3 (art. 6-3) [...].'

It is for the court to ensure that counsel has the opportunity to defend their client.

4.13.3 The right to free legal assistance

The Court ruled in the Pakelli40 case that Article 6(3)(c) means that:

'[...] (a) person charged with a criminal offence" who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing; if he does not have sufficient means to pay for such assistance, he is entitled under the Convention to be given it free when the interests of justice so require.'

4.13.4 The right to an interpreter

Article 6(3)(e) guarantees the right to an interpreter during a trial. In the Kamasinki41

the 'equality of arms' principle entails the right of an accused to question witnesses, to have access to the case-file and to contradict the statements of witnesses

case, the Court ruled that this provision was not violated despite the fact that the questions of the witnesses in that case were not translated and the accused was not granted a written translation of the judgment. This is because an interpreter was present during the trial and the accused was given an oral explanation of the judgment that he used to appeal his conviction.

'The applicability of Article 6 § 3 (e) (art. 6-3-e) was not contested. However, the Court, like the Commission, finds no indication in the evidence before it that the requirements of this provision were not met during Mr Kamasinski's pre-trial questioning by the police and the investigating judges. An interpreter was present on each occasion. It does not appear that Mr Kamasinski was unable to comprehend the questions put to him or to make himself understood in his replies. Neither is the Court satisfied that, despite the lack of written translations into English, the interpretation as provided led to results compromising his entitlement to a fair trial or his ability to defend himself.'

4.13.5 The right to call and cross-examine witnesses

This right is closely related to the 'equality of arms' principle. As the Court decided in Barberà42 at paragraph 78:

'[...] and to enable him to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The latter right not only entails equal treatment of the prosecution and the defence in this matter (see, mutatis mutandis, the Bönisch judgment of 6 May 1985, Series A no. 92, p. 15, para. 32), but also means that the hearing of witnesses must in general be adversarial.'

In the Vidal43 case, the Court held:

'33. As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce (see, inter alia, the Barberà, Messegué and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, p. 31, para. 68). More specifically, Article 6 para. 3 (d) (art. 6-3-d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system (see, as the most recent authority, the Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 25); it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter" (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, pp. 38-39, para. 91, and the above-mentioned Bricmont v. Belgium judgment, Series A no. 158, p. 31, para. 89). The Brussels Court of Appeal did not hear any witness, whether for the prosecution or for the defence, before giving judgment.'

This means that it is for the national courts to decide whether it is appropriate to call a witness. However, in the Bricmont44 case at paragraph 89, the Commission restricted this power by stating that a court should give reasons for refusing to call witnesses.

'As regards Mr Merkt, the Commission took the view that the failure to hear him did infringe the right secured in paragraph 3 (d) of Article 6 (art. 6-3-d), because no reasons had been given therefor. It is normally for the national courts to decide whether it is necessary or advisable to call a witness.'

Furthermore, this provision entails the right to confront witnesses who don't appear at trial with their statements.45

4.14 Rules of evidence

Article 6 of the ECHR does not contain any rules on the admissibility of evidence.

'46. While Article 6 (art. 6) of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law.'46

Although the determination of any rules of evidence is the exclusive right of a member state, the Court will examine whether the proceedings, including the way in which evidence has been gathered, has been fair. Nevertheless, minimum standards of an evidential kind can be inferred from the case law of the Court and Article 6 of the ECHR.

4.15 The principle of 'equality of arms'

As was mentioned above, the 'equality of arms' principle entails the right of an accused to question witnesses, to have access to the case-file and to contradict the statements of witnesses. Case law also indicates that the burden of proof falls on the prosecutor. Their prosecuting powers are however subject to certain limitations. Article 6(3), furthermore establishes the right of an accused to defend himself.

4.16 The admissibility of evidence

It is for the national courts to assess the evidence before them given that Article 6 of the ECHR does not contain any rules with respect to the admissibility of evidence. As the Court held in the Schenk47 case, even evidence that is unlawfully obtained may be permissible provided that certain conditions are met.

4.17 The credibility of evidence

Evidence that refers to statements made before trial or to anonymous statements can be consistent with Article 6(1) and (3)(d) provided that the accused has been given:

'An adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings.'48

This was a confirmation of a former ruling in the case of Unterpertinger49, where the Court held that:

'[...] the use made of them as evidence must nevertheless comply with the rights of the defence, which it is the object and purpose of article 6 (art.6) to protect. This is especially so where the person "charged with a criminal offence" who has the right under article 6 & 3 (d) (art. 6- 3-d) to examine or have examined witnesses against him, has

not had an opportunity at any stage in the earlier procedures to question the persons whose statements are read out at the hearing.'

If this requirement has not been met, those statements cannot form the only basis for an conviction.50

A number of rules can be derived from the above mentioned case law. Firstly, the accused should be granted the opportunity to interrogate the witness. Secondly, an accused, in principle, should be granted the opportunity to contradict statements made during the trial. Finally, hearing other than during trial is permissible in certain circumstances.

5. CONCLUDING REMARKS

Article 6 of the ECHR guarantees the right of an accused to a fair trial. The conviction of Memik Horuz on the statement of one witness could appear to be inconsistent with this right. The Dutch legal system recognises the 'unus testis, nullus testis' rule that provides that an accused cannot be convicted solely on the basis of one person´s testimony. This principle, however, is not recognised by the Court. According to the case law of the Court, a conviction based on one statement is permissible provided that certain requirements are met. The accused should be granted the opportunity to confront the witness with his statement. The Court has also indicated that it is a matter for national courts to assess the evidence before them. This means that the Court only has a supervisory jurisdiction to ensure that a trial in its entirety is fair.

There are several factors that might support a finding that the trial of Memik Horuz was not fair. Firstly, is seems that the defence did not have the full opportunity to examine the statement of the witness. Secondly, if the court that convicted Memik Horuz was a military court, this could be an infringement of the requirement of the right to be heard before a impartial and independent tribunal. Thirdly, the fact that several witness statements were contradictory, whilst evidence produced by the defence that refuted those statements was not considered compels a conclusion that any conviction based on this evidence is incompatible with the presumption of innocence. Lastly, it could be argued that the decision of the court was not based on sufficient grounds in infringement of the right to a reasoned judgment.

The Court has ruled that proceedings covered by Article 6 are to be determined applying Convention rules and not merely national rules.

1 Translation by authors.

2 Corstens, Inleiding tot het Nederlands Strafprocesrecht, Deventer, Kluwer 2001, p. 128, 616, 646.

3 Commission report 12 May 1988, app.nr. 00011454/85

4 ECHR 12 July 1988, ECHR 1988 Series A, A 140 paras 45, 46, 48 (Schenk v. Switzerland).

5 ECHR 20 November 1989, ECHR 1989 Series A, A 166 para 39 (Kostovski v the Netherlands).

6 ECHR 12 July 1988, ECHR 1988 Series A, A 140 para 45, second sentence, second part, starting with 'unless...', (Schenk v. Switzerland).

7 ECHR 24 November 1986, ECHR 1986 Series A, A 110 (Unterpertinger v. Austria).

8 ECHR 6 December 1988, ECHR 1988, Series A, A 162 para. 78 (Barberà, Messegué and Jabardo v. Spain).

9 ECHR 12 July 1988, ECHR 1988 Series A, A 140 (Schenk v. Switzerland).

10 ECHR 4 July 2002, ECHR 2002 Series A, A (Baratelli v. Italy).

11 Commission Report 6 October 1987, (Colak v. Federal Republic of Germany).

12 ECHR 12 july 1988, ECHR 1988 Series A, A 140 paras 45 (Schenk v. Switzerland).

13 ECHR 4 July 2002, ECHR 2002 Series A, A para 11 (Baratelli v. Italy).

14 Commission Report 6 October 1987, para 106 (Colak v. Federal Republic of Germany).

15 ECHR 27 oct. 1993, ECHR 1994, Series A, A 274 para. 3 (Dombo Beheer BV v. Netherlands).

16 ECHR 23 june 1993, ECHR 1993, Series A, A 262 para. 63 (Ruiz-Mateos v. Spain).

17 ECHR 6 dec. 1988, ECHR 1988, Series A, A 162 para. 78 (Barberà, Messegué and Jabardo v. Spain).

18 ECHR 16 dec. 1992, ECHR 1993, Series A, A 252 para. 33 (Hadjianastassiou v. Greece).

19 ECHR 21 feb. 1975, ECHR 1975, Series A, A 18 para. 36 (Golder v. UK).

20 ECHR 29 apr. 1988, ECHR 1988 Series A, A 132 para. 64 (Belilos v. Switzerland).

21 ECHR 28 june 1984, ECHR 1984 Series A, A 80 para. 78 (Campbell and Fell v.UK).

22 ECHR 1 oct. 1982, ECHR 1982 Series A, A 53 para. 30 (Piersack v. Berlgium).

23 ECHR 8 dec. 1983, ECHR 1983 Series A, A 72 para. 25 (Axen v. FRG).

24 ECHR 18 feb. 1991, ECHR 1991 Series A, A 192 para. 21 (Fredin v. Sweden).

25 ECHR 18 dec. 1983, ECHR 1983 Series A, A 71 para. 25 and 26 (Pretto and others v. Italy).

26 ECHR 28 june 1978, ECHR 1979 Series A, A 27 para. 99 (König v. Germany).

27 ECHR 1983, ECHR 1983 Series A, A 66 para. 29 (Zimmerman and Steiner v Switzerland).

28 ECHR 12 feb. 1985, ECHR 1986 Series A, A 89 para 27 and 28 (Colozzaand Rubinat v. Italy).

29 ECHR 21 feb. 1990, ECHR 1991 Series A, A 171 para 66 (Häkkansson and Sturesson v. Sweden).

30 ECHR 6 dec. 1988, ECHR 1988, Series A, A 162 para. 77 (Barberà, Messegué and Jabardo v. Spain).

31 ECHR 6 dec. 1988, ECHR 1988, Series A, A 162 para. 78 (Barberà, Messegué and Jabardo v. Spain).

32 ECHR 21 febr. 2002, RJ&D ECHR 2002, Series A, no. 49093/99 para. 27 and 28 (Sipavicius v. Lithuania).

33 ECHR 1 March 2001, RJ&D ECHR 2001 Series A, no. 29082/95 para. 47 (Dallos v. Hungary).

34 ECHR 30 sept. 1985, ECHR 1985 Series A, A 96 para. 53 (Can v Austria).

35 ECHR 28 june 1984, ECHR 1984 Series A, A 80 para. 99 (Campbell and Fell v.UK).

36 ECHR 25 apr. 1983, ECHR 1983 Series A, A 64 para. 31 (Pakelli v. Germany).

37 ECHR 21 sept. 1993, ECHR 1994 Series A, A 268 para. 67 (Kremzow v. Austria).

38 ECHR 25 Sept. 1992, ECHR 1993 Series A, A237-B para. 29 (Croissant v. Germany).

39 ECHR 22 Sept. 1994, ECHR 1994 Series A, A 297 para. 33 (Lala peladoah).

40 ECHR 25 Apr. 1983, ECHR 1983

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Series A, A 64 para. 31 (Pakelli v. Germany).

41 ECHR 19 Dec. 1989, ECHR 1991 Series A, A 168 para. 77 (Kamsinski v. Austria).

42 ECHR 6 dec. 1988, ECHR 1988, Series A, A 162 para. 78 (Barberà, Messegué and Jabardo v. Spain).

43 ECHR 22 april 1992, ECHR 1992, Series A, A 235-B para. 33 (Vidal v. Belgium).

44 ECHR 7 july 1989, ECHR 1989 Series A, A 158 para 89 (Bricmont v. Belgium).

45 ECHR 24 nov. 1986, ECHR 1986 Series A, A 110 para. 31 (Unterpertinger v. Austria).

46 ECHR 12 july 1988, ECHR 1988 Series A, A 140 para. 46 (Schenk v. Switzerland).

47 Id para. 46

48 ECHR 20 Nov. 1989, ECHR 1989 Series A, A 166 para 41 (Kostovski v. Netherlands).

49 ECHR 24 Nov. 1986, ECHR 1986 Series A, A 110 para. 31 (Unterpertinger v. Austria).

50 ECHR 20 Sep. 1993, ECHR 1993 Series A, A 261 para. 43 (Saidi v. France), See also Kostovski para. 41.

Resolution On the Designation by the US and Dutch Governments of CPP/NPA and Prof. Jose Maria Sison as Terrorists

On 9 August 2002, the US State Department designated the Communist Party of the Philippines (CPP) and the New People's Army (NPA) as "foreign terrorist organizations." On 12 August 2002, the US Treasury Department listed the CPP/NPA and Prof. Jose Maria Sison as "terrorists" whose assets must be frozen.

Following the lead of the US, the Dutch government placed the CPP/NPA and Prof. Jose Maria Sison on its own terrorist list and issued a "Sanction Regulation on Terrorism 2002 III" on 13 August 2002 against the above ordering the freezing of their assets and prohibiting anyone from providing them direct or indirect support. The Dutch government also announced that they would ask the European Union to place the aforementioned organizations on the European terrorist list and apply similar sanctions.

These actions by the US and Dutch governments are brazenly arbitrary and unjust. To our knowledge and information, the CPP and NPA are highly responsible and principled political organizations fighting for national liberation and democracy in the Philippines. They recognize, adhere and conform to international instruments and standards of human rights and international humanitarian law.

The CPP and NPA together with 15 other organizations are represented by the National Democratic Front of the Philippines (NDFP) in peace negotiations with the Government of the Republic of the Philippines (GRP) since 1992. These negotiations have been facilitated by the Netherlands, Belgium and Norway and endorsed by the European Parliament. These negotiations have so far produced ten agreements the most important of which is the Comprehensive Agreement on Respect for Human Rights and International Humani-

Prof. Jose Maria Sison

tarian Law. These peace negotiations are now placed in jeopardy as a result of the designation of the CPP and NPA and Prof. Jose Maria Sison (who is the Chief Political Consultant of the NDFP panel in the peace negotiations) as "terrorists".

The Sanction Regulation on Terrorism 2002 III unjustly criminalizes Prof. Jose Maria Sison as a "terrorist" without the benefit of due process even though there are no pending charges for criminal or political offenses against him anywhere in the world. It demonizes him and incites public hatred against him, and subjects him to such punitive measures as the freezing of his personal bank account and withdrawal of the basic necessities of life due him as a recognized political refugee.

There is now a growing concern that the US may ask the Dutch government to extradite Prof. Sison to the US based on some trumped up charges.

The International Association of People's Lawyers (IAPL) demands from the US and Dutch governments the following:

- the immediate delisting of the CPP/NPA and Prof. Jose Maria Sison from the terrorist lists;
- the total and unconditional lifting of sanctions that have been imposed;
- the full respect for the most basic rights of Prof. Sison as a human being and his rights as a recognized political refugee protected by international conventions.

The IAPL, an organization committed to defend the people against oppression, protests the use of the legal system and the enactment of new legislation such as the USA PATRIOT Act and so-called anti-terrorist laws that undermine civil and political rights and violate due process.

The IAPL commits itself to support the campaign being carried out by the Committee DEFEND to defend the rights of Prof. Sison and other Filipino progressives in Europe who may be the object of attack and persecution in the future.

Furthermore, the IAPL commits itself to expose and oppose the ideological and political offensive of reactionary governments all over the world to denigrate as "terrorists" liberation movements and political organizations with valid and legitimate causes.

Finally, the International Association of People's Lawyers commits itself to defend the people against the growing attacks on their most basic rights and fundamental freedoms by reactionary governments hiding behind the deceptive cover of "war against terrorism". #

International Fact-finding Mission to Turkey Reports Human Rights Violations

Below is the report of an international fact-finding mission which visited Turkey from March 16-20, 2002. The team was composed of Hon. Crispin Beltran of the Philippine Parliament, Dundar Gurses from Lawyers Without Borders and the International Association of People's Lawyers (IAPL), lawyers Paul Anthony Richard and Maria Y. Sharpe from the United Kingdom, An Rosiers of the Bar Association of Ghent and Fatiha Dahmani of the Bar Association of Brussels Dr. Anne Mackelenbergh of People's Rights Watch (PRW), Dr. Sanne Nooteboom of Medicine for the Third World and Unsal Demiral of PRW as interpreter.

The delegation had meetings with human rights activists, lawyers, doctors and a member of the Turkish parliament to collect as much information as possible not only on the case of Memik Horuz, but also on the general situation of the political prisoners and human rights violations in Turkey.

Today in Turkey, anyone who disagrees with the government faces the risk of being criminally charged, the risk of an unfair trial, the risk of torture in an F-type prison and the risk of not being able to live to tell of his horrible experience.

All the lawyers that we met, whether in Ankara or Istanbul, recounted the same problems that made their duty and work as lawyers impossible. Among these are the arbitrary setting of time limitations on prison visits and the humiliating body searches. The secrecy of the profession and the confidential character of the lawyer-client relationship are completely ignored by the Turkish government. All documents and notes that a lawyer brings into prison must first be approved by a special commission within the prison before any consultation with the client.

In addition, a lawyer in Turkey risks being charged if he wishes to defend a political prisoner. The lawyer is prosecuted based on Article 169 – support to an illegal organization. Thus, practicing law – once upon a time a noble profession – is considered

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a crime, punishable under the Law on Fight Against Terrorism. All of the lawyers we met were facing charges.

Constitutional rights as well as human rights based on International Treaties and Conventions exist only on paper. Civilians and lawyers have a hard time exercising these rights. Lawyers are not on equal footing with their opponents from the Prosecutors Office, whose powers can be felt inside as well as outside the court.

Violations of Human Rights:

Torture

Testimonies show that people are still being tortured both physically and psychologically. The purpose of this type of torture is to deprive the prisoner of his self-respect and self-esteem. The authorities want to make the prisoner accept all humiliations and tortures until all resistance is broken. This was one of the main reasons for the resistance against the F-type prisons.

Violations on a Medical Level

1. The 1991 Malta Declaration of the World Medical Association gives the person on hunger strike not only the right to a second opinion from another doctor, but also upon request, the right to be attended to by that second doctor (Nederlands Tijdschrift voor Geneeskunde 2000, 20 mei; 144 (21) Geneeskunde en recht 'Hulpverlening bij hongerstaking; het juridisch kader, Prof. Mr. JKM Gevers, jurist.) This right is upheld in most European countries. In Turkey however, this right is denied.
2. There are testimonies that medical personnel who stand up for the rights of political prisoners are being intimidated.
3. The Declaration of the World Medical Association was accepted worldwide in 1975 (Declaration of Tokyo) and in 1991 (Declaration of Malta). The most important element is to respect the decision of the refusal to eat. The Tokyo Declaration considers forcing hunger strikers to eat to be a form of torture and an inhumane and degrading treatment. Article 3 of the European Convention on Human Rights forbids inhumane and degrading treatment.

Violation of Right of Defense

The lawyers do not have easy access to their clients. They undergo body searches in a degrading way. They are not allowed to use documents during the visit unless these are first checked. Thus the secrecy of the profession is violated.

There are several limitations that make it impossible to prepare a good defense, such as the lack of visitation time in prison. These constitute a violation of:

1. The right to defense as a general principle of law.
2. Article 6.3 of the European Convention for human rights. The article says that, in order to guarantee a fair trial, each prosecuted person needs to have unlimited and effective access to his lawyer. This means that time and facilities must be provided to the lawyer and his client. Article 6 of this convention upholds the right to a fair trial. However, a great number of political prisoners are detained for long periods of time while awaiting trial.
3. The confidentiality of communication between lawyer and client. This right is granted by Principle 22 of the United Nations Basic Principles on the Role of Lawyers, by Principle 18 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and by Article 93 of the European Prison Rules.
4. The prohibition of intimidation and interference in the exercise of the profession of lawyers and the prohibition of identification of lawyers with their clients or with their case. These prohibitions are embodied in Principle 16 and Principle 18 of the UN Basic Principles on the Role of Lawyers.

Memik Horuz et al

The case of Memik Horuz and several others best illustrate our aforesaid conclusions:

Memik Horuz, a journalist of Ozgur Gelecek (Free Future) was arrested in Istanbul on charges of writing an article and interviewing a guerrilla member of the TKP/ML-TIKKO in East Turkey. The state first tried to charge him of being the publisher of the paper. But according to the law, it is the editor-in-chief that is accountable for the contents of a

The purpose of this type of torture is to deprive the prisoner of his self-respect and self-esteem. The authorities want to make the prisoner accept all humiliations and tortures until all resistance is broken.

paper. The state then produced a witness who declared that he met Horuz in the mountains with the guerrillas in September of 2000. Thus, instead of being just charged on grounds of Article 169 (supporting a subversive and banned organization), Horuz is now charged with membership in a banned organization and receiving military training. This charge is based on Article 168 of the Turkish Anti-Terror Law.

After the defense proved that Horuz could not have possibly been in the mountains in September as the witness alleged, the witness changed his statement from September to August. The state then produced a second witness who not only alleged that he met Horuz in the mountains in 1998 but also declared that he met Horuz's lawyer, Filiz Kalayci in the mountains. On the basis of the first state witness's testimony the state security court sentenced Memik Horuz to 15 years imprisonment last June 12, 2002.

(The case of Memik Horuz is on appeal at the highest court of Turkey. Experts from the Amsterdam Center for International Law are currently conducting a research into the jurisprudence of Unus Testis – testimony based on a single witness. A delegation from the International Association of People's Lawyers (IAPL) to the December 25, 2002 hearing of the Horuz case will hand-carry the outcome of this research.)

In the case of Cennet Cabat, her crime is that of participation in a demonstration against the F-type cells (supporting a banned organization). Together with seven others, she was arrested and imprisoned for three months. She was released on bail because she has a known address.

The case against her is built on the information that she was carrying a report on the health situation of the hunger strikers when she was arrested during the street protests. Previously, street protest against the F-type cells was not an offense. But after the Minister of Justice declared that "Anyone who protests against the F-type cells will be prosecuted based on Article 169 – supporting a banned organization – it became an offense. The bill for this law is still in the preparatory stage but the state prosecutors' office is already using this bill simply on the basis of the Minister of Justice's statement.

two lawyers were taken into custody and charged under Article 169 (supporting a banned organization) because they attended the funeral of a political prisoner and wrote a book three years ago

In the case of hunger strikers, over the last six months (before March 2002), physicians of the Turkish Medical Association have been barred from treating their prison patients. Now, physicians can only visit prisoners if they apply as 'visitors'. Only prison physicians are allowed to treat prisoners medically.

Lawyers of prisoners are treated no differently. According to lawyer Zeki Ruzgar, his visits to clients in prison last mostly 10 minutes. He is not allowed to bring his agenda book inside prison. Thus he tries to leave all that he can in the car: belt, documents, pens, money, and takes along only one pen which must be transparent and one sheet of paper. If he takes down notes during these consultations he must then show them to a special prison commission. He thus takes down only the most important dates or telephone numbers and tries to memorize the rest of the conversation that he then writes down as soon as he gets to the car.

Zeki Ruzgar says that the slightest action is turned into an offense. For example, two lawyers were taken into custody and charged under Article 169 (supporting a banned organization) because they attended the funeral of a political prisoner and wrote a book three years ago. In another incident, twenty-seven lawyers were charged under Article 240 of the Turkish Penal Code when they tried to calm the situation wherein two female hunger strikers appearing in court for their hearing were beaten up by the guards. They refused to continue with the hearing under the said circumstances were are thus charged with dereliction of duty.

Lastly, we have the story of Dr. Fincanci. Professor Fincanci works for the Council of Forensic Medicine. She was fired following the autopsy reports on the victims of the massacres in 20 different prisons. She filed a complaint against her dismissal and won the case.

Dr. Fincanci says that they used to have an outpatient clinic for forensic medicine, where their department examined torture prisoners free of charge. These reports were later used for human rights purposes. The department also examined persons for the European Court for Human Rights. Now there is a strong restriction on their work. They are only allowed to do examinations upon request of the court. But the court never asks the clinic but assigns this task to the Council for Forensic Medicine that is under the Ministry of Justice.

According to Dr. Fincanci, harassment has been a regular part of her work. She has been accused of being a Muslim fundamentalist, a separatist, a PKK member, etc. She has lately been charged under Article 159 (slander) with insulting and ridiculing the police forces of Turkey. #

FROM HUMANITARIAN REASONS TO PREVENTIVE STRIKES US IMPERIALISM JUSTIFIES INTERVENTION

By Hakan Karakus
Lawyer of Acilim Law Bureau - Istanbul and member of IAPL

Laws can be defined as the implementation of the will of the dominators. Any analysis of international and intergovernmental law will undoubtedly fall within this framework. The saying "Rules are imposed by the dominators" is an open acknowledgement of this and rejects any alternative interpretation of history.

From the Roman to the British Empire, throughout the era of slavery, feudalism and colonialism, states and empires enlarge the scope of their sovereignty by setting up legal systems to justify their reign, after their invasions and wars have established the principle of "the mighty make the rules." They founded an order of multilateral agreements to settle conflicts and reinforce harmonies but in the process imposed upon the conquered disaster, pain and slaughter in order to protect the interests of their dynasties.

The 20th century saw imperialism's domination of the world. Imperialist powers have distributed among themselves countries of the world which they controlled through monopolies. Law is again their tool. Sovereignty expresses itself through law to control the peoples of the world.

When we read the background of these developments, we understand that the course of history is determined by the class struggle of the oppressed and exploited masses. Developments within the relations of production carried societies into the next stage of development through revolutions. Law, in turn, manifested itself as the reflection of these developments within the infrastructure of the superstructure.

Today's world is no different from the past. Despite the progress and experiences of humanity towards goodness, truth and beauty, imperialism as the highest stage of capitalism, has launched the most barbarous, savage, reactionary, merciless and bloody system in history. Imperialism imposes its arbitrary, aggressive and tyrannical rule upon the dominated peoples using its might to legitimize what it does.

Today, the United States. is defined as the biggest empire in history. It is the gatekeeper of the dominators. Pax-Americana revised its mission of "preventing the spread of communism" and determined its new role as "the defense of human rights". The "war against terrorism" has become the legitimate tool of US imperialism to attack and launch its "preventive wars". Now we are talking about an age of continuous war which could last for decades. Dick Cheney said that "we could take action against 40 to 50 countries," and added, "our lives may be not long enough to see the end of the war." The whole world is now turned into an arena for war and a justification for those whose driving motive is "slavery or eradication."

In fact the horrible attacks of US imperialism during the 21st century is neither different nor independent from its predecessors. Imperialist states from England to France, Germany and Japan, have launched numerous attacks, interventions and wars which were started on the supposedly important reasons and excuses during 20th century. Thus, mainly England and all other imperialist states and state coalitions support US imperialist policies directly or indirectly according to the balances of power of the United States. Nevertheless, despite the pretended hegemonic views of the world, the realities of a multipolar world manifest itself much more clearly. The leadership of countries like Germany, Russia, China and Japan are coming near with determined steps.

At the beginning of the 20th century, in 1902, Theodore Roosevelt spoke these words to the US Congress, "The increasing dependency and complexity of international political and economic relations to each other charges all of the civil and well-organized powers with the duty to undertake the world policemanship properly." This statement, dated a century ago, could well be the speech of President Bush. The same Roosevelt clarified his ideas with the following words: "If I should make a choice between blood and iron politics and with milk and water politics, I will choose blood and iron politics! This politics is better not only for the nation but also for the world in the long term."

As it grew in strength, US imperialism found guidance in the doctrine of Woodrow Wilson which is crystallized in his words dated 1915; "From now on, the mission of the United States is to resist all attacks wherever it takes place in the world."

The words of these two American presidents can summarize the 20th century and explain the 21st century. With this philosophy US imperialism determined the whole 20th century with its coup d'états, its interventions, its occupations, its attacks and its wars. It became the biggest militarist power in the world with its military bases in approximately 150 countries and became more and more fearless in doing anything that would consolidate and improve its hegemony.

In order to overcome its economic problems and crises, to control the energy (petroleum, natural gas, water) zones, to change the balance of powers and to take control of critical regions the United States made its first attacks at the beginnings of the 1990's under the banner of fighting for humanitarian reasons, or "humanitarian intervention".. It conceptualized this process as "globalization for redistribution". It was not a coincidence that the timing corresponded to the dissolution and weakening of the Soviet Bloc.

"Humanitarian intervention" as a heritage of the colonialist period was polished with the notions of peace and democracy and with principles such as "prohibition on intervention of borders and internal affairs" and the "right to self-determination of the nations" which are accepted and protected by the post-1945

international law. However, these principles were annulled by the United States in its interventions, occupations and attacks.

Intervention requires a theoretical justification. Thus, there has to be a good reason for the interventions, aside from aiming at suppressing the opposition, resistance and liberation movements in colonized and semi-colonized countries, and the strengthening of the reactionary and fascist regimes. Added to this, rivalry and the struggle to control the world has made de facto interventions unavoidable.

US imperialism has found enough reasons to justify their "humanitarian interventions". Those responsible of the situation in these countries were the same imperialist states which exploited them and suppressed and controlled them through their servants and comprador. In all of these countries labeled as "Third World", "South"," Underdeveloped", etc. there are a lot of systematic human rights violation. Here we should mention the violations of human rights in the systematic contra-guerrilla activities and low intensity conflict strategy developed by the US after the 1960's.

If there are not enough reasons in a country or region the US creates the necessary scenario for an intervention. Thus, "ethnic" and "religious" provocation were used to implement tactics of sowing discord among nations and peoples from Rwanda, Bosnia and Kosovo in order to establish suitable conditions for intervention.

During this period the US became the worst violator of human rights. The US determined the concept of human rights which they propagated through human rights organizations under their control. Through this manner, they pursued their aims to control countries. While they made the concept of human rights unsubstantial and void by their actions, they also weakened concept to conceal the injustice in their countries under their control. Thus, as violations of human rights increased the US was able to direct the attention of the world to the practices of certain countries and regimes while lessening social rights and benefits in their own country.

Before there was intervention in a country, the governments became targets of campaigns against them. Provocations would intensify the violence and the balance sheet of abuses of human rights, thus preparing for the attack and occupation of the targeted country. The UN Security Council was a willing accomplice of the US. Economic, trade and diplomatic embargos would follow. The next step would be military interventions either through NATO intervention through other forces according to existing conditions. The process would be completed by the establishment of a guardian government initiated either by the UN or NATO. And so the mission would be accomplished.

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The US could not prevent problems arising to justify their "humanitarian interventions". Thus the International Court of Justice refused their reasoning of the intervention of Nicaragua during the 1980's (27.06.1986). The US justified its intervention using the "human rights infringements" of the state against the contra-guerrillas. In fact, during interventions of the US, human rights violations did not decrease but rather increase. New violations occurred and spread out through out the region. But the most important thing were the arbitrary actions of the US which manifested themselves as inaction in several countries where fundamental rights and freedoms were being violated.

The period which took the defense of human rights as its motto did not develop as intended because of the deepening and sharpening contradictions between capital and labor. The cyclical crisis of capitalism continued. Competition among the capitalists increased and sharpened. The concept of threat gradually widened to include new practices and areas. In order to protect its hegemony the US became inevitably more aggressive and built all its political strategies on militarist attacks. Such a development in strategy required increasing their targets and to find better and legitimate cause to serve as the reasoning for the interventions.

Concepts such as "war against terrorism", "struggle against terrorist activities" were born as a result of these developments. This was built around several dichotomies; "us and others", "the war of good and bad/ god and evil", "you are either on our side or our enemy's", "those who are not on side will be got rid of". The categories of perpetrator and encourager, promoter; and supporter and accessory after the facts were blurred and thus fell under the same category. This approach was essentially formulated as follows; "We will act against the terrorists and those who harbor or provide aid to them with every means at our disposal." Extra judiciary and arbitrary executions became the usual method. The US provided the framework. Directions they gave had to be followed and all the positions taken should be within the agreed framework. The mighty imposed itself on others.

September 11 is the milestone of this process. The US began to apply its new strategy which has been planned long before the attacks of September 11. Now it continues its attack and invasion strategy with Iraq after Afghanistan. Everybody knows that these attacks will continue with other countries and regions.

The concept of "terrorism" is defined by the real terrorist imperialists to make all armed liberation and social movements illegal and illegitimate. This concept is widening itself to include all the opponents of their system. The next step is to massacre guerrilla groups which they founded to promote their counter-revolutionary, but which later fell out of their control, like al-Qaida, etc. Finally their targets are the reactionary and fascist regimes in countries where they have lost control. Those they call "the terrorist states", the "vagrant states" and the "evil front".

☜p. 25

A broadly interpreted version of the concept of terrorism can be found in the wordings of the resolutions numbered 1368 (2001) and 1373 (2001) of the United Nations Security Council after September 11. Anti terror laws enhances their scope from fascist and authoritarian regimes to global fundamental presence. We should define this period as a "worldwide martial law period". Everybody is forced to determine their position according to the invitations and threats of the US. They can act in a manner that means "I will agree to the rules and I will implement them as I want or I could neglect them if I want."

Bush declared the intention of the US when on September 26, 2001, he said, "From now on, we will hit before we are attacked." The cabinet of war and petroleum monopolies were repeating the same theme. The "National Defense Strategy Document" of the US announced to the public on September 20,2001 that they determined the legal base of the war against terrorism.

"When necessary we can make offensive attacks without any assaults directed towards us. We use our legitimate right to self-defense. We will not allow any foreign power to close the gap between the United States and other states established within the last 10 years."

This document known as the "New Defense Doctrine of Bush" and declared as a "revolution in international relations" by Kissinger, became the legal ground for preventive wars and pre-emptive attacks and strikes based on the principles "you hit first" and consequently changed the main principles of international law and gave legitimacy to extra judiciary and arbitrary attacks, interventions and wars in global politics.

However, the United States also prepared itself for creating new reasons for its interventions and founded a provocative and offensive group named Proactive Preemptive Operation Group (P2OG) whose function is designed as an effective preventive operation group to stimulate the reactions of the terrorists and states who have weapons of mass destruction. This group would encourage terrorist cells to undertake terrorist actions paving the way for the intervention of US forces.

In the League of Nations Covenant (art. 10 and 12), the Briand-Kellog Pact and Charter of the United Nations (art.2/4), "intervention in the internal affairs of states", "using force" and "threats to use force" is clearly prohibited. Only in exceptional conditions, that is to say, when peace is under threat or a country is under attack is the authority to intervene given to the United Nations Security Council (art. 42). The mere exception to this authority is defined in art. 51 which gives "individual or collective defense rights against armed attacks" to the ones under threat until the UN Security Council takes the necessary measures to consolidate international peace and security.

In reality these exceptions have became the rule and in order to legitimize the interventions NATO is included in the interventions. The Convention against Genocide is used as a new ground for new arguments. Still these international instruments have proved insufficient to respond to the different actions of the US G.W. Bush did not hesitate to criticize and threaten the U.N. during the debates on Iraq. The US even managed to take the right to attack Iraq by itself on the basis of the U.N. resolution 1441 of November 8,.2002.. Despite these developments the US still announced that it will attack to Iraq without any reasoning if it finds it necessary.

In this period we should develop our analysis and expand it to include the situations where the US will not use international instruments. The US is trying to draw in China into the war because of North Turkestan, and Russia because of the Chechen problem. It wants to immediately to consolidate its military power into permanent victories. Another urgent matter is the increasing anger of the world population whose conditions are continually worsening and the reality that the present system can hardly withstand this anger.

CHOMSKY Noam, Interventionism of America , Aram Yay.,pg. 72,

"The weak, fragile and in many respects defective system of the world order has only one "real alternative". The mighty will do whatever they want.

KENNEDY Paul, History Proffessor, USA

"Neither the reign of Pax-Britannia, nor the France of Napoleon, nor the Spain of the Philip II, nor the empire of Charlemange, nor the Roman Empire are comparible to the sovereignity of America today. There has not been a world power throughout history which can impose its dominance in such diverse aspects and fields of our life."

PARENTI Michael, Against the Empire, Kaynak Yay., pg. 44

The US as the leader and the most fervent advocator of the recolonization of the world escaped the second world war without any serious injuries and isin a very advantegeous position in terms of wealth, production capacity and military power when compared to the other industralised countries, and became the worldwide representative and protector of capitalism. With its financial investments and military power the US is the biggest empire in history. Bigger than the British Empire of the 19th century and the Roman Empire of the ancient ages."

MYERS Richard , U.S.A. Head of Military Staff, 23.10.01

"We are thinking broad. Afghanistan is only little piece of it. What is on the agenda is the biggest plan after the second World War. I think this will be a long and tiring war."

KISSENGER Henry, Diplomacy, T.C. İş Bankası Yay., pg.32

"According to Roosevelt international life means struggle and Darwin's theory saying that the powerful will remain alive is a better guide than personal morality."

WOLFOWITZ Paul D., USA Assistant to Defense Minister ,

"The function of military bases is political rather than military. These bases give the message that we have the capacity to come back and we will come back whenever we want."

ARKIN William, Los Angeles Times, 06.01.02,

"The US is creating a new circle and new military bases. These military bases enable them to hit the necessary targets and will serve as the front bases in a war."

CHOMSKY, a.g.e., pg. 110,

" Sometimes interventions caused humanitarian results but they were accidental rather than intended. And almost all of the interventions, including the one's iniated by Hitler and Mussolini, were announced to serve humanitarian aims. Nevertheless it is very difficult to find an intervention whose real aim is to serve humanitarian needs. In fact, maybe there is not an example of such an intervention."

HALPERIN Morton H., SCHEFFER David J., SMALL Patricia L., Self Determination In the New World Order, Carnegie Endowment, Washington D.C., 1992, pg. 80

U.S.A.'s IMPERIALIST WAR LAW REFLECTS THE SPIRIT OF THE JUNGLE

By Acilim Hukuk Burosu (Acilim Law Bureau—Istanbul)

U.S.A. imperialism is becoming more and more indifferent to the international community after 11 September, 2001 with its worldwide extra ordinary martial law measures. Within the last 3 years it turns the world to a hell of terrorism with its oppressive and threatening attacks. It denies all of the international law with all its written and consuetudinary rules and interprets the international relations arbitrarily in line with its interests. It imposes itself as the mere authority to put the rules and regulations, to implement that rules, to judge and to execute at the expense of the will of the states and peoples of the world. Its refusal to bind itself with the international conciliations can be understood from its "international law" practice:

- It withdrew from the Kyoto Protocol about global heating;
- It left the UN Conference against Racism, Racial Discrimination, Xenophobia and related intolerance held at Durban;
- It refused to approve the Rio Biodiversification Treaty;
- It annulled the Anti-Ballistic Missile Treaty for its project for missile shield
- It did not approve the Convention on the Prohibition of Nuclear Experiments;
- It did not sign the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction
- It did not approve the new international regulations regarding Biological War;
- It prevented the initiatives to update and amend the Convention on the Prohibition of torture and inhuman or degrading treatment or punishment;
- It refused the jurisdiction of the International Criminal Court;
- And finally, it rejected the UN protocol (19.12.02) concerning the establishment of independent national mechanisms for the prevention of the inhuman or degrading treatments or punishments in the prisons by promoting the conditions in the prisons and by regular visit and audit of the prisons by an international specialists' committee

It started an "anti-terror campaign" by using the UNSC resolutions numbered 1368 and 1373 which requires adoption of similar anti-terror rules and regulations by the member states, it announced the list of "the states to be attacked priorly" (which are defined as the terrorist states or the evil front by U.S.A.), and it also prepared a list of "terrorist organisations". It settled in the Middle Asia through the invasion of Afghanistan, it undertook operations Colombia, Philippines and the Yemen and it choke the Palestine in blood by hands of Israel.

U.S.A. imperialism which enhanced its military blockade by increasing the number of its military bases to 150 and surrounded its near target, the Middle East with the excuse of the Iraq problem, is trying to fulfil its enthusiasms for being an unchallenged empire and is acting on the grounds to enhance the reach of its hegemony as far as possible. Being fed by the human life and blood, the strongest guardian of the imperialist-capitalist system is resorting to its best known tools, the violence, and it is expecting profits from this uninterrupted, continuous war.

An order functioning according to the opinions, preferences, discretion and disposition of U.S.A., who is trying to impose illegality as 'law', is trying to be established. This order covers not only the "U.S.A. Territories" but an unlimited area where the "interests of U.S.A." can reach. U.S.A. do not have claims but decisions. It do not accept or need any evidence to ground its decisions, judgements or opinions. Even though it does not change the judgement or the decision the duty to prove is charged upon the accused rather than the claimer.

U.S.A. imperialism change its "humanitarian intervention" strategy of its attacks and invasions in favour of another strategy called "pre-emptive intervention" under the motto of "anti-terrorism" which open it the way to "first you kick" "always you kick". This is an "imperialist war law" inspired from the jungle law and annul all the principles of "international law" including "prohibition of the use of law" "prohibition of threatening by the use of law", "prohibition of intervention to the internal affairs of the states" and "self-determination"

An understanding is on the way with the motto "Might will set and implement the rules." The same understanding is claiming that the Geneva Convention is not valid anymore and see the UN as an impediment for its plans even though U.N. has done everything to adapt itself to the wills of the Empire. An imperialist law order which functions on the basis of power, sovereignty and war is trying to be established. This order divides the world into two according to the ones who obey the emperor or not, the ones who oppose it or not and defined the other as the "enemy" and found the eradication of the enemy legitimate. #

Question & Answer on the International Criminal Court

What is the ICC?

The International Criminal Court (ICC) is a permanent international tribunal that will try individuals responsible for the most serious international crimes. One hundred and sixty countries attended a U.N.-sponsored conference in Rome in 1998 to draft a treaty for the establishment of the ICC. After 5 weeks of intense negotiations, 120 countries voted to adopt the treaty. Only seven countries voted against it (including China, Libya, Iraq, and the United States) and 21 abstained. Before the Court can be set up, 60 countries need to ratify the treaty. 139 states signed the treaty by the 31 December 2000 deadline. As of September 19, 2002, 81 countries have ratified it. The tribunal will come into force on 1 July 2002.

What crimes will the ICC prosecute?

The ICC will prosecute individuals accused of genocide, war crimes, and crimes against humanity, all defined in the court's treaty. The ICC will help ensure that these serious crimes, which have long been recognized by the international community, no longer go unpunished because of the unwillingness or inability of individual countries to prosecute them.

Who can be brought to trial before the ICC?

The ICC will have jurisdiction over crimes committed by the nationals of governments that ratify the treaty, or in the territories of governments that ratify. It can try any individual responsible for such crimes, regardless of his or her civilian or military status or official position.

What are the rights of those accused of a crime by the ICC?

The ICC treaty contains a detailed list of the rights that any accused person shall enjoy, including the presumption of innocence, the right to counsel, to present evidence, the right to remain silent, and the right to have charges proved beyond a reasonable doubt.

How will national courts and the ICC work together?

The treaty gives the ICC jurisdiction that is complementary to national jurisdictions. This 'principle of complementarity', as it is known, gives states the primary responsibility and duty to prosecute the most serious international crimes, while allowing the ICC to step in only as a last resort if the states fail to implement their duty -- that is, only if investigations and, if appropriate, prosecutions are not carried out in good faith. Bona fide efforts to discover the truth and to hold accountable those responsible for any acts of genocide, crimes against humanity, or war crimes will bar the ICC from proceeding.

How is the ICC different from the International Court of Justice (World Court) and other existing international tribunals?

The International Court of Justice (ICJ or World Court) is a civil tribunal that hears disputes between countries. The ICC is a criminal tribunal that will prosecute individuals. The two ad hoc war crimes tribunals for the former Yugoslavia and Rwanda are similar to the ICC but have limited geographical scope, while the ICC will be global in its reach. The ICC, as a permanent court, will also avoid the delay and start-up costs of creating country specific tribunals from scratch each time the need arises.

Who can join the ICC and when will it start trying cases?

All countries of the world can ratify the ICC treaty. Members must accept the Court's jurisdiction and cooperate with the court in investigating and prosecuting crimes and enforcing penalties. The ICC will come into existence once 60 countries have ratified the treaty.

Where will the ICC be located and who will pay for the Court?

The ICC will have a permanent seat in The Hague, the Netherlands. When necessary, it may also make arrangements to sit in other countries. The countries that belong to the ICC will determine its budget and provide the necessary funding. The United Nations will also contribute funds, especially when the ICC investigates and prosecutes cases referred to it by the U.N. Security Council.

How will the ICC and the Security Council work together?

The Security Council may refer cases to the ICC for investigation and prosecution. The Security Council may also request the ICC to suspend investigations for 12 months at a time if it feels that ICC proceedings might interfere with the Security Council's responsibility to maintain peace and security. This arrangement makes it difficult for any one permanent Security Council member to manipulate the ICC, while permitting the Security Council to resolve any genuine conflicts of interest with the ICC.

How can politically motivated cases be avoided?

Many safeguards exist in the ICC treaty to prevent frivolous or politically motivated cases. For example, all indictments will require confirmation by a Pre-Trial Chamber of judges, which will examine the evidence supporting the indictment before issuing it.

The accused and any concerned countries will have an opportunity to challenge the indictment during confirmation hearings before the Pre-Trial Chamber. In addition, any investigation initiated by the Prosecutor will first have to be approved by the Pre-Trial Chamber.

What happens if a country does not ratify the treaty?

Countries that fail to ratify the ICC treaty will be prohibited from participating in the nomination of the Court's judges and prosecutor. They will also lose the privilege of contributing to decisions about the budget and administrative operations. #