Iraq: war and occupation

Rule of law or rule by power?

Phil Shiner asks: can there be accountability for an illegal war? Louise Christian on Guantanamo Bay

INQUEST Interview Paul Troop: the Israeli wall
An it really be that memories are so short? As far as I was concerned it seemed that a former Home Secretary with more than ‘something of the night about him’ was almost certain to be the new leader of the Conservatives. During his time as a member of Government, Michael Howard QC scared more than a few people. He made his name with his role in the ill-fated poll tax, oversaw a tranche of anti-union legislation and more, but it was his tenure as one of the most illiberal Home Secretaries of the 20th Century (and that’s saying something) that has marked his political career so far. He also personally contributed to the victory of the Blair Rich Project in 1997. Who will ever forget Jeremy Paxman asking ‘Did you threaten to override the jury’ fourteen times during the run-up to the election? Rather than merely celebrating the fact that the Tories are a spent force, it is worth considering how far to the right our whole mainstream political process has gone. Thomas Kielinger, writing about the deposing of Iain Duncan Smith in the German daily Die Welt, sums it up perfectly. He suggests that, ‘what counts is not ideology, but competence... That’s where the Tories in the end drew the short straw because since 1994 Tony Blair and Gordon Brown have incorporated the lessons of the Thatcher revolution into the once socialist Labour party... The Tories became the victims of their own success – how could they oppose policies that came across like a facsimile of their own agenda.’

Michael Howard’s ‘achievements’ as Home Secretary are being increasingly overshadowed by those of David Blunkett, who is a true horror story. Who could have imagined that a Labour Government would oversee some of the biggest incursions into fundamental rights in the last 100 years? From attacks on the criminal justice system, through a systematic assault on asylum seekers, through to the criminalisation of whole sections of the community through vicious anti-terrorism legislation, it is just plain scary.

At the same time there are many important things that the Home Office has singularly failed to deal with. One such issue is racism in the police. Perhaps one of the most shocking things about the recent BBC programme on racism in the police force, The Secret Policeman, was how little shocked so many people were that there is such ingrained racism within the force. It showed some parts of the police looking like a recruiting ground for the BNP. The police force have been consistently criticised for the number of deaths in custody of black men and the programme disturbingly gave some indications about some of the attitudes that lie at the heart of many forces up and down the country. This comes at the same time as the final vindication of Superintendent Ali Dizaei after a campaign against him that can only be described as a witch-hunt. It is of real concern that there appears to be such ignorance on the question of diversity and anti-discrimination, even when a great deal of time and money is now spent on trying to address them. Is respect and dignity really that hard to understand?

Which brings us back to Michael Howard. If he were to take up residence at 10 Downing Street – highly unlikely as it is – he would become only the second Jewish Prime Minister, and it is worth considering the record of the first. Benjamin Disraeli was, like Howard, a Conservative, but unlike Howard oversaw a surprising number of relatively progressive pieces of legislation, including the legalisation of picketing, the first steps to the legalisation of trade unions, the Factory Acts and major steps towards universal suffrage. However, Disraeli was, in essence, a consummate politician, from a rich family, who implemented limited philanthropic measures at home, while ensuring that the monarchy and the rich got essentially what they wanted and retained their position of privilege and wealth. He also made sure that the UK’s imperialist adventures in the world went forward apace, buying the Suez Canal and declaring Queen Victoria Empress of India. Similarities with our current Prime Minister are there for all to see.
When David Blunkett announced that they were downgrading cannabis from a Class B to C drug, my initial reaction was one of surprise and pleasure. Here amongst the raft of attacks on civil liberties was finally a concession to an appeal from the left. Maybe the drug could become legalised altogether but at least the police would no longer be able to arrest young black men for possession of the stuff. Alan Travis of The Guardian wrote two years ago when the announcement was made, ‘The police lose the power to arrest the 90,000 people a year who are currently charged with possession offences... Suspection of cannabis possession will no longer be grounds for police stop and search, a Home Office spokesman said.’

Since that announcement in October 2001 the government have delayed and put the proposal back for two years. Then they started to retract. A further announcement was made. Now there would only be a ‘presumption’ against arrest ‘except where public order is at risk or where children are vulnerable.’ It is far from clear how this drug could cause a risk to public order and the announcement also failed to recognise that 40% of British schoolchildren have tried the drug.

The reason for the change is the guidance for implementation of this new law (like everything else that this Home Secretary does) is laid entirely by the Association of Chief Police Officers (ACPO). The Government in making this bill have not considered the public but only the police. Sir John Stevens, the Commissioner, welcomed the bill to free up time for his officers. ACPO also wanted to retain the power to arrest and to charge. The police hate the idea of youth being free to smoke and suggested it be an offence to blow smoke in an officer’s face. This has been extended under the new ACPO guidance and the police will be able to arrest for ‘aggravating factors, such as smoking in public, for repeat offenders, and where there is a fear of public disorder. Juveniles will be dealt with under the Crime and Disorder Act 1998 and will be arrested and given a formal warning, which seems more discriminatory against juveniles.

The obvious conclusion from this guidance is that possession of a Class C drug must become an arrestable offence and that provision is contained in the Criminal Justice Bill currently under debate. The upshot is that when considering the evidence for the reason to arrest our client, we shall still read in the officer's notebooks the back- nipped phrase ‘I smelt cannabis’.

This law will be worse than before as the public will believe it is legal and the police will retain more sophisticated discretion. We know that the rate of police stops against black people in comparison to white people is increasing. The McPherson Inquiry showed that stop and searches for drugs increased threefold between 1990 to 1997. This law will not stop the trend.

Matt Foot

Safety and justice?

This year the government released its much-heralded paper detailing its proposals to deal with domestic violence. It never ceases to surprise me that an issue still has to be ‘heralded’ and requires a specific response. Even The Sun had to remind their readers that it’s not okay to physically abuse those in your domestic situation, but followed up with a favourite pastime of the tabloids by naming and shaming. Offences against the person (such as common assault, ABH and GBH) are a crime where ever they are committed against but, arguably, in cases of domest ic violence those crimes are worse. They involve a fundamental breach of trust.

A crime of dishonesty invoking a breach of trust immediately attracts a longer and harsher sentence. Not so with domestic violence so the government is recognising there has been a pitiful response from those who believe they should go on with domestic violence.

The government is right to tackle the issue head on – the alarming number of women killed by their partners testifies to that. However the proposals make for sad reading. The main thrust is that further criminalisation is the answer. Harsher sentences and more prosecutions. Alarmingly, the cost analysis at appendix D states that it will be cheaper to push more work the way of the criminal courts than work on improving access to civil courts, injunctions and enforcement of breaches of civil orders. Rather than helping victims to go to the police, they include previously negative behaviour as a basis for domestic violence court orders. It won’t work, or if it does work it’s only a short term fix.

Police don’t work. Working as a volunteer for a women’s legal advice line, an alarming number of calls are from women who have called the police and then don’t want to proceed with charges. This is not always because of fear. In the majority of cases it is due to economic and family considerations. Fathers who had been contributing financially would actually find themselves out of a job and then potentially un-employable with their convictions for violence. Most people just want the violence to stop. Judges must also be called to account for lower sentences when the victim involved is a partner or relative. But will or can minimal convictions really act as a deterrent and prevent further domestic violence?

In New Zealand offenders are sentenced to domestic violence intervention programmes – they complete them they don’t have to go to prison. In Washington DC, perpetrators are able to enter a guilty plea, sentence is adjourned, if they then complete a similar anger management course, the plea is withdrawn and so there is no conviction. The victim, current and future (no register of offenders is going to stop people from choosing who they go out with), is hopefully saved from similar behaviour in the future. There is not enough data to assess the impact of these programmes at the moment. But surely they are likely to be more effective than locking someone up and making them more angry and hopeless.

There are many reasons for not going to the police. They include previously negative behaviour as a basis for domestic violence court orders. Judges require clearer and more sensitive training about the issues surrounding domestic violence. Breaches of restraining orders should be treated with the severity they require. Domestic violence cannot be seen as a low priority.

A recent law which was only as good as those who enforce it. More effective enforcement of current measures coupled with wider and more sensitive sentencing powers in the courts is what is required. If the only option is harsher and longer terms of imprisonment the worry is that people who have previously had the courage to go to the courts for assistance ‘to make it stop’ will be utterly deterred.

Rebekah Wilson, volunteer at Rights of Women

Travellers suffer more ‘humbug’

Once they first arrived in Britain in the fifteenth and sixteenth centuries Gypsies and Travellers have faced persecution and discrimination. Obviously things have improved somewhat since the time when to be a Gypsy in itself was a capital offence, but Travellers still find themselves in a position where, for example, young Johnny Delaney could be recently bettered to death in Ellesmere Port apparently merely for being a Traveller.

After the closure of commons and the progressive loss of or closing off of traditional stopping places, the government finally acted by introducing the Caravan Sites Act 1968 (via a private members’ bill sponsored by Eric Lluckeck, MP – now Lord Avebury) and still at the
The Travellers’ Advice Team was set up in 1995 as a direct response to the disastrous effect of the 1994 Act on Travellers. On the one hand, those Travellers who could afford land found it extraordinarily difficult to get permission for their site. On the other hand, Travellers who had no approved site were bounded from pillar to post by the use of the new eviction powers (section 77 was the relevant provision for local authorities). Our experience of the use of the police powers is regularly negative. The powers, when used ‘correctly’, are ‘draconic’ (not my words but those of Lord Justice Sedley). However we meet all the time with cases where the police appear to be using the powers unlawfully. For example by not ensuring that the landowner has given a proper (or any) notice to leave or by failing to have regard to the guidance on the use of the powers from the Association of Chief Police Officers, which states that welfare considerations must be taken into account. It may surprise you to know that we often end up strongly advising our clients to leave even when the law is not being properly applied by the police. This is because very short deadlines to leave are given by the police, ranging from “now” (in many cases) to two hours. We face almost impossible hurdles in attempting to obtain an injunction preventing the eviction within that timespan. Therefore, unless we can persuade the police to back down by means of negotiation, our clients are faced with the possibility of arrest and imprisonment of their homes, unless they leave by the deadline.

Out of hundreds of cases, I can only recall two where the Travellers challenged the incorrect use of this sweeping power. What if, for example, there is not actually a pitch available or that pitches offered are totally unsuitable (e.g. by splitting up a family or between unrelated encampments and the provision of ‘additional land’)

Now they have taken the first tentative step forward in that direction and particularly worsened an already catastrophic situation. Just to add injury to insult, the government have ticked on their new police eviction powers to the Association Social Bill. At least this brings their philosophical position into the open – apparently being a norm is per se anti-social.

The new proposals, all the previous criteria are thrown out of the window and a new central criteria is introduced – the police can direct you to an available pitch on a ‘relevant’ caravan site (run by a local authority or registered social landlord such as a housing association), then, unless you go there, you will be effectively banned from all land within the area of that local authority for three months. It will be an offence to stop on land in that local authority area for that period unless you go to the indicated caravan site.

How on earth will this work? Understandably local authorities usually have policies for the allocation of the much sought after vacancies on official sites. Are these policies to be overridden to the detriment of all those on the waiting list? How are the police going to know about vacancies?

The second, and much more devasting question is, how will Travellers challenge the incorrect use of this sweeping power? What if, for example, there is not actually a pitch available or that pitches offered are totally unsuitable (e.g. by splitting up a family or between unrelated encampments and the provision of ‘additional land’)

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**Human rights and embryos**

Entire rights and Loaraine Hamblet under-grove in vitro fertilization (IVF) treatment with their respective partners from whom they subsequently separated as would no longer either had any continuing relationship. In each case there remained in existence em- bryos created from the gametes of each claimant and her former partner. The former partners of the claimants had withdrawn their consent to the use of the embryos in IVF treatment. The consequences of the withdrawals were devastating for both claimants but in particular for Natalie Evans who, as a young cancer victim, was unable to produce any further embryos. The Human Fertilisation and Embryology Act 1990 (the Act) regulates certain forms of fertility treatment, including IVF; the stor- age of gametes, and the creation, storage and destruction of embryos outside the body for treatment purposes or research. The two most important principles under the Act are the welfare of any child whose birth is dependent upon the use of the embryos retained by the three musketeers and the protection of their own rights to marry or enter into the same arrangement. As regards Article 14, the dis- crimination alleged was not ad- dressed to any disproportionate enjoyment by men (as against women) of their rights and free- doms set out in the Convention. The essence of the issue was the claimants' right to bring a complaint to the European Court of Human Rights. The Judge did not agree with this contention and found that there was no true analogy between the com- plaints and the chosen compar- ater. A woman who has fallen pregnant naturally is in a differ- ent position to an IVF patient awaiting embryo implantation, the Judge claimed, that accor- dingly there was no breach of Article 14. The Judge found that both Ms Evans and her former part- ner had embarked on the IVF treatment in good faith on the basis that their relationship would endure. However, it did not. In the changed circum- stances of separation the Judge ruled “it would be quite in- equitable not to allow either par- ty to change their mind and withdraw consent to treatment.” Lorraine Hadley challenged the word “use” in Schedule 3 of the Act by trying to persuade the Court that it should not be given a literal interpretation. She claimed that the word was not restricted to the act of implant- ing the embryos but also in- cluded other aspects of the process, for instance, selection and examination, and as a result her partner was not in a position to withdraw his consent. The Judge found that the word “use” can only mean the implanting of the embryo into the female pa- tient undergoing IVF.

As in many human tragedies involving disputes between individ- uals, in this case the tragedy spread to the rest of the human family. It is important to note that there were no changes in the law that would be affected, whether it be for the protection of disabled people or the rights of women to marry or enter into the same relationship. A recent decision made by the European Court of Human Rights in the case of a woman who was refused marriage to a man of the same sex highlights the importance of the right to marry or enter into the same relationship. The Court ruled that the refusal of marriage to a woman who was engaged to a man of the same sex was a breach of the woman’s right to marry or enter into the same relationship.

**Lords help us**

Things have come to a present status under a Labour government, the fight against a new attack on the firefighters, surely left to a small Old Labour band in the billet. The attack stems from the government’s victory over the Fire Brigades Union last winter. Instead of safeguarding its victory and leaving the matter there, the government insisted on proceeding with a fire services bill that pretends not to limit the fire- fighters’ right to strike, but threatens precisely that. The bill is a slippery piece of work whose gaps have been con- sistently exposed by three trade union spokesmen: Lord Mc- Carthy, Baroness Turner and Lord Wedderburn. Government ministers in the Lords have been consistently irritated by the de- termined tactics of the muke- ters, who insist on simple answers to simple questions and carry on asking those questions late into the night. The latest contest, ignored by the parliamentary press lobby, since it involves the question of union ballots, was on Monday 6th October, Lord Wedderburn moved an amendment to the bill’s wording to ensure that the firefighters’ right to strike should not be hampered by a distinction made in 1979 by the court of appeal. It distin- guished between industrial action backed by a ballot that in- cludes a breach of contract, where the union is protected, and industrial action backed by a ballot that in- cludes a breach of statutory duty and is therefore illegal.

Since the bill creates new statutory duties for firefighters to take part in industrial action, it should protect industrial action supported by a ballot that in- cludes a breach of statutory duty. The point is relatively simple and, for the union, crucial it seems beyond the intellectual ca- pacity of ministers in the Lords, notably Lord Bassam.

Opposing the Wedderburn amendment, Bassam told their lordships: “This would single out the firefighters to be treated differently from other groups of workers, which in our view would be equally unfair.” Lord Wedderburn pointed out that its role was the bill that was treating firefighters differently, by imposing on their union an extra abil- ity. Bassam’s objection, he concluded, “is a straight application which would not pass an entrance ex- amination and would be for a first year paper”, Bassam had no reply.

Either ministers do not under- stand what Wedderburns called “the simplest possible point”, or, if they do, they are prepared to go to the limits of the law, with plans to allow unions to be used for public sector strikes. It is not clear whether the three musketeers plan to divide the Lords on the bill’s third reading, Labour peers need to be there to defend the most basic freedoms at least as they stand today, Labour MPs who created the unions’ immunities nearly a hundred years ago.

**Paul Foot**

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**News & Comment**

25 Tommy Sheridan of the Scottish Socialist Party sent to jail for seven days after he refused to pay a 100,000 fine, was over the legal limit for his role in an anti-Trident demonstration was arrested and was likely to be charged with rioting, and was taken to Court, charged with rioting. The application for judicial review was made by Liberty. At least two of the 144 people arrested were detained under the Terrorism Act 2000.

**August**

12 The Home Office announce that the police and internet service providers will be asked to stockpile customer records for up to 12 months so that they can be accessed by law enforcement and other public bodies, despite protests.

12 Demonstrators against the London arms fair were given permits for a full day’s protest. The authorities warned that they would not be allowed to continue their protest for more than one night.

**September**

27-28 September: London argued their case before the House of Lords in Hallam and the House of Lords in laying down their law that it was illegal to discriminate against disabled people and called for changes in the law to allow disabled people to challenge decisions that they faced. The Judge did not agree with this contention and found that there was no true analogy between the complainant and the chosen comparator. A woman who had fallen pregnant naturally in a different position to an IVF patient waiting for embryo implantation, the Judge claimed, that accordingly there was no breach of Article 14. The Judge found that both Ms Evans and her former partner had embarked on the IVF treatment in good faith on the basis that their relationship would endure. However, it did not. In the changed circumstances of separation the Judge ruled “it would be quite inequitable not to allow either party to change their mind and withdraw consent to treatment.”

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The inquiry heard a number of theories for how this search for a 'form of words' saw the dossier changed over a series of drafts in order to sharpen the case for war. Earlier drafts of the document had been entitled 'Iraq's programme for WMD'. The published dossier was called Iraq's 'Weapons of Mass Destruction', a face between the intelligence professionals and to find a form of words which would strengthen certain political objectives.

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North Londoner Roger Sylvester died in police custody in 1999. This month an inquest jury unanimously returned an unlawful killing verdict. We spoke to the co-directors of campaigning group INQUEST, Deborah Coles and Helen Shaw.

"I WON'T BRING HIM BACK"

SL: Wasn't it a case of mixed emotions when the verdict came through?
Deborah: Yes. The family felt it was a vindication of what they'd thought all along, that Roger had died as a direct result of the excessive and unlawful force used against him by police officers. But, at the end of the day, nothing is going to bring him back, and it had played such an incredible emotional toll on them over the past four and a half years, that I think it was relief at the justness of the verdict, but also for the first time I think they'd started the grieving process.

They found out that other people, ordinary members of the public, had judged what those officers did to be unlawful. Apart from being a vindication of what they'd believed all along, that jury and that family were subjected to the most appalling attacks on Roger's character, in an attempt to demonise him by the lawyers acting for the Metropolitan Police Commissioner and the lawyer acting for the individual officers. What was just so utterly despicable, was the fact that the lawyer representing the Metropolitan Police Commissioner is supposed to be a neutral lawyer in these circumstances, he was there to assist the court in finding out the truth about what happened. Ronnie Thompson QC, during the course of that month, launched a vicious assault on Roger; Roger's character; Roger's family; he accused us all, lawyers as well as the supporters of the campaign, of having hidden political agendas. And what you had at that inquest was one legal team representing the family, confronted by two legal teams, one of whom was publicly funded by taxpayers' money, representing, in theory, the interests of Londoners in terms of what happened to an innocent man on the streets of London. But in fact, he was defending the actions of those officers. But despite all that, the jury unanimously decided in those hours that he'd been unlawfully killed. My theory is that the same thing could happen tonight on the streets of London because the Metropolitan Police have taken no action in regard to the serious issues raised at the inquest about the dangerous use of restraint.

SL: Over the time that it's taken to even get an inquest in the first place, you must have felt the pain of the family.
Deborah: Yes. I think it's the first time I've got as close to a family, because four and a half years is a long time, and you build up a relationship with people. All the staff at INQUEST have been involved in attending marches, memorial services, and have built up a close relationship with the family. One of the emotions is just a sense of anger that the system allowed the family to have to endure that whole process for such a long time, but also, we said from the outset that there had been a proper, thorough police investigation, those officers would have been prosecutable for manslaughter. And now we're back to the same old situation, where we're having the police lawyers threatening to publicly review that inquest verdict, and we're calling upon the Crown Prosecution Service, in light of the evidence that was heard, to bring charges for manslaughter. But historically, it's really unlikely that that's going to happen.

Helen: The other thing I think is particularly disgraceful about what happened to the Sylvester family is that Roger died just around the time of the publication of the Stephen Lawrence inquiry report, and there was a lot said about how different it was going to be for families facing that kind of ordeal, and I remember us saying at the time, well, this is an opportunity for the authorities to demonstrate that difference. And, in fact, for the Sylvester family it's probably been one of the worst experiences that we've worked with a family on; rather than anything being better and different, it's actually been a real struggle.

Deborah: Also we have a Labour administration who were lyrical about open justice, and access to justice, and, it is only because the family was a large extended family with significant resources in terms of not letting this case rest, that really ensured that Roger's death wasn't out of the public eye, and that the Ministers in Government who needed to know about it were actually made to hear about it. But not all families have got those kind of resources, and it's taken a really serious emotional toll on members of the family.

SL: You mentioned the Labour government. What differences do you notice since they were elected in 1997?
Helen: There have been changes, it would be wrong to say there haven't, but these haven't been enough. And one of the people who was quite instrumental in those changes was Gareth Williams (Lord Williams of Mostyn) who died recently. Particularly around pre-inquest disclosure of information to families, some movement on allowing limited means-tested funding at inquests; and obviously the fundamental review of the whole inquest system.

We had a strategy before Labour got into Government which was to make as much public fuss about the issue as possible, put it on as many people's agendas as possible, and we were quite successful at that. But, it's a long time since they were elected, and really not enough has been done. And I even think that, with this fundamental review of coroner services, it's going to make a difference in a generic sense to the inquest system, but, the cases that we've been most concerned about, that raise questions of the right to life, I don't think they've looked at that seriously enough.

I was talking to a woman the other day who had a similar view, which is that, although there have been policy changes arising out of her brother's death, it doesn't bring him back, she's still got no justice, and, I think, the new system isn't going to deliver justice, and that's still a big struggle for our organisation to try and put that back on the agenda.

Deborah: Having campaigned for years that there should be public funding given to received people, particularly in deaths in custody cases, there was then limited means-tested funding made available, but the experience of our lawyers is that it's becoming increasingly difficult to get funding, and that the Legal Services Commission would do as much as they can to try and prevent access to public funding. In the case of the Sylvester family, because the family owned their own home in north London, it took them over the legal aid limits. We had to run a concerted parliamentary lobbying campaign, meeting up with all the key Ministers, and we were lucky to have the support of David Lammy [the local MP and junior minister] in actually pursuing this. But we had to run a concerted campaign to get them to grant exceptional funding in that particular case. But it didn't cover a lot of the important preparation work, and it's a problem that families are having all over the country. Home ownership takes you over the limit, and it also excludes anybody who's on a low income from any public funding. We've never said that families should be treated any differently from anybody else, but that there should be equality of arms. And we know that wherever an inquest is taking place into a death involving the State, unlimited public funding is available for the State to ensure that it has a team of lawyers to represent it, and that isn't the case for families.

Helen: The State has never publicly said how much that money is, how much is being spent, and I think that's something that we consider asking the Metropolitan Police Authority, to ask how much they've spent on the Sylvester case, and on other cases. I think people should know how much is being spent of their money that they pay in their council tax.

Deborah: None of these so-called reforms have come without concerted political campaigning, and it actually takes a lot of effort and strategic thinking. And the difficulty that an organisation like INQUEST has is that in small, under-funded, but also has so many conflicting priorities, its actually very difficult to do justice to the cases.

SL: The Princess Diana Memorial Fund Reaco hit you quite hard, didn't it?
Helen: Yes, our grant was suspended until recently, and one of the things that is always a problem for us is getting enough funding to even keep our six staff. That means we're having to desperately fundraise to keep the organisation going, and to meet our commitment to our staff.

Deborah: Some lawyers have been extremely important in supporting INQUEST's key objective, to maximise the opportunity for families to find out the truth about how their relative died. We've had a lot of lawyers - some of whom were involved in the settling up of the organisation – who have been extremely good at working in an area of law that has been very marginalised, and who haven't been paid. That's been extremely important – otherwise we could've done what we've done. A lot of the early cases, where we got unlawful killing verdicts or where we had thorough inquests, have been through lawyers giving up weeks of their time for nothing, and quite senior lawyers. But now we're at a situation where lawyers are getting paid, particularly barristers. It's vital that lawyers join our
The level of scrutiny that's been applied to deaths of detained patients in psychiatric settings is far lower than that applied to deaths in prison and police custody. That's because INQUEST, as an organisation, has caused that level of scrutiny to be applied to deaths in custody.

On the one hand, the State will say they take organisations like INQUEST terribly seriously, they want our inputs, they want our expertise, however, what they never do is give us the resources in order to do our work more effectively. We've had to struggle with that whole idea of co-option in terms of when do we respond, and why the hell should we, as a voluntary sector organisation, have to respond without proper resources? A good example of that was the setting up of the Coroner's Review. Why was it the case that it wasn't on the Review Panel, given our expertise and this constantly happens, being marginalised and patronised.

Deborah: That's the setting up of the Coroner's Review Panel. Helen: There's a double edge to the way that we've been treated as women working in an organisation like this, because we've been seen on the one hand, 'aren't they wonderful', holding the hands of poor distressed bereaved people, and pigeon-holed in that way, and then on the other hand, seen as another sexist stereotype of being loud-mouthed lefties who are just out to...

Deborah: Cause trouble!

Helen: A person told me they had spoken to someone in Government and when my name was mentioned they said, 'Oh that troublemaker.' We've got various examples of things like that. So we're in the one hand patronised and dismissed as 'hand-holders' and then, on the other hand, dismissed because people wrongly caricature us as being too extreme.

Deborah: I also think that it's something to do with the issues that we're dealing with, and one of the big issues that people cannot deal with is bereavement. When you're talking about State-sanctioned death, which a lot of these cases are, there are people who are quite afraid, not just of death itself, but the fact that what we are talking about is that police officers and prison officers have caused the death of members of the public. That is a difficult issue for people to engage in. And the problem there is always the attempts to blame the dead for their own death. We ask the question, why is it that a disproportionate number of black men die following the use of force, and what are you dealing with here are very difficult questions about racism. And again it's another issue people don't really want to engage with. It took us years and years to get Government to acknowledge the fact that the figures that we kept putting out were actually correct. We monitor every death in custody and have done so since we were set up. We were reporting it to UK organisations, and international human rights organisations, we were saying, there is a disproportionate number here. We're not saying more black people than white people die, we're saying it's disproportionate in terms of when you look at the circumstances.

Helen: One thing that's important about how we've worked is where we've both come from politically and I think that has really informed our organisation. It's not politics with a big "P" in terms of political parties, it's more about our understanding of how the world works, and how it's played out in people's lives, how it affects policing, how you end up in prison.

Deborah: I think the power to put legislation into the Queen's Speech at the end of November, what would you propose?

Helen: That in any death in custody cases, families have automatic non-mean-tested public funding for their legal representation and preparation.

Deborah: I think a firmer commitment that when you have police or prison officers who use unlawful force, then they must be prosecuted. And, a change in the way in which Article 2 cases are investigated, both in terms of the police and prison investigation, but also the way in which they're dealt with at an inquest; we need a completely different system. We hope that our research project, funded by Nuffield, which is coming out in July of next year, is going to make a contribution to that.
Torture is being justified by UK?

The US military is using torture against suspected terrorists in prisons around the world. And now, intelligence officials have said that information obtained from victims will be used to prosecute terror suspects in secret British tribunals. But evidence obtained during torture is extremely unreliable and international law forbids its use in court. Campaigners say the secret British tribunals breach fundamental human rights. The director of the Medical Foundation for the Care of Victims of Torture, Professor Tim Heaven, says:

"Information obtained under torture is cheap and dirty information, if the intelligence services are cooperating in this way then they are in effect condoning, even encouraging, the tortures."

British's controversial antiterrorism tribunal – the Special Immigration Appeals Commission – meets behind closed doors with the press and public excluded. And yet the International has condemned the tribunal as 'a perversion of justice'. Some of the victims in Guantanamo are not even considered for transfer. The detainees comes from Bagram airbase in Afghanistan. The CIA employs an interrogation technique known as 'stress and durance'. This is a torture technique which involves kicking detainees, medical treatment and threats have been denied to many injured in battle. There can be no doubt that any information gathered in these circumstances will be unreliable. Yet the British government claims the evidence is admissible.

The US government has admitted that those physical techniques, as well as psychological torture, are used at Guantanamo. Since the camp opened there have been 28 reported suicides. This is not surprising when detainees are held in wire mesh cages measuring 9ft by 6ft and only one hour outside their cells each week. The wire cages were used as a newly constructed execution chamber and the US intends to seek the death penalty for those found guilty of certain terrorist offences in its special military commission, where the prisoners have no right of appeal.

Is it possible that the government secretly approves of the US in its use of torture in the National interest? International law at Bagram airbase and Guantanamo Bay? This suspicion will be raised when it is revealed that it intends to use torture evidence in its case for the Special Immigration Appeals Commission.

**Domestic Tangle**

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**Twilight Zone**

**Louise Christian** on the plight of Guantanamo Bay detainees and the dilemma of lawyers representing them.

Not long after the announcement of the military commission trials a story appeared in the Wall Street Journal which looked very much like it had been planted by the Pentagon, saying that all six of those detained for the first military commission trial were expected to plead guilty and enter into plea bargain agreements. All the indications are that the US is planning to hold a show trial in which dramatic confessions will be made. We are led to believe that those confession are being made under torture. Under no circumstances do we support the use of torture.

**...they wished they had never agreed to defend them since their only role was to legitimise an unfair process.**

**Present**

David Blunkett says that he will not be present if the plea bargain agreements are said to be unfair. But this is not the case in the rules for Guantanamo Bay. The lack of remission and the lack of 'legal aid' problems involved mean that the detainees' lawyers in the US have applied to be in the pool of civilian lawyers. There is not a single Muslim lawyer among them. After this, we believe that the detainees' lawyers should have access to the Pentagon. Submission made on behalf of the Pentagon as to why he should be denied such access make interesting reading. In evidence from Ad- mortal Jacoby, the Jakeby declaration is said, "Padilla is unlikely to co-operate if he believes that an attorney will intercede in his detention. ...DIA (the Intelligence Department) is aware that Padilla is even more likely to refrain from cooperation in that regard."

Padilla has had extensive experience in the US criminal justice system and had access to counsel when he was being held as a material witness. These experiences have likely heightened Padilla's awareness that counsel will assist him in the interrogation process. Only after such time as Padilla has perceived that help is not on the way can the US reasonably expect to obtain all possible intelligence information from padilla. Providing him access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an end-around-Pentagon process which would be devoid of any hope of a fair trial. They are fighting for their lives, this option is opposed by David Blackburn. Goldsmith has admitted in correspondence that the Pentagon is engaged in a "process of negotiation" involving the plight of four other British citizens also detained for well over a year incommunicado and without access to a lawyer or a lawyer.

Sixty pages of rules for the military commissions do not mention the right to an attorney. The contravene the requirements of Article 14 of the International Covenant of Civil and Political Rights in almost every possible way. The judges are military officers; the Chief defense lawyer is a military officer and the restrictions on civilian defense lawyers are so sweeping as to mean they cannot perform their role. The procedures are all made up by the military, based on Goldsmith's wishes and without consideration of the consent of the "appointing authority" an Orwellian description for Mr Goldsmith.

Civilian attorneys who are not paid must be seated at a table with the defense, at the risk of being evicted. They must obtain security clearance and sign an agreement that they understand their communication may be monitored by Mr. Wolfowitz. This remains a requirement even though one of the "important concessions" announced in July by Goldsmith was that "exceptionally" - the conversations of Abbasi and Beggs with their attorneys may continue to be held indefinitely at Guantanamo Bay as "enemy combatants".

Female lawyers who defended six young Muslim men in Lackawanna, NY - acquitted of conspiracies to provide material support to a terrorist training camp in Afghanistan - complained after their clients entered into plea bargain agreements. They wished they had never agreed to defend them since their only role was to legitimise an unfair process. The accused were sentenced to between six and nine years.

Meanwhile there are now at least three people who are being detained indefinitely without access to a lawyer as "enemy combatants" in the US. All of them were literally snatched in the custody of the Justice Department and removed from civilian prisons to military brigs by the Pentagon. Only one of the three, Yasser Nasser, was detained in Afghanistan. The other two, Jose Padilla and Ali Saleh Khalid al-Marri, were detained in the US accuser of planning a "dirty bomb" (Padilla) and terror offences in Afghanistan (al-Marri). Padilla has been detained for ten months without access to the outside world or to a lawyer despite the court ordering he should have such access (the Pentagon is appealing). Submission made on behalf of the Pentagon as to why he should be denied such access make interesting reading. In evidence from Ad- mortal Jacoby, the Jakeby declaration is said, "Padilla is unlikely to co-operate if he..."
Twilight Zone

Louise Christian on the plight of Guantanamo Bay detainees and the dilemma for lawyers representing them.

Not long after the announcement of the military commission trials a story appeared in the Wall Street Journal which looked very much like it had been planted by the Pentagon, suggesting that all of those designated for the first military commission trial were expected to plead guilty and enter plea bargain agreements. All the indications are that the US is planning a show trial in which dramatic confessions will be sought and a public record of guilt established. As Mr. Goldsmith and others have emphasized, the military commission trials are not part of a wider plan to reform American military justice. If the points raised in this article are correct, it is high time that the United States Government was required to explain its case for these trials. This is not the only case in which the US military has failed to meet its international obligations.

Is torture being justified by UK?

The US military is using torture against suspected terrorists in prisons around the world. And now, according to intelligence officials, they are using techniques that have been found guilty of torture in international law forums by its use in court. Campaigners say the secret British tribunals breach the law and are a trick. The director of the Medical Foundation for the Care of Victims of Torture, Malcolm Smart, said, "Information obtained under torture is cheap and dirty information. If the intelligence services are cooperating in this way then they are in effect condoning, even encouraging, the torture.

Goldsmith's controversial anti-terrorism tribunal - the Special Immigration Appeals Commission - meets behind closed doors with the press and public excluded. And yet the International Commission has condemned the tribunal as a 'perversion of justice'. Some of the legal 'consultants' who provide advice to the C"...
CAN THERE BE ACCOUNTABILITY FOR AN ILLEGAL WAR?

The decision of any government to go to war is critically important, and the part played by the UK in the recent war in Iraq has raised profound concerns as to its basis in morality, common sense and legality. The public debate will continue as the Hutton report is released, and thereafter, issues of international law of profound importance and complexity, are highly significant to this ongoing debate. It is possible to identify four critical areas:

- The right of states within international law to resort to force;
- The lawfulness of the use of force;
- The legality of the occupation;
- Human rights issues arising from the occupation

This article explores the efforts of a group of lawyers, peace activists and non-governmental organisations (NGOs) to make the UK government accountable for its actions in Iraq. It discusses the possibilities, in the tradition of cause lawyering, to expose abuses of power in the context of war, and explores the potential for and constraints on non-litigious means. A forthcoming publication, The Case for War, will make available all the opinions, reports, articles, letters and judgments referred to below.

This campaign of cause lawyering continues. It has to date four stages.

by PHIL SHINER
Pictures by JESS HURD
The UK's right to self-defence

Any argument about the legality of force proceeds from the basis that the UN's purposes are essentially peaceful, and that Article 2(4) of the UN Charter prohibits the use of force subject to two limited exceptions. The first exception is the right to self-defence under Art. 51. At the time, the UK appeared to argue that the threat from Iraq to the UK through international terrorism, or from its WMD, or both, was so serious it justified a pre-emptive strike in self-defence. Alternatively, it was suggested that the threat to the US was such that the UK could invoke the right of collective self-defence. The legal opinion left no doubt that neither was justified. It emphasised that state practice "tends to suggest that the anticipatory use of force is not generally considered lawful, or only in situations of great emergency," a situation where an armed attack is launched or immediately threatened, and where there is an urgent necessity for defensive action against such attack, and no practicable alternative to action in self-defence. The opinion concluded the right to use force in anticipatory self-defence did not arise for the UK alone, or under collective self-defence with the US. There was no evidence to link Iraq to "September 11" or Al-Qaeda, and that the government's dossier released on 24th September 2002 did not meet the required conditions. Once the weakness of the case on self-defence had been exposed it was no longer than that both the UK and US charged back and began to argue for the second exception, a SC authorisation under the UN Charter, Chapter VII.

The 11th October Inquiry

This Inquiry was inspired by the approach to people's law, for long developed by the Permanent People's Tribunal. The "judge", Professor Warbrick of Durham University, heard legal argument over a day hearing. The sponsoring group obtained key evidence, for example of R 687. Professor Warbrick concluded: "the peacefullness of R 687 had been released, indicating that the decision to use force based on R 1441 would be in breach of international law, as a second SCR clearly authorising force was required. The opinion analysed the background to the adoption of the resolution as a guide to its interpretation and the system, in paragraphs 11 and 12, for Iraq's failure to comply to be reported to the SC who remained "seized of the matter." It advised that the phrases "final opportunity" and "serious consequences" were only warnings to Iraq, not authorisations. It concluded: "It would be extraordinary if, having failed to obtain an express authorisation for the use of force, having incorporated minute changes to the final draft, and to exclude the possibility of "automatic" and "hidden triggers" and to preserve the role of the Security Council and having publicly agreed to, there was no such implied authorisation for force, the UK and US were to be able to use SCR 1441 as authority for the use of force without a further Security Council Resolution.24 When the Treasury Solicitor, acting for the Prime Minister, Foreign Secretary and Defence Secretary, responded to a letter before action on 26th November 2003, it would not declare its understanding of what R 1441 permitted, procedures were listed for 9th and 10th December 2002 on preliminary issues of justiciable, standing and delay.

The Issue of Costs: The first ever Pre-emptive Costs Order

CND are a private company limited by guarantee with limited funds. It had serious concerns about costs. As for its lawyers' fees, there was a very successful fundraising campaign led by Mark Thomas, the Channel 4 comedian, and some of the work was done without charge. The concern was the government's costs if it lost. Thus, on 29th November a letter was written to the Treasury Solicitors offering to pay £25,000 into an account on trust for the government's costs with an explanation as to why, in the public interest, its case should proceed with CND having celerity as to availability. When the government refused the offer a hearing took place in the Divisional Court on 5th December 2002. CND obtained the exercise of a pre-emptive costs order since the court held the issues were of genuine public importance and it was right to the CND the certainty to pursue them. This success was covered in the national press.

The Judgment of the Divisional Court

CND's lawyers did not seek to constrain the executive as to whether to take military action. In the light of recent cases on this issue concluded, this was not argued. Instead it was argued that the government had repeatedly confirmed it would be bound by international law and it had indicated that it would go to war without a second SCR. It was submitted that a pre-emptive norm of customary international law was at stake (the prohibition on the use of force) and the Court could exercise its discretion to give an advisory opinion. The Divisional Court25 gave judgment on 17th November 2002. They gave permission to move for judicial review but dismissed the application. Simon Brown J held: "the Court has jurisdiction to declare the true interpretation of an international instrument (R 1441) which has not been incorporated into English domestic law and which it is unnecessary to determine the purposes of determining a person's rights or duties. The Court would not determine an issue if it to do so would be damaging to the public interest in the field of international relations, national security or defence. There was no reason of public policy good reason for making an advisory declaration. The strategy to pursue this issue through judicial review instead of until the costs and benefits. It was seen as a very positive exercise by CND, despite the ultimate financial results. The costs were limited and covered by a fundraising campaign. The issue of illegality gained much public attention, and within the specific context of R 1441, and there was extensive media coverage. CND raised its public profile and brought to light that it was concerned not just with nuclear weapons but also with the peaceful resolution of conflict between states. The costs were limited order was another million pounds.
Divisional Court and the compliments paid to the "excellent submissions" of CNND's lawyers. Although the approach of the court to issues of international law is a point of public importance (justifying an appeal), a decision was made that CNND had gone far enough. However a further strategy was already evolving.

STAGE 3: FURTHER PRE-EMPTIVE ACTION

War Crimes: Letters before action

During the wars in the Gulf, Kosovo and Afghanistan there were many incidents involving indiscriminate or disproportionate force. For example, the deliberate massacre of tens of thousands of Iraqi soldiers and civilians on the road to Basra, the destruction of homes, shops and the infrastructure, and the use of cluster bombs in all three conflicts. Acting on behalf of Mark Thomas, CNND and 16 other NGOs lawyers served letters on Blair, Hoon and Straw on 22nd January 2003. The letters documented the best evidence as to war crimes committed in the three previous conflicts. It set out the relevant provisions of international criminal and international humanitarian law, and the powers of the new ICC prosecutor under Article 15 of the Rome Statute to initiate an investigation of his own initiative. It gave notice to the author that a coalition of NGOs in different countries would be collecting evidence as to war crimes. At the end of the war a tribunal consisting of leading international lawyers would sit to establish the legal principles for a hi-tech war. It would hear evidence from eyewitnesses and weapons experts to enable it to determine whether particular attacks were compliant with principles of discrimination, necessity and proportionality. If the panel concluded that evidence existed that war crimes had been committed it would report to the prosecutor who would be urged to use his Article 15 powers.

The Tribunal Hearing

Following the war, serious concerns arise as to war crimes especially in the context of the use of cluster bombs in urban areas. The Armed Forces minister has confirmed that the UK did deploy, despite assurances that it would not. It is difficult to see how these necessarily indiscriminate weapons can satisfy key principles of necessity and proportionality. A panel of seven leading international lawyers have been assembled for a tribunal hearing on 8th and 9th November 2003 in London.

The Government's Case for War

By mid-January the UK government had apparently decided on war, and that it would rely either on a second SC Resolution authorising its force or (if that one or something lesser if it could not). A lesser option was thought by the team of lawyers to be a case under RS 678, 687 and 1441. Subsequently, this was indeed the basis of the Attorney General's statement of 17th March 2003. His position was that SC R 687 was extrait and could be revived by a material breach of R 678, which set out Iraq's disarmament obligations, plus a further material breach of R 1441 in mind the warnings of a "final opportunity to comply with its disarmament obligations" and the serious consequences if it did not. By operative paragraphs 3, 4 and 13 of R 1441, it is apparent that if the authorisation of force from R 687 was not capable of being revived, because it had been terminated, then the government's arguments for legality fell away. The team now set about showing the public and the Commons that, in this critical build up to war, this was indeed the case, the government could not rely on R 678, 687 and 1441 and that a fresh SC authorisation was required.

The 23rd January opinion on R 678

The next opinion addressed the specific question as to whether the authorisation to use force contained in R 678 could be revived by a material breach of R 678 so as to entitle the UK to use force without a further SCR. The revocation of this authorisation, in order to force Iraq to meet the disarmament obligations set out in R 678 was, and is, the UK's only route to legality. There are five arguments against legality through this route:

- R 678, which introduced the ceasefire agreement, was preceded by R 686, which acknowledged the suspension of hostilities.
- The breach of R 678 explicitly recognised that during the period required for Iraq to comply with the terms of the provisional ceasefire, the authorisation from R 678 would remain valid.
- No such explicit language is present in R 687 and as the opinion stated: "If the Security Council had sought to use the authorisation to use force contained in resolution 678 alive pending Iraq's compliance with the provisions of resolution 687, in our view Resolution 687 demonstrates that it could and would have done so." Professors Warbrick and Vaughan-Lowe had reached similar conclusions.
- R 687 provided for a formal cease-fire to be effective upon official notification by Iraq of "its acceptance" of the provisions of R 687. Once it had accepted them, as it did, the authorisation of 678 ended. If the SC had wanted to keep it suspended like the sword of Damocles, to ensure Iraq complied with 687's disarmament obligations it could have done so. It did not.
- R 687 authorised the "member states cooperating with the government of Kuwait... to use... all necessary means... to restore international peace and security in the area." It is apparent that once Iraq had notified its acceptance of the provisions of R 687, and the UN's observer unit deployed, the coalition work was ended, and it ceased to be in existence. The authorisation of force ended with it.

By OP 4 of the SC, resolved to remain actively seized of the matter. It is clear from that and the wording of R 687 that any steps taken for the implementation of R 687 and to secure peace and security in the region were now once more a matter for the SC and not for the member states who had formed the coalition.

Bearing in mind the UN Charter's peaceful purposes and the prohibition against the use of force if it is not for member states acting unilaterally to interpret SC resolutions so as to authorise force. It is plain from recent conflicts in Bosnia, Somalia, Rwanda, and the Gulf War that if the SC meant to authorise force it does so in clear terms using the phrase "all necessary means."

It is apparent that accountability for the war's illegality is still a possibility. Moreover, even the government's case for legality collapses in the absence of WMD.

The 3rd March opinion on the Draft Resolution

The UK and US initially acknowledged that R 1441 was insufficient and a second SCR was required. However, the spin doctors had us believe that the key was whether this second resolution was passed, not what was in it, and in particular whether it specifically authorized force. As it turned out the UK and US abandoned the attempt even to have a bland second resolution adopted. However on 14th February a draft resolution was released by the UK and US. The fourth in the series of six options focused on this draft. Essentially this draft said little. After a series of peremptory paragraphs the two operative paragraphs stated that "Iraq has failed to take the final opportunity afforded to it in R 1441" and that the SC "decides to remain seized of the matter." The opinion noted that the phrase "all necessary means" or such like was absent, the preamble does not have operative effect, the warning of a final opportunity expressly envisages that a further decision will be taken by the SC as to what steps should be taken, and that accordingly "any attack by the US and the UK on Iraq in reliance on the Draft Resolution rather alone or in conjunction with Resolution 1441 would be in breach of international law."

The Attorney General's Opinion and all that

By mid-March the question of legality had become key, especially as there was not to be political agreement amongst SC members for a second resolution, let alone one authorising force. The government's case for legality shifted away from requiring either a SC authorisation or a second resolution towards the view that the government had a bland legal right. For example, a QC, gold medal, a proper one for a law officer to make. He could not have been unaware of the arguments of Rahninder Singh QC, Professor Warbrick and Vaughan-Lowe, and others, that R 686's wording gave a key understanding as to why R 687 did not suspend the authorisation of force not to impede the legal and the counter arguments. He had a duty not to misrepresent Parliament and the public. He broke it. It is not clear to the inevitable included two briefing sessions to MPs in the House of Commons as to why the government's position was that of...

STAGE 4: ACTION POSTWAR

The central strategy is to make the government accountable for its actions. As far as war crimes go I have already described the tribunal to be held on 8th and 9th November 2002. There are other themes to the continuing work to secure accountability for the decision to wage an illegal war, for the legality of the occupation, and for violations of the human rights of Iraqi civilians.

The missing WMD

Even if the government's analysis of the law was accepted the missing WMD blows a hole in its case for legality. The Attorney General's statement is posted on the proposition that the evidence before him as to Iraq's WMD was so compelling, the threat so serious, that UNMOVIC could be given no more time despite having made excellent progress. The UK must go on to ensure immediate compliance with R 687's disarmament obligations. His position is shown by his advice on the legality of occupation dated 26th March 2003 published in the New Statesman on 26th May. He reminds the Government that “military action pursuant to the authorisation in Resolution 678 (1990) must be limited to what is necessary to achieve the objectives of that Resolution, namely Iraqi disarmament and must be a proportionate response to that objective.”

At best the government's case is that since retrospectively it is known that the threat of WMD was not apt to induce such a state of emergency, any programme for disarmament must be overridden, and the SC not given a further opportunity to consider the matter, it can be seen that the war was illegal. At worst, if there is the mere hint that the evidence as to seriousness and imminence was exaggerated (deliberately or otherwise) the government should resign. Thus, the issue of the evidence before the Attorney General when he gave his statement of 17th March 2003 as to the seriousness and immediacy of the threat is central. We do, of course have the reports of the Foreign Affairs Select Committee's inquiry, the Parliamentary Intelligence and Security Committee's inquiry and the Hunter inquiry. Neverthe less the combination of all of these is not sufficient to establish the strength of the state's case on reliance on factual foundations for the government's case in law.

Calls for a judicial inquiry

On 6th June 2003, a fifth legal opinion was released and sent to the Treasury Solicitor, which purported to “deny that the allegations made by former members of the cabinet in the recent past, that the evidence of the existence of weapons of mass destruction was exaggerated by the UK and US prior to the invasion of Iraq in March 2003 can call into question the factual foundation for the Attorney General’s view that the invasion was lawful in international law. In our view there is therefore a strong case for establishing a judicial inquiry to examine that legal question.” The Treasury Solicitor's response was that the government saw no need for a judicial inquiry and relied on the two forthcoming Parliamentary inquiries. The addition of the Hunter inquiry, and the prospecs of challenges on human rights violations (see below) means that the team have put this issue on the shelf for the time being.

The legality of the occupation

Accountability is sought for the thousands of apparently unnecessary casualties amongst civilians. One route is through the war crimes tribunal. Another would be liability could be established for human rights violations during the war. Unfortunately, Strasbourg jurisprudence does not assist. The case of Bankovics, arising from NATO's deliberate bombing of a TV station in Belgrade, enables the UK government to argue that it did not have jurisdiction during the war as it had not assumed the normal functions of government. However, human rights violations and the legality of the occupation, after the UK assumed jurisdiction, is an entirely different matter.

On 23rd July 2003, a lengthy sixth opinion on the legality of the occupation by the UK was released. The law of belligerent occupation is complex and a summary of the advice has to suffice. Given the continuing importance of the legality of the occupation the whole of the con- quering occupation of Iraq by the US and the UK lawful, subject to the limits on the conduct of that occupation contained in international law.

The responsibilities and obligations of the US and the UK remain limited by the Hague Regulations and Geneva Convention IV, and on a proper construction of Resolution 1483 the primary responsibility for nation-building, judicial reform and economic reconstruction rests with the Special Representative appointed in accordance with operative paragraph 8. While Resolution 1483 envisages the role of the UK and the US will be involved in those processes, in our view such involvement must remain ad-ministrative and logistical in order for it to comply with the US and the UK's obligations under international law, which are reaffirmed by Resolution 1483. It remains to be seen how this particular chapter develops.

Human Rights violations post-occupation

As a matter of law there is no reason why the UK government should not be held responsible for violations of human rights in the parts of Iraq for which it is responsible. For example, if civilians are killed or injured by cluster bombs used in urban areas and US forces are responsible for removing them promptly have not done so, or if medical operations have been cancelled because hospitals have not been adequately protected from looting. Violations of human rights in these, and other, circumstances may also involve breaches of provisions of GC IV. Such violations might be challenged through judicial review and the HR Act 1998. Contact has been made with a number of Iraqi civilians affected by violations for which the UK is responsible. A trip to Iraq has been arranged in October in order to take instructions.

CONCLUSIONS

The political implications of this illegal war have not finished sounding. What role international law has played in this struggle to make the government accountable, and within that the differences our campaign has made; is not for us to say, and certainly not at this stage. One would not wish to claim too much for the part of cause lawyering. Some might say that we are right as we did not stop the war, or even win our legal challenge. But that is an unnecessarily re- strictive appreciation of success. If we put the UK government under even more pressure at all, so as to spare one casualty, one could argue it would be worth every ounce of effort or penry. It would be difficult to dismiss the effects of our co- ordinated legal and political strategy in the light of the extensive opportunities we had to air the case for legality in the court of public opinion. It is simply too early to say where this road leads. Will there be future eveness in accountability for aggressive war and war crimes, or will "victor's justice" prevail? Given this unilateral action that may be seen as a hammer blow to the role of the UN in furthering the peaceful resolution of conflicts can there be an equal and opposite reaction? What is needed is a strong UN, a reformed Security Council so that the five nuclear weapons states are not also the five permanent members and performs in enforcement as other procedures so that, at least, there is an expedient method of obtaining an authoritative advisory opinion from the International Court of Justice. As for radical lawyering perhaps more might be achieved if we believe that we could make a difference and defeat the forces against us.

Phil Shiner, of Public Interest Lawyers, acted for CND, Peacecraft, other NGOs and Mark Thomas in the various stages of this campaign.

Prominent speakers at Public Meeting: RUBINDER SINGH GC, Matrix Chambers (author of the first legal opinion stating the war is illegal) and PHIL SHINER, Public Interest Lawyers (organisers of the people's inquiry into the legality of the war)

Wednesday 19th November 7pm

Conway Hall, Red Lion Square, London WC1 (tube: Holborn)
Atrial

Yarl's Wood Immigration Detention Centre in Bedfordshire symbolised New Labour's determination to be tough on asylum seekers. It was Europe's largest immigration detention centre. The Centre opened in November 2001 to 384 asylum seekers and had the capacity to detent 1,500. It was equipped with multi-faith prayer rooms, 10 classroom computers, books in several languages and a gymnasium, but no sprinklers.

On 14th February, 2002, half the detention centre was reduced to rubble. The £100 million centre was set ablaze by rioters. Group 40, who had operated control of the Centre, announced that they were using Bedfordshire Police for 97 million pounds under the Riot (Damages) Act 1886.

The black system was crucial to the government's policy of speeding up failed applications for asylum in the UK. The Home Office, at a cost of £2,560,000, a month and Yarl's Wood was designated for such asylum seekers. However, at the time of the fire, only 46 detainees had notification of their removal dates. Many had been detained for months.

The one million pound trial of detainees Henry Monodou, Nasem Moustafa, Lucky Jacobs, Thomas Kala, Aga Kazeem, Abdul Kayode, Kholjan Gaba, George Tuka and Bihar Limani resembled two convictions for violent disorder and one for affray. No one was convicted of any of the defendants had the charges against them dismissed before or at half-time. This includes Nasem Moustafa who pleaded guilty to affray. He received a three month sentence of imprisonment for throwing a plastic bottle at the police lines, but had already been remanded in custody for 16 months.

The trial judge, HHJ Roger Sanders, was not impressed with Group 4. He observed that there had been a "wholesale breach of the codes of conduct... They took it upon themselves to identify troublemakers on the night in ways which are in total breach of the rules... It's hard to justify the course of conduct".

Group 4 in their wisdom had taken matters into their own hands. The issue at the trial was identification. On the night of the fire, detainees were let into the sports hall at the B wing. While in the sports hall, a number of Group 4 officers openly identified potential suspects of the disorder, giving rise to contamination of identification evidence. These detainees were immediately taken to the segregation wing. The officers later became themselves in the trial on the issue of identification. The Shift Manager responsible for receiving information from Group 4 staff that the potential witnesses could not produce any notes of first descriptions given to him on the night. The only immediate record of alleged perpetrators came from an Inspector who had made a set of notes, written in a hurry, and which had been relayed to her by the Shift Manager.

The opportunities for contamination of ID evidence continued for several more days. Immediately after the disorder, Group 4 hired a private company to conduct group counselling sessions, which inevitably means that potential witnesses were placed together in the same sessions. Staff were also given access to management of photographs of detainees and similar photographs were shown to detainees. Bedfordshire Police were informed of this and they immediately advised Group 4 to cease investigation. To make matters worse, a local newspaper had photographed detainees who were charged with arson and violent disorder outside Bedfordshire Magistrates. The article and the corresponding photographs were on display in the staff room at Yarl's Wood for at least three weeks.

Relations between Group 4 and Bedfordshire Police quickly deteriorated during the course of the investigation. Bedfordshire Police had to threaten Group 4 with a court order to obtain disclosure of Detention Custody Officers (DCO) notebooks. All DCOs were issued with notebooks where they were expected to record events while on duty. A significant number had made a detailed record of the events of 14th February 2002. B later materialised that these notebooks were essential for cross-examination, particularly in the case of Thomas Kala.

Furthermore, the manager for the Yarl's Wood Detention Centre had issued a notice to all members of staff at the Centre stating that they should not copy or distribute the information to the police. The staff were advised that they were not required to sign their statements to the police without a copy being provided to them. They were further advised that they could discuss their statements with Group 4 management at the Centre. A legal representative for Group 4 was present during interviews between the police and Group 4 staff. The legal representative was there to represent the interests of Group 4. Bedfordshire Police interpreted the above as an interference with their investigation and reported Naimo Rose, solicitors for Group 4, to the Law Society.

One month before the trial at Harrow Crown Court, Group 4 began conducting witness training sessions for potential witnesses. Bond Solon were hired for this purpose. A training package entitled 'Batting Immigration Detention Centre for Asylum Seekers'. The Crown Prosecution Service was concerned that this, the absence of the witness training programme went beyond usual skills and advice of Group 4, was not related to the training. Although, Bond Solon were later described by leading counsel for the Crown as a "thoroughly disreputable organisation" and the training as "wholly inapposite and improper in the context of a criminal trial". One of the witnesses received at least six hours of training – he should ask for his money back as the trial judge described his evidence as "simply awful".

The deportation of potential defence witnesses was a failure of both Bedfordshire Police and the Home Office. Defendants such as Andy Karrade and Lucky Jacobs had named in the interview fellow detainees who could corroborate their whereabouts at the time of the disorder. It was too late – some of these witnesses were deported before the police could make inquiries. Another defendant, Thomas Kala, was unable to name potential witnesses and needed access to photographs. This should not have prevented a balanced investigation as detainees were photographed on the night of the fire. Instead, Mr Kala was given access to photographs several months after the incident. He should have been able to have his defence to discover that four out of the 23 detainees had been מקים.

Some of the defence that the papers had accused of escaping convictions were also responsible for assisting Group 4 staff in escaping the fire. Lucky Jacobs and George Tuka led a Detention Custody Officer to safety. He was accompanied by another defendant, Adrian Kasimati, whom the officer described as a "good man". Mark Curtis, a Detention Custody Officer who had suffered a terrifying ordeal while being trapped in a window was later confirmed by Thomas Kala and Lucky Jacobs. Bihar Limani, who was convicted of violent disorder, helped lead fellow detainees to safety.

The prosecution cynically described these efforts as "acts of mercy". Other detainees such as Fais, a striking middle-aged Jamaican, ensured the safety of Group 4 officers caught in a harrowing siege. He was deported before the trial.

The Daily Mail found the not guilty verdicts for arson hard to swallow. It described them as backfiring on Group 4. The Daily Mail noted that Immigration Officials immediately denied the reports and that the publications were not "smashing hit fritters" and was "boosting a burning truth".

"The Daily Mail found the not guilty verdicts for arson hard to swallow. It described them as "escaping charges of burning down". The Daily Mail found the not guilty verdicts for arson hard to swallow. It described them as "escaping charges of burning down". The trial judge: 'it's hard to justify the course of conduct [of Group 4]'.

Rekha Kodikara asks if cosmetic fitting of sprinklers is enough to cover up incompetence

The trial judge said: 'it's hard to justify the course of conduct [of Group 4]'
**International condemnation of Colombian president's outburst**

Organisations including the UN, the European Union and the whole host of international and Colombian human rights bodies have severely criticised President Alvaro Uribe Velez for his recent attacks on civil society groups.

Alfredo Castro, ANNCOL, reported:

"Following his outburst last week in which he described human rights groups and other NGOs as "terrorists" and "cowards" president Alvaro Uribe Velez of Colombia has been condemned by the international community for his attacks on groups in the protection of human rights and for undermining the peace process."

In a speech in which he made the remarks took place as eighty well respected Colombian organisations issued a report criticising various elements of President's national security policy, Uribe refused to name specific groups but claimed that those who were against him represented terrorist interests. Such accusations put the groups involved in grave danger of attack from right wing paramilitaries who see opponents of Uribe as guerrilla supporters.

While the United Nations said that the groups that Uribe attacked were "indubitable representatives of the efforts of many Colombian citizens and of the defence of human rights" and the European Union said that they were "personal attacks" by the possible "tragic consequences" of his remarks, perhaps the harshest criticism came from the United States.

"Mr. Uribe's strident attack has placed lives of all Colombian human rights defenders at risk. The Colombian government seems unable to comprehend that dissent is essential to democracy. The president's statements will only deepen international concerns about his commitment to human rights. No one should expect Colombian democracy to emerge strengthened from Mr. Uribe's tirade in office," said Kimberly Stinton, the Deputy Director of the Washington Office on Latin America.

Phil Rubenstein, Amnesty International's Director of the South American Research, said: "Uribe demonstrated in his outburst that he has no respect for the rule of law and for human rights in Colombia and that he is responsible for the crimes he has ordered."

In Colombia, to be accused by someone in power of being a guerilla fellow-traveller is tantamount to receiving a death sentence. The context of Mr. Uribe's contemptuous remarks is particularly disturbing given the documents that continue to exist between some leaders of the Colombian armed forces and paramilitary groups, who often target human rights defenders. Human rights defenders are already under threat in many areas of the Colombian national territory. The situation is grave and is the result of the President's policy of "counterinsurgency" and the offensive launched against the left.
The Israeli government is building a wall in the West Bank. Its construction has raised strong and conflicting emotions within Israel, the occupied Palestinian territories and internationally.

Paul Troop examines its legality under the Geneva Convention

Within Israel, the vast majority of Jewish Israelis support the building of a wall separating Israel and the Palestinians. In the July 2003 Peace Index Survey, 80% said that they were very or fairly supportive of the idea. This is not to say that Israelis are in agreement as to what the wall is being built for. In this regard views range diversely: parts of the Israeli left want the wall built along the Green Line that marks the boundary between Israel and land in the West Bank occupied by Israel since 1967, whereas Israeli settlers in the West Bank generally want the wall to be built as far into occupied land as possible.

No doubt the desire for a wall is as a result of three years of the Palestinian Intifada, the failure of the peace process and the threat generated by Palestinians militant activity against civilians by way of suicide bombings. It may also have been because of the apparent success of a similar wall built around Gaza in foiling suicide bombings in Israel.

Within the UK, at least initially, there also seemed to be support for the building of a wall. Among some sections this may have been because of a desire to delineate the boundaries of a future Palestinian state along the Green Line. This wish was shared by sections of the Israeli left wing and apparently a reason for the initial opposition to the wall by the current Israeli Prime Minister Ariel Sharon. Perhaps also people in this country considered both sides to be equally blameable and saw the only solution as being to support them.

The folk wisdom quoted in the 1915 Robert Frost poem "Mending Wall": "Good fences make good neighbours" is often quoted. However, like the wall, the poem is not as straight forward as it sounds. The character in Frost's poem in fact questions why a wall is necessary: "Before I built a wall I'd ask to know/ What I was walling in or walling out, / And to whom I was like to give offense.

What Will the Wall Amount to?

Throughout this article, the word "wall" is used. The Israeli Government does not use this term and prefer to refer to the wall as the "separation barrier," "concrete fence," and "apartheid wall" depending on the point of view of the user. Many official Israeli Government words and phrases have unofficial counterparts. Examples include: "Israel Defense Forces" / "Israeli Occupation Forces"; "Judea and Samaria" / "West Bank"; "Targeted Prevention" / "Assassination".

I have used the term "wall" as I consider it to be the most accurate description of the structure currently being built. Although not consistent at present, there are clear indications of what the final form of the structure will be. It is likely to be a concrete structure with a maximum height of eight metres. There will also be electrified fencing, trellis up to four metres deep, a path trace, a two lane road for patrol vehicles, electronic sensors, thermal imaging and video cameras, fortified guard towers and razor wire. There are likely to be "no-go" areas of various widths either side of the structure, possibly up to several hundred metres. This does not reflect the normal use of the word "fence" and as I shall explain in this article, the effect of the wall will not be to "separate" Israelis and Palestinians.

Legality under International Law

It has been contended that the building of the wall in this way is contrary to International Law. Both the recent UN General Assembly Resolution A/RES/58/1 on the wall and the UN Security Council draft resolution S/2003/980 (voted by the USA) state that the wall is "contrary to relevant provisions of international law," though they do not state which ones.

The Israeli government argues that the construction of the wall in the West Bank is consistent with its obligations under international law. It claims that the wall is necessary to prevent terrorism and to enforce its borders. However, the wall has been widely condemned as a violation of international law.

The Fourth Geneva Convention also provides that appropriation of property can amount to a "grave breach" and therefore a war crime: "Article 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, committed against persons or property protected by the present Convention..." (The Hague Regulations states that "Article 23. In addition to the prohibitions provided by special Conventions, it is especially forbidden..."

However, Article 46 of the same Hague Regulations states that private property must be respected and cannot be confiscated and Article 55 states that an occupier is regarded only as an administrator and user of real property and agricultural land in the occupied territory and therefore must safeguard such properties.

The Wall is a barrier to the Israeli settlement programme. Travelling through the West Bank, settler settlements are as common as seeing Palestinian towns. In contrast to Palestinian towns that have grown ramshackle and��'ty in the valleys, settlements are located on the tops of hills, regular white boxes of houses with red tiled roofs arranged in rows and surrounded by massive security. Though the distribution of settled areas is not uniform, it is clear that the majority of settlements are in the West Bank.

Other commentators have pointed out various breaches of international instruments that Israel is breaching including of the wall. B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories has submitted that the wall is an infringement of the right to freedom of movement, the right to work and to an adequate standard of living and the right to property. Additionally, the Oslo Peace Accord signed in 1995 forbids a party from changing the status of the West Bank under the agreement.

in "separation" possible?

You can be forgiven for thinking that separating Israelis and Palestinians would be easy. The West Bank lies to the east of Israel. The River Jordan and the Dead Sea form the eastern border of the West Bank with Jordan. The Border of the West Bank with Israel runs for about 350 kilometres in a rough curve that runs near Haifa in the North, Tel Aviv to the West and the Negev desert to the South. For a variety of reasons, attempting to build a divid- ing wall would not be easy. The wall in Robert Frost's poem divides an apple orchard from pine trees. The populations of the West Bank and Israel are not so neatly divided.

The first obstacle is the Israeli settlements. Travelling through the West Bank, settler settlements are as common as seeing Palestinian towns. In contrast to Palestinian towns that have grown ramshackle and��'ty in the valleys, settlements are located on the tops of hills, regular white boxes of houses with red tiled roofs arranged in rows and surrounded by massive security. Though the distribution of settled areas is not uniform, it is clear that the majority of settlements are in the West Bank.

The suicide bomber who killed 19 people in a Haifa restaurant on 4th October 2003 appeared to live in the North of the West Bank and through the completed sections of the wall with little difficulty. Security in the Government have also expressed doubts about the wall. In an interview published on 18th October 2003, Israel Defence Force Chief of Staff Moshe Ya'alon said: "I don't think the fence will solve all the problems. I would advise it, whatever it is, not to be too chauvinist. " Even Ariel Sharon, speaking of the wall, has been quoted as saying: "The idea is popular and intended to see political objectives." This is in line with massive differences between Israelis and Palestinians. The apparent success of the wall in Gaza has been as a result of the massive airport and water connections the Palestinian Authority has with the outside world.

When I lived in East Jerusalem, myself and my family occupied a flat belonging to a Palestinian from a Palestinian from Gaza who sold food cooked by his wife from the back of a battered van. However, when I moved into the flat, I was effectively sealed and had been unable to...
The United Nations

UN Security Council draft resolution

20030980, introduced by Syria, was subject to a vote on 14 October 2003.

The draft was not adopted by a vote of 11 for, 7 against and 1 abstention.

The United Nations Security Council, underscoring the gravity of the situation in the Occupied Territories, and reaffirming its previous resolutions on the question of the inalienable rights of the Palestinian people, and in particular the right to self-determination, freedom, and independence through the establishment of a viable, independent, and sovereign Palestinian State, having determined that Resolution 425 (1978), which established the non-self-governing Palestinian territory to be budge

Palestine has no influence on the route of the wall. Orders for requisition of land have been vacated, even if not delivered to the owner, and may be issued retroactively after the seizure has taken place. Appeals against the requisition of land are heard within a week to the Legal Advisor for the Military Commander for review by the Israeli Military Appeals Committee. It is believed that every one of the hundreds of appeals against requisition have been rejected; though in some cases the land has been requisitioned and not so far reduced. It is also possible to appeal further to the Israeli High Court, but all these have so far been unsuccessful. Compensation is offered, but it is considered to be below the actual value and Palestinian settlements are reluctant to accept it for fear of legitimising the appropriating of their land.

It is apparent that the wall will be temporary. The significant cost and extent of the construction alone have led some to question what the Israeli government is trying to achieve by building a wall.

The government points to the fact that the land in question has been requisitioned by military order only until 31st December 2005. However, nothing prevents the orders themselves from being renewed without limitation in the future. It would seem difficult for the Israeli Government to justify the enormous cost of the wall if it were to be discontinued in 2005 or shortly thereafter. The construction methods suggest the wall could stand for a long time.
Merrilyn Onisko from the US National Lawyers Guild reports on the recent experiences of their Middle East Legal Assistance Brigades

The first delegation of the U.S. NLG’s Legal Assistance Brigades to Israel and Palestine was a great success. The Middle East Subcommittee arranged for a group of Guild lawyers and law students (and recent graduates like me) to work with Israeli and Palestinian NGOs on such important issues as detainees, prisoners, and torture, as well as collaborating with the Free Marwan Barghouthi Campaign. I was there for nearly three weeks and from the moment I arrived, there was endless work for me to do.

On my first day, I met a lawyer woman from the Prisoners’ Club – a large network of law offices across the West Bank devoted solely to providing legal assistance to Palestinian who are either in prison or being held in administrative detention. Administrative detention, usually described as preventative detention or internment, entails the imprisonment of individuals, without charge or trial, initially for a period of six months but renewable indefinitely. This policy originated during the British Mandate of Palestine but has continued in various forms since 7th June 1967, when Israel began its illegal occupation of the West Bank and Gaza Strip.

Because of the widespread nature of administrative detention it is difficult to meet one Palestinian who has not been in jail or detention or has a family member incarcerated groups working on this issue are vital to the Palestinian society.

Along with the Prisoner’s Club, there are eleven other groups in Palestine devoted solely to this issue, including the Mandals Institute, Addameer, and others in Israel including the Public Committee Against Torture in Israel (CATI). The Guild Brigades worked with many of these groups on a daily basis on whatever issues they needed help with at the time. For example, Michael Shams, a lawyer student from California is currently assisting Addameer attorneys in administrative detention cases. I worked at Mandals Institute and updated their report on Administrative Detention for their website. The final section on International Law required updating since their previous report in 1998. One of the most important parts of the update is a legal strategy that came out of this Guild project: the idea of claiming POW status for Palestinian prisoners and detainees. Audrey Bomse, a Guild member who has been working in East Jerusalem for the past two years, has written an extensive article on the legality and legitimacy of Palestinian resistance to the Israeli occupation, and argues convincingly for a movement within the Palestinian community to claim POW status upon arrest. This status would allow Palestinian prisoners and detainees considerably more rights than they are now allowed (which is virtually nil), and also serve to legitimise the claim of Palestinian self-determination via armed struggle to the international community.

We were also able to attend one of the community outreach events hosted by Addameer at Dheisheh refugee camp in Bethlehem. Although it was conducted in Arabic, we were able to pick up a definite message from the community – that they feel angry and helpless in the face of their sons and daughters being victims of mass arbitrary arrests without any form of due process and no real recourse to challenge it. The good news is that these groups are beginning to make good progress educating the community about their rights and what they should and should not do if they are arrested. (At present, 95% of criminal convictions are based on confessions.) These efforts are especially hopeful considering a brand new procedure agreed to by the Israeli State Attorney’s Office – in the course of litigation challenging the human rights violations of detainees – to distribute to all detainees under interrogation, a document (written in Arabic) detailing their rights. This includes the right not to incriminate oneself.

Finally, we developed a strong relationship with the Campaign to Free Marwan Barghouthi. The Guild, along with other groups from around the world, are working together to promote awareness of the campaign for Marwan and all political prisoners. I hope to take this campaign back to the States and with the help of the Guild community, apply some real pressure on the Israeli government to end the illegal and immoral policy of detaining and imprisoning political prisoners – especially those abducted from the Occupied Territories in clear violation of the Oslo Accords. The Legal Assistance Brigades has been an extremely rewarding experience, and I think we have made some encouraging contacts in Palestine and Israel that will be long lasting and fruitful for all of us. The Guild is affiliated with the International Committee of the Red Cross which has agreed to co-sponsor the work in Palestine. We are hoping to expand participation in the Legal Assistance Brigades to lawyers and law students from other countries. Anyone interested in getting involved with the Brigades in Palestine, or doing legal research and writing from home, please contact me at merrilyonisko@yahoo.com. Join us in our campaign to ‘Bring the Infral into the Courtroom.’
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