



DISSENT

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International Association
of People's Lawyers

WHY DISSENT?

Why do we, the International Association of People's Lawyers, call our bulletin "Dissent"?

Change is the essence of existence. The dynamics of the socio-economic and the political system necessarily means dissent. Absence of dissent is the silence of the graveyard. Dictators and tyrants try to enforce it, while people resist it.

If one goes by Greek mythology, Prometheus was the first dissenter. He stormed the forbidden gates of heaven and stole fire to dispel the darkness to which the Gods had condemned human beings. Zeus consequently put Prometheus to extreme torture.

The powers-that-be do not take dissent kindly. Whether they are claimants to worldly power or divine power. Retribution for dissent is assault on life. They poisoned Socrates and crucified



Jesus Christ. The 'infallible' Pope ordered that Galileo be tied to a wheel and dragged into the streets of Rome because he disagreed with the Pope that the Earth was flat and not round. Americans defoliated, carpet-bombed and napalm-bombed Vietnam because the Vietnamese peasants and workers defied the might of American imperialism.

This saga started from time immemorial and it will continue until people have taken charge of their own destiny.

The US and British aircraft have been bombing Iraq for over a decade because they have not yet been able to install a flexible, puppet regime there as they have done in the other Middle East countries. America trains, finances and arms the police and military forces of Colombia to decimate Colombian peasants who have cocked a snook at the American hegemony in Latin America. Besides, America has organised and armed death squads in Colombia to perform outright crimes against humanity, which the Colombian regime finds embarrassing to do directly.

We, the IAPL, are on the side of those who dare dissent and defy. So we call our organ "Dissent".

The International Association of People's Lawyers believes that the law is basically the

legitimation of the interests of the dominant class or classes. In this respect, the difference between the bourgeoisie and the previous dominant classes is that, while the previous classes expressed their class interests in blatant terms, the bourgeoisie sets down its laws in universal terms. But, in reality, they were meant to serve the interests of the dominant class and gender.

The US Constitution is one of the oldest written constitutions of the bourgeoisie. It says in its preamble that all human beings are born equal. Still only white, male property owners could vote for almost a century. The African-Americans, women and propertyless white males were not considered citizens and were excluded from the electoral process. Roger Taney, the chief justice of the US Supreme Court, reasoned in Dred Scott vs Sanford, 1857, that the founding fathers of the American Republic never thought that the blacks were human beings. This syndrome based on class, race, etc. continues. One instance will make the point.

There are about fourteen million people in the city of Mumbai, India, out of whom about eight million stay in slums where there are no basic amenities. The oppressive circumstances have compelled them to live a life of

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misery in the slums. The establishment and its media call them 'encroachers' and 'outsiders' and accuse them of vitiating the quality of life of the citizens and residents of the city. It implies that those who dwell in the slums are not citizens and residents. The terminology used disenfranchises them and legally justifies their sub-human existence. The only concession which the establishment and its media grants is that they do not demand that the inhabitants of the slums be sent to the gas chambers as the Nazis did in the case of the Jews. Roger Taney's are not aberrations. They are the organic intellectuals of the capitalist system. The talk of equality, liberty and fraternity is bunk.

The facade of the 'rule of law' that prevails in 'normal' times in bourgeois society is also shattered whenever the people resist the oppression of the rulers, especially if the resistance is led by forces that stand for a revolutionary transformation of society. The bourgeoisie unleashes brutal repression in such situations and terrorises, tortures and even kills the activists and supporters of such movements in an attempt to crush out the protests at any cost.

The IAPL believes that the human rights such as food, clothing, shelter, education, freedom of expression, the right to travel throughout the world, etc. are all necessary conditions for our existence as human beings. The vast sections of the world population are deprived of such conditions. We will contribute our mite to facilitate movements which are trying to change the world for the realisation of such conditions so that the human potential blooms all over the globe.

The signature tune of the present socio-economic system is injustice. After the collapse of the Soviet Union, the global capitalist system has shed even its fig-leaf of decency. In 1960, the wealthiest 20 % of the world population were appropriating 70% of the global income. This proportion has risen up to 85% in 1991. Simultaneously, the income of the poorest 20% has plummeted from 2.3% to 1.4% of the global income in 1991. The intensification of this inequity in the system is commensurate with militarization to keep the common people under subjugation.

The inequality and exploitation exists within states and between states. The transfer of resources from South to North between 1984 and 1991 totalled US\$ 115 billion. The Southern countries pay out US\$ 50 billion more in debt service each year than they receive in terms of capital inflow. This unequal exchange of wealth is effectuated through the World Bank, the International Monetary Fund and the World Trade Organisation. The USA has a hegemonic grip over these so-called global institutions. For instance, the US holds 17.6% of the World Bank's capital and has voting power which is well over the 15% required to reject credit applications. The US uses these insti-

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tutions to integrate the national economies of Asia, Africa and Latin America into the international capitalist economy that it controls with catastrophic results. It has reduced the Gross Domestic Product in Africa to such an extent that it shrank to what it was 30 years ago.

This process of integration into the world economy is paralleled by the disintegration of the South through ethnic and religious strife. The political opposition recognised and encouraged by the US, takes advantage of the absence of revolutionary forces to channel the social conflicts towards the radical transformation of the society, and promotes obscurantist and divisive ideologies.

The US takes along the United Nations as well in its hegemonic and militaristic activities. American and British bombers have been pounding Iraq for the last one decade under the auspices of the UN. No member asks whether the UN has sanctioned such activities or not. And the world media do not think that any human being is hurt when the US and UK planes drop bombs over Iraq. This is a classic example of how the US has appropriated the international institutions to promote its hegemonic interests and how the US has made an ass of international law. This is one of the issues which the IAPL wants to take up and present before the world for its verdict.

The USA also acts outside the frame-work of the UN. The Revolutionary Armed Forces of Colombia (FARC-EP) occupies about one-third of Colombia. It has an army of about 17,000 soldiers. The classified documents of the US and Colombian military reveal that the Central Intelligence Agency (CIA) and the Defence Department of the US advised, financed, trained and armed Colombia to fight what is diplomatically called a drug war. The US advised, too, the Colombian Defence Ministry to set up 41 clandestine intelligence networks (death squads) in 1991.

America, the only super power in the world, is waging a war against the sovereignty and territorial integrity of the oppressed countries of the world, and is trying to set up its own unchallenged sway over the world capitalist system. It is leading the other imperialists in intensifying the attacks on the living standards of the working and middle classes everywhere. The people of the world are bound to take up this challenge head-on, either today or tomorrow. In that eventual face off, the International Association of People's Lawyers will always be on the side of the people. #

By PA Sebastian—IAPL Chairperson

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.

SEPTEMBER 11 AND INDIA

P.A. Sebastian

September 11, 2001 - the day that changed the world. What happened on that day in the United States of America caused tidal waves which swept the whole world and dismantled many a myth. When such momentous and historic events take place, there are two ways of reacting to it: one can call for blind retribution or try to find out why it happened. The ruling classes in India seem to have reacted in a retributive mode.

Unsolicited, India offered all assistance to America in her war against Afghanistan and Osama Bin Laden. America ignored the offer because in American strategy India had no role to play. Undaunted, India persisted and provided the U.S.A. with "intelligence" which, among other things, had taped the militant training camps on the Pakistan side of Kashmir. The tapes described the camps as Islamic and terrorist and said, with an air of wisdom, that therein lay the roots of terrorism which took place in America on 11th September 2001. The tapes exhorted that the roots be wiped out. The government of India was so naive that it indirectly asked America to bomb Pakistan along with Afghanistan and treat India as the front line state in the "war on terrorism".

The Indian government has taken advantage of what happened on 11th Sept and initiated several measures which are blatantly communal and undemocratic. The elections to several state assemblies are due. The ruling coalition is unpopular and discredited. So there is a concerted effort by the BJP, the leading party in the ruling coalition, to polarise the Indian society on religious lines and to present themselves as the true representatives of the majority community and to win the elections.

The President of the Rastriya Swayam Sevak Sangh (RSS), the parent organization of the BJP has called upon the Hindus to collect arms and to keep them in their homes to defend themselves against Islamic terrorists. The purposed is to cause a sense of insecurity among the Hindus and to keep the

society as a whole on the precipice of a communal carnage so that the Hindus en masses plump for the BJP at the elections. The communal situation in India is so explosive today that the country is on a tinder box and the communal riots may break out in different parts of the country on some slight provocation.

One such incident has already taken place. On 26th October, some Muslim youth in a town called Malegaon, Maharashtra, India started after Friday

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prayer to distribute leaflets which called for the boycott of the British and American goods. The policemen on the spot objected to leafleting and seized the leaflets and tore them even though it did not violate any law in India. This led to a brawl between the police and the Muslims. The police opened fire immediately and injured and killed several Muslims. At the heels of this incident, riots broke out in the town and the adjoining areas. The police and Hindu communal and resorted to violence and arson in the Muslim localities.

This is typical of the way in which the armed forces of the state react in India when the protestors are workers, the low castes or minorities other wise they are benign.

Three contemporary incidents will substantiate the point. In Thane, a city

near Mumbai, the members of the Shiv sena a communal and fascist organisation, attacked and destroyed a hospital in the presence of the police. The police did nothing either to prevent the destruction or to stop it. In justification of their inaction, the police said that there would have been loss of human life if they had acted. The activists of Bajrang Dal the crude and violent foot soldiers of the RSS, vandalized the Taj Mahal, a symbol of love, erected by Shah jahan in memory of his wife. The police turned a blind eye to the outrage, in the third incident, the top leaders of the Hindu communal forces stormed the place where the Babri masjid (this was demolished by the Hindu communal forces in 1992) stood and performed the Hindu religious rituals in violation of the supreme court order. The police stood outside and let it happen.

The vital organs of the Indian state have been communalized of the semi-feudal and semi-colonial system, no matter which party is in power. In several states of India like Maharashtra, the congress is in power which has not made much of a difference to the communal and authoritarian character of the state.

Grabbing the opportunity with alacrity, the got, of India has issued the 'Prevention of Terrorism Ordinance' The Ordinance is almost a replica of the terrorist and disruptive Activities Act which the Indian parliament had let elapse in the light of the infamy which the law had incurred. The ordinance does violence to the basic principles of the Anglo-Saxon jurisprudence. The onus of proving innocence is shifted on the accused stultifies the cross examination, the corner stone of an impartial trial. An accused will not be released on bail unless the prosecution consents.

Those who refuse to learn from history are condemned to oblivion. The Indian rulers have not learnt any lesson from Srilanka. The Buddhist majority there treated the Hindu minority as non-citizens, only to turn the country into an island of pain and death. The Muslims in India are almost the same percentage as the Hindus in Srilanka. The twelve percent may not be sufficient to build a country but it is enough to destroy a country. Do the Indian ruling classes listen? Only the history will answer the question. #

The Human Rights Situation in Afghanistan

Mr. F.R. Ahmad

The people of Afghanistan are under three pressures at the moment. The military attacks by the United States and Great Britain are only one part of one of these problems; the pressure by foreign countries. The Warlords of the Northern Alliance and the ultra-fanatic Taleban form together the second pressure on Afghan people. The third problem that results to the continuation of the first and second pressure is the lack of a modern State and legal system in Afghanistan.

Background

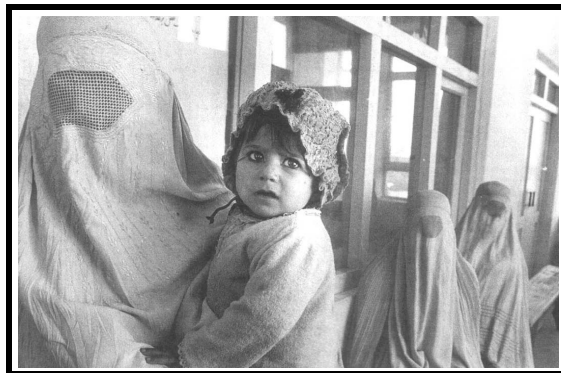
Freedom and independence are old phenomenon in Afghan culture. The footprints of individual liberties are also to find in the classic Afghan literature. Practically, however, the dictatorial regimes and foreign invaders in the course of the history have repressed Afghans.

The modern Human Rights, however, found their way to the first Afghan Constitution in 1923. The progressive monarch Amanullah took during his ten years of kingdom (1919-1929) wide steps towards the modernization of Afghanistan. Amanullah abolished slavery. The Constitution of 1923 established secularism in Afghanistan and the equal rights for women were for the first time recognized by an Afghan law. Civil and political rights were guaranteed by this constitution. The society namely in the rural area's was not ripe and ready to appreciate and use these rights and liberties. The hasty reforms of Amanullah failed to survive the subversive intervention of Great Britain directed and financed through the British authorities in India.

Maybe the 1923 constitution was the most progressive Afghan constitution in the 20th century. Because the Constitution of 1964 came short to establish a pure secular political system in Afghanistan. *Sharia* and the *Suni* branch of Islam were accepted as the basis of Afghan legal system. Nevertheless this Constitution revived the guarantees given by the 1923 Constitution for the observation of civil liberties and political rights. In 1973 the coup d'etat of Mr. Daoud terminated the

application of the 1964 Constitution. But Daoud introduced a single-party political system with limited civil liberties in his so-called constitution of 1976. In the same year his regime introduced the first civil and criminal law codes. Notwithstanding the shortcomings of these laws, their mere existence was a remarkable happening in the history of the legal system in Afghanistan. These laws were considerable steps towards the establishment of the principal of legality in Afghanistan.

In April 1978, the Peoples Democratic Party (PDPA) came to power. The application of previous constitution halted and the application of other laws were permitted if they did not contradict the policies and decrees of the so-called "revolutionary" Government. The repressive "Democratic Republic of Afghanistan" violated Human Rights and civil liberties under the name of "revolutionary situation". More than 500,000 Afghan intellectuals and political activists were at the same time in the jails of this regime. Loyalty to the Soviet Union was the condition of enjoying freedom in Afghanistan. A small critical remark about the policies of the Government could result to years of imprisonment. This "revolutionary situation" went on until April 1992, when that regime stopped to exist. PDPA disintegrated in several parts on the basis of ethnicity. Every part joined an Islamic fundamentalist party belonging to the same ethnic group. The internal war for power between these ethnic parties resulted in the actual division of the country to areas of influence of these parties. All these parties violated Human Rights in the worst possible terms. Even the right to life was ignored.



The Taleban were brought to power by the Pakistani and Arab fundamentalists. This project enjoyed the direct and indirect support of some countries including Pakistan, Saudi Arabia and the USA. This group turned Afghanistan into a big prison for the nation.

Women were the most severe victims of this group.

The current situation

Historically and geographically Afghanistan has remained a country. However, in the absence of the three pillars of the modern State; the parliament, the judicial system and the government, Afghanistan can't be defined as a State. The Taleban ignore the term State and use consciously the term "Emirate" for their theocratic authorities. The use of the term State by the so-called Northern Alliance for their mini-territory is not worthy to be taken seriously. The gap created by the lack of a democratic three-pillar structure, and the absence of a national army paved the way for the shameless invasion of Afghanistan by the Al-Qaeda fundamentalist network. Being supported by the Taleban, the Al-Qaeda network invaded Afghanistan. This invasion was the result of a series of gradual subversive and clandestine activities by Al-Qaeda. Bin Laden sponsored the education of the Afghan Taleban in close cooperation with the military intelligence of Pakistan, the ISI. The cornerstone of the Taleban movement is therefore the army of Al-Qaeda. Mullah Mohammad Omar is merely the leader of the Afghanistan branch of Al-Qaeda: the Taleban movement. Bin Laden is as the leader of Al-Qaeda the master of Mullah Mohammad Omar. The CIA, once the master of Bin Laden is fully aware of the abovementioned historical facts. They pretend, however, to believe that Bin Laden is just a guest of the Taleban.

In the Human Rights catastrophe in Afghanistan until recently nobody was interested. Even organizations such as Amnesty International lost their motivation to plea for an international pressure on the Taleban asking them to show a little respect for the elementary civil rights of the Afghans residing in Afghanistan. What the post-Taleban government will do is not foreseeable. Having in mind the nature of the Northern Alliance or, former king Zahir Shahs, there is not much hope for a fundamental change of the situation. #

Primer on the United States Attacks on Afghanistan

Basic International Legal Issues

Public Interest Law Center (PILC), Philippines

1. Is the United States legally justified in launching armed attacks against Afghanistan as a reprisal for the September 11, 2001 attacks on the World Trade Center and Pentagon? Are there parameters under international law dealing with the use of force by states against another state?

The United States-led armed attack against Afghanistan which commenced on Sunday, October 7, 2001 is illegal being in violation of basic tenets of international law prohibiting the use of force by one state against another state.

Since the Kellogg-Briand Pact of the 1920s, war has been outlawed and denounced as an instrument of national policy by all civilized states. This principle forms part of the constitutions of many states including the Philippines.

With the founding of the United Nations in 1945, the prohibition against war was expanded to include all uses of force, threats of force, and acts of aggression by one state against another state. Article 2, paragraph 4 of the UN Charter reads thus: "4. All Members (of the UN) shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Under the Charter of the United Nations, there are only two recognized exceptions to the non-use of force rule. These are:

(1) Use of Force in Individual or Collective Self-Defense under Article 51 of the UN Charter; and

(2) Collective Use of Force by the United Nations under the Direction of the Security Council under Article 42 of the UN Charter.

None of these exceptions apply to justify the armed attack by the United States and allied western powers on Afghanistan.

2. Can one consider the US-led attack as an exercise of the right of individual and collective self-defense?

No. The exercise of the right of individual and collective self-defense can only be validly made by the United States and its allies under the following conditions:

(1) There is an armed attack on the

United States by Afghanistan; and

(2) The Security Council has not yet taken measures necessary to maintain peace and security.

This is provided for under Article 51 of the UN Charter which reads thus:

"Art. 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the



"Collateral damage": US bomb hitting residential area.

Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

These conditions have not been met by the United States or its allies.

Firstly, it has not been competently established that Afghanistan is responsible for the attacks in New York and Washington. It is only claimed by the US that Bin Laden and Al-Qaeda are responsible for the attacks and that the Taliban government is harboring them in its territory. **However, the responsibility of Afghanistan for the alleged acts of Bin Laden and Al-Qaeda is at best a legally disputable issue best settled in a dispassionate judicial proceeding.** At best, the responsibility of the Taliban consists in continuing to ignore past Security Council

resolutions urging to expel Bin Laden from its territory so he may face indictments against him. This is not equivalent to armed attack by Afghanistan on the United States.

Secondly, even assuming the first condition is met, **the US and its allies may no longer exercise the right to self-defense because the matter of the attacks on New York and Washington has already been taken cognizance of by the Security Council** and the Security Council has already taken measures intended to restore or maintain peace and security. On September 28, 2001, the Security Council, exercising its powers under **Chapter VII of the UN Charter**, with specific reference to the New York and Washington, D.C. attacks, passed **Resolution 1373**. Resolution 1373 provided for measures intended to counteract the flow of funds and material support to terrorist groups as well as the provision of safe haven to terrorists. Joint assistance by states in criminal investigations and proceedings against terrorists and effective controls on the movement of terrorists are also enjoined. No determination was made of the responsibility of Afghanistan for the New York and Washington attacks. **Nor did the resolution call for military action on Afghanistan at this point. Thus, the Security Council having taken cognizance of the situation has determined that at the present time, only measures short of military action are necessary to restore or maintain peace and security.**

3. Assuming the attack can be considered as self-defense, how will the killing and wounding of civilians affect the legality of the US-led attack on Afghanistan?

Under customary international law, the legality of an exercise of the right of self-defense, whether individual or collective, is measured by the principles of **necessity** and **proportionality**. No unnecessary force shall be employed nor should the force employed in self-defense be out of proportion to the goal of the exercise of such right.

It is submitted that any force used by the United States and its allies which will result in the intentional killing and wounding of ordinary civilians and the targeting of civilian populations in Af-

ghanistan will thereby render the force used as unnecessary and disproportionate, and the claimed exercise of self-defense as invalid. Even assuming for the sake of argument that the US is justified in apprehending Bin Laden and the leaders of Al-Qaeda as a measure of self-defense, the killing, wounding and targeting of the civilian population is not necessary for such goal.

In considering the proportionality of the force used, one should keep in mind that the huge civilian death toll in New York and Washington does not justify a similar civilian death toll in Afghanistan. Revenge is not an acceptable goal in self-defense. Under international law, a violation of human rights and humanitarian law will not be rendered legal even if undertaken as a counter-measure to a previous violation.

4. Is the US-led attack sanctioned by the United Nations?

It is clear that the attack on Afghanistan which started on October 7, 2001 is the initiative solely of the United States, Great Britain, and participating western powers. It is not the action of the United Nations. It has no authorization from the Security Council which, having taken cognizance of the matter of the New York and Washington attacks, has determined that for the moment, only measures short of war are necessary to restore or maintain peace and security.

Collective use of force by the United Nations under Article 42 of the UN Charter cannot be sanctioned by the Security Council at this time because, under the said article, the Security Council (and indeed the international community as a whole) is under obligation to first exhaust all peaceful means or measures short of

war before use of force could be resorted to.

The relevant provisions of the UN Charter are quoted below:

"Art. 2. (3) All Members (of the UN) shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

"Art. 33. (1) The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"(2) The Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means."

"Art. 39. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security."

"Art. 41. The Security Council may decide what measures **not** involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. xxx

"Art. 42. **Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate**, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air,

sea or land forces of Members of the United Nations."

Clearly, collective use of force by the United Nations under Art. 42 can only be taken as a last resort. If peaceful means not involving the use of force still exist, such must be earnestly pursued. Use of force can only be allowed by the Security Council should peaceful means be inadequate or prove inadequate.

5. Has the United States exhausted peaceful means to combat terrorism as it was obliged to do under the UN Charter?

It is clear from the conduct of the United States since September 11, 2001 that peaceful means of combating terrorism have been avoided rather than pursued. The US has threatened force by issuing an ultimatum for the Taliban to hand over Bin Laden. The Taliban rejected the ultimatum and instead counter-proposed the submission of evidence against Bin Laden to the Organization of the Islamic Conference (IOC), the recognition of the Taliban government by the US, and for negotiations. President Bush rejected the counter-proposals off-hand saying that "today is not the time for discussion but for action".. Third parties, notably Pope John Paul II, have exhorted the US not to use force, but were ignored. President Bush has since solicited the support of other countries for military action against Afghanistan, and has mobilized the home front for war against Afghanistan. The US then extended increased material aid to the Northern Alliance rebels in Afghanistan.

The United States was bent on making war from the very beginning and did not exert earnest efforts to give peace a chance.#

A Human Rights Perspective on The International Instruments, Laws and Institutions On Migrant Workers' Rights By Romeo T. Capulong

Presented on November 5, 2001 during the International Migrants' Conference in Manila organized by Migrante International.

As a human rights lawyer and now a member of a United Nations Criminal Tribunal, and particularly because of my unforgettable experience in March 1995, in our collective efforts to save the life of Flor Contemplacion, I feel

honored to be one of your speakers in this important conference.

We live in a time of global political turmoil and serious international economic disorder. Among the many symptoms of this disorder are the increasing number and continuing deterioration of the human rights conditions of migrant workers and refugees all over the world. And yet, as we all know, there is still a low level of international and national awareness on the issues and problems confronting

migrant workers. There is an even lower understanding of the deep-rooted causes of international labor migration and the problems of racism, xenophobia, discrimination and human rights violations committed against migrants.

For clarity, my piece will dwell specifically on "migrant workers" who have been identically defined by the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the Philippine Migrant Workers' and Overseas

Filipinos Act of 1995 (R.A. 8042) as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national" (Article 2(i) and Section 3 (a), respectively.). Republic Act 8042 added that "migrant worker" and "overseas Filipino worker" may be used interchangeably.

In the interpretation and applicability of pertinent domestic laws and international instruments, and as far as legal rights are concerned, there should be no distinction, in my view, between documented or legal migrant workers and undocumented, illegal or irregular workers. Likewise the main points and issues in my discussion would be similarly applicable to immigrants, refugees, asylum-seekers and stranded persons.

Since it is necessary to cite specific cases and empirical data, I beg your indulgence when I make constant references to the Philippine setting and experience of Filipino migrant workers.

International Migrants as a Distinct Labor Force

Business people, tourists and traveling leaders and bureaucrats from the public and private sectors are fond of saying that we now live in a global village where freedom to travel, to work and to choose one's domicile is a universal human right. Indeed, this right is so basic it is enshrined in the Universal Declaration of Human rights (Article 13 (2)) and in many other international and regional instruments as well as in the fundamental laws of liberal democracies. But to hundreds of millions of people in poor countries like the Philippines, this basic right, just like other basic and fundamental rights, is merely illusory. The reality is that because of extreme conditions of poverty and joblessness, and in some cases, because of persecution and armed conflicts, millions of job-seekers migrate to other countries everyday not out of a well-informed choice but out of necessity, desperation and physical survival.

The United Nations and the International Organization for Migration (IOM) estimate that there are now more than 150 million persons who live outside their countries of origin as migrants and refugees. This means that one in every fifty human being or 2.5% of the total population of the world is either a migrant worker, a refugee, an asylum seeker or an immigrant living in a foreign country. IOM further predicts that the total number of international migrants will reach 250 mil-

lion by year 2050.

These are conservative, if not inaccurate, figures. The statistics of both sending and receiving countries as well as international agencies generally include only documented or legal migrants. The undocumented and illegal workers whose numbers have increased in recent decades due to illegal recruitment, trafficking, human smuggling, over-staying and run-aways are obviously difficult to keep

2.5% of the total population of the world is either a migrant worker, a refugee, an asylum seeker or an immigrant living in a foreign country.

track of and count with some degree of accuracy.

The figures on migration of Filipinos reveal a higher percentage of migrants and typically mirror the problems faced by migrants in the receiving countries and the economic conditions in the sending countries. About 10% of the 74 million Filipinos are migrants and immigrants scattered in 181 countries. This means that there are only eight countries in the world where there are no Filipinos. Twenty percent (20%) of our population is directly dependent upon the incomes of Filipinos working abroad. Labor export is the number one industry in the Philippines and the biggest source of foreign earnings.

I live in a typical barangay (village) in a province in Central Luzon. In this village, going abroad to work is a staple topic of early morning conversation among the peasants and the dream of every peasant family, including my own folks.

Undoubtedly, the Philippine Govern-

ment has commodified Filipino labor in order to ease the unemployment problem, earn much-needed foreign currencies to improve its balance of payments position and to defuse internal social tensions. Despite some limitations and constraints in organizing them, some experts have advanced the view that it is now time to consider migrant workers as a distinct sector or labor force. Whatever may be your view on this matter, it is not disputed that organizing and raising the social awareness of migrant workers and developing support networks to promote and protect their rights are urgent tasks for all committed social workers. I am sure the human rights lawyers in the sending and receiving countries readily see the phenomenon of international migration as a distinct opportunity and challenge to render enlightened and committed legal assistance and to assist social workers in developing the international migrants as empowered participants in the struggle of humanity for social change.

The Human Rights Problems of Migrant Workers

Studies and documentations on the human rights conditions of migrant workers reveal common problems and violations, wherever they are and regardless of their ethno-cultural background, religion, language or belief.

Migrant workers are often victims of deceit, fraudulent practices or misrepresentation committed by unscrupulous and illegal recruiters. Contract substitutions, excessive fees, promise of non-existent jobs and outright trafficking and human smuggling are now common. These violations are often committed through the collusion of the violators with corrupt officials of the sending government, implicit tolerance of such government or as essential ingredients of government policy. If we study the recruitment procedure closely, we will readily see that these vulnerabilities of the migrant workers are imbedded in the system itself. They are rooted in the policy of the sending government commodifying labor and exporting warm bodies to solve its economic and political problems. And the violations will intensify for as long as the sending governments continue to rely on the labor export program to solve their unemployment problems and to defuse the internal political crisis.

The violations of the human rights of migrant workers during the recruitment

process constitute only a small fraction of their problems. Awaiting them in the receiving countries are more severe conditions that they have to bear or survive. Migrant workers are generally victims of racism, racial discrimination, xenophobia and other forms of human rights abuse and intolerance. Because of their conditions of vulnerability and the prevalent racism in the receiving countries, migrant workers are often exploited and maltreated by employers and recruiters, denied their basic human rights under international and domestic laws and subjected to various forms of discriminations. They are made to work long hours, including weekends and holidays oftentimes without overtime pay, forced to accept grave-yard schedules and assigned in types of work generally shunned by nationals. They are paid low wages often without medical, welfare and retirement benefits.

Despite their undeniable contribution to the economy of the receiving country they are stereotyped as job usurpers and criminals or dangerous persons. Either out of fear or sheer ignorance they are unable or are denied their basic right to form or join trade unions especially a militant one, or even to organize, join peaceful assemblies and air legitimate grievances. Because of sheer neglect, apathy, lack of political will and existing government policy not to offend the receiving government or jeopardize job opportunities there, migrant workers are denied access to national and regional legal fora even for grave violations of their basic human rights. This lack of judicial access is often aggravated by the laws and deliberate policies of the receiving government. Such government, as a rule, protect their nationals, discriminate against migrant workers or outrightly deny due process to the latter.

Children and women are particularly vulnerable to exploitation and abuse, including human smuggling and trafficking. Women have been victims of the most heinous crimes of sexual assault, murder and physical violence.

The Human Rights Watch has noted *"the rise of xenophobia and racist violence against asylum-seekers, refugees and migrants in Western Europe throughout the last few years --- and the emergence of political movements founded on the manipulation of racist fears and the promotion of racist exclusionary policies x x x"* (Critique of the Draft General Conclusion of the European Conference Against Racism).

It is significant to note that the ILO and the OIM have recently stated em-

phatically that *"it is necessary to recognize that migration can never be eliminated or even fully controlled."* They added that *"with rising globalization, migration pressures will most likely increase"* thereby presenting a "challenge to the international community to deal with this issue in the broader context of a coherent, human-centered and human rights-based response to globalization" (publication of the ILO and IOM on International Migration, Discrimination and Xenophobia, p.2).

Migrant workers are generally victims of racism, racial discrimination, xenophobia and other forms of human rights abuse and intolerance.

Legal Remedies under International Instruments and in Legal Fora Are Mere Rhetoric and Illusory

In the historical and continuing struggle of humanity against oppression and exploitation, legal principles, standards and processes that embody respect for the dignity and welfare of the human being have emerged and accumulated in the statute books and judicial records. They are now enshrined in the legal systems of constitutional and liberal democracies which constitute the overwhelming majority in the community of nations. They are found in international and regional instruments, in national laws and in substantive legal remedies and processes of international and regional institutions and organizations. They are considered universal and part of the consciousness of the dominant sectors of societies especially among business and political leaders, mass media, NGOs, the academe and the religious. These prevailing legal

principles, standards and processes have gained universal acceptance and validity among policy-makers and opinion-moulders, and are now standard reflex arguments of the ruling elites in defending and justifying the status quo whenever they are challenged to rectify or render justice to victims of human rights violations. Indeed, theoretically these legal principles, standards and processes apply to and protect every person or human being in this planet including migrants and refugees, stranded persons, run-aways, ship-jumpers and illegals, regardless of national origin, race, religion, language and belief. Lawyers and government leaders always love to argue this way!

But the real question for committed legal advocates and social workers involved in migrant workers' rights is: how effective or beneficial in real and practical terms, are these laws and instruments and what can we do to avail of them to promote the fundamental rights and freedoms of migrant workers and their struggles as well as our struggles for a just and humane society.

The more we study closely these laws and instruments, the more we become convinced that there is a wide gap between legal rhetoric and legal enforcement. There is no space in my paper to discuss in-depth the details or even the fundamentals of these laws and instruments. But the list that follows will give us an idea of their comprehensiveness and the obvious validity of the positions which I have just formulated especially to you who are familiar with migrant workers' issues and problems.

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Political Rights
4. Convention on the Elimination of the All Forms of Racial Discrimination
5. 1989 Convention on the Rights of the Child
6. ILO's Convention on the Worst Forms of Child Labor
7. 1979 Convention on the Elimination of All Forms of Discrimination Against Women
8. 1961 Convention on the Reduction of Statelessness
9. 1954 Convention Relating to the Status of Stateless Persons
10. 1949 ILO Convention No. 97 Concerning Migration for Employment
11. 1975 ILO Migrant Workers' Con-

vention No. 143

12. 1958 ILO Convention No. 111 on Discrimination in Respect of Employment and Occupation

13. UN Protocol Against Trafficking in Persons – Especially Women and Children or Trafficking Protocol

14. UN Protocol Against the Smuggling of Migrants by Land, Sea and Air or Migrant Smuggling Protocol

15. 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

16. 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

17. 1962 Equality of Treatment Convention No. 118

18. 1982 Maintenance of Social Security Rights Convention No. 157

19. 1998 ILO Declaration on Fundamental Principles and Rights at Work

20. 1948 ILO Convention on Freedom of Association and Protection of the Right to Organize

21. ILO 1949 Convention No. 98 on the Right to Organize and Collective Bargaining

22. ILO Convention No. 138 on Minimum Age

23. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

(For brief discussion on these instruments see the publication of the ILO and IOM on International Migration, Racism, Discrimination and Xenophobia and the Critique of the Draft General Conclusions of the European Conference Against Racism by the Human Rights Watch and the European Council on Refugees and Exiles.)

A cursory reading of these instruments will show that as early as 1949 international organizations, spearheaded by the International Labor Organization, have adopted instruments that not only recognized and anticipated the problems of migrant workers but actually proposed specific measures to address such problems. It is not clear whether these international organizations have predicted that migrant workers will reach their present numbers and generate the kind of problems and issues that now confront them. What is obvious is that as their numbers increase and the problems multiply, the international community correspondingly, though obviously not effectively, initiate measures, initiatives and remedies addressing migrant issues and problems. Principal among such measures are the international instruments I

just mentioned which are in varying ratification status and very low degrees of acceptability and implementation.

A reading of these instruments will not only give us an idea of the multifarious problems of migrant workers but also, and more importantly, the wide range of legal gobbledygook employed by the ruling elite in responding to such problems. In terms of process such problems commence right at the recruitment stage in the sending country and progressively multiply and intensify as the migrant worker traverses the process until he or she reaches the workplace in the receiving country and begins to live or "exist" there as an unwanted stranger.

On paper, the responses and remedies proposed by the international instruments especially in the judicial and legal fora are not wanting in comprehensiveness. This is so because the sub-human

They are the rhetorical tools of the dominant class to thwart or blunt the struggles of the poor for structural reforms.

living conditions and the violations of the human rights of the migrant workers are so stark and blatant it will be the height of naiveté and hypocrisy to ignore them or pretend that they do not occur. The coverage of the instruments range from a definition of the core rights of the migrant workers, elimination of all forms of exactions and exploitations in the recruitment process, recognition of trade union rights and family re-unification, addressing the specific problems of human smuggling and trafficking and the particular vulnerabilities of women and children, to the most serious problems of racism, xenophobia and discrimination.

We who are involved in migrant workers' problems and issues and in the

struggle of humanity for a just and humane social order would do well to view these international instruments from a human rights-centered and people-oriented perspective. Laws and instruments are but concrete expressions of the dominant interests of any given social order. The interstices of such laws are replete with safety valves and loopholes designed to preserve the existing social order both national and international and the dominance of the ruling elites and the imperialist super-power, its allies and its tentacles and network of international institutions. These instruments are adopted as accommodations and concessions to the ever-growing legitimate grievances, protests and demands of the oppressed and exploited poor for justice and betterment of their lives. They are more honored in breach than in implementation or compliance. They are the rhetorical tools of the dominant class to thwart or blunt the struggles of the poor for structural reforms.

This is true for national laws as well as international instruments. It will be an error to entertain any illusion that under the present unjust system these laws and instruments will be implemented or complied with in accordance with their letter or express provisions without any struggle and without a strong mass support. It will be an even graver error to rely on these legal provisions or in the legal fora alone to effectively protect or promote the rights of migrant workers. With your indulgence, let me say that as a senior member of the bar and long-time practitioner of my craft and now as member of an international tribunal, my experience in lawyering for the poor has taught me the important lesson that the legal battles of the oppressed and exploited sectors of our society are inextricably linked, if not dependent, on their strategic struggle for genuine social transformation; that in the handling of the legal battles of the poor, the legal advocate and the organizer must work closely together, using their skills and their deep commitment and dedication to the larger cause to raise social awareness, develop unity and militance and eventually rely on mass and protest actions to achieve their goals.

Having said these, I believe it will be wrong tactic to discard or ignore these international instruments, domestic laws, institutions and processes in our organizing, relief and welfare, and human rights work among the migrant workers. Again going back to my experience, there are various ways of invoking and utilizing in

their own fora, illusory and rhetorical, even motherhood, legal provisions against exploitation and oppression perpetrated by both the sending and the receiving governments. These legal provisions after all have been crafted and popularized and had become part of the rhetoric of both the sending and receiving governments and the implementing agencies of international instruments. The skillful legal advocate and social worker can utilize them to achieve modest gains, as defensive weapons, to neutralize the oppressors and exploiters, to expose the unjust system and to raise the level of awareness of the migrant workers that their best weapons are their own unity and strength and militant struggles for fundamental reforms.

There is another common experience in our work among the poor whether as legal worker or social worker. There is need for creativity in developing networks and building alliances or solidarity. Legal

provisions and legal fora are an important arena in the effective building of such networks and alliances.

My friends, we have a long way to go in our work among the migrant workers. Our adversaries are strong and entrenched. Our constituents are weak and understandably, in a state of fear, ignorance and vulnerability. These are challenges that summon the best in us; utmost strength, dedication, deep commitment, solid and unwavering faith in the historical journey and unerring capacity of the poor to achieve genuine democracy and a just social order.

Romeo T. Capulong is the President of the Public Interest Law Center (PILC), Founding Chair of the Committee on Filipino Migrant Workers' Rights of the Integrated Bar of the Philippines (IBP) and ad litem judge of the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY). He is a convenor of the IAPL.

TWO DIFFERENT COURTS

By Hakan Karakus

In the weeks from June to July, two different international courts were convened. At first glance, they look similar in that they were convened on the issue of "war crimes" and "human rights violations". But there was really nothing in common between them. One was formed to prosecute a scapegoat and thus acquit the real culprits and the other to hold the real culprits in judgment.

The first one, founded with the resolution of the UN Security Council dated 22 February 1993, and numbered as 808, is the International Criminal Tribunal for the Former Yugoslavia (ICTFY) that is carrying out its work in The Hague, the Netherlands. This Court, has taken jurisdiction over serious violations of the Geneva Conventions, violations of laws of war, and crimes against humanity. Twenty people have been tried in the period of eight years and found guilty with sentences ranging from two years to 45 years. Thirty nine people are still being tried.

The basic function of ICTFY is to mislead world public opinion. Former US proteges and collaborators who

have outlived their usefulness or who have later turned against their masters are now the object of prosecution by this court. The purpose is to hide the masters' own responsibility for war crimes and human rights violations.

Slobodan Milosevic, a former collaborator and now forsaken by the imperialists, said, "The real aim of this court is to produce forged justifications for war crimes committed in Yugoslavia by NATO." He was arraigned in court on the 3rd of July after being arrested by the Yugoslav authorities upon the pressure of the US with a promise of one billion dollars credit.

The US is doing its best to prevent the activation of the more permanent International Criminal Court (ICC or Rome Court) which was established in July, 1998. The approval of 20 more countries is needed to make the Court work. The resolution to establish the court has been signed by more than 100 countries and ratified by 40 of them.

But these courts, founded by imperialists and their close collaborators, do not and can not judge them. Only under a real new world order will justice be rendered. However, even now the real culprits can already be tried if only in a

symbolic way.

One such example is the "Vietnam-International War Crimes Court", known also as the Russell Tribunal. This was headed by Jean Paul Sartre and set up at the initiative of the famous English scientist and humanist Bertrand Russell. The Court, which dealt with the crimes committed by the US and French imperialists against the Vietnamese people was constituted in May 1967 with the participation of many famous scientists, intellectuals and artists. It found the imperialists guilty of a whole range of crimes.

Another example is the one held on the 22nd-23rd of July, 2001 in New York City called the "Korea International War Crimes Tribunal" which was set up to prosecute the US for its crimes against the Korean people. The Court consisted of 28 jurists from 20 countries. Sixteen former soldiers and officers of the US armed forces testified against the US government.

The Court (in which two lawyers from Turkey and the Philippines who are members of the International Association of People's Lawyers [IAPL] took part) judged the defendants, the US government and its high officials guilty of 19 different crimes.

The Korean Truth Commission prepared the indictment and all the pieces of evidence (documents, photographs, video cassettes, special reports, specialist analyses/experts reports) which were the result of painstaking work lasting for years.

The US government refused to defend itself in spite of all the notices sent to it. It also prevented many delegates and witnesses from coming to the proceedings by not issuing them visas.

The Court came to the conclusion that the US government's guilt was proven beyond reasonable doubt on 19 counts committed in three different periods.

First is the period between 25 June 1950 and 27 June 1953. During this three-year period, 4.6 million Koreans were killed. Half a million from and three million from the North were civilians. The military forces of the USA demolished many buildings and houses, carried out systematic bombardment resulting in genocide and casualties of huge proportions. They destroyed the environment through the use of biological and chemical weapons, and US soldiers committed mass rapes on women in both Koreas.

Korea International War Crimes Tribunal Finds US Government Guilty



Edre U. Olalia, Treasurer of IAPL, sat as a jurist in the Korea International War Crimes Tribunal.

The Members of the Korea International War Crimes Tribunal, meeting in New York, having considered the Indictment for Offenses Committed by the Government of the United States of America Against the People of Korea, 1945-2001, which charges all U.S. Presidents, all Secretaries of State, all Secretaries of Defense, all Secretaries of the armed services, all Chiefs of Staff, all heads of the Central Intelligence Agency and other U.S. foreign intelligence agencies, all Directors of the National Security Agency, all National Security Advisors, all U.S. military commanders in Korea and commanders of units

which participated in war crimes, over the period from 1945 to the present, with nineteen separate War Crimes, Crimes Against Peace and Crimes Against Humanity in violation of the Charter of the United Nations, the Charter of the Nuremberg Tribunal, the Hague Regulations of 1907, the Geneva Protocol of 1925, the 1929 and 1949 Geneva Conventions, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, other international agreements and customary international law, the laws of the United States, the laws of Korea and the laws of other nations that have been forced to provide bases, support and military personnel for United States actions against Korea;

- having the right and obligation as citizens of the world to sit in judgment regarding violations of international humanitarian law;

- having heard the testimony from various hearings of the Korea Truth Commission held over the past year and having received evidence from various other Commission hearings which recite the evidence there gathered;

- having been provided with documentary evidence, eyewitness testimonies, photos, videotapes, special reports, expert analyses and summaries of evidence available to the Korea Truth Commission;

- having access to all evidence, knowledge and expert opinion in the Commission files or available to the Commission staff;

- having considered the Report from the Korean Truth Commission (South) on U.S. War Crimes During the Korean War, providing eyewitness accounts by survivors of massacres of civilians in farming vil-

lages in southern Korea by U.S. military forces during the 1950-53 war;

- having considered the Report from the Democratic People's Republic of Korea (DPRK) on U.S. War Crimes During the Korean War, prepared by the Investigation Committee of the National Front for Democratic Reunification, providing details on war crimes and crimes against humanity committed in the north by the U.S. from June to December 1950;

- having been provided by the Commission, or otherwise obtained, various books, articles and other written materials on various aspects of events and conditions in Korea and in the military and arms establishments;

- having heard the presentations of the Korea Truth Commission in public hearing on June 23, 2001, and the testimony, evidence and summaries there presented;

- having considered the testimonies of those Koreans denied visas to personally attend the hearings by the governments of the U.S. and the Republic of Korea (ROK). but presented in the form of videotaped interviews and documents;

- having been informed that the Korea Truth Commission gave ample opportunity to U.S. government defendants to attend and present evidence in their defense, which up to the moment of this verdict they have been unable or unwilling to do;

- and having met, considered and deliberated with each other and with Commission staff and having considered all the evidence that is relevant to the nineteen charges of criminal conduct alleged in the Initial Complaint, make the following findings:

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The second and less known period is the 5 years before September 1945 when US forces went into Korea, up to the time war broke out. The US established a police-state in south Korea. They instigated the tensions between the South and the North, sabotaged the efforts for peace, trained and supported South Korea in systematic murders, imprisonment, torture, harassment and other human rights violations against those who opposed them. These were especially used against persons or groups thought to be nationalists, leftists,

peasants who wanted land reform, organizers of trade unions and those who had sympathy for the North.

The third period includes the time from 1953 up to the present. The US maintains a powerful military force in south Korea as an army of occupation. Organized sexual exploitation of Korean women resulting in violence and even death accompanies this military occupation. The US has condemned north Korea to starvation as a result of its economic embargo.

Even though these symbolic courts do not have the power to impose sanctions, they serve to expose the real

culprits and are valuable for the people's democracy and independent struggle. It is important in such symbolic courts to try every kind of reactionary, fascist and imperialist who are the real culprits behind the people's sufferings.

We oppose such makeshift courts like the "International Criminal Tribunal for the Former Yugoslavia" that acts at the behest of the imperialists in order to exonerate the imperialists. We welcome the "International Korean War Crimes Tribunal" that has exposed and condemned the crimes of the US government against the Korean people. #

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Findings.

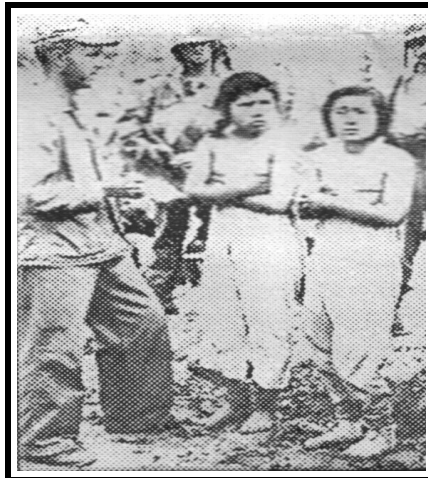
The Members of the International War Crimes Tribunal find the accused Guilty on the basis of the evidence against them: each of the nineteen separate crimes alleged in the Initial Complaint has been established to have been committed beyond a reasonable doubt. The Members find these crimes to have occurred during three main periods in the U.S. intervention in and occupation of Korea.

1. The best-known period is from June 25, 1950, until July 27, 1953, the "Korean War." when over 4.6 million Koreans perished, according to conservative Western estimates, including 3 million civilians in the north and 500,000 civilians in the south. The evidence of U.S. war crimes presented to this Tribunal included eyewitness testimony and documentary accounts of massacres of thousands of civilians in southern Korea by U.S. military forces during the war. Abundant evidence was also presented concerning criminal and even genocidal U.S. conduct in northern Korea, including the systematic leveling of most buildings and dwellings by U.S. artillery and aerial bombardment; widespread atrocities committed by U.S. and R.O.K. forces against civilians and prisoners of war; the deliberate destruction of facilities essential to civilian life and economic production; and the use of illegal weapons and biological and chemical warfare by the U.S. against the people and the environment of northern Korea. Documentary and eyewitness evidence was also presented showing gross and systematic violence committed against women in northern and southern Korea, characterized by mass rapes, sexual assaults and murders.

2. Less known but of crucial importance in understanding the war period is the preceding five years, from the landing of U.S. troops in Korea on September 8, 1945, to the outbreak of the war. The Members of the Tribunal examined extensive evidence of U.S. crimes against peace and crimes against humanity in this period. The Members conclude that the U.S. government acted to divide Korea against the will of the vast majority of the people, limit its sovereignty, create a police state in southern Korea using many former collaborators with Japanese rule, and provoke tension and threats between southern and northern Korea, opposing and disrupting any plans for peaceful reunification. In this period the U.S. trained, directed and supported the ROK in systematic murder, imprisonment, torture, surveillance, harass-

ment and violations of human rights of hundreds of thousands of people, especially of those individuals or groups considered nationalists, leftists, peasants seeking land reform, union organizers and/or those sympathetic to the north.

3. The Members find that in the period from July 1953 to the present, the U.S. has continued to maintain a powerful military force in southern Korea, backed by nuclear weapons, in violation of international law and intended to obstruct the will of the Korean people for reunification. Military occupation has been accompanied by the organized sexual exploitation of Korean women, frequently leading to violence and even murder of women by U.S. soldiers who have felt above the law. U.S.-imposed economic sanctions have impoverished



Korean women were victims of rape by US soldiers.

and debilitated the people of northern Korea leading to a reduction of life expectancy, widespread malnutrition and even starvation in a country that once exported food. The refusal of the U.S. government to grant visas to a delegation from the Democratic People's Republic of Korea who planned to attend this Tribunal only confirms the criminal intent of the defendants to isolate those whom they have abused to prevent them from telling their story to the world.

In all these 55 years, the U.S. government has systematically manipulated, controlled, directed, misinformed and restricted press and media coverage to obtain consistent support for its military intervention, occupation and crimes against the people of Korea. It has also inculcated racist attitudes within the U.S. troops and general population that prepared them to commit and/or accept atrocities and genocidal policies against the Korean people.

It has violated the Constitution of the United States, the delegation of powers over war and the military, the Bill of Rights, the TIN Charter, international law and the laws of the ROK, DPRK, People's Republic of China, Japan and many others, in its lawless determination to exercise its will over the Korean peninsula.

The Members of the Korea International War Crimes Tribunal hold the United States government and its leaders accountable for these criminal acts and condemn those found guilty in the strongest possible terms.

Recommendations:

The Members call for the immediate end of U.S. occupation of all Korean territory, the removal of all U.S. bases, forces and materiel, including land mines, from the region, the rectification of environmental damage, and the cessation of overt and covert operations against northern Korea.

The Members urge the immediate revocation of all embargoes, sanctions and penalties against northern Korea because they constitute a continuing crime against humanity.

The Members call for emergency funds to be provided to the people of northern Korea through the Democratic People's Republic of Korea to feed the hungry and care for the sick, whose suffering is a direct result of U.S. policies.

The Members call for reparations to be paid by the U.S. government to all of Korea to compensate for the damage inflicted by 55 years of violence and economic warfare.

The Members further call for an immediate end to all interference by the U.S. aimed at preventing the people of Korea from reunifying as they choose.

The Members call for the U.S. government to make full disclosure of all information about U.S. crimes and wrongful acts committed in Korea since September 7, 1945.

The Members urge the Commission to provide for the permanent preservation of the reports, evidence and materials gathered to make them available to others, and to seek ways to provide the widest possible distribution of the truth about U.S. crimes in Korea.

We urge all people of the world to act on recommendations developed by the Commission to hold power accountable and to secure social justice on which lasting peace must be based.

Done in New York this 23rd day of June, 2001. #

COLOMBIA'S KILLER NETWORKS

The Military-Paramilitary Partnership and the United States

By Human Rights Watch

In 1989, Human Rights Watch wrote that although we could not prove that Colombia's military high command directly ordered paramilitaries to commit atrocities, it should be obvious that their response to these atrocities "to close ranks and avoid and frequently to obstruct any serious investigation" compromised their obligation to uphold the rule of law. We concluded that the failure to investigate and prosecute military officers who have joined with paramilitaries to commit murders and mass murder indicated, at the very least, that their superiors had chosen to tolerate these crimes.

Today, however, we can say much more. Far from being punished, the junior and mid-level officers who tolerated, planned, directed, and even took part in paramilitary violence in Colombia in the 1980s have been promoted and rewarded and now occupy the highest positions in the Colombian army. To be sure, a few, linked to well-publicized cases, have been forced into retirement or dismissed. But many more have been awarded medals for distinguished service and lead Colombia's troops.

As commanders, they have not only promoted, encouraged, and protected paramilitary groups, but have used them to provide intelligence and assassinate and massacre Colombians suspected of being guerrilla allies. In fact, many victims, community and peasant leaders, trade unionists, and human rights monitors among them have no ties to guerrillas, but have been trapped in a conflict where few wear uniforms or admit their rank.

Human Rights Watch has chosen to use the word "paramilitary" deliberately, to mean armed civilians and civilian groups working for or in partnership with the military. Over the past two decades, paramilitaries have been tied to thousands of forced disappearances, murders, cases of torture, and death threats. In 1995, almost half of all acts of political violence where a perpetrator was identified were attributed to paramilitaries.

Human Rights Watch has obtained evidence, including the heretofore se-

cret Colombian military intelligence reorganization plan called Order 200-05/91 and eyewitness testimony, that shows that in 1991, the military institutionalized the key role of civilians in its intelligence-gathering apparatus. Working under the direct orders of the military high command, paramilitary forces incorporated into intelligence networks conducted surveillance of legal opposition political figures and groups, operated with military units, then executed attacks against targets chosen by their military commanders. An intelligence network organized by the navy in compliance with Order 200-05/91 was responsible for dozens of extrajudicial executions in Barrancabermeja.

Although the army denies conducting surveillance of political parties and elected officials, the surveillance of legal political groups appears to be among the prime duties assigned to military intelligence, which has apparently used paramilitaries to gather information and later act on it by threatening and killing people.

In one interview, a retired army major described paramilitaries as the "principal source" of army intelligence. "These people live in the region and have contacts with both their own side and with the enemy," he told us. "In fact the principal action of the paramilitaries is [to collect] intelligence, in addition to serving as an extermination group."

These activities represent only half of the military-paramilitary partnership in Colombia. Fundamental is what we call the "strategy of impunity": how the deeds of officers who ally with paramilitaries, brought to light again and again by the government's civilian investigators, are systematically covered up by the military justice system, allowing these same officers to return to the field and continue their work of organizing, directing, and deploying paramilitary groups.

Human Rights Watch has also documented the disturbing role played by the United States in the military-paramilitary partnership. Despite Colombia's disastrous human rights record, a U.S. Defense Department and Central Intelligence Agency (CIA) team worked with Colombian military officers

on the 1991 intelligence reorganization that resulted in the creation of killer networks that identified and killed civilians suspected of supporting guerrillas. Eyewitnesses have linked the new network run by the Colombian navy to the murders of at least fifty-seven people in and around the city of Barrancabermeja in 1992 and 1993.

In addition, U.S. military authorities have provided weapons ostensibly to fight drugs to Colombian military units with a record of serious and continuing human rights violations and has failed to establish appropriate screening mechanisms to ensure that U.S. aid is not used to commit these violations. According to a U.S. government report, U.S. military aid has gone to the First, Third, Fifth, Thirteenth, and Fourteenth Brigades, Mobile Brigades One and Two, and the Tarqui, Jose Hilario Lopez, Numancia, Luciano D'Elhuyar, Ricuarte, Palace, and La Popa Battalions. All are implicated in serious human rights violations, including violations associated with paramilitaries.

Since 1990, the year a U.S. commission of advisors drafted recommendations for Colombia's military intelligence reorganization, U.S. weaponry provided to the Colombian army and navy has included 2,020 M9 pistols, 426 M16A2 rifles, 945 M60E3 machine guns, and 255 shotguns, as well as various military vehicles and communication equipment.

The year 1991, when the Colombian military's intelligence reorganization plan was implemented, was a banner one for U.S. arms shipments to Colombia: 10,000 M14 rifles, 700 M16 rifles, 623 M79 grenade launchers, 325 M60 machine guns, 26,000 60mm rifle grenades, 20,000 40mm rifle grenades, 37,000 hand grenades, 3,000 Claymore mines, and about fifteen million rounds of rifle ammunition.

Not all paramilitaries are intimate partners with the military. Clearly, others in Colombia including wealthy landowners and drug traffickers fund and direct private armies, which also commit acts of criminal and political violence. However, the military has not only created and deployed many paramilitary groups, but also allows virtually all of them to carry out political killings when it serves a common purpose, ridding

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the country of perceived guerrilla support.

It is time to clear the smokescreen of official denial and identify the military-paramilitary partnership for what it is: a

sophisticated mechanism, in part supported by years of advice, training, weaponry, and official silence by the United States, that allows the Colombian military to fight a dirty war and Colombian officialdom to deny it. The price: thousands of dead, disappeared, maimed, and terrorized Colombians. #

HUMAN RIGHTS AS A CONVENTIONAL WEAPON OF IMPERIALISM

By *Acilim Hukuk Bürosü*

Imperialism, which is the last main obstacle in the way of classless society, has entered in the last century. It acts furiously and violently as if aware that it cannot get out of the 21st century. While the reformists and revisionists try to show that imperialism has changed, it continues to inflict violence on the peoples of the world. Humanity is in its the worst days of its history; exploitation, hunger, destruction of nature, torture and massacres continue. The world has become a hell for the people but a heaven for a handful of imperialist bourgeois and reactionary fascists acting as their servants and collaborators.

In such a world, the fortune of 475 US billionaires is equal to the wealth of half the population of the world (3 billion), 600 million of people on the limits of hunger; 82.7 % of total production, 81.2 % of trade, 94.6 % trade credits are in the hands of a 20 % of the wealthy part. The main industries and financial markets are owned by 10-15 huge monopolies, the majority of which are USA originated companies. The gap between incomes is ever widening. 1.5 million children have lost their lives and 4 million become disabled in wars. In the same period, in Iraq alone, the number of children, who have lost their lives due to imperialist attacks, medicine and food embargo, exceeded over 1 million. There are hail-bombs flying on the heads of the peoples, the imperialist response to those fighting for justice and for their rights.

The present process, being bandied about as the New World Order and Globalisation, is merely a phase that imperialism has to pass. Keynes' policy, which foresees the State's import substitution intervention has become a temporary solution for a crisis after the 1929. This, however, prepared the pre-conditions of a

wave of a new crisis. New policies were developed under the name of neo-liberalism in order to resolve the obstruction in the capital's accumulation rates that started from the '70's. The aim was to institute a limitless exploitation system in world-wide level. According to this new policy, the economy would be controlled by money movements. As the monetary finance become dominant in the financial capital, the finance market would become free, thus they would pass on the rentier-finance from the production. The labour period would become flexible, the period of the production would be divided into pieces, thus performance of some part of production in different countries would be carried out systematically. The labourers' rights would be attacked, the system of social security would be broken and the proletariat would be turned into a disorganised state. Due to the privatisation programs the co-operative and servant states' structures could be used as a war instrument. All these were put into practice in the world-wide level since the 1980's.

While productive capital (industrial capital) lose power, finance and rentier capital came forward with an extraordinary strength. As the technical level of the production increased, the production speed started to slow down. As a matter of fact, from the early 70's, the 4.9% rate of increase fell to 2% in the 90's. The rivalry and the extreme profit in the capitalist production caused an unplanned nature and anarchy in production. As a result of that, supply and demand were not balanced. The advanced technical level and capacity of production, altogether with a decrease and narrowness in labour, which caused a contradiction, has increased the crisis. As a result, the unemployment rate has in-

creased to very high levels. The imperialists face employment problems in a growing nature. Thousands and ten thousands of labourers are being sacked in every passing day. An estimated 40 million have lost their jobs. The population below the poverty level in the imperialist countries is also symmetrically increased. There are more than 60 million poor people in the USA, and 50 million in EU. 1% of the population own the 39% of the country's wealth in USA.

The means of production are improved at the cost of decrease of labour, which produces the value. This situation naturally puts pressure on the production relations. This conflict deepens the contradiction that exists in every cell of the system and creates the basis for new contradictions. This destroys the system's organic and working structure. Despite the all interventions, use of the potential powers, distribution and share of production, stability of the system, relations among the classes, destruction and dilemmas in production process have deepened the blockage for the imperialist-capitalist system. Due to imperialist historical exploitation its capital has grown, its accumulation/savings has reached the top, as parallel of that the means of production promoted, labour experience on production increased, but on the other hand, problems have increased and reached the present chronic levels.

The financial transfer from the colonies and semi-colonies has fallen in an impasse. The era of paying debt by debt has started. Approximately the debt of 62 billion dollars in 1970, increased 8 times and reached to 481 billion dollars in the 80's and it has grown thirty-two times and reached to 2 trillion in 1996.

As capitalism is in its last gasp, it attacks more furiously. The usury character becomes strong. The rentier relations increases. While production, growth speeds up and employment rates go down, the product stocks pile up. Speculative operations have reached soaring levels. While daily transactions in finance sectors was 290 billion dollars at 1986, this exceeded to 325 trillion in 1996. This is equal to fifty times of the whole world trade. The total exchange in the stock markets has grown 300%. The most striking one, is the global

capacity of monetary sectors that has exceeded 20 trillion dollars. The world has been divided between a handful of usurers and the majority of indebted states. The global economy is being designed by an international credit collecting process that infects the state organs and limits employment and economic activities. The local economies have been linked to each other, the trade banking and company ownership, which are controlled by approximately 750 big monopolies, has erased the economic borders.

Such policies as "Free Market Economy" in 1970's, "Neo-Liberalism" in 1980's, "New World Order" and "Globalisation" in 1990's are based on the idea of getting the state out of the production process; limiting state intervention on the economy, determination of the prices in free markets, limitation of social expenses, reduction of wages, tax reforms, devaluation, speeding up the world trade and forming the monetary policies by the finance institutions.

The imperialist-capitalist world's control is in the hands of the US. As Russian social-imperialism has changed its form and as its system of control collapsed the USA has taken advantage of the situation and strengthened its control on the EU, Japan, Canada and the other imperialists. While the main instruments of the imperialism on worlds hegemony in political and military fields are the UN and NATO; in the economical, social and again political fields, the work is done by the IMF, WTO, World Bank and the other organisations. Besides, huge media monopolies, many so-called Non-Governmental civil organisations (NGOs) are also serving as important instruments of the imperialist system.

As administrative organiser institutions, the IMF, World Bank and WTO, which correspond in functioning and dominant economic and financial interests in capitalist system, work on the principle of "exploit to the end". "Dictatorships that do not kill by arms but by starvation and economic and political control characterizes a new colonisation process. The same prescription of budget discipline, devaluation, liberalisation of trade and privatisation were put in place in more than 100 countries. These was accomplished by the means of structural adjustments and deliberate manipulation of the market forces, which resulted in a sort

of economic massacre. In comparison to the various massacres in the colonial history, these have more devastating social effects as more than 4 million people have been directly effected.

Neoliberal policies aim at the formation of a new economic system and a more systematic exploitation of the world. For its superstructure, it needs a new set of fundamental rights and freedoms. The notion of "Law/legal State" under the title of "Liberal Democracy" is a new political reformulation. Financial operations which are defined as "free", include full intervention. Such intervention of the State is an imperialist assertion in accordance with

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the action of dominant classes.

The new international "aid" are based on political conditions of imperialist organisations. The aim is to form a political system as it was desired. This will result in more secure functioning. In this context, the notions of "democracy", "human rights" "law state", "clear and transparent administration" were made popular. Another strategic notion is "civil society". The NGO's or so-called "civil society" organisations are being made to appear as as independent. On the contrary such organisations are subsidiary organisations of imperialism and with the latitude that is given them they try to influence the social structure. These institutions which are in-

struments of ideological struggle function as barriers to revolutionary opposition and aim to tame the revolutionary demands.

In order to carry out economic massacre and uncontrolled exploitation more efficiently, the administrative formation and political organisation become primary conditions. Re-colonisation policies for semi-colonies have been put into practice. The promotion of human rights has been used as a pretext to justify intervention into the internal affairs of other countries. Thus, intervention gains legitimacy and an acquires a "humanitarian" look. Their main argumentation is that, human rights is not just a domestic issue but a matter of international concern. Hence, the principles of non-intervention in internal affairs, equality, independence, sovereignty, self-determination have been violated. As it is well known, these principles were established as a result of the influence of socialist countries such as Soviet Union and the People's Republic of China in the world.

Direct or indirect imperialist intervention is imposed by means of force. In dependent countries for example, if the opposition forces can not be eliminated by war called "low intensity conflict", then it is replaced by direct intervention. The "low intensity conflict" strategy was devised against the national and social independence struggles, a kind of an undeclared continuous war. Such counter-guerrilla strategy which consists of various means and methods, such as disappearances, extra-judicial executions by death squads, widespread use of various torture methods and massacres are being used in every part of the world. As a result, there is the negation and violation of the rights and freedoms on a wide scale. Imperialist-fascist terror tyrannises peoples, thousands upon thousands of revolutionary and patriots are killed, subjected to torture and put into prisons. The terror is multiplied in such places.

In such a world, which has been turned into a peoples' prison, in conditions when local reactionary and fascist administrations are not successful and when some local lackeys get out of the control, the USA has carried out some operations using the UN many times.

From only 13 operations between 1948-1978, UN "Peace Operations" that are car-

ried out under the name of "humanitarian intervention" have reached 36 between 1988-1998, and exceeded 20 in last two years alone. The right to self determination is brazenly violated. Forces under the name of the UN, design and reshape everything from the economy to administration in the places where they intervene.

Despite the death of one million people, the US obstructed the UN's intervention in Rwanda in 1994. On the other hand, it has bombed Yugoslavia for weeks not even bothering to get UN Security Council's permission. At the same time, the US and its other imperialist accomplices enjoy watching Israel's Zionist assassins' massacre the Palestinian people. Also, the Iraqi people have been subjected to injustice for more than ten years. The military expenses of the US is 281 billion dollars. In comparison, its European allies, Japan and Korea's military expenses is only 202 billion dollars. It is clear that the USA plans to increase its military expenses.

"Human rights" is the primary and high-sounding global policy of imperialism. There is nothing new in this notion. Since the beginning of the imperialist's expansion, occupation, policies and practices have always been accompanied with ethical reasons. "Bringing civilisation", "serving humanity", "development", "promotion of human rights" have been key words which have covered up massive exploitation and fierce oppression. It is not a coincidence that there is again the use of human rights notions in today's world dominated by imperialism.

The same manipulation of the meaning of that notion is also true for the words "peace" and "democracy". Conversely, some words and definitions which explain the class struggle and its fundamental reasons, immediate and long-term perspectives are being debased by counter-revolutionaries. Thus class reconciliation, individual liberation, and liberalism have been entrenched. Human rights as defined by the imperialists plays a role in legitimising the sys-

tem where human beings are exploited by other human beings. Its twisted definition makes it appear that classes are equal with respect to human rights.

The prevailing notion of human rights which has for its base the "right to private property" has mainly been reduced to the individual rights and subsequently to the rights of property owners. As a result of the class struggle, social rights (community/group rights, economical and social rights) were won and added to the fundamental rights and freedoms at international level. But these were pushed back and later abandoned wholesale. The use of such rights which endangers capitalist exploitation and its plundering process are carefully prohibited. They try to black out the reality that revolution is a fundamental right of the oppressed peoples and nations for rising up against brutality, uniting against injustice, and fighting for independence and liberty.

The ideal of classless society, which aims at the protection of human beings and its surroundings (nature), has to go forward with the aim of protecting the interest of both proletariat and other democratic classes. Ever since the emergence of classes, the interest of humanity need to be seen in the context of the interest of classes. The categories of rights and freedoms can only be only be meaningful when seen in this light. The notion of rights and freedoms abstracted from this context is false. This serves for black out and divert the class struggle.

Those who proclaim human rights to be "sacred" are the biggest enemy of the fundamental rights and freedoms of humanity. The notions for which humanity has struggled for such as justice, equality, rights and freedoms, have been used against the oppressed with the continuous falsification. The process of alienation of humanity has gone on with the attacks on the natural category of rights.

Socialism gets a new impulse with the coming of the 21st century. It did not survive as a system at the national

level during the last century. The developments today give hope. Despite a lot of problems, particularly leadership problems, this hope emerges as a unique alternative. The increasing oppression and exploitation brings awakening and reflection. In countries all over the world, the anger of the oppressed is rising. The challenge is to channel this anger in the right direction.

The anti-imperialist activities from Seattle to Prague cannot be underestimated. Although there was no class perspective and correct conscious of imperialism, despite leadership and organizational problems, these activities have considerable importance. Care must be taken so that the imperialists will not infiltrate these activities. These anti-imperialist activities should also link up with local struggles. The important task is to give these activities the right perspective, change the spontaneous character of these actions and turn them into an anti-imperialist platform.

Some human rights organisations act as assistants of imperialism. They should be rescued from a such position of only publishing reports. International labour organisations that have become reformists should be made active. Moreover, there is a need for creating alternative organisations, that are able to make correct analyse of imperialism and contemporary objective explanations of today's realities. This is important for the promotion of the struggle of the exploited classes.

The formation of the International Association of Peoples' Lawyers is a result of the developments in today's society. The members are lawyers and legal workers who defend the interests of the oppressed and exploited. They give their services at the highest level. The challenge of these lawyers is to break imperialist propaganda, which consist of lies and demagogy. Another task is to expose the imperialists' lack of respect for legal rules. They have made these rules by themselves and yet they violate the legal instruments that they have signed because of their greediness. The International Association of People's Lawyers is committed to contribute to the struggle of the exploited and oppressed people for national independence, democracy and the social emancipation. #