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Israel's Insecurity Disorders & Check Points



Edward Said *Presente!*

Haiti's Murderous Army Reborn

"Gene Bombs"

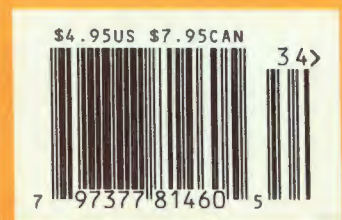
Guantanamo Detainees

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IBM and Apartheid

Racism, Sexism, Militarism and John Kerry

World Social Forum, India



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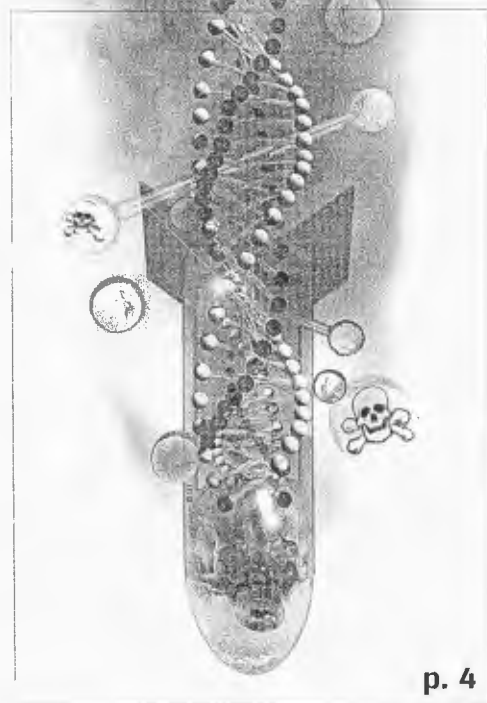
On the cover:

Jayyous, West Bank. Nov. 2003: Israeli soldiers verify that a Palestinian farmer and his donkey are not carrying any explosives, weapon or banned materials before allowing the farmer to cross the fence. Farmers have to cross over from their village of Jayyous east of the fence (the Wall) to their olive groves on the western side of the fence (the Wall) since the fence separates their village from the agricultural areas.

photo by Eyal Dor-Ofer



Baghdad, Iraq
Women's protest against
war on Iraq and the
occupation of Palestine.



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illustration by Apollo GT/CAQ

CovertAction Quarterly

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Edward Said, an Irreplaceable Treasure

Hussein Ibish


With the passing of Edward Said, the United States, the Arab world and the human family have lost a rare public intellectual who was both a groundbreaking scholar and a champion of decency and humanity. Said was first and foremost a teacher, who worked not only in the classroom and campus, but who also taught entire peoples on several continents and in several languages how to think about each other and themselves. He was University Professor of English and Comparative Literature at Columbia University, past President of the Modern Language Association and one of the most influential literary critics of his generation.

Certainly, no one did more than Said to teach the Western public, especially in the United States, about the reality and experience of the Palestinians. He theorized the Palestinian predicament in "The Question of Palestine," humanized it in "After the Last Sky," and personalized it in his moving memoir "Out of Place." In the 1970s and '80s, when the word "Palestinian" conjured no images in the West other than hooded thugs, Edward Said — brilliant, urbane, polished and eloquent — came forward as living proof that the stereotype of the Palestinian terrorist was as crude a prejudice as any other. His seminal work, "Orientalism," is widely credited with inaugurating the Postcolonial Studies movement in the humanities. His collections of essays, "The World, the Text, the Critic," and "Reflections on Exile" are among the most influential in contemporary literary scholarship.

In his columns in the largest Arabic language daily *Al-Hayat* and in the Egyptian newspaper *Al-Ahram*, as well as in countless lectures and speeches, Said devoted himself to explaining aspects of Western culture, especially the American political sensibility, to Arab audiences. Although he was thoroughly immersed in both Western and Arab culture, Said often remarked that he felt completely at home in neither. From this de-centered perspective, he attempted to serve as a bridge between increasingly alienated Arab and American societies.

His consistent bravery, especially in defending the Palestinian cause at a time

1935 – 2003



Edward Said Speaks on Human Rights, Divestment.
February 19, 2003 — Edward Said, a leading Palestinian intellectual and activist, spoke at UC Berkeley on the U.S., the Islamic World and the Question of Palestine. During his talk, he stated "divestment campaigns reminiscent of the anti-apartheid movement have become an important item on American campuses. Berkeley has a place of honor in this effort."

www.ucdivest.org

and place of maximum unpopularity, won Said many bitter and vitriolic opponents. Some cast him as a "professor of terror," or denied that he was a Palestinian at all, while others bombed his office at Columbia University.

Through it all, Said remained committed to reconciliation between Israelis and Palestinians based on mutual respect and recognition. He was one of the first prominent Palestinians to embrace the notion of a two-state solution, arguing in the 1970s for the recognition of Israel. More recently, he came to believe that the only viable solution was a single state for both Israelis and Palestinians that could transform rivals into partners and allow each to express their national identity without excluding or oppressing the other.

His critics often accused him, quite falsely, of being "anti-American," because of his staunch opposition to many aspects of U.S. foreign policy. Such critics fail to

acknowledge not only that such dissent is in the highest tradition of American civil and intellectual life, but that Said was equally merciless in his judgments of Arab governments.

His scathing attacks on leaders such as Yasser Arafat, George W. Bush and Ariel Sharon, to name only three but not entirely at random, were informed by an intellectual ethic that demanded speaking truth to power and telling people what they needed to hear, whether they liked it or not. Perhaps more than any other contemporary scholar, Said presented his students, colleagues and the public with a powerful understanding of mission and purpose of the engaged intellectual.

Perhaps Edward Said's most important achievement as a public scholar was his championing of secularism as a critical, political and philosophical orientation. He taught several generations of literary critics a form of "secular criticism," by which he meant, in effect, cultivating the ability to

read texts with a full appreciation of how other cultural and historical narratives inform, inflect and intersect with one's own. He called this deeply influential critical methodology reading "contrapuntally" or "against the grain." His 1993 lectures, published as "Representations of the Intellectual," explained in detail his vision of the public

and foe alike.

Said, a multi-talented renaissance man, was also Music Editor for the *Nation* magazine in the 1990s, and an accomplished pianist. He was a champion of political secularism, as opposed to religious or ethnic chauvinism, which he rightly viewed as a *sine qua non* for coexistence with respect

mainly from Giambattista Vico — the notion that human history is shaped by a genealogy of human choices. This version of secular history rejects divine intervention or teleology, the primacy of economic forces whether the "hidden hand" of the market or the inevitable victory of the proletariat, biology as destiny, and any other form of determinism, in favor of the self-conscious agency of collective and individual human actors.

As religious fanaticism deepens around the globe and turns mass-murderous, globalization increasingly subjects every villager on the planet to the whims of transnational and transhistorical economic forces, and biotechnology and genetic engineering prepares to alter our very conception of what constitutes the human. Edward Said's empowering but generous secular vision seems all the more precious a contribution. It is, perhaps, for explicating the genuinely redemptive and liberatory spirit of secularism that we owe the greatest debt of thanks to the late, great teacher. He is an irreplaceable treasure, and we shall miss him beyond measure.



Hussein Ibish is Communications Director for the American-Arab Anti-Discrimination Committee, Washington, D.C.

HIS CRITICS OFTEN ACCUSED HIM, QUITE FALSELY, OF BEING "ANTI-AMERICAN," BECAUSE OF HIS STAUNCH OPPOSITION TO MANY ASPECTS OF U.S. FOREIGN POLICY. SUCH CRITICS FAIL TO ACKNOWLEDGE NOT ONLY THAT SUCH DISSENT IS IN THE HIGHEST TRADITION OF AMERICAN CIVIL AND INTELLECTUAL LIFE, BUT THAT SAID WAS EQUALLY MERCILESS IN HIS JUDGMENTS OF ARAB GOVERNMENTS.

intellectual as a fiercely independent spirit who confronted both the smugly powerful and the complacent public with difficult truths. Edward Said's life-work was an exercise in this ethos, forever challenging friend

and equality in a heterogeneous world made up of heterogeneous societies.

Underlining the literary and political secularism Said promoted was a philosophical understanding of secularism adopted

9/11 COVER-UP CONTINUES

Why Richard Clarke's "apology" is misleading. He is not talking about and the National Commission on 9/11 is not looking at the following:

- al-Qaeda — Saudi — CIA — Reagan administration collaboration in Afghanistan
- al-Qaeda — Saudi — CIA — Bush I administration collaboration in Afghanistan
- al-Qaeda — CIA — Clinton administration collaborations in Albania, Algeria, Bosnia, Chechnya, Iraq, Libya, Sudan.

Haiti's Murderous Army Reborn

Jean Charles Moise

March 20, 2004

I am the mayor of Milo, a district of about 50,000 people near Cap-Haitien. When I was elected nine years ago, at the age of 28, I was the youngest to serve in that office in Haiti's modern history. I've traveled in the U.S. on speaking tours, telling Americans about how we were building democracy in Haiti under the Aristide government. In late February, my district came under attack by anti-Aristide forces and I fled for my life — I am now hiding in the woods. The old Haitian army is back. Those they don't kill, they lock up in containers, because they burned down the jails. The kind of containers you put on ships.

The situation is different here from what I hear about in Port-au-Prince, where you have the multinational force of American, Canadian, Chilean soldiers. In Cap-Haitien you have the former Haitian military. There are no police anymore. They come into your home. They take you, they beat you up, they kill you. They burn down homes. They do anything they want because they are the only law in town.

The journalists are in Port-au-Prince, but here in the north no one is reporting what's going on, that the former Haitian military is killing people. They are killing about 50 people a day in Cap-Haitien. It's happening in the central plateau, in the Artibone region.

Can you imagine that on Monday at 2 p.m., the former military declared a curfew that would start at 4 p.m.? The peasants, many of them are poor and do not have a radio, so how could they hear of this curfew? So what happened at 4 p.m.? The former military took to the streets and anyone they saw on the streets they shot.

We have people like myself, mayors and other members of the municipal government who have had to flee and are now sleeping in the woods, and have gone to the mountains. We have church members and priests who have been beaten and whose cars have been destroyed. These people are also in hiding. We could never have imagined that we would be going back to this situation that existed before. It is intolerable.

Since this whole thing started, I haven't seen my wife and my children. I have been in hiding. This cannot continue. This is a



U.S. Marines from Camp Lejeune occupy Port-au-Prince, Haiti, March 15, 2004.

AP Photos

catastrophe for all the people of Haiti.

One has to ask, why is all of this happening? Is this because we used to have only 10 public high schools but now we have over 150? Is it because we made a democracy where people could go in the streets, protest, and be free to say whatever they want? Is it because black people in the country now, people who were poor and always kept out of the political life of the country, they have come out and have been participating in democracy? Is that why they have unleashed this terror on us? Is that what we are paying for?

We ask these questions: Is it because the United States blocked international assistance to Haiti to make people rise up against the president, but they never did? Is it because people here are continuing to support their president? Is that why we are getting all this repression? We have to ask these questions. We wonder whether it is because the army that used to exist before was disbanded by President Aristide. Instead of defending the people, that army used to carry out a war against us. Is it because that army is no longer there that someone has rearmed it and brought it back to Haiti with very powerful weapons?

Now the old army is doing what they used to do before, except with more powerful weapons and with helicopters. They are drowning people in the sea. The press is reporting the looting that is taking place in Port-au-Prince but they are not reporting about schools that have been destroyed. They are not reporting on the burning of the airport in Cap-Haitien and all the other things that were built under the government of President Aristide for the Haitian people.

I cannot understand how a group of disbanded military has access to such sophisticated equipment and heavy weaponry. They have two helicopters and they have two airplanes. They use the helicopters to transport their troops and they use them at night with spotlights to look for people in hiding. They are in the air and they have their troops on the ground.

These are the questions we ask ourselves as we hide from those with the guns.



Mayor Jean Charles Moise spoke with Pacific News Service contributors Lyn Duff and Dennis Bernstein via cell phone. The interview originally aired on Pacifica Radio's Flashpoints show (KPFA FM 94.1 in Berkeley, Calif.). www.flashpoints.net/.

Race, Ethnicity and the “Gene Bombs”

John H. Moore¹

As recently as June 2003, rumors persisted among biological researchers that geneticists would soon be “lining up at the doors” of the Army’s Medical Research Institute for Infectious Diseases at Fort Detrick, Maryland, to be matched with genomic and pharmaceutical companies that will receive special new funding to design something called “gene bombs.” These weapons, which represent the Holy Grail of biological warfare research, could theoretically be targeted against racial or ethnic groups whose behavior seems inimical to “American interests,” especially as these are defined by the Bush administration. At the time the rumors were circulating, such plans seemed plausible since the Israelis had just announced that they were developing an “Arab Bomb” which would facilitate an “ethnic cleansing” of the Middle East, since the weapons would affect people only of Arab ancestry.² Whether or not the rumors about massive new funding were true, implementation of new secrecy and security rules under the Homeland Security Act may have squelched any specific Requests for Proposals (RFPs) from the Department of Defense (DoD).³ Biologist Ron Hurlbert believes that the U.S. government may have decided to rely on public research funding rather than on secret research funded from military budgets.⁴

Research published in the journal *Science* in December 2002 considerably encouraged the belief that human “races” or ethnic groups might have special genetically based vulnerabilities which could be exploited by U.S. biological weapons. In separate articles, Noah Rosenberg and Mary-Claire King reported that self-described “race” or “ethnicity,” as reported in censuses or other questionnaires, does in fact correlate with genetic variability as determined in the laboratory. This means that public records, and concordant gene sequencing in the laboratory, might be used to determine which of the world’s ethnic groups could be targeted by “gene bombs”

of various kinds.⁵

Although the idea of using weapons geared to genetic differences was presented to the U.S. military as early as 1970, the idea lay dormant until the Human Genome Project and the subsequent Human Genome Diversity Project (HGDP) made such plans appear to be technologically feasible.⁶ As a member of the Organizing Committee for the HGDP, I first heard about “gene bombs” in 1992, as we began planning protocols and collection schemes under grants from the National Science Foundation (NSF) and later, the MacArthur Foundation. When our plans were reported in the press, we began to receive mail and phone calls from people critical of the Project. Some were very useful, like the concerns about gene patenting and informed consent, and some absolutely crackpot, like the accusation that the HGDP was secretly building agricultural “zombies” who would work without complaint on tropical plantations. The “gene bomb” accusation was somewhere in between, alleging, as Carl Larson had done in his 1970 article, that each nationality or race had a genetic vulnerability which, if known, could be exploited by United States weaponry.⁷ In the 1990s the United States was trying to undermine Nicaragua and Cuba, and some naïve political radicals, on the Right and the Left, assumed that there could be a “Nicaraguan Vulnerability Gene,” carried only by Nicaraguan nationals, which could be found if we took blood samples from Nicaraguans and other people and compared them. U.S. researchers could then locate the gene and then find or design some biological weapon, some disease, which would kill or disable the carriers, leaving non-Nicaraguans untouched.

Concerning Cuba, it was argued that the Cuban economy could be ruined by spraying the population with some mild infectious disease, specifically tailored for Cubans, during the sugar harvest. As Chair

of the North American Committee for the HGDP in the mid-nineties, I occasionally received odd phone calls about such matters. What we were actually doing in this period was developing protocols and procedures, and planning for the creation of a global database that would make genetic samples available without charge to all genetics researchers, especially those engaged in medical research.⁸ In retrospect, it seems that we were the naïve ones, believing that we could accomplish such an objective in the context of a rush by pharmaceutical companies and the U.S. government to patent genes, and the generally anti-science atmosphere on the Left. By 1999 the international HGDP committee was split over several scientific and ethical issues, especially patenting and informed consent. Given the clear, firm and highly public promises all the organizers had made concerning patenting and consent, and the failure of the international HGDP to keep these promises, I was one of several scientists who withdrew from the international organization that year.

This was the time during which the idea of race had been thoroughly criticized and discarded, at least among the majority of human biologists, and with it the idea that a biological attack could be racially specific.⁹ If there were no races, how could you attack them? Kenneth Kidd, a prominent geneticist at Yale and a member of the HGDP Organizing Committee, had announced that “99.95 per cent of all human genes are found in all human populations.” So the idea of a “Cuban gene” or a “Nicaraguan gene” that could be used for military purposes seemed ridiculous, and was dismissed by members of the HGDP, some of whom had pre-existing anti-war sentiments anyway. But old ideas die hard, and sometimes yesterday’s impossibilities become today’s imminent problems. And once again, as with nuclear weapons and Ronald Reagan’s plans for “Star Wars,” we

are forced to consider battlefield scenarios which are only now emerging into reality from the dreams and fantasies of the writers of science fiction.

The Original Gene Bombs

While the Spanish conquistadors attributed their military successes in the Americas to superior arms, religious piety and their enormous courage, the Jesuit historian Joseph Acosta had a different opinion. According to him, it was epidemic disease which had brought the Aztecs and Incas to their knees, and as the French and their associated Jesuits invaded North America, he recommended that the priests, explorers and traders go first, and once the Native people had been devastated by the diseases that the French carried, the army and Jesuits would have an easier time "establishing a moral order."¹⁰ As it turned out, it was the British rather than the French who distributed the first "gene bombs" in North America, in the form of smallpox — and measles — infected blankets which devastated Native American populations, most notably the Kaws and the Mandans.¹¹ The questions remain, however, whether the Native peoples died because 1) they lacked genetic immunity, 2) their immune systems had never experienced these particular diseases, 3) the intensity of the epidemics prevented people from taking care of one another, or some combination of these three factors. Modern researchers interested in taming infectious diseases for military purposes still must consider these three explanations for how diseases kill their victims.

Biological weapons — bacteria, viruses and their products — are theoretically preferable to chemical weapons because they can be "targeted" so that they only affect people of a certain biological configuration. If the enemy has that configuration and your own troops do not, then there is no such thing as "friendly fire," killing your own troops by mistake. And especially, there is no such thing as "blowback," the phenomenon which has discouraged the use of chemical weapons ever since World War I. If the wind changes and blows chlorine or phosgene back on your own troops, they will die. But if an errant wind blows

your own biological weapons back on your friends and allies, they will be unharmed if they have been genetically selected or immunized. The disadvantage of biological weapons, however, from a military standpoint, is that they do not act immediately or thoroughly. Only a portion of an exposed population will actually contract the disease, reflecting the "attack rate" of that particular disease. Since World War II considerable research has gone into the question of how to make the attack rate higher, for example by atomizing anthrax spores so they do not cluster, or waiting for the right weather, since some agents are more viable in wet weather than dry weather, and vice versa.

Biological agents are different among themselves in their individual characteristics and behavior. Anthrax, for example, is killed by sunlight, so an anthrax attack must be made at night. Smallpox is contagious from person to person and will continue in an affected population long after the initial attack, but anthrax is not contagious. Each

percent for the worst kind, inhalational anthrax, the most likely result of an airborne attack.¹²

Traditional military people still argue that conventional weapons — bullets and bombs — are quicker, easier and less costly to use than biological weapons, albeit with "collateral damage," which is to say dead civilians, crushed temples and schools, and the destruction of priceless national treasures, as in Iraq. Think about the 1945 Dresden firestorm, and the bombing of the ancient Monte Cassino monastery in Italy the same year. By contrast, biological warfare raises the possibility that an invading army could occupy a city where buildings and industries are left mostly intact, although the streets are filled with corpses. Conventional weapons are generally much more likely than biological weapons to create civilian "collateral damage" because they cannot be "aimed" at human targets so precisely. Concerning the willingness of the United States to initiate destructive warfare without regard to civilian casualties and col-

lateral damage, it is well to note that the perpetrators of the attacks on Baghdad, Dresden and Monte Cassino, as well as Hiroshima and Nagasaki, were not some wild, reeking savages from afar, but uniformed and well-scrubbed military planners of the United States of America.

Biological weapons dubbed "humane" by United States researchers are those which do not necessarily kill all their victims, but simply make them sick long enough for the other side to win the battle. These include psittacosis or "parrot fever," which kills only 20 percent of its victims, brucellosis or "undulant fever," which kills 15 percent, and tularemia or "rabbit fever," which kills 10 percent.¹³

CONCERNING THE WILLINGNESS OF THE UNITED STATES TO INITIATE DESTRUCTIVE WARFARE WITHOUT REGARD TO CIVILIAN CASUALTIES AND COLLATERAL DAMAGE, IT IS WELL TO NOTE THAT THE PERPETRATORS OF THE ATTACKS ON BAGHDAD, DRESDEN AND MONTE CASSINO, AS WELL AS HIROSHIMA AND NAGASAKI, WERE NOT SOME WILD, REEKING SAVAGES FROM AFAR, BUT UNIFORMED AND WELL-SCRUBBED MILITARY PLANNERS OF THE UNITED STATES OF AMERICA.

disease used as a biological weapon is also characterized by a lag time or "incubation period" between the time of infection and the appearance of disabling symptoms, which may vary from a few days to a few weeks. For some kinds of smallpox, for example, the incubation period can be as long as 21 days, and after that death is nearly certain, with mortality rates of over 90 percent of those infected. The mortality rate for anthrax is also very high, over 75

The Basic Facts

Diseases that have been drafted for use as biological agents are usually found in, *i.e.*, they are "endemic" to, specific regions or climates of the world. Perhaps, like malaria, they require a particular animal "vector," in this case a mosquito, which must reproduce where there are swamps and standing water.¹⁴ Or perhaps the disease, like sleeping sickness (tsetse fever) in Africa or influenza in Asia, requires the presence of

particular domestic animals as a breeding reservoir for the virus or bacteria, in these cases, respectively cattle and pigs. Anthrax, before it attracted the attention of biological warriors, was a bacterial disease of goats and sheep, and of the humans who came in contact with them — shepherds, sheep shearers and leather-workers.

As humans in their long history developed genetic resistance to diseases, by accumulated beneficial mutations of their genes, these new protective alleles were likewise confined to particular geographical regions, of which the best-known example is the blood sickling trait as a resistance to malaria. People with sickled, crescent-shaped red blood cells tended to escape the attack of the malaria parasite. But there is a down side. People whose red cells are too misshapen experience circulatory problems or "sickle cell anemia" which can sicken or kill them. Only within the area where malaria is endemic do people with the sickling trait have a net advantage of survival over those without the trait.

Human beings regularly marry and mate across the artificial boundaries of "race" and ethnicity, despite their claims that they don't or they shouldn't. At the boundaries of ethnic groups, about fifteen percent of each generation marry a "foreigner."¹⁵ Consequently there is enormous "gene flow" in the world from village to village, province to province. Yugoslavia is a perfect example: Though Serbs and Croats claim to speak different languages, to be ethnically distinct and even "the opposite" of one another, the populations are genetically nearly the same. Comparative studies show that Serbs and Croats are simply different-shaped cultural cookies cut from the same genetic dough, and every generation of gene flow makes them even more alike.

Although alleles providing resistance to certain diseases are constantly moving across the landscape, sometimes they don't get very far. The sickling trait does not survive for long outside the areas where malaria is endemic because the trait is a handicap, not an advantage, in other areas. After scores or hundreds of generations (a nonce in the evolutionary time scale) the trait can disappear. What remains is a mosaic of gene fre-

quencies across the globe, each tile representing a population which not only harbors the disease, but also the means to cope with it. And the stage is set for a new kind of gene bomb, as the U.S. military is just discovering.

A central and profound historical event needs to be noted here if we want to understand battlefield tactics which might be used with the new gene bombs...and that is the fact that all humans on earth originated in Africa, at least twice.¹⁶ The first dispersion from Africa was about 1.7 million years ago, resulting in a distribution of "primitive" humans, such as *Homo erectus*, known only from fossil evidence. The second diaspora was very recent in evolutionary time, only 200,000 years ago, as modern humans with big brains repopulated the earth. The significance of this repopulation is that all dispersed human populations — like many other animals who have also migrated between continents — are very similar genetically despite superficial differences in skin color and body type. Our species is homogeneous because it has

different from the rest of us.

The redoubtable Kenneth Kidd of Yale has dramatized the unique genetic status of African populations by showing that any large village in east Africa probably exhibits more genetic variability than the whole non-African world put together. And why is that? It is because the human species, like every other species, exhibits more variability in its homeland than in its branch populations. Before the last diaspora, Africa consisted of a patchwork of scores or perhaps hundreds of local populations, each with its own configuration of gene frequencies. Only a few of these populations, probably from the Horn of Africa — Ethiopia, Eritrea and Somalia — served to populate the rest of the world. The great bulk of genetic variation was left in Africa, where it still remains. And this is what has made African-American soldiers the new "secret weapon" of the Pentagon, for biological warfare, because they embody not only the original African variation, but also the augmentation provided by matings and marriages with Europeans, Asians and Native Americans over the last few centuries. Under the peculiar "one-drop rule" of official American racism, they are all "Black," legally and socially.¹⁸

THE GREAT BULK OF GENETIC VARIATION WAS LEFT IN AFRICA, WHERE IT STILL REMAINS. AND THIS IS WHAT HAS MADE AFRICAN-AMERICAN SOLDIERS THE NEW "SECRET WEAPON" OF THE PENTAGON, FOR BIOLOGICAL WARFARE, BECAUSE THEY EMBODY NOT ONLY THE ORIGINAL AFRICAN VARIATION, BUT ALSO THE AUGMENTATION PROVIDED BY MATINGS AND MARRIAGES WITH EUROPEANS, ASIANS AND NATIVE AMERICANS OVER THE LAST FEW CENTURIES.

Assessing the Gene Bomb

The first alarm about gene bombs from a "responsible" person was sounded by no less a scientist than Nobel-winner Joshua Lederberg, who has sat on a variety of government panels on biological warfare (BW), including the President's Scientific Advisory Council, and is an advocate of squelching BW altogether by treaties and international inspection. In an interview published in the *New York Times* on December 13, 1998, Lederberg told reporters that it was "theoretically possible" to target particular

populations whose body cells had surrounding membranes of known biological composition. These membranes are directly related to a person's genetic structure, and a disease must breach the membrane to infect the cell. A disease can then use material from inside the cell to reproduce itself. Although Lederberg was only saying that ethnic targeting was possible, certain

populations whose body cells had surrounding membranes of known biological composition. These membranes are directly related to a person's genetic structure, and a disease must breach the membrane to infect the cell. A disease can then use material from inside the cell to reproduce itself. Although Lederberg was only saying that ethnic targeting was possible, certain

journalists "interpreted" Lederberg's remarks as advocating genocidal warfare, which led him to quickly explain and elaborate his views to colleagues. So he added:

"The proposition would be that viruses could be tailor-made to exploit any cell surface receptor molecule you choose, and still retain their virulence. Since there is so much overlap in gene frequencies, an ethnic weaponer would have to settle for a lot less than 100% precision. And if you're relying on post-attack contagious spread, you are multiplying the risks of collateral diffusion and further adaptation [by mutation] of the pathogen. So that strikes me as sheer madness."¹⁹

In other words, yes, you might create a synthetic virus which was specific to a particular population with a particular cell membrane composition, possibly an "ethnic group" or "race." But if you used such a weapon, you might unleash mutations of that synthetic virus, genetic variations, which could have unpredicted rates of contagion among human populations, and unknown rates of mortality, like the fictional Andromeda Strain, which had the potential for exterminating the whole species. This was what Lederberg called "the monster in our backyard."²⁰

So Lederberg was the first public figure to emphasize that not only must we have to worry about natural agents used as weapons, but also about "virus zombies" created in the laboratory with a head from one virus, perhaps modified in the laboratory to penetrate a particular kind of cell membrane, and a tail from another virus, to kill the cell and reproduce the attacking virus. Such creatures are already under construction for benevolent roles like penetrating cancer-ridden cells to kill them and prevent their reproduction.²¹

Old and New Genetic Warfare

The basic idea of the old gene bombs was to identify a unique genetic characteristic of an enemy population, then find a natural pathogen somewhere on earth — a virus, bacterium, or biological product — which could exploit that vulnerability. At least two

things were wrong with that idea: 1) all populations seem to have the same genes and alleles, albeit in different frequencies, and 2) the number of pathogens occurring

of the number of shots. So the actual percent of adverse outcomes was six times the reported rate. The definition of "adverse outcome" has also been juggled to keep the number down. But there is no denying that the anthrax series is dangerous, much more so than smallpox or measles, especially to a civilian population which is not as healthy as a group of young, medically screened soldiers.²⁵

Battlefield Scenarios

An army facing the realities of the new genetic warfare, then, will consist of soldiers identified as having different immunities. Some will have a natural immunity to some viruses or bacteria to be used, and these soldiers can be identified by immunological or genetic screening if the proper technology is available. Others can have their immunity intensified by vaccination if they have the appropriate genetic substructure, and if they do not react "adversely" to the vaccination. It is at this point that African-Americans become "secret weapons." Because of their evolutionary history and because many of their ancestors come from the motherland of our species, they are more likely, as a population, to harbor the genetic basis both for natural immunity and the potential for successful immunization.²⁶ That is, if a researcher had a list of one hundred potential pathogens which might be used on the battlefield, a group of self-identified "African-American" soldiers would likely have resistance to more of them than a same-sized group of soldiers whose ancestry is mostly from some other continent. And so the 21 percent of the military that is African-American — about half a million people — will come to the forefront for biological combat.²⁷

If an army is on the defensive, all units should contain persons immune to all possible battlefield pathogens, since the army would not know what pathogens might be used against them, or where. But if the army intends to use pathogens offensively, the immunological configuration of the army should be different, more lethal and more ominous. For example, if the army had an entire regiment, or even a division consisting of people who are immune to anthrax, then the enemy army could be sprayed with anthrax spores without fear of "blowback" of the infecting agent. And in a few days,

SOME PEOPLE DIE OR BECOME PERMANENTLY DISABLED, A (IMMUNIZATION) RESULT LABELED "ADVERSE OUTCOMES" IN BW NEWSPEAK. SO FAR, THE U.S. GOVERNMENT HAS NOT BEEN CANDID IN DESCRIBING THE EXTENT OF ADVERSE OUTCOMES IN EITHER THE CIVILIAN POPULATION OR THE MILITARY, ESPECIALLY WITH ANTHRAX.

in nature is very limited; only about one hundred are on the Defense Department's short list.²² But Lederberg has pointed out that "biological weaponers" can increase the number of pathogens artificially, which increases the number of weapons available. But there is yet another technique which can be utilized by weaponers to give themselves more degrees of freedom in designing gene bombs and devising tactics for using them — immunization.

As has recently been illustrated in public discussions of plans to immunize soldiers and medical workers against smallpox and anthrax, especially, not everyone can be successfully inoculated.²³ Most people get their shots for a particular bacterium or virus and become immune but some cannot acquire immunity, no matter how often they repeat the inoculations. And some people die or become permanently disabled, a result labeled "adverse outcomes" in BW Newspeak. So far, the U.S. government has not been candid in describing the extent of adverse outcomes in either the civilian population or the military, especially with anthrax. In its report to the congressional committee investigating the refusal of some military personnel to submit to anthrax vaccinations, the government underreported the rate of adverse outcome by using a statistical trick. For example, if the number of deaths and disabilities was 30 soldiers out of a thousand, with each soldier receiving a series of six shots,²⁴ the rate of adverse outcomes was reported as 30/6,000 or 0.5 percent rather than 30/1,000 or 3 percent, if we count the number of persons instead



Penn State University

1992 conference of geneticists and anthropologists at Penn State University who first planned a world-wide collection of human genetic samples. This group evolved into the Human Genome Diversity Project. The author is the man with the white beard in the center of the third row. Kenneth Weiss, quoted in this article and organizer of the conference, is at the left of the top row.

the anthrax-immune soldiers could attack through the infected area, even without protective clothing or breathing devices.²⁸

An army organized by its ethnicity (and immune characteristics) would be odd but not unprecedented in military history.²⁹ In the Revolutionary War, the British infantry was Hessian, but the cavalry was English. In the days of Alexander the Great, the pattern was even more pronounced as he called on his "Cretan archers" and "Thessalian cavalry." Ironically, the U.S. Army, after years of striving for racial integration, might find itself segregated biologically, with some units predominantly African-American, and others perhaps Asian or Native American. It all depends on what the research shows about the genetic structures of soldiers with ancestors from different continents. The importance of the Rosenberg and King articles is that they show that genetic structure, and hence immunological potential, can in fact be predicted by self-declared ethnicity.³⁰

Even greater damage can be done to an enemy army, or a civilian population, by concocting a "pathogenic cocktail." Suppose, for example, that an army had at hand one pathogen, natural or artificial, which could kill or disable 60 percent of an enemy population, and another pathogen which could kill or disable 30 percent. Some people in the population would be affected by one, but not the other. But if these pathogens were used in concert, that is, dispersed at the same time, 60 percent of the population would be affected, plus 30 percent of the remaining people, a total of 72 percent. The more different pathogens used, the higher the casualties. The technical problem is how to "mix" the cocktail so that the pathogens themselves, or elements of the delivery system, do not interfere with one another.

A more devastating plan is to attack in "phases," beginning with a disabling chemical attack. Something like mustard gas (two percent mortality) or the new disabling

agent Adamcrite, might pin enemies in place so that they would be more vulnerable to biological attack. One can only imagine the battlefield, compounded beyond the carnage of field hospitals after a World War I chlorine attack; one would find soldiers in various stages of reaction to the disabling agent, some coughing and hacking, others throwing up incessantly, some turning blue-black and dying for lack of oxygen. Still others might be in the first stages of inhalational anthrax, with holes in their throats, their bodies bloated and their limbs covered with huge black and brown blisters, trying to breathe with what is left of their lungs, waiting and perhaps hoping for their turn to die. Everywhere there are doctors trying to disentangle the complex of diseases, and determine which symptoms are the results of which diseases, and how best to treat or comfort the afflicted people. This is the reality behind sanitary phrases like "pathogenic cocktail," or "attack in concert," which sound almost like themes for a party.



"Like an angry spider from another world, the biohazard device seems ready to devour the human species, race by race, nation by nation." - JHM

Many scientists believe that the research necessary to learn how to attack with "gene bombs" is either impossible or so expensive as to be not cost-effective. Neither of these considerations discourages those agencies, companies and scientists who lust after the billions of dollars which might be thrown at universities and private companies willing to make the effort. The best possible outcome, according to some expectant scientists, is that once the research is funded it will turn out that we can't make the weapons, but by-products of the research will help medical research in many different ways. One wonders if some scientists had the same hopes and dreams for the Manhattan Project. And one cannot help but remember Robert Oppenheimer's perhaps distraught and disappointed statement when he saw the first A-Bomb explode, "I am become Death, the destroyer of worlds."³¹

Kenneth Weiss, Evan Pugh Professor at Penn State University and one of the discouraged scientists who left the Human Genome Diversity Project, has thought about possible consequences of genetic warfare. His greatest fear is that it could be

made to work. His next greatest fear is that the United States will spend billions or trillions of dollars on useless research, money that could or should be spent elsewhere for public good since, as he points out, "we already have a very powerful military."

"Many things are possible in principle, and the safest policy for human sanity is to ban the research rather than say blithely that 'it can't happen.' If these tasks were easy or inexpensive to accomplish, legitimate gene therapy would be far more successful than it has been so far. In general, humans from around the world share too much variation for it to be easy or cost-effective to design weapons to target enemy soldiers' specific genetic variants, and we already have equally effective conventional weapons. Genetic engineering targeted to genotypes of members of some potential adversary military force seems today more like science fiction and political pork, not to mention that it undoubtedly would be a form of banned biological warfare.

"Using disease pathogens is a different type of biological warfare, and the technology to do that kind of thing in a devastating

way clearly already exists, but it is banned, and we must go to great lengths to see that other countries do not develop or use such weapons.

"The biomedical-industrial complex (including universities and government bureaucracies) hungrily seeks any form of funding, and this is the time to prevent a new bonanza from developing (if it's not already too late). There are many better ways to spend public and private money. At the same time, if we know that others are developing weapons, we certainly would have to develop defenses, and it is also true that there is typically no complete defense against an innovative enemy."³²

"Geneticists who would work on this type of research would no doubt be true believers and not at all deterred by contrary arguments. Moreover, it is dangerous to hint that strategies or genetic mechanisms that we don't know about, that have not been discovered yet, or that cannot at present be engineered, cannot exist or be used. With DoD levels of money, or similar contracts with pharmaceutical companies, it is rash to assume that researchers wouldn't believe they could do it, and try."

DESPITE MUCH WARNINGS, THERE ARE STILL PEOPLE, ESPECIALLY AMONG THE "EXPECTANT BILLIONAIRES" OF THE PHARMACEUTICAL INDUSTRY, WHO ANXIOUSLY AND OPTIMISTICALLY AWAIT THE BEGINNING OF MEGA-FUNDING FOR GENETIC BIOLOGICAL WEAPONS.

Despite much warnings, there are still people, especially among the "expectant billionaires" of the pharmaceutical industry, who anxiously and optimistically await the beginning of mega-funding for genetic biological weapons. Some express the opinion that genetic superfunding for genetic diversity will provide a cornucopia of benefits for world health. Such fanciful and self-serving opinions leave this author...speechless. I suppose I am not programmed correctly. As an Army veteran, when I hear about biological warfare, all I can think about is "collateral damage" — dead children who will never have a life, as in Vietnam, thousands of human beings dying in unimaginable agony, and a human culture devastated perhaps beyond repair. This is the potential of the "monster in our yard." But the advocates of BW research seem already to have roughed out the first stages of a public relations campaign, "Support research for biological weapons, they are good for you."



NOTES

1. The author holds a Bachelor's degree in chemical engineering, and a Doctorate in anthropology from New York University. He is a Fellow of the American Association for the Advancement of Science, and the author of "Genetics in Anthropology" for the new International Encyclopedia of the Social and Behavioral Sciences, edited by Neil Smelser and Paul Baltes. He served in the U.S. Army Infantry during the Vietnam War, where he received standard instruction of the day on defense against nuclear, chemical and biological weapons. After his military service, he was an early

member of Vietnam Veterans Against the War (VVAW). He is now Research Professor of Anthropology at the University of Florida.

2. See article by Greg Bishop, "Ethnic Weapons for Ethnic Cleansing."

www.elfis.net/tem/ethnicweapons.htm.

3. My web queries to the Broad Area Announcements of the Dept. of Homeland Security and the DoD Procurement Gateway gave negative results for RFPs concerning genetic variation. But in the now-famous words of Defense Secretary Donald Rumsfeld regarding alleged weapons of mass destruction in Iraq, "Absence of evidence is not evidence of absence."

4. E-mail to the author from Ron Hurlbert, Oct. 12, 2003. See Hurlbert's excellent article on biological weapons, entitled "Microbiology 101," at:

www.slic2.wsu.edu:82/hurlbert/micro101/pages/101biologicalweapons.html.

5. Noah A. Rosenberg, et al., "Genetic Structure of Human Populations," *Science*, 298, 5602, pp. 2381-85, Dec. 20, 2002; Mary-Claire King and Arno G. Motulsky, "Mapping Human History," same issue, pp. 2342-43.

6. An invaluable guide to information on biological weapons is John G. Bartlett, "Bioterrorism and Public Health," ed. (Medguides, 2002) The guide lists hundreds of useful web sites for all kinds of information.

7. Carl A. Larson, "Ethnic Weapons," *Military Review*, Nov. 1970.

8. The Model Ethical Protocol of the HGDP can be viewed on their web site:

www.stanford.edu/group/morrinst/hgdp.h.

9. Judith Miller, et al., *Races* (New York: Simon and Schuster, 2001), pp. 39, 98-104.

10. Iosepho Acosta, "De Promulgatione Indorum Salute," 1588. Salmanticae, microfilm.

11. Henry Dobyns, *Their Number Become Thinned* (Univ. of Tennessee Press, 1983).

12. Bartlett, pp. 31-57.

13. Robert Harris and Jeremy Paxman, *A Higher Form of Killing* (New York: Random House, 2002), p. 164.

14. Malaria has not yet been, and probably never will be, used for biological warfare because it requires a fragile vector, the mosquito, to infect a human population. While in theory thousands or millions of mosquitoes infected with malaria might be dropped on an enemy population, the technical and practical problems of doing this, fortunately, seem insurmountable. It is alleged that fleas have already been evaluated as vectors for plague. Air-dropped fleas seem to survive the ordeal.

15. "Blood Quantum and Ethnic Inter-marriage in the Boas Data Set" (with Janis Campbell), *Human Biology* vol. 67, no. 3, pp. 499-516, special issue edited by Richard Jantz.

16. Hitler and his stooge Rosenberg believed that the Nordic race evolved separately in Atlantis, which then conveniently sank into the ocean depths near Iceland. See Joscelyn Godwin, *Arktos: The Polar Myth* (Kempston, Ill.: Adventures Unlimited Press, 1996).

17. It is this same evolutionary bottleneck which has produced the "mitochondrial Eve" phenomenon — Eve

the mother of us all. Not only Eve, but nearly every human alive at that time, is likely to have been the ancestor of everyone alive today, some of them manifold ancestors. See John Relethford, *Genetics and the Search for Modern Human Origins* (New York: Wiley-Liss, 2001).

18. American tradition, since slavery, is that if you have a single African ancestor, you are "Black." I have twice served on committees of anthropologists who have tried to persuade the U.S. Census Bureau to drop its "racial" categories and simply ask respondents to identify themselves ethnically, if they choose to do so. But the Bureau's position is that the racial categories are imbedded in federal law. Ironically, Black politicians are among the staunch defenders of racial classification, because of affirmative action considerations in awarding federal contracts.

19. E-mail to the author, Dec. 29, 1998. For Lederberg's views on treaties, see *Biological Weapons: Limiting the Threat* (Cambridge, Mass.: MIT Press, 1999).

20. E-mail above.

21. It is also theoretically possible to create viruses from scratch, since they are rather simple genetically, but it would be difficult.

22. 53 candidate pathogens for biological warfare are listed in Table 1.2 of Andrew T. Price-Smith, *The Health of Nations*, (Cambridge, Mass.: MIT Press, 2002), pp. 32-33.

23. *Newsweek*, Oct. 14, 2002.

24. On December 22, 2003, U.S. District Court Judge Emmet Sullivan ruled that armed forces personnel could not be immunized without their consent and ordered a trial. The discovery phase of the trial should produce additional evidence that the government has misrepresented the dangers of anthrax inoculations. Text of Judge Sullivan's decision can be found at:

www.cbsnews.com/hdocs/pdf/anthraxdocument.pdf.

25. Anthrax immunization report available at the Congressional Record Service web site:

www.fas.org/irp/crs.

26. All humans have some resistance, however minuscule, to all pathogens by virtue of a generic "cascade" response when the body is first invaded. This response is soon overwhelmed by the bacterium or virus unless the human immune system kicks in with antibodies especially designed to kill the invading pathogen. If a person already has the capacity for making such antibodies, this usually means that he or she has either had the disease before, and defeated it, or has been immunized.

27. In this regard, it is interesting that AIDS researchers in Kenya have discovered that some Africans have an apparently inherent resistance to infection with the HIV virus. Despite repeated exposures, they do not contract HIV and consequently do not develop AIDS.

28. "Race and the American Military: Past and Present" in N. F. Dreisiger, ed., *Ethnic Armies* (Waterloo, Ont.: Wilfrid Laurier Univ. Press, 1990).

29. For examples, see John Hockett, ed., *Warfare in the Ancient World* (London: Sidgwick and Jackson, 1989).

30. Rosenberg, et al.

31. From the *Bhagavad Gita*.

32. E-mail to the author, Dec. 29, 2002.

Road Map to Sharonville

Nabeel Abraham



www.workersadvocacycenter.org

15,000 workers, in hope of jobs, wait all night at the Checkpoint Erez for three turnstiles to open. No food permitted. No facilities. The tunnel is half a mile long.
Still image taken from a videotape by Bassam Zamel.

Born officially on April 30, 2003, and currently lying comatose awaiting an official declaration of death, the "road map" is the latest in a long line of wrecks strewn along the road known as "the Middle East Peace Process."¹ Unlike its predecessors, the road map held some promise, as indicated in its official title: "A Performance-based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict." Two goals make an appearance for the first time in the U.S.-authored peace plan: 1) A termination of "the occupation that began in 1967" and 2) A timetable for "the emergence of an independent, democratic, and viable Palestinian state."²

Not bad for a peace plan coming from a White House which for the first 18 months of its tenure stood by while Ariel Sharon drove his tanks and bulldozers over Palestinian cities and towns, accelerating the downward spiral of violence and counter-violence in the region. Like previous administrations, the Bush administration

was far from being a neutral bystander. Bush provided the iron-fisted Sharon everything from Apache helicopters and Hellfire missiles to political immunity from international censure at the United Nations. He crowned the Israeli prime minister "a man of peace" even as Sharon leveled Jenin, Nablus and other West Bank towns in the first half of 2002.³

So, when George W. Bush floated his vision for Israeli-Palestinian peace in a June 24, 2002, speech, many were naturally skeptical.⁴ Was he merely bowing to international pressure as Israel's superpower patron? Was he trying to placate an increasingly alarmed and suspicious Arab/Muslim world after his invasion of Afghanistan? Was he warming up the world for his next campaign in Iraq, which would go into high gear that autumn? One had to wonder.

The June speech became the basis for the road map. "My vision," Bush told the world, "is two states, living side by side in peace and security." He framed the problem

in a way that was congenial to his War on Terror. As Bush saw it, Israeli citizens "live in terror," while Palestinians "live in squalor and occupation." "Israeli citizens will continue to be victimized by terrorists, and so Israel will continue to defend herself. In the [sic] situation the Palestinian people will grow more and more miserable." This formulation skewed the resolution of the conflict: First and foremost, the Palestinians had to drop the terror and leave the Israelis alone. In return for their good behavior, they would get an American blessing for a state of their own down the road. Bush deployed the word "occupation" sparingly and softly, shearing it of any role or responsibility for conflict. The uninitiated listener in Middle America might be excused for believing that the occupation was the result of Palestinian terror, not the other way around.⁵

If the framing of the problem was wrong-headed, the remedies Bush laid out were unduly harsh and unequal and, given the realities on the ground, probably next to impossible to meet by the Palestinian leadership, already battered and besieged on all sides by the Israelis and mistrusted by their own people. Bush: "The United States will not support the establishment of a Palestinian state until its leaders engage in a sustained fight against the terrorists and dismantle their infrastructure. This will require an externally supervised effort to rebuild and reform the Palestinian security services." Translation: The U.S. will supervise the re-training of the Palestinian security forces so as to become effective in their assigned role of keeping the population in check, preventing future intifadas, and relieving Israel from having to do the job.

Bush's offer came with a laundry list of preconditions which the Palestinians would have to meet to earn U.S. support for a vaguely defined state. If the Palestinians, Bush suggested, can "build a practicing democracy," find "new leaders, new institutions and new security arrangements with their neighbors," create "a new constitutional framework," end their corruption, set up "a system of reliable justice to punish those who prey on the innocent," the U.S. "will support the creation of a Palestinian state whose borders and certain aspects of its sovereignty will be provisional until resolved as part of a final settlement in the Middle East."

Bush's speech re-emerged ten months



Masha, West Bank. August 1, 2003: Palestinian, Internationals and Israeli protestors stand together in a demonstration against the construction of the separation Wall.

later on April 30, 2003, in the form of the road map. In the interim, his vision was the subject of rumor, hint, partial announcement, concealment, and contestation before it was officially brought before a jittery world.⁶ Its appearance on the eve of Bush's May 1 victory declaration in Iraq seemed intended to sweeten the bitterness the Arab and Muslim worlds felt over Bush's invasions of Afghanistan and Iraq. By displaying some concern for the Palestinians, Bush might have been telegraphing "proof" of his previous assurances that the War on Terror was not directed at Arabs or Muslims per se, just the Evil-Doers among them. Given the context, one might be forgiven for having believed that perhaps, just perhaps, the U.S. might be cynically willing to throw a bone to the Arabs over Palestine in exchange for being allowed to devour its prey in peace in Iraq. Even that level of cynicism was out of place in a world dominated by Washington superhawks, for whom crushing nations is no different than crushing insects.

The U.S. refused to release the much-heralded road map until the Palestinians started demonstrating the proper deference. Although Yasser Arafat, desperate as ever, welcomed the initiative, he had to step aside and appoint a Palestinian "leader" acceptable to U.S. and Israel. And, so, to please the dominant powers, the Palestinian

Authority had to go through the charade of appointing Mahmoud Abbas to the non-existent post of prime minister of a pseudo-government in a land under foreign occupation. Sharon's original demand had become Washington's. By seeking to erase Arafat from the picture, Sharon was seeking to break the national will of the Palestinian people by decapitating its leadership. In all his cravenness and corruption, Arafat had proven unwilling to acquiesce to all of Israel's demands at Camp David in summer 2000, and thus had to be replaced by a more malleable leader along the lines of those found in Central America and other puppet republics.⁷ Sharon predictably accepted the road map with reservations. He even went so far as to utter the words "occupation" and "Palestinian state," sending those to his right into fainting spells, and those on his left into ecstasy. The sad truth is that Israelis seem to dwell in a world of make-believe, where they avoid looking too closely into the jaws of the disaster they have created with their own hands. As Israeli scholar Tanya Reinhart observed, for many Israelis — right, center, and left — "the mere declaration of a willingness to give away something at some future time . . . is by itself the most painful and crucial of concessions."⁸ Most of Sharon's ministers and, crucially, the leadership of American Jewry, American Christian fundamentalists, many

in Congress, as well as key figures in Bush's administration, also opposed any concessions to the Palestinians. When Benny Elon, a far-right minister in Sharon's cabinet who supports the expulsion of the Palestinians, visited the U.S. he was "given an enthusiastic reception by congressional leaders."⁹ Meanwhile, the Christian right, a pillar of the Greater Israel camp, declared the road map "Satanic."¹⁰

The Road Not Taken

The road map was a wholly American affair from the start. Although it was "theoretical" the work of the 'quartet' of international mediators — the U.N., U.S., EU, and Russia — control of its design and release has been dominated by Washington. Mr. Bush delayed its publication three times at the request of . . . Ariel Sharon, and only committed himself publicly to the process under pressure from Tony Blair in the run-up to the Iraq war.¹¹ Accordingly, Bush set himself up as judge, mostly over the hapless Palestinians, turning a blind eye to Sharon's violations with the occasional slap on the wrist, while brow-beating the Palestinians for failing to "curb the terror."¹² Although the White House sought to project a strong Bush-Blair alliance against Iraq, what the Arab victims saw was a Bush-Sharon coordinated assault on the region.

Still riding high from his triumph in Baghdad, Bush brought together the warring sides at the Aqaba summit (Jordan) in early June. At the meeting, the newly appointed head of the Palestinian security services, Mohammed Dahlan, was given five minutes to brief Bush on the difficulties he faced in "dismantling the terrorist infrastructure." He blamed Israel for having destroyed much of the Palestinian security structure.¹³

The American preference for a Palestinian repressive fist as a substitute for the Israeli one was not shared by Sharon, primarily because the Israeli prime minister was implementing his own vision of a Palestinian Bantustan which even the most compliant Palestinians could not accept (see below). Not only did Sharon and Mofaz not assist Dahlan in carrying out Bush's directive to "fight against the terrorists and dismantle their infrastructure," the Israelis continued to wage war on the Palestinians while skirting their obligations under the road map to take "measures to improve the humanitarian situation." This despite Sharon's promise of a "viable Palestinian state" at Aqaba, along with other commitments under the road map to

"take no actions undermining trust, including deportations, attacks on civilians; confiscation and/or demolition of Palestinian homes and property, as a punitive measure or to facilitate Israeli construction; destruction of Palestinian institutions and infrastructure . . ."¹⁴

In the following months, Bush said and did very little about Sharon's moves to undermine his own peace plan thereby revealing his complicity in the road map charade. In the first week the road map was published, for example, "the Israeli army . . . killed 20 Palestinians (and, perhaps, a British journalist) in the occupied territories, including 13 in a single raid on Gaza City on May 1. On May 5, an Israeli was killed and two others wounded in an ambush in the

BUSH SAID AND DID VERY LITTLE ABOUT SHARON'S MOVES TO UNDERMINE HIS OWN PEACE PLAN THEREBY REVEALING HIS COMPLICITY IN THE ROAD MAP CHARADE.

West Bank, claimed by Fatah's 'unofficial' military wing, the Al-Aqsa Brigades."¹⁵ This and much more went unmentioned on by the cartographer Bush.

At the start of the road map, the three-and-one-half million Palestinians under occupation sought and expected relief on several fronts: a lifting of the closures and a concomitant withdrawal of the Israeli military from their towns and villages; a reversal of the settlement expansions and attendant land expropriations; a halt to the construction of the separation wall. They also expected the quick release of the more than 6,000 Palestinian prisoners — fathers, brothers, sons, and even daughters — mostly held without charge or trial in Israel's archipelago of prisons and detention camps. Precisely because Prime Minister Mahmoud Abbas had staked his standing on this issue, Sharon was not accommodating. He released several hundred prisoners. Sharon "turned the issue into a public humiliation of Mr. Abbas," contributing to his downfall.¹⁶ This argument was recently reinforced by none other than Moshe Yaalon, the Israeli army chief of staff, who

"accused the government of helping bring down . . . Abbas' pragmatic Cabinet by not making concessions that would have boosted his credibility."¹⁷

After much prodding, the Bush administration made some noises about Sharon's separation wall, "a 60-yard wide complex of ditches, 25-foot-high walls, electronic sensors, roads and steel fences."¹⁸ On October 3, Colin Powell declared "the fence . . . a problem" in an interview with the *Washington Post*. An Israeli cabinet decision approving the extension of the wall deep inside Palestinian territory came two days earlier. Soon thereafter, Palestinian farmland was confiscated and the building of the wall continued.¹⁹ As could have been predicted, the White House quietly shifted position in support of Sharon's wall, blaming its loss of resolve on the resignation of Abbas. The *Forward*, a Jewish-American publication, reported "the administration now appears to accept not only the idea of the fence, but also its deep penetration into the West Bank."²⁰

Terror: Theirs, Not Ours

Sharon justified virtually everything on the imperative of "fighting terror." This resonated with Bush's one-sided characterization of the conflict as one of terror — Palestinian terror. The curious thing is that when Abbas convinced the Palestinian armed factions in June to stop attacking Israeli civilians, Sharon rejected the offer of a cease-fire precisely because it was negotiated. He, like the Great Mapmaker, demanded "that the Palestinian Authority will use forceful [military] means against the terror organizations and their infrastructure in the territories, as precondition for any diplomatic advance."²¹

The Road to Sharonville

That the road map arrived at a dead-end should come as no surprise. Sharon did very little to help it along and much to block it, like rejecting and then undermining the Palestinian cease-fire. On the surface, his rejection makes no sense — isn't a cessation of violence what he and Bush were after? The counter-intuitive answer is no. The violence provided Sharon with ample cover to implement his own road map, a kind of "final solution" to the perennial dilemma of Israeli Jewish society — how to incorporate the 1967 conquered territories (the West Bank and Gaza) into Israel without absorbing the 3.5 million Palestinians inhabiting those lands. In this he has largely enjoyed support from the Bush White House.

In a sane and just world, the straightforward solution would be to offer the conquered Palestinians equal rights and citizenship in Israel, or allow them to establish their own state adjacent to Israel. The latter solution, known as the two-state solution, has been the thirty-year goal of the Palestinian leadership. But this runs counter to the aim of the dominant Israeli political parties who want to retain the occupied lands whether for practical reasons — water, land, "security" — or ideological reasons — the messianic impulse to settle the mythical "Land of Israel." The incorporation of several million Palestinians into Israel, which outright annexation of the territories would entail, would be repugnant to the majority of Israelis (and many Jews around the world) who cherish the idea of living in an exclusively (or predominately) Jewish society.²²

Sharon's relentless pursuit of his unique solution has caused increasing consternation in Israel, even among the elite like the military pilots and army reserve officers who now refuse to serve in the Gaza and West Bank.²³ Dissent from Sharon's manic drive to crush and beat the Palestinians into submission, including humiliating and threatening to kill their internationally recognized leader, has spread to the former heads of the notorious Shabak, the Israeli Secret Service, which has prime responsibility for repressing the Palestinian struggle for freedom. In an unprecedented newspaper interview, four former Shabak directors publicly declared their support for a "peace plan" drafted by former Shabak director Ami Ayalon and Palestinian academic Sari Nusseibeh, a plan which parallels a similar effort known as the Geneva Accord.²⁴ In the interview, former Shabak director Avraham Shalom expressed the major concern animating Israel's political establishment:

Today's fence is creating a political and security reality that will become a problem. Why? Because it creates hatred, it expropriates land, and annexes hundreds of thousands of Palestinians to the State of Israel. This is contrary to our interests, according to which we view the State of Israel as the home of the Jewish people.²⁵

Fear of the Arab babies, like similar fears of Black, Jewish, Gypsy, Asian babies — the essence of racism — runs across the Zionist political spectrum from left to right.



Eyal Dor-Ofar

Tulkaram, September 6, 2003. Israeli soldiers open the gate in the separation Wall for some Palestinian women.

So, for example, a recent fund-raising letter from the liberal Americans for Peace Now raises the same concern the Israeli right wing does: The alarming truth is that settlements pose an existential threat to the future of Israel. In Israel proper, Jews constitute the majority. But if you add the Palestinians of the West Bank and Gaza — a population with one of the highest birthrates in the world — you see that Israel is facing a demographic debacle. Within a decade perhaps, the Palestinians will constitute the majority population between the Mediterranean Sea and the Jordan River.²⁶

The recently announced Geneva Accord, released amidst much hubbub, essentially seeks to achieve the same purpose — preserve Israel's Jewish majority by ridding it of most Palestinian Arabs. While it concedes the need for a Palestinian state, the small print reveals that the Palestinian state will cede control of its borders, airspace and vital underground water reservoir to Israel. On the touchstone of the Palestinian right to return it fudges the issue by pretending to address it, something Bush's road map virtually sidesteps with a nod to "an agreed, just, fair, and realis-

tic solution to the refugee issue" in the distant future.

Short of expelling the Palestinians — ethnic cleansing — how can Israel have its cake and eat it? How can Israel continue to control the West Bank and the Gaza Strip but avoid having to rule a population determined to be rid of the occupation? How to prevent the Palestinians from establishing a truly viable and democratic country which would not only compete with Israel economically, but also continue to remind it of its obligation to repatriate hundreds of thousands of Palestinians driven off their lands in 1948? Moreover, how to prevent the rise of a genuine secular democracy in the Middle East which would pose a political/ideological challenge to the undemocratic and theocratic regimes that continue to hold sway over the region's oil-producing countries and beyond?

Sharon's answer seems to be the creation of — for the lack of a better name, a "Sharonville" — the walling off of several million Palestinians on approximately 10% of the occupied territories. Hence his preference for the separation Wall over cease-fires; his preference for having the Israeli

military do the work of corralling the Palestinians into Sharonvilles instead of turning the job over to the U.S.-trained Palestinian security forces. Typical of Sharon, he has held his plan close to his vest for many years. Ron Nahman, the mayor of Ariel, one of the major Jewish settlements, was allowed a peek at Sharon's map of the Palestinian enclaves being created by the apartheid Wall. It's "the same map," he observed, "I've seen every time I've visited Arik [Sharon] since 1978. He told me he's been thinking about it since 1973."²⁷

The irony is that Sharon is asking Jews, of all people, to support his plan to ghettoize West Bank Palestinians behind a 410-mile-long ghetto Wall. The most revealing fact, one that belies Sharon's alleged security claim for it, is that the wall is planned to encircle the Arab population centers of the West Bank on all sides including the side not facing Israel proper. The encirclement of Gaza's 1.5 million Palestinians is virtually complete. In these physically demarcated Sharonvilles, virtual open-air prisons, the Palestinians will be allowed their "state." They, of course, will be responsible for

policing themselves as they seek handouts from a largely indifferent world. Israel will continue to control Sharonville's borders, water supply, airspace and even internal movement, to say nothing of its battered economy.

Sharon's gambit is predicated on "the defeat of the Palestinian people and their aspirations for national self-determination."²⁸ This is the ultimate meaning of Sharonville. If he succeeds in taking Palestinians and Israelis down this road, Sharon will have ended — perhaps forever — any possibility of turning back to a viable two-state solution where Palestinians would actually enjoy a truly independent and democratic state in part of historic Palestine. A good argument can be made that a genuine two-state solution has long been a moot point since Arafat went down the path of Oslo in the early nineties and acquiesced to the doubling of Israeli settlements.²⁹ By the same token, the road to Sharonville inadvertently opens the possibility of a unitary Arab-Jewish state in the distant future, as Jews and Arabs will dwell in an Israeli South Africa.³⁰



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FURTHER READING

To read more on the background of the current Israeli-Palestinian stalemate, please see CAQ # 72 (Spring 2002).

To get involved in a citizens' campaign for divestment from Israel and for divestment news from around the U.S., please check this website: www.ucdivest.org.

NOTES

1. A good overview of some of these plans is found in Tanya Reinhart, "The Guaranteed Failure of the Road Map," *Yediot Aharonot*, May 14, 2003; see also, Glenn Kessler, "Road Map' Setbacks Highlight U.S. Pattern," *Washington Post*, Oct. 6, 2003.
2. Text of Proposed "Road Map," <http://electronicintifada.net/v2/article1410.shtml>
3. Sharon's long, bloody history is detailed in Baruch Kimmerling, *Politicide: Ariel Sharon's War Against the Palestinians* (New York: Verso, 2003).
4. Text of speech can be viewed at: www.cnn.com/2002/ALLPOLITICS/06/24/bush.mideast.speech/index.html
5. Indeed, confusion about who is occupying the "occupied territories" appears widespread in the English-speaking world. A British study of 300 young people found that "71% did not know that it was the Israelis who were occupying the territories. Only 9% knew that

it was the Israelis and that the settlers were Israeli. There were actually more people (11%) who believed that the Palestinians were occupying the territories and that the settlers were Palestinians." "Missing in Action," *Guardian* (London), April 16, 2002.

6. "There are more than 100 Israeli corrections to the latest version of the international road map . . . The U.S. rejected demands from the Europeans and the Arab states to publish the map as is, an international plan for an imposed peace," Aluf Benn, "Israel Seeks More Than 100 Changes to the 'Road Map,'" *Ha'aretz*, Feb. 20, 2003.
7. Hussein Agha & Robert Malley, "Camp David: The Tragedy of Errors," *New York Review of Books*, Aug. 9, 2001; a good distillation of Arafat's capitulations at Oslo can be found in Roane Carey's review essay, "The Road Map to Nowhere," *The Nation*, July 21/28, 2003.
8. Tanya Reinhart, "The Complex Art of Simulation," *Yediot Aharonot*, June 6, 2003.
9. Roane Carey, "Bumps in the Road Map," *The Nation*, June 30, 2003. "Mortimer Zuckerman, outgoing head of the Organization of Presidents of Major Jewish Organizations, has dispensed with the tactical soft soap of AIPAC and has flatly denounced the road map as an outrage to Israel, as have spokesmen for the Christian right," Alexander Cockburn, "The Roadmap Hoax," *Counterpunch*, June 1, 2003.
10. Julia Duin, "Zionist Meeting Brands 'Road Map' as Heresy," *Washington Times*, May 19, 2003.
11. Conal Urquhart and Chris McGreal, "U.S. Releases 'Road Map' Amid Underlying Tensions," *Guardian* (London), May 1, 2003.
12. Cf. Glenn Kessler, "'Road Map' Setbacks Highlight U.S. Pattern," *Washington Post*, Oct. 6, 2003; see also, Robert G. Kaiser, "Bush Moves U.S. Closer to Sharon on Mideast Policy," *Washington Post*, Feb. 9, 2003.
13. Chris McGreal, "The Real Obstacle to Peace Is Not Terror But Sabotage by Sharon-Backed Army," *Guardian* (London), June 20, 2003.
14. Justin Huggler, "Israelis and Palestinians Sign Up to America's Road-Map," *Independent* (London), June 5, 2003.
15. Graham Usher, "Playing for Time," *Al-Ahram Weekly Online*, May 8-14, 2003. <http://weekly.ahram.org.eg/2003/637/fr1.htm>
16. Chris McGreal, "Ridiculed and Betrayed: Why Abbas Blames Arafat," *Guardian* (London), Sept. 8, 2003.
17. "Sharon, Army at Odds on Palestinians," Associated Press, Oct. 30, 2003. See also, Robert Tait, "Is Israel Losing Its Army?" *Sydney Herald Times*, Nov. 2, 2003.
18. John Ward Anderson, "Israel Approves Extending Barricade," *Washington Post*, Oct. 1, 2003.
19. Glenn Kessler and Peter Slevin, "Powell Criticizes Israel on Fence," *Washington Post*, Oct. 4, 2003; Suzanne Goldenberg, "Peace Hopes Blown Apart in Tit for Tat," *Guardian* (London), Aug. 22, 2003; Press Release, International Solidarity Movement, Oct. 14, 2003, 10:07 AM.
20. Ori Nir, "Bush Drops Opposition to Building of Barrier: Fence Gains Nod as Road Map Dies," *The Forward* (New York), Oct. 24, 2003.

21. Tanya Reinhart, "The Complex Art of Simulation," *Yediot Aharonot*, June 6, 2003.
22. As an Israeli official told the head of a Palestinian nonviolent organization: "Look, you can forget about nonviolence. You can tell our friends to forget about violence. Forget about the Road Map and forget about Oslo. What Israel wants is the land and we don't want you on it." Quoted in Krisin Ess, "The Stage Is Set for Ethnic Cleansing," *ZNET*, July 26, 2003.
23. Lily Galili, "Reserve Pilots to Refuse Liquidations," *Ha'aretz*, Sept. 19, 2003; Associated Press, "Sharon, Army at Odds on Palestinians," Oct. 30, 2003; cf. Gideon Levy, "Twilight Zone: I Punched an Arab in the Face," *Ha'aretz Friday Magazine*, Nov. 21, 2003.
24. The Geneva Accord was originally drafted by a group of security operatives and other Israeli policy wonks in Ehud Barak's short-lived government, reports Akiva Eldar, "People and Politics/Word Launderers and Peace Wanderers," *Ha'aretz*, Nov. 12, 2003. Not surprisingly, according to a widely circulated critique, the Accord "attempts to nullify the Palestinian right of return, both as a collective national right and as an individual right. By doing so, it strengthens existing attempts to relocate and scatter Palestinian refugees throughout the world and give credence to plans to abrogate international law pertaining to the inalienable nature of the Right of Return." "The net result," the document warns, "would be to extract the very anchor of the Palestinian struggle for self-determination: the indivisible oneness of the Palestinian people and their right to their homes, properties and homeland."
25. Alex Fishman and Sima Kadmon, "We Are Seriously Concerned about the Fate of the State of Israel," *Yediot Aharonot*, Nov. 17, 2003. See www.gush-shalom.org.
26. Undated letter (late 2003) from Americans For Peace Now, apndc@peacenow.org
"In late July [2003] the Israeli Knesset voted to enact a law denying citizenship to Palestinians from the occupied territories who marry Israeli citizens. The most shocking aspect of the law was that it did not surprise anyone [emphasis added]," writes Todd May. "People who are Dutch, Indonesian, Cambodian, Uruguayan or Canadian will receive Israeli citizenship if they marry an Israeli citizen in accordance with Israeli law. Of all the peoples in the world, only Palestinians are barred Israeli citizenship through marriage." "Israel's New Eugenics," <http://weekly.ahram.org.eg/2003/653/op8.htm>
27. Cited in Amira Hass, "The State Sharon Is Talking About," *Ha'aretz*, May 28, 2003.
28. Henry Siegman, "Sharon's Phony War," *New York Review of Books*, Dec. 18, 2003.
29. See the excellent discussions in Charles Enderlin, *Shattered Dreams: The Failure of the Peace Process in the Middle East, 1995-2002* (New York: Other Press, 2003) and Noam Chomsky, *Middle East Illusions* (Lanham, MD: Rowman & Littlefield, 2003).
30. Jeff Halper draws similar conclusions in "Post-Apartheid: One State," www.fromoccupiedpalestine.org/node.php?id=772, as does Tony Judt, "Israel: The Alternative," *New York Review of Books*, Oct. 23, 2003.

Israel's Wall: An Analysis of Its Legal Invalidity Under U.S. and International Law

Zaha Hassan and Steven Goldberg¹



Qalqilya, West Bank. July 31, 2003. International protestors raise a protest sign written in three languages against what the protesters dubbed "Apartheid Wall." The sign is carried via helium-filled balloons above the 24-foot Wall so it can be visible to Israeli motorists traveling on the Cross Israel highway just on the other side of the wall and by residents of the Israeli town of Kfar-Saba which is several hundred yards away.

Background

In June 2003, the Israeli Government began a massive construction project, within the Palestinian territories its military occupies. The Israeli Government claims that it is constructing a "security fence" necessary for the protection of its people from attacks and suicide bombings emanating from the West Bank. Palestinians call the barrier an "apartheid wall" ("the Wall") aimed at caging Palestinians into densely populated, Bantustan-like areas² while Israel annexes more Palestinian territory for Israeli settlements. Palestinians argue that the Wall denies them the right to travel outside of their towns and villages, that it has resulted in the expropriation of their water resources and their agricultural land, and that it prevents them from accessing medical facilities and their cultural and spiritual centers.³

The U.S. appropriates between \$3-5 billion in economic and military aid to Israel every year. If our Government intends to facilitate a just and lasting peace in the Middle East — something which is clearly in our national security interest — then we must maintain a balanced and reasoned stand on the conflict in Israel-Palestine.

In recognition of that reality, when Congress passed the Emergency Wartime Supplemental Appropriations Act of 2003 (Public Law 108-11, HR 1559), it placed an unequivocal condition on the allocation of \$9 billion in U.S. loan guarantees to Israel. The Act requires that the loan guarantees may only be used by Israel "to support activities in the geographic areas which were subject to the administration of the Government of Israel prior to June 5, 1967." The Act also directs that the amount of the guarantees "shall be reduced" by the amount of loan guarantees which the President determines have been used inconsistently "with the objectives and understandings reached between the United States and the Government of Israel regarding the implementation of the loan

guarantee program.”

On September 16, 2003, State Department deputy spokesperson Adam Ereli told members of the press that the State Department had decided that a reduction would be made in the loan guarantees authorized to Israel. However, “the precise amount is still being determined, but will be an estimate based on a range of Israeli Government expenses associated with the settlement activity.” Spokesperson Ereli also stated that the U.S. may also reduce loan guarantees to Israel by the amount which Israel spends on the construction of the Wall.⁴

Although the Act required the President to report to Congress by September 30, 2003, regarding whether loan guarantees to Israel should be reduced, the President has postponed his determination pending further review. It is unclear when he plans to submit his report to Congress.

However, in late November, the Bush administration decided to cut \$289.5 million from the loan guarantee package, an action which the Israeli Government dismissed as negligible. As reported by the BBC, the Israeli embassy even said in a statement that the amount cut had been “suggested” by Israel. None of the loan guarantee reductions are based upon Israel’s construction of the Wall, according to an article in the November 26, 2003, *Jerusalem Post*, but are solely focused on the construction of settlements. There has been little if any congressional response to the Administration’s decision.

In this paper, we discuss our Government’s obligations under U.S. law and international law with respect to Israel’s continued construction of illegal Israeli settlements and of the Wall in the occupied Palestinian territories. Our intent is that organizations working for a just and lasting peace in the Middle East will use this information in their efforts, particularly in terms of focusing on possible action by Congress.

The Wall and Its Connection to Israeli Settlement Activity

Israel’s undertaking to curb the growth of settlements has not been implemented. On the contrary, settlements have continued to grow at an unacceptable pace. This phenomenon, together with the construction of the Wall, suggests that territorial expansion remains an essential feature of

Israel’s policies and practices in the [occupied Palestinian territories].

Report of the Special Rapporteur for Palestine, Commission on Human Rights, John Dugard.⁵

Recently, the Israeli military has ordered the thousands of Palestinians living between the Wall and the Green Line to obtain permits to live in their own homes and to work their own farm land.

The first phase of Israel’s construction of the Wall took place in the northwest corner of the occupied West Bank, in the Qalqilya, Tulkaram and Jenin districts, and in the heart of the West Bank, in the Jerusalem and Bethlehem environs. When completed, the Wall will be approximately 280-400 miles long and will have cost Israel approximately \$1.4 billion. A report by the U.N. Office for the Coordination of Humanitarian Affairs issued on November 11 estimates that Israel’s projected route for this barrier will put nearly 15 percent of the West Bank on the Israeli side. By September 2003, the construction has affected over 65 Palestinian communities with a population of over 210,000.

At certain points the Wall is approximately 26 feet tall, is constructed with concrete and/or with razor wire, and is fitted with electronic motion detectors. Where the topography permits, trenches have been dug on the Palestinian side of the Wall. On the “Israeli side,”⁶ fine sand or earth runs parallel to the fence to pick up footprints. Parts of this trace zone will be mined. Alongside of the trace zone is a tarmac road for Israeli army patrol vehicles.

The Wall’s path does not follow the “Green Line” which marks the de facto boundary between Israel and the Palestinian territories based upon the situation before the 1967 war. In fact, in some areas it cuts four miles into the West Bank and incorporates approximately half of the illegal Israeli settlement-colonies located in

the West Bank. The result is that Palestinians are effectively cut off from their farmlands and workplaces, schools, health clinics and other social services.

Palestinians living between the Wall and the Green Line are especially isolated as they will be cut off from the West Bank entirely and will continue to be denied entry into Israel. Currently, over 11,000 Palestinians comprising 16 villages are located between the Wall and Israel. However, when construction of the Wall is complete, 70,000 Palestinians will find themselves in this “no man’s land.”⁷ Recently, the Israeli military has ordered the thousands of Palestinians living between the Wall and the Green Line to obtain permits to live in their own homes and to work their own farm land.⁸

At least 10% of the West Bank will be expropriated by Israel in construction of the Wall. As John Dugard, the Special Rapporteur for Palestine for the U.N. Commission on Human Rights, states:

The Wall has all the features of a permanent structure. The fact that it will incorporate half of the settler population in the West Bank and East Jerusalem suggests that it is designed to further entrench the position of the settlers. The evidence strongly suggests that Israel is determined to create facts on the ground amounting to de facto annexation.⁹

The Humanitarian Crisis Surrounding Construction of the Wall

Jean Ziegler, the United Nations Special Rapporteur on the Right to Food, has stated that “[t]he Occupied Palestinian Territories is on the verge of humanitarian catastrophe, as the result of extremely harsh military measures imposed by the occupying Israeli military forces since the outbreak of the second Intifada in September 2000.” Mr. Ziegler blames the “[t]he extensive imposition of curfews, road closures, permit systems, security checkpoints, and back-to-back truck off-loading systems imposed by the occupying military forces” for the humanitarian crisis.¹⁰ Restrictions on movement mean that the economy has almost collapsed and many Palestinians cannot feed themselves. Mr. Ziegler also found that water shortages are as serious as food shortages. Water tankers cannot always reach villages, or are arbitrarily not permitted to cross checkpoints, leaving communities without water for days

at a time. For the 280 rural villages that depend on the water tankers for their water supply, this means that water insecurity is extremely high in the occupied Palestinian territories.

The construction of the Wall has exacerbated this already dire situation according to a report by U.N. Secretary-General Kofi Annan issued on November 28 and in Ziegler's report:

The fence/wall is seen by many as a concrete expression of the bantustanisation of the Palestinian areas in that it operates as a political strategy to divide the land, separating the Palestinian people into 5 barely contiguous cantons or 'bantustans,' deprived of international borders ... this would amount to a structural negation of the right to food, as it will effectively forestall forever the possibility of a viable Palestinian state and therefore hinder the capacity of the Palestinians to have a viable economy or be food self-sufficient as a coherent State with international frontiers.¹¹

U.S. Obligations Under U.S. Law and International Law

The legal context for examining Israel's justification for building the Wall within the Palestinian territories is framed by both international and U.S. law. These laws provide an objective standard for evaluating Israel's actions.

Public Law 108-11

To the extent that funds from the loan guarantees are used for the construction of the Wall, which veers into the West Bank and Gaza to include settlements west of the barrier, Congress' clear intent as expressed in Public Law 108-11 in allocating the guarantees is being flagrantly violated. Nonetheless, the Administration has ignored Congress' directive by not submitting the required report by September 30.

If the President continues to ignore his clear statutory duty, the Congress should immediately hold hearings to determine if any portion of the U.S. loan guarantees is being used to support the construction or maintenance of settlements in the occupied Palestinian territories (OPT). Second, Congress should determine if any portion of

the guarantees is being used to support the construction of the Wall in the OPT. If Congress decides that the guarantees are in fact being so used, then future loan guarantees should immediately be halted until the precise amount of the guarantees being used in violation of the congressional mandate is determined.

Foreign Assistance Act and The Arms Export Control Act

The Foreign Assistance Act of 1961, 22 USC § 2304, provides that "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of interna-

human rights standards. If that is the case — as is argued further below — then Congress is obligated under federal statutes to suspend aid to Israel until it halts construction of the Wall.

Construction of the Wall in Occupied Palestinian Territories Violates International Humanitarian and Human Rights Law

There is a specific body of international humanitarian law that governs Israel's administration of the Palestinian territories it has occupied since the 1967 Arab-Israeli War. The law is codified in the Hague Regulations of 1907 (Regulations Appended to the Fourth Hague Convention Respecting the Laws and Customs of War on Land, Annexed Regulations, 1907) and the Fourth Geneva Convention of 1949 (Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949). The international community, including the United States as discussed in the State Department's annual survey of human rights violations, considers Israel's authority in the occupied Palestinian territories to be subject to these Conventions as a matter

of customary international law. Customary law provides that even if a country is not a party to a particular treaty, it may still be bound by the terms of the treaty if it is intended for adherence by states generally and is in fact widely accepted in the international community. Article 2 of the Fourth Geneva Convention specifically states that it applies "to all cases of partial or total occupation."

Despite this international consensus regarding the applicability of these Conventions to Israel's occupation, and despite the explicit statement in Article 2 of the Geneva Convention that it applies "to all cases of partial or total occupation," Israel contends that the Fourth Geneva Convention is not fully applicable in the occupied territories. However, in recent decisions of the Israeli Supreme Court sitting as the High Court of Justice, the Court has assumed the applicability of the Fourth Geneva Convention and has based its decisions in part on the provisions of that Convention.¹² Israel has generally conceded the application of the Hague Regulations to its occupation of the West Bank and Gaza.

The Hague and Geneva Conventions prescribe the conduct of the belligerent

ISRAEL IS *CREATING* A FOOD SHORT-AGE THROUGH ITS CONSTRUCTION OF THE WALL AND DESTRUCTION OF PALESTINIAN-OWNED LANDS, CLEARLY VIOLATING ITS DUTIES UNDER INTERNATIONAL HUMANITARIAN LAW.

tionally recognized human rights."

Section 2151n of the statute also provides that no development assistance will be provided to such countries. The Arms Export Control Act, 22 USC § 2751 *et seq.*, states that the provision of military assistance to countries must further "the security objectives" of the U.S., "the purposes and principles of the United Nations Charter" and must be consistent with "the purposes of the foreign assistance program" of the U.S. as provided in section 2304 of the Foreign Assistance Act.

As discussed above, Israel's construction of the Wall has produced a humanitarian crisis in the occupied Palestinian territories. Israel's legitimate interest in providing security to its citizens is no justification for the starvation of the Palestinian population. U.N. agencies and virtually every non-governmental organization that has investigated the justifications for Israel's construction of the Wall has determined that the Wall does not serve the interest of security but instead constitutes a gross violation of internationally recognized human rights. Again, congressional hearings should investigate whether Israel's actions in constructing the Wall violate international



Masha, West Bank. August 3, 2003: Israeli border police arrest international and Israeli protesters who were trying to block the construction of the separation Wall in the yard of a Palestinian home in the village of Masha. As this photo was taken the police officer on the left of the picture tried to grab the photographer and ordered him to be detained for taking the photo; the photographer was released later.

occupier during what is assumed will only be a temporary period of occupation, and prohibit the military occupier from taking any action that turns its temporary presence into entrenched sovereign permanence. These treaties specifically counter the idea that territory can legitimately be acquired by war and conquest. Further, they demand that the occupied population be treated humanely, specifically spelling out the rights of the inhabitants.

Specifically, construction of the separation Wall violates and/or undermines the following well-established fundamental humanitarian and human rights norms applicable to the Palestinian people living in the occupied territories:

IT IS A COVER-UP FOR ANNEXATION OF LAND AND THE ESTABLISHMENT OF NEW BORDERS FOR THE ISRAELI STATE WHICH WILL INCORPORATE ILLEGAL SETTLEMENTS AND PALESTINIAN LAND...

The Right to Food

As an occupying power, Israel has the obligation to provide resources such as food and water if the resources in the occupied territory are inadequate. Under Article 55 of the Fourth Geneva Convention, the occupying power should ensure the food and water supplies of the population and bring in the necessary foodstuffs. If the whole or part of the population is inadequately sup-

plied, the occupying power shall agree to relief schemes on behalf of the population and facilitate (not hinder) such schemes (Article 59). Yet as discussed in the Ziegler report, Israel is *creating* a food shortage through its construction of the Wall and destruction of Palestinian-owned lands, clearly violating its duties under international humanitarian law.

Israel has ratified all of the principal instruments for the protection of human rights which protect the right to food – the International Covenant on Economic, Social and Cultural Rights (Article 11), the Convention on the Rights of the Child (Articles 24, 27), the Convention for the Elimination of Discrimination Against Women (Article 12) and the Universal Declaration of Human Rights (Article 25).

The Right to Own Property

As discussed above, to construct the Wall Israel has and will continue to confiscate thousands of acres of land owned by Palestinians. Private agricultural land as well as olive trees, wells and citrus groves have been destroyed. Further, agricultural land adjacent to the Wall has been declared off limits to Palestinians, rendering it useless.

In the section addressing military occupation, Article 46 of the Hague Regulations explicitly affirms that “[p]rivate property cannot be confiscated.” Article 53 of the Fourth Geneva Convention prohibits the destruction of real or personal property “except where such destruction is rendered absolutely necessary by military operations.” Article 17 of the Universal Declaration of Human Rights states that everyone has the right to own property, and that no one shall be arbitrarily deprived of his or her property.

Israel claims that its confiscation and destruction of Palestinian land are justified by military necessity. In addition, Israel contends that given the ongoing violence in the OPT, a situation of hostility rather than occupation exists which permits Israel to engage in defensive measures such as construction of the Wall. Israel argues that Article 52 of the Hague Regulations allows Israel to requisition property if it is “for the needs of the occupying army” in situations of hostility.

Israel’s justification for the construction of the Wall is clearly pretext. Palestinian land and property is not being appropriated to build for the “needs of the occupying army,” but rather, as the U.N. Special Rapporteur for Palestine, John Dugard, stated in his report, it is a cover-up for annexation of land and the establishment of new borders for the Israeli state which will incorporate illegal settlements and Palestinian land necessary to protect those settlements.

The Right to Freedom of Movement

Although Palestinians now suffer severe limitations on their ability to move within and between the occupied Palestinian territories due to checkpoints, roadblocks and curfews, the Wall will only worsen this situation. Walled-in enclaves confining tens of thousands of people will be created, sharply curtailing movement for all except a handful of permit-holders. Access to basic services, medical care and employment will be limited. Both Article 13(1) of the Universal Declaration of Human Rights and Article



Abu-Dis, Jerusalem. September 2003. A Palestinian grandmother helping her granddaughter to cross the Wall on her way to school. Thousands of Palestinians cross the Wall at this section every day on their way to and from work and school.

12(3) of the International Covenant on Civil and Political Rights – fundamental international human rights laws – guarantee the right to freedom of movement within the borders of each State.

Conclusion

So many efforts have been made to resolve the Israeli-Palestinian crises, all of which have failed to this point. Even a decision by the International Court of Justice based upon hearings held in February 2004, finding that the Wall violates international law, is likely to be ignored by Israel and the United States. It is clear that further peace proposals will fail and further United Nations resolutions will be of no consequence unless significant pressure is put on Israel by its strongest ally, the United States.

The U.S. Congress has reiterated its unwillingness to tolerate human rights

abuses by countries receiving U.S. economic and military aid in the Foreign Assistance Act and Arms Export Control Act. It has specifically addressed concerns with Israeli actions by restricting the April 2003 loan guarantees to not being used in the occupied Palestinian territories. Through its continued construction of settlements and now the Wall, Israel has flaunted Congress' clear intent. Israel's actions, as the actions of any country violating international humanitarian and human rights laws, must not be tolerated. Given the President's meager response by cutting such negligible amounts from future guarantees, if the President refuses to act, then it now falls to Congress to take more meaningful action. It must act by calling hearings immediately to investigate Israel's actions. If it determines that the loan guarantees are in fact being used to support settlements and Wall construction in the West Bank, then future guarantees

should be immediately withheld which reflect the actual amounts being spent by Israel. Indeed, Congress should consider going further by conditioning all future aid to Israel on its compliance with international and U.S. laws.

With U.S. troops in Iraq and the War on Terrorism still waging on, it is exceedingly ill-advised for the U.S. to be seen as an accomplice to Israel's construction of the Wall in Palestine. As a facilitator of peace talks between Israelis and Palestinians, the U.S. must support the building of bridges between Israel and Palestine, not walls. The National Lawyers Guild – in conjunction with other groups working on this issue in the U.S. – will push for congressional hearings this spring to address the issue of continued funding for the Wall through the loan guarantees. If you wish to join in this effort, please contact us at stevengoldberg@comcast.net.

NOTES

1. Zaha Hassan and Steven Goldberg are attorneys in Portland, Oregon, and members of the National Lawyers Guild. Goldberg is co-chair of the Guild's International Law Committee. Both Hassan and Goldberg participated in the Guild's delegation to the Occupied Palestinian Territories and Israel in January 2001.
2. The term "bantustan" historically refers to the separate territories designated as homelands for Black people under the South African apartheid state.
3. Detailed documented analysis of the effects of the Wall is beyond the scope of this paper, but is available in reports by Amnesty International, www.amnesty.org, Human Rights Watch, www.hrw.org, B'Tselem (an Israeli human rights organization), www.btselem.org, and the Palestinian Environmental NGOs Network (PENGON), www.pengon.org.
4. Ha'aretz, Sept. 17, 2003, "U.S. Considers Deducting Fence Money from Loan Guarantees"; see also *International Herald Tribune*, Aug. 5, 2003, "U.S. Weighs a Cut in Aid to Israel Over Its Fence."
5. E/CN 4/2004/6, Sept. 8, 2003, at p. 3.
6. The "Israeli side" refers to the eastern side of the Wall that has de facto been incorporated into Israel. The path of the Wall is, for the most part, wholly within the Palestinian territories.
7. *Sydney Morning Herald* (Australia), Oct. 31, 2003, "Israeli Fence Will Leave 70,000 in No-Man's Land."
8. "Permits Ordered for Palestinians," *Guardian*, Oct. 27, 2003.
9. Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, E/CN 4/2004/6, Sept. 8, 2003, p. 2.
10. Draft Report on the Right to Food in the Occupied Palestinian Territories, Section I-A, Aug. 2003.
11. *Id.*, Section IV.
12. See, e.g., *Ajuri v. IDF Commander*.

The Concentration Camp at Guantanamo

Marjorie Cohn

Anyone who has traveled to Cuba or listened to *mariachis* sing in myriad Latin restaurants is familiar with the lovely song, *Guantanamera* — the little girl from Guantánamo. Based on a poem by José Martí, the father of Cuban independence, the song is narrated by “an honest man from where the palm tree grows,” who speaks of the beauty of Cuba.

In stark contrast, the post 9/11 Guantanamo Bay is home to a veritable concentration camp, in the words of both the National Lawyers Guild and the American Association of Jurists.¹ In December 2003, Cuba’s National Assembly also decried the “concentration camp” at Guantanamo, saying: “In the territory illegally occupied by the Guantanamo naval base, hundreds of foreign prisoners are subjected to indescribable abuses.”²

Cuban President Fidel Castro says the United States has transformed Guantanamo base “into a world prison in violation of all law and of what they themselves refer to as human rights. It hurts us when throughout the world people talk about that horrible prison, one that bears no difference with the Nazi concentration camps.”³

More than 600 prisoners have been incarcerated at the Guantanamo camp for nearly two years. Images have emerged of hooded men on their knees, kept in small cages, with no charges against them, subjected to repeated interrogation, without access to attorneys or courts to challenge their confinement. Secretary of Defense Donald Rumsfeld has indicated that many will be kept at Guantanamo until the war on terrorism is over.

Ironically, the United States government, which has treated the Cuban people to a punishing embargo and blockade for 43 years, continues to illegally occupy that part of Cuba’s territory. Guantanamo Bay came under United States control in 1903

when Cuba was under occupation by the U.S. army after Cuba’s war of independence against Spain. The Platt Amendment,⁴ which granted the U.S. the right to intervene in Cuba, was incorporated into the Cuban Constitution as a prerequisite for the withdrawal of U.S. troops from the rest of Cuba. That provision provided the basis for a treaty granting jurisdiction over Guantanamo Bay to the United States.⁵

Illegal Occupation of Guantanamo

The 1903 Agreement on Coaling and Naval Stations gave the United States the right to use Guantanamo Bay “exclusively as coaling or naval stations, and for no other purpose.”⁶ In 1934, President Franklin D. Roosevelt signed a new treaty with the Republic of Cuba, which abrogated the Platt Amendment and the 1903 treaty.⁷

But this treaty, in the spirit of Roosevelt’s “Good Neighbor” policy, maintained U.S. control over Guantanamo Bay in perpetuity until the United States abandons it or until both Cuba and the U.S. agree to modify it. The new treaty, however, specified that “the stipulations of [the 1903] agreement with regard to the naval station of Guantanamo shall continue in effect.”⁸ That is, Guantanamo Bay can be used *only* for coaling or naval stations. Additionally, article III of the 1934 treaty provides that the Republic of Cuba leases Guantanamo Bay to the United States “for coaling and naval stations.” Nowhere in either treaty does Cuba give the United States the right to utilize Guantanamo Bay as a prison or a concentration camp.

The United States sends Cuba a \$4,085 check each year for the use of the 45-square-mile piece of prime Cuban waterfront land. But, in protest against this humiliating infringement on Cuban sovereignty, the government of Fidel Castro, who calls the Guantanamo base “a dagger

plunged into the heart of Cuban soil,”⁹ refuses to cash the rent checks: “An elemental sense of dignity and absolute disagreement with what happens in that portion of our national territory has prevented Cuba from cashing those checks.”¹⁰

In its January 2002 statement, the Cuban government did not oppose housing the U.S. prisoners at Guantanamo: “Although the transfer of foreign war prisoners by the United States government to one of its military facilities — located in a portion of our land over which we have no jurisdiction, as we have been deprived of it — does not abide by the provisions that regulated its inception, we shall not set any obstacles to the development of the operation.”¹¹

President Castro likely knew that protest would be futile, and he is eager to normalize relations between the United States and Cuba. Moreover, Cuba was the first country to condemn the September 11 attacks. It has the distinction of both opposing those attacks and also protesting the U.S. bombing campaign in Afghanistan, saying: “Despite the fact that we hold different positions as to the most efficient way to eradicate terrorism, the difference between Cuba and the United States lies in the method and not in the need to put an end to that scourge.”¹²

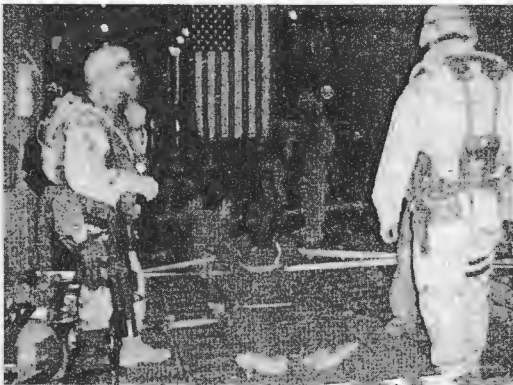
The Red Cross Denounces Treatment of Guantanamo Prisoners

Cuba, which boasts one of the most advanced medical systems in the world, offered to provide medical services and sanitation programs for the prisoners, which apparently was not accepted by the U.S. After a recent two-month visit to the Guantanamo camp, the Red Cross (ICRC) strongly condemned the detention of the prisoners housed there: “The ICRC’s main concern today is that the U.S. authorities

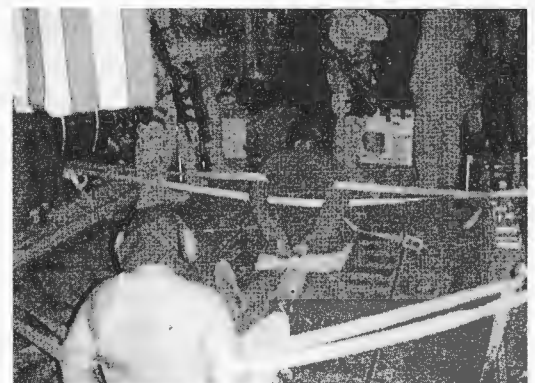


These photos were anonymously sent to several mainstream and alternative news organizations, according to CNN. It was radio host Art Bell who first published them on his Website, in the early morning hours of November 8, 2002. The photos have been confirmed as genuine.

CNN: "A Pentagon spokesman says the photographs appear to be genuine. It is not known who took or e-mailed the pictures."



Associated Press: "Officials believe the photos were not authorized and know their release was unauthorized, he [a Pentagon spokesman] said."



According to these news reports, it's likely that the photos were taken as the prisoners were being transported from Afghanistan to Turkey, on their way to Guantanamo Bay.

have placed the internees in Guantanamo beyond the law. This means that, after more than eighteen months of captivity, the internees still have no idea about their fate, and no means of recourse through any legal mechanism." The Red Cross "observed a worrying deterioration in the psychological health of a large number of them."¹³ Indeed, the *New York Times* reported 32 attempted suicides in 18 months and several detainees being treated for clinical depression as a direct result of the uncertainties of their situations.¹⁴

In April 2003, the U.S. government admitted that children as young as 13 were being held at Guantanamo.¹⁵ Labeled "juvenile enemy combatants,"¹⁶ they live in what the U.S. soldiers call "Iguana House."¹⁷ Although Guantanamo's commander, Major General Geoffrey Miller, recommended in August 2003 that the children be sent home because they had been "kidnapped into terrorism," were not a significant risk, and could not provide additional intelligence, some still remain in custody.¹⁸

The ICRC also expressed concern about the housing of juveniles at Guantanamo, saying, "the ICRC does not consider Guantanamo an appropriate place to detain juveniles."¹⁹ The American Declaration of the Rights and Duties of Man, which is binding on the United States as a member of the Organization of American States, provides that "all children have the right to special protection, care and aid."²⁰ Likewise, the Convention on the Rights of the Child states that "every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."²¹ Although the U.S. has not ratified the Convention on the Rights of the Child, it is obliged, as a signatory, to refrain from action that would undermine the object and purpose of the treaty.²²

A Legal Black Hole

Amanda Williamson, spokeswoman in the Red Cross's Washington office, said the Guantanamo prisoners "have been placed

in a legal vacuum, a legal black hole." The U.S. authorities, she claims, "have effectively placed them beyond the law."²³

The Third Geneva Convention Relative to the Treatment of Prisoners of War sets forth minimum standards for the treatment of prisoners of war.²⁴ It also requires that the status of captured persons be determined by a "competent tribunal" should "any doubt arise" about whether they are prisoners of war.²⁵ But instead of deferring to a competent tribunal to determine their status, the Pentagon maintains that there is no doubt these captives are "unlawful combatants" and they have thus been denied the protections that POWs enjoy under the Third Geneva Convention.

According to the Lawyers Committee for Human Rights, "the administration has in fact been using the term 'unlawful enemy combatant' — a term not found in international law — as a kind of magic wand, wav-

"THE ICRC'S MAIN CONCERN TODAY IS THAT THE U.S. AUTHORITIES HAVE PLACED THE INTERNEES IN GUANTANAMO BEYOND THE LAW. THIS MEANS THAT, AFTER MORE THAN EIGHTEEN MONTHS OF CAPTIVITY, THE INTERNEES STILL HAVE NO IDEA ABOUT THEIR FATE, AND NO MEANS OF RECOURSE THROUGH ANY LEGAL MECHANISM."

ing it to avoid well-established standards of U.S. and international law."²⁶ Moreover, Jamie Fellner, director of Human Rights Watch's U.S. Program, said: "As a party to the Geneva Conventions, the United States is required to treat every detained combatant humanely, including unlawful combatants. The United States may not pick and choose among them to decide who is entitled to humane treatment."²⁷

An editorial in the *New York Times* described the situation of the Guantanamo detainees as a "scandal," saying: "Whoever they are, their treatment should be a demonstration of America's commitment to justice, not the blot on its honor that Guantanamo has become."²⁸

Inter-American Commission on Human Rights Says Convene Tribunals

In February 2002, the Center for Constitutional Rights filed a petition with the Inter-American Commission on Human Rights, asking that the Guantanamo detainees be declared prisoners of war and given immediate access to lawyers and consular officials of their home countries.²⁹ The Commission requested that the U.S. government convene competent tribunals to determine the status of the detainees,³⁰ but the government has refused to comply, saying it is not bound by rulings of the Commission.³¹

Catch 22 — Prisoners Denied Access to U.S. Courts

Two appellate court cases have denied the Guantanamo prisoners access to United States federal courts. In *Coalition of Clergy, Lawyers & Law Professors v. Bush*,³² the U.S.

Court of Appeals for the Ninth Circuit affirmed an order dismissing a habeas corpus petition on the ground that those bringing the action on behalf of the Guantanamo detainees — clergy, lawyers, and law professors — were not proper "next friends." The U.S. Court of Appeals for the D.C. Circuit also dismissed the habeas corpus petitions in *Khaled A.F. Al Odah v. U.S.A.*,³³ for lack of jurisdiction, holding that the detainees are not "within any territory over which the United States is sovereign."³⁴ This result is premised on the absurd notion that Cuba is actually sovereign over Guantanamo Bay, even though the United States exercises

exclusive jurisdiction over it.³⁵ Amnesty International has noted: "It is deeply ironic that the U.S.A. is violating fundamental rights on Cuban soil, and relying on the fact that it is on Cuban soil to keep the U.S. courts from examining its conduct."³⁶

Another federal case, however, reached a different result from the *Al Odah* case. In *Gherebi v. Bush & Rumsfeld*,³⁷ the Ninth Circuit decided that U.S. courts do have jurisdiction to hear the Guantanamo prisoners' complaints. The court said that by employing Guantanamo as a prison camp, "our government has purposely acted in a manner directly inconsistent with the terms of the Lease and the continuing Treaty, [which] ... limit U.S. use of the terri-

tory to a naval base and coaling station." Rejecting the Bush administration's disingenuous claim that the U.S. is not sovereign over Guantanamo Bay, the court held that, "for the purposes of habeas jurisdiction, Guantanamo is sovereign U.S. territory."

The Ninth Circuit confronted the challenge facing the constitutional principle of separation of powers, saying, "even in times of national emergency — indeed, particularly in such times — it is the obligation of the Judicial Branch to ensure the preservation of our constitutional values and to prevent the Executive Branch from running roughshod over the rights of citizens and aliens alike." The court answered the Bush administration's assertion of authority head-on, saying:

"Here, we simply cannot accept the government's position that the Executive Branch possess the unchecked authority to imprison indefinitely any persons, foreign citizens included, on territory under the sole jurisdiction and control of the United States, without permitting such prisoners recourse of any kind to any judicial forum, or even access to counsel, regardless of the length or manner of their confinement. We hold that no lawful policy or precedent supports such a counter-intuitive and undemocratic procedure."

But the appellate court was perhaps most alarmed at the government's assertion during oral argument that these prisoners would have no judicial recourse even if they were claiming the government subjected them to acts of torture or summary execution. The Ninth Circuit said: "To our knowledge, prior to the current detention of prisoners at Guantanamo, the U.S. government has never before asserted such a grave and startling proposition." The court said this was "a position so extreme that it raises the gravest concerns under both American and international law."

During its present term, the United States Supreme Court will decide whether U.S. courts have jurisdiction over the Guantanamo prisoners. On November 10, 2003, the Supreme Court granted certiorari in the *Al Odah* case, limited to the following question: "Whether United States courts lack jurisdiction to consider challenges to

the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba."³⁸

The Supreme Court's decision to review this case got the attention of the Bush administration. Less than a month after the Court's grant of certiorari, a U.S. military official told *Time* magazine that 140 detainees are scheduled for release. The official said the military is "waiting for a politically propitious time to release them."³⁹

AMNESTY INTERNATIONAL HAS NOTED: "IT IS DEEPLY IRONIC THAT THE U.S.A. IS VIOLATING FUNDAMENTAL RIGHTS ON CUBAN SOIL, AND RELYING ON THE FACT THAT IT IS ON CUBAN SOIL TO KEEP THE U.S. COURTS FROM EXAMIN- ING ITS CONDUCT."

Basing the release of prisoners on political exigencies flies in the face of due process guarantees in the International Covenant on Civil and Political Rights.⁴⁰ Barbara Olshansky, deputy legal director of the Center for Constitutional Rights, characterized the planned releases of the prisoners as "an admission by the United States that it has imprisoned people for two years who cannot be charged with anything..."⁴¹

Military Commissions Violate International Law

In November 2001, George W. Bush issued a Military Order establishing military commissions to try non-U.S. citizens.⁴² Four months later, the Department of Defense released the procedures for trials in these commissions.⁴³ People who appear before them will enjoy only those rights the President or Secretary of Defense decides they should have. Defendants can be tried in secret with the use of secret evidence, with limitations on their choice of counsel, and they can be executed with no right to judicial review. They do have the right to appeal to George W. Bush.⁴⁴ There are plans to build a death row and execution chamber at Guantanamo, presumably to carry out death sentences imposed by the military commissions.⁴⁵

These military commissions are not competent and independent tribunals.⁴⁶

Moreover, even if a person is acquitted by the military commission, the Pentagon maintains it can continue to hold him in indefinite detention.⁴⁷

The International Military Tribunal at Nuremberg tried and convicted Nazi leaders in public proceedings in which the defendants were able to hear the evidence against them.⁴⁸ Likewise, the International Criminal Tribunal for the Former Yugoslavia⁴⁹ and the International Criminal Court⁵⁰ guarantee basic due process rights, which are absent from Bush's military commissions.⁵¹

In 1942, the Supreme Court upheld the President's authority to establish a military tribunal to try German soldiers who came onto U.S. soil;⁵² however, the United States was engaged in a war with Germany at the time. No nation has executed an armed attack against the U.S. Yet Bush's commission would have the authority to try those suspected of violating the laws of war.

Concerns about the lack of independence of military tribunals led the Inter-American Commission and Court of Human Rights, and the U.N. Human Rights Committee, to find that the use of military courts to try civilians in four Latin American countries violated fundamental rights of due process.⁵³

Geneva III provides that prisoners of war are entitled to the same judicial processes as are the armed forces of the detaining power.⁵⁴ The Guantanamo prisoners, if determined to be POWs, should be tried under the Uniform Code of Military Justice.

The U.S. Violates Its Treaty Obligations

Even if a competent tribunal were to decide these people are not prisoners of war under Geneva III, they are still entitled to due process rights under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.⁵⁵ And, the government is still duty bound to comply with two other treaties it has ratified — the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵⁶ and the International Covenant on Civil and Political Rights.⁵⁷

The U.N. Working Group on Arbitrary Detention has noted that even when prisoner of war status is not recognized by a competent tribunal, "the situation of detainees would be governed by the relevant provisions of the [ICCPR] and in par-

ticular by articles 9 and 14 thereof, the first of which guarantees that the lawfulness of a detention shall be reviewed by a competent court, and the second of which guarantees the right to a fair trial.”⁵⁸ Article 9(4) of the ICCPR provides: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that country may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”⁵⁹

The Torture Convention prohibits cruel, inhuman or degrading treatment or punishment as well as torture. It forbids the use of physical or mental coercion to get information,⁶⁰ and the ICCPR prohibits compulsion to force a person to confess guilt.⁶¹ Nearly half the Guantanamo prisoners are interrogated each week in sessions lasting up to 16 hours.⁶² A prisoner released in May 2003 told Amnesty International that the interrogations “were like torture.”⁶³ Mohammed Sagheer, a Pakistani minister, filed a \$10.4 million lawsuit against the U.S. government for wrongful imprisonment. He claims the wardens at Guantanamo used drugs “that made us senseless.”⁶⁴ This could constitute torture under the Torture Convention.

Moreover, Australian lawyer Richard Bourke, who has worked on the cases of many incarcerated at Guantanamo, asserted on ABC Radio that prisoners had been subjected to “good old-fashioned torture, as people would have understood it in the Dark Ages.” According to Bourke: “One of the detainees had described being taken out and tied to a post and having rubber bullets fired at him. They were being made to kneel cruciform in the sun until they collapsed.”⁶⁵

Three prisoners were released from detention in Guantanamo in October 2002. They reported having no contact with the outside world for 11 months, being locked in 8-foot by 8-foot cells 24 hours a day, with one 15-minute exercise break each week.⁶⁶ Amnesty International denounced the treatment of the Guantanamo prisoners in an August 2003 report, which said: “Amnesty International considers that the totality of the Guantanamo regime including the prolonged and indefinite nature of the detentions can amount to cruel, inhuman or degrading treatment.”⁶⁷

Under the Torture Convention, “No

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.”⁶⁸ Likewise, the ICCPR specifies that torture, cruel, inhuman or degrading treatment or punishment shall never be permitted, even in times of “public emergency which threatens the life of the nation.”⁶⁹

The ICCPR also guarantees a detainee the right to be informed of the reason for his detention,⁷⁰ the right to prompt access to counsel of his choosing,⁷¹ and the right to the presumption of innocence.⁷² Amnesty International has said: “The detainees’ right to be presumed innocent, and treated as such, unless and until they are convicted in a fair trial, has been flouted by an administration which has repeatedly labeled them

ONE OF THE DETAINEES HAD DESCRIBED BEING TAKEN OUT AND TIED TO A POST AND HAVING RUBBER BULLETS FIRED AT HIM. THEY WERE BEING MADE TO KNEEL CRUCIFORM IN THE SUN UNTIL THEY COLLAPSED.

as ‘terrorists.’”⁷³ The U.S. government is detaining prisoners at Guantanamo Bay, Cuba, in violation of the Geneva Convention, the Torture Convention and the ICCPR.

Indeed, onetime prisoner of war Senator John McCain (R-Ariz.), who recently returned from a visit to the Guantanamo camp with two other senators, wrote to Rumsfeld that the prisoners should be tried or released, because “they have rights under various human rights declarations. And one of them is the right not to be detained indefinitely.”⁷⁴

United States military personnel at Guantanamo are vulnerable to accusations of misconduct. Four who had close contact with the prisoners have been charged by military authorities with offenses ranging from adultery to espionage.⁷⁵ Army Captain James Yee, a chaplain, and Air Force Senior Airman Ahmad I. Halabi, a translator, had both questioned U.S. policy and the prisoners’ conditions of confinement.⁷⁶

Halliburton Profits from Guantanamo Concentration Camp

The United States wars on Afghanistan and

Iraq, like those on Kosovo and Vietnam, have been very lucrative for U.S. corporations.⁷⁷ In particular, Brown & Root Services, the engineering division of Halliburton Company which was headed by Dick Cheney before he was tapped for Vice President, won a \$9,700,000 contract to build a 204-unit detention camp at Guantanamo. Each steel unit will measure 6 feet 8 inches by 8 feet.⁷⁸ This is the same Brown & Root that built the controversial isolation units, or “tiger cages,” to hold prisoners in South Vietnam in the CIA’s infamous Phoenix Program in the early 1970s.⁷⁹ And it is the same Brown & Root that built Camp Bondsteel in Kosovo after the U.S.-led NATO’s so-called “humanitarian intervention” in 1999. Camp Bondsteel is the largest U.S. foreign military base constructed since the Vietnam War.⁸⁰ In the most recent scandal, Halliburton, which secured a \$5 billion contract to rebuild Iraq without any competitive bidding, has been accused of overcharging the U.S. government \$61 million for fuel delivery to Iraq.⁸¹

Dismantle the Concentration Camp at Guantanamo

The National Lawyers Guild has called on the United States government to close its concentra-

tion camp at Guantanamo Bay, Cuba; release the prisoners and make certain they will not be subjected to human rights violations if repatriated; immediately charge prisoners with criminal offenses if probable cause exists; immediately cease all interrogations of those still held and provide them with legal counsel and access to family and international human rights organizations; try those charged with criminal offenses in accordance with the Uniform Code of Military Justice and international norms of due process, and not in military commissions; reject the death penalty for all charged with criminal offenses; and return Guantanamo Bay to Cuba.⁸²

Likewise, the American Association of Jurists⁸³ has called for the closure of the Guantanamo concentration camp run by the U.S. government, the release or trials of the prisoners in accordance with international legal norms, and the return of Guantanamo to Cuba. The *Economist* has also called for the facility to be dismantled, describing the treatment of the prisoners there as “unworthy of a nation which has cherished the rule of law since its very birth, and represents a

more extreme approach than it has taken even during periods of all-out war. It has alienated many other governments at a time when the effort to defeat terrorism requires more international co-operation in law enforcement than ever before.”⁸⁴

Amnesty International has called on the U.S. government to drop all plans for trials by military commissions; arrange the voluntary repatriation of those detained as combatants during the international armed conflict in Afghanistan, unless charged with recognizably criminal offenses or if they would face serious human rights violation if returned to their countries of origin; ensure that all other detainees are charged with recognizably criminal offenses and brought to trial within a reasonable time pursuant to international norms, including full access to legal counsel; reject the death penalty against all detainees; ensure all detainees due safeguards under international law; suspend any interrogations that may have prosecutorial purpose until and unless legal counsel is provided; ameliorate conditions including the increase of out-of-cell time; and transfer all children to more suitable circumstances.⁸⁵

In an unprecedented statement, Britain’s third most senior judge described the imprisonment of the men at Guantanamo as a “monstrous failure of justice.” Judge Johan Steyn called the military commissions that may try them “kangaroo courts.”⁸⁶

The United States government must immediately close its concentration camp and release or try the prisoners in accordance with international norms, as called for by the National Lawyers Guild, the American Association of Jurists, and Amnesty International. It should return Guantanamo Bay to its rightful owner, the Republic of Cuba.



Marjorie Cohn is a professor at Thomas Jefferson School of Law in San Diego, executive vice president of the National Lawyers Guild, and the U.S. representative to the executive committee of the American Association of Jurists.

NOTES

1. National Lawyers Guild Calls for Closure of Concentration Camp at Guantanamo Bay, Cuba, www.nlg.org/news/statements/Guantanamo.htm; www.aaj.org.br/.
2. Reuters, “Cuba Says Guantanamo Prison a Concentration Camp,” Dec. 26, 2003, [www.washingtonpost.com/wp-dyn/articles/A32197-](http://www.washingtonpost.com/wp-dyn/articles/A32197-003Dec26.html)

003Dec26.html.

3. Speech given by Fidel Castro Ruz, President of Cuba, Dec. 5, 2003, www.cuba.cu/gobierno/discursos/2003/ing/f051203i.html.

“Camp Delta, Guantanamo is a concentration camp. Except for Auschwitz’s mass slaughter of its prisoners, Guantanamo is run no differently from Manzanar or the German equivalents during WWII. Like Auschwitz, Guantanamo is housed on foreign soil but controlled by the invading country.” Marti Hiken, Press Release, National Lawyers Guild Military Law Task Force, Nov. 12, 2003.

4. “The Platt Amendment,” in *Treaties and Other International Agreements of the United States of America, 1776-1949*, vol. 8, ed. C.I. Bevans (Washington, D.C.: United States Government Printing Office, 1971), pp. 1116-17.

5. The Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations, Feb. 23, 1903, U.S.-Cuba, art. III, T.S. No. 418, reprinted in 6 Bevans 1113-15.

6. *Id.*, art. II.

7. Treaty of Relations Between the United States of America and the Republic of Cuba, May 29, 1934, www.yale.edu/lawweb/avalon/diplomacy/cuba/cuba001.htm

8. *Id.*, art. III.

9. Reuters, “Guantanamo Bay – U.S. foothold in communist Cuba,” Apr. 7, 1999, <http://64.21.33.164/Cnews/y99/apr99/08e4.htm>.

10. Government of the Republic of Cuba, “Statement by the Government of Cuba to National and International Public Opinion,” Jan. 11, 2002, n.y. transfer news, www.blythe.org/nytransfersubs/Covert_Actions/Cuban_Statement_on_US_Use_of_Guantanamo.

11. *Id.*

12. *Id.* The U.S. government continues to designate Cuba a terrorist state, even though the Pentagon admits Cuba is no security threat to the U.S. Why, if Cuba were a terrorist state, would the U.S. bring more terrorists to Cuba?

13. Guantanamo Bay: Overview of the ICRC’s work for internees, Oct. 2003, [www.icrc.org/web/eng/siteeng0.nsf/html/5QRC5V?Op=](http://www.icrc.org/web/eng/siteeng0.nsf/html/5QRC5V?Op=OpenDocument)

14. Neil A. Lewis, “Red Cross Criticizes Indefinite Detention in Guantanamo Bay,” *New York Times*, Oct. 10, 2003.

15. Amnesty International, “United States of America: The threat of a bad example – Undermining international standards as ‘war on terror’ detentions continue – a damaging unilateralism,” Aug. 19, 2003, <http://web.amnesty.org/library/print/ENGAMR511142003>.

16. See text accompanying note 27, *infra*.

17. Carol Rosenberg, “Three Boys, 13-15, Held as Detainees at Cuba Base,” *Pittsburgh Post-Gazette*, Nov. 29, 2003, p. A-1.

18. Charlie Savage, “Guantanamo’s ‘Child Soldiers’ in Limbo,” *Boston Globe*, Nov. 16, 2003, p. A1; Associated Press, “Three Youngest Guantanamo Prisoners Released,” *Los Angeles Times*, Jan. 30, 2004, p. A1; Carlotta Gall, “3 Afghan Youths Question U.S. Captivity,” *New York Times*, Mar. 12, 2004, p. A12.

19. Guantanamo Bay: Overview of the ICRC’s work for internees, *supra*, n.13.

20. American Declaration of the Rights and Duties of Man, OAS res. XXX, adopted by the Ninth International Conference of American States, Bogota, 1948, art. VII.

21. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Annex 1, Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989), art. 40.

22. Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 31(1), 1155 U.N.T.S. 331, 340, 8 I.L.M. 679, 691-92 (1969), art. 18.

23. Jonathan Wright, “Red Cross Criticizes U.S. for Guantanamo Bay Detentions, Reuters, Oct. 10, 2003, www.commondreams.org/headlines03/1010-08.htm.

24. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, U.N.T.S. 135 (hereinafter Geneva III). POWs must be treated humanely at all times. *Id.* at art. 13. For example, they may not be subjected to coercive treatment to secure information from them (*id.* at art. 17), and they must be permitted to send and receive letters. *Id.* at art. 70. The prisoners at Guantanamo have been denied these rights.

25. Geneva III, *id.* at art. 5.

26. Lawyers Committee for Human Rights, “Security Detainees and the Criminal Justice System, A Year of Loss 2002,” www.lchr.org/us_law/loss/loss_ch4b.htm. See generally, Jordan J. Paust, “Judicial Power to Determine the Status and Rights of Persons Detained Without Trial,” 44 *Harvard International L.J.* 503, 505 (2003). (“[C]ontrary to the Bush administration’s claims, the executive branch does not have the complete and unreviewable power to classify persons as enemy or unlawful combatants and to detain such persons without trial.”) Paust cites the International Covenant on Civil and Political Rights, the Geneva Conventions and customary international law. See generally, *id.*, pp. 503-31.

27. “U.S.: Geneva Conventions Apply to Guantanamo Detainees,” *Human Rights News*, Jan. 11, 2002, <http://www.hrw.org/press/2002/01/us011102.htm>.

28. Editorial, “The Guantanamo Scandal,” *New York Times*, May 15, 2003.

29. John Mintz, “Detainees Case to Be Taken to OAS Rights Commission,” *Washington Post*, Feb. 25, 2002, p. A17.

30. Decision on Request for Precautionary Measures (Detainees at Guantanamo Bay, Cuba), Inter-Am. C.H.R. (Mar. 12, 2002) (reprinted at 41 I.L.M. 532 [2002]).

31. Response of the United States to Request for Precautionary Measures Detainees in Guantanamo Bay, Cuba (Apr. 15, 2002) (reprinted at 41 I.L.M. 1015 [2002].) Although the United States has not ratified the American Convention on Human Rights, the U.S. is a party to the American Declaration of the Rights and Duties of Man. The Commission, in asking the U.S. to submit the issue of the status of the Guantanamo prisoners to a competent tribunal, was interpreting the American Declaration.

32. 310 F.3d 1153 (9th Cir. 2002).

33. U.S. Cir.Ct.App. (D.C. Cir. 2003), No. 02-5251, Mar. 11, 2003, <http://laws.lp.findlaw.com/dc/025251a.html>.

34. The detainees argued unsuccessfully that because

the U.S. military controls Guantanamo Bay, it is in essence a territory of the United States and the U.S. government exercises sovereignty over it.

35. See Jordan J. Paust, "Antiterrorism Military Commissions: The Ad Hoc DOD Rules of Procedure," 23 *Mich. J. International L.* 677, 690-93 (2002).

36. Amnesty International, *supra* n. 15.

37. No. 03-55785, Dec. 18, 2003, 2003 WL 22971053 (9th Cir. [Calif.]).

38. *Al Odah, Fawzi K., et al. v. United States, et al.*, No. 03-343, Nov. 10, 2003.

39. Nancy Gibbs with Viveca Novak, "Inside 'The Wire' Security breaches. Suicidal detainees. A legal challenge heading to the Supreme Court. Welcome to Guantanamo," *Time*, Dec. 8, 2003, p. 40. A few days after the Pentagon acknowledged it might release many of the prisoners, it suddenly announced its intention to give U.S. citizen Yaser Hamdi, who has been held incommunicado as an "enemy combatant" in a Navy brig in South Carolina for nearly two years, access to an attorney. This announcement came the day before the Justice Department was due to file a brief with the Supreme Court in the Hamdi case. The *New York Times* said "it may be" that this about-face by the Pentagon, which has resisted providing Hamdi attorney access, is "merely a calculated gesture to help the administration shield its policies from criticism and reversal by the courts." See Neil A. Lewis, "Sudden Shift on Detainee. Allowing Legal Access May Give Legal Cover," *New York Times*, Dec. 4, 2003, p. A1. In another move by the Bush administration to deflect criticism that it has denied attorney access to the Guantanamo prisoners, an Australian and a Yemeni, both slated to be tried in a military tribunal, were allowed attorneys. See "Defense Counsel Assigned to Salim Ahmed Hamdan," Dec. 18, 2003, www.dod.mil/releases/2003/nr20031218-0792.html; Grant McCool, "Guantanamo a 'Black Hole,' Says 1st Civilian Lawyer to Visit," Dec. 18, 2003, <http://news.findlaw.com/international/s/20031218/securityguantanamo.html>; Neil A. Lewis, "Lawyer for Taliban Detainee Says His Client Is Depressed," *New York Times*, Dec. 18, 2003, p. A25. Meanwhile, the U.S. Court of Appeals for the Second Circuit ruled in *José Padilla v. Donald Rumsfeld* that the President lacks the constitutional power to detain as an enemy combatant a U.S. citizen seized on U.S. soil outside of a combat zone, and ordered Rumsfeld to release Padilla from military custody within 30 days. But the court distinguished the case of Hamdi, who was captured on the battlefield in Afghanistan, and thus, implicitly, the Guantanamo prisoners. See *Padilla v. Rumsfeld*, No. 03-2235; 03-2438, Dec. 18, 2003, 2003 WL 22965085. The Supreme Court will decide both the Hamdi and Padilla cases this term. See *Hamdi v. Rumsfeld*, 124 S. Ct. 981 (2004); *Rumsfeld v. Padilla*, No. 03-1027, available at 2004 WL 95802.

40. See text accompanying notes 57-59; 70-73, *infra*.

41. Paul Koring, "Guantanamo releases linked to court ruling — Legal rights probe spurred Pentagon to review detainees' cases, analysts say," *Globe & Mail* (Toronto), Dec. 2, 2003, p. A5.

42. Military Order of Nov. 13, 2001 — Detention,

Treatment, and Trial of Certain Noncitizens in the War Against Terrorism, 66 Fed. Reg. 57,833 (Nov. 13, 2001).

43. Department of Defense Military Commission Order No. 1, Mar. 21, 2002,

www.defenselink.mil/news/Mar2002/d20020321ord.pdf.

44. See *Id.*

45. See Richard A. Serrano, "Base Preparing for Possible Tribunals," *Los Angeles Times*, May 3, 2003, p. A20.

46. According to Jordan Paust, the rules which will govern the military tribunals "continue intentional and per se discrimination on the basis of national or social origin, intentional and per se denial of equal protection, and 'denial of justice' to aliens in violation of various international laws." See Paust, "Antiterrorism Military Commissions," *supra* note 35, p. 678.

47. Katherine Q. Seelye, "Pentagon Says Acquittals May Not Free Detainees," *New York Times*, Mar. 22, 2002, p. A13.

48. Marjorie Cohn, "No Military Tribunals: Let U.N. Try Terrorists," *National Law Journal*, Dec. 20, 2001, p. A21.

49. International Criminal Tribunal for the Former Yugoslavia, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

50. Rome Statute of the International Criminal Court, U.N. GAOR, 52d Sess., Annex II, U.N. Doc. A/CONF.183/9 (1998).

51. See generally, Laura Dickinson, "Using Legal Process to Fight Terrorism: Detentions, Military Commissions, International Tribunals, and the Rule of Law," 75 *Southern California Law Review* 1407 (2002).

52. *In re Quirin*, 317 U.S. 1 (1942).

53. Diane Orentlicher & Robert Kogod Goldman, "When Justice Goes to War: Prosecuting Terrorists Before Military Commissions," 25 *Harvard Journal of Law and Public Policy* 655, 660 (2002).

54. Geneva III, *supra* n. 24, art. 82.

55. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287; see Paust, *supra* n. 26, p. 511.

56. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85 [hereinafter Torture Convention].

57. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, U.N. Doc. A/6316 [hereinafter ICCPR]. In article 2, each state party pledges to ensure the rights recognized in the Covenant "to all individuals within its territory and subject to its jurisdiction." The Human Rights Committee, which is charged with administering the ICCPR, has stated that States parties to that treaty have an obligation to ensure that its protections apply to "all individuals under their jurisdiction." Human Rights Committee, General Comment 3, para 1, Jan. 29, 1981. Guantanamo Bay, if not a territory of the United States, is certainly under the jurisdiction of the U.S.

58. E/CN.4/2003/8, Dec. 16, 2002.

59. See ICCPR, *supra* n. 57, at art. 9(4).

60. See Torture Convention, *supra* n. 56, at art. 1.

61. See ICCPR, *supra* n. 57, at art. 14.

62. See Gibbs & Novak, *supra* n. 39.

63. See Amnesty International, *supra* n. 15.

64. See Gibbs & Novak, *supra* n. 39.

65. Ben Knight, "Claims of Torture in Guantanamo Bay," Oct. 8, 2003, www.abc.net.au/am/content/2003/s962052.htm.

66. David Rohde, "Afghans Freed from Guantanamo Speak of Heat and Isolation," *New York Times*, Oct. 29, 2002, p. A14.

67. Amnesty International, *supra* n. 15.

68. Torture Convention, *supra* n. 56, at art. 2.

69. ICCPR, *supra* n. 57, at art. 4.

70. ICCPR, *supra* n. 57, at art. 9.

71. ICCPR, *supra* n. 57, at art. 14.

72. *Id.*

73. Amnesty International, *supra* n. 15.

74. Neil A. Lewis, "Try Detainees or Free Them, 3 Senators Urge," *New York Times*, Dec. 13, 2003, p. A11.

75. Susan Schmidt, "Army Colonel At Prison Charged; Classified Material Allegedly Taken," *Washington Post*, Dec. 1, 2003, p. A13; John Mintz, "Ex-Muslim Cleric at Guantanamo Faces Minor Charges," *Washington Post*, Oct. 11, 2003, p. A6; Johanna McGeary, "On the Base: Fear of Spying: Enemies Within?" *Time*, Dec. 8, 2003, p. 42.

76. John Mintz, "Clashes Led to Probe of Cleric: Flare-Ups Over Muslim Prisoners' Treatment in Cuba Are Cited," *Washington Post*, Oct. 24, 2003, p. A9. The *New York Times* has called for the U.S. government to drop the charges against Capt. Yee: "The military's mean-spirited and incompetent prosecution of Capt. James Yee, the former Muslim chaplain at Guantanamo Bay, illustrates the danger of allowing the war on terrorism to trump basic rights." Editorial, *New York Times*, Dec. 14, 2003, p. 10.

77. The Bush administration has selectively punished countries that didn't support its war on Iraq by excluding their companies from bidding on valuable Iraq reconstruction contracts. See Sebastian Rotella & Paul Richter, "U.S. Bid Policy Elicits Outrage — Bush tries to limit the diplomatic damage of the decision to keep anti-war countries from competing for major contracts in Iraq," *Los Angeles Times*, Dec. 11, 2003, p. A1.

78. Douglas Valentine, "Brown & Root Services — Engineering Oppression for Over 50 Years," *Covert Action Quarterly*, no. 74, (Fall 2002), p. 25.

79. *Id.*

80. Marjorie Cohn, "The Myth of Humanitarian Intervention in Kosovo," *The Lessons of Kosovo. The Dangers of Humanitarian Intervention*, Aleksandar Jokic, ed., 121, 144-45, n. 29. (Broadview Press, 2003).

81. Douglas Jehl, "Evidence Is Cited of Overcharging in Iraq Contract. Halliburton Subsidiary. Preliminary U.S. Audit of Fuel Deal — Company Defends Its Actions," *New York Times*, Dec. 12, 2003, p. A1.

82. See: www.nlg.org/news/statements/Guantanamo.htm.

83. See: www.aaj.org.br/.

84. "A place in the sun, beyond the law," *Economist*, May 7, 2003.

85. Amnesty International, *supra* n. 15.

86. Robert Verkaik, "Guantanamo treatment is 'monstrous,' says lord," *Independent* (UK), Nov. 26, 2003.

Demonize to Colonize

Ramsey Clark

"In the determination of any criminal charge ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

International Covenant on Civil and Political Rights

Article 14(1)

The complete demonization of Saddam Hussein threatens to determine every decision and action affecting not only his future but that of Iraq as well. With U.S. mass media and U.S. government propaganda stripping Saddam Hussein of every redeeming human quality, any act against him or Iraq is *ipso facto* justified.

This successful demonization made the U.S. unilateral war of aggression against Iraq politically possible. It now makes a fair trial for Saddam Hussein impossible.

The debate about intelligence failures is itself a cover-up of the obvious. Saddam Hussein was demonized to justify regime change in Iraq. It rendered him an evil madman threatening the civilized world. He possessed weapons of mass destruction. He supported 9/11. He aided al-Qaeda. WMDs could be launched within minutes of his order. That Saddam Hussein would use them was clear. He used them "against his own people." Ignored were the facts that under devastating attacks by the U.S. in 1991 and 2003, Iraq did not use any illegal weapons. In 1991, Iraq was the victim of 88,500 tons of explosives (almost seven Hiroshimas) delivered by the Pentagon in 42 days that destroyed its infrastructure: water systems, power, transportation, communications, manufacturing, commercial properties, housing, mosques, churches, synagogues. Food production, processing, storage, distribution, fertilizer and insecticide production, were targeted for destruction. Nearly 150,000 defenseless people were killed outright in Iraq. The U.S. claimed its casualties to be 156 — 1/3 from friendly fire, the remainder accidents.

Sanctions against Iraq from August 6, 1990, into 2003 took over 1,500,000 lives, the majority children under age five. By October 1986, 567,000 children under five were dead from sanctions according to a U.N. FAO report that month. One-fourth of the infants born alive in Iraq in 2002 weighed less than four pounds, a danger-

ously low and crippling birth weight — symbolic of the condition of the entire country.

During the high-tech terrorism of "Shock and Awe" in March and April 2003, Iraq never used any WMDs or other illegal weapon as some 25,000 of its defenseless people were killed.

At least 35 nations have WMDs in their military stockpiles, the U.S. more than all others combined. The U.S. is planning a new generation of nuclear weapons, tacti-

The U.S. used 4,000 tons, or more, of depleted uranium, super bombs in attempts to assassinate Saddam Hussein ...

cal weapons that would have been used against Iraq if the U.S. had possessed them in 2003. The U.S. used 4,000 tons, or more, of depleted uranium, super bombs in attempts to assassinate Saddam Hussein and cluster bombs to savage anyone within a large area, usually urban, where they were dropped.

Saddam Hussein was demonized because he refused to surrender the sovereignty and independence of Iraq and its people to demands and plans for U.S. domination and exploitation under its New World Order.

At the very time the Bush administration claims Saddam Hussein committed his most serious atrocities, "gassing his own people," Kurds at Halabja, in March 1988, near the end of the Iran-Iraq war, U.S. support for the government of Saddam Hussein was at its height. Donald Rumsfeld was a principal player. Stephen C. Pelletiere, the CIA's senior political analyst of Iraq during the Iran-Iraq war, professor at the Army War

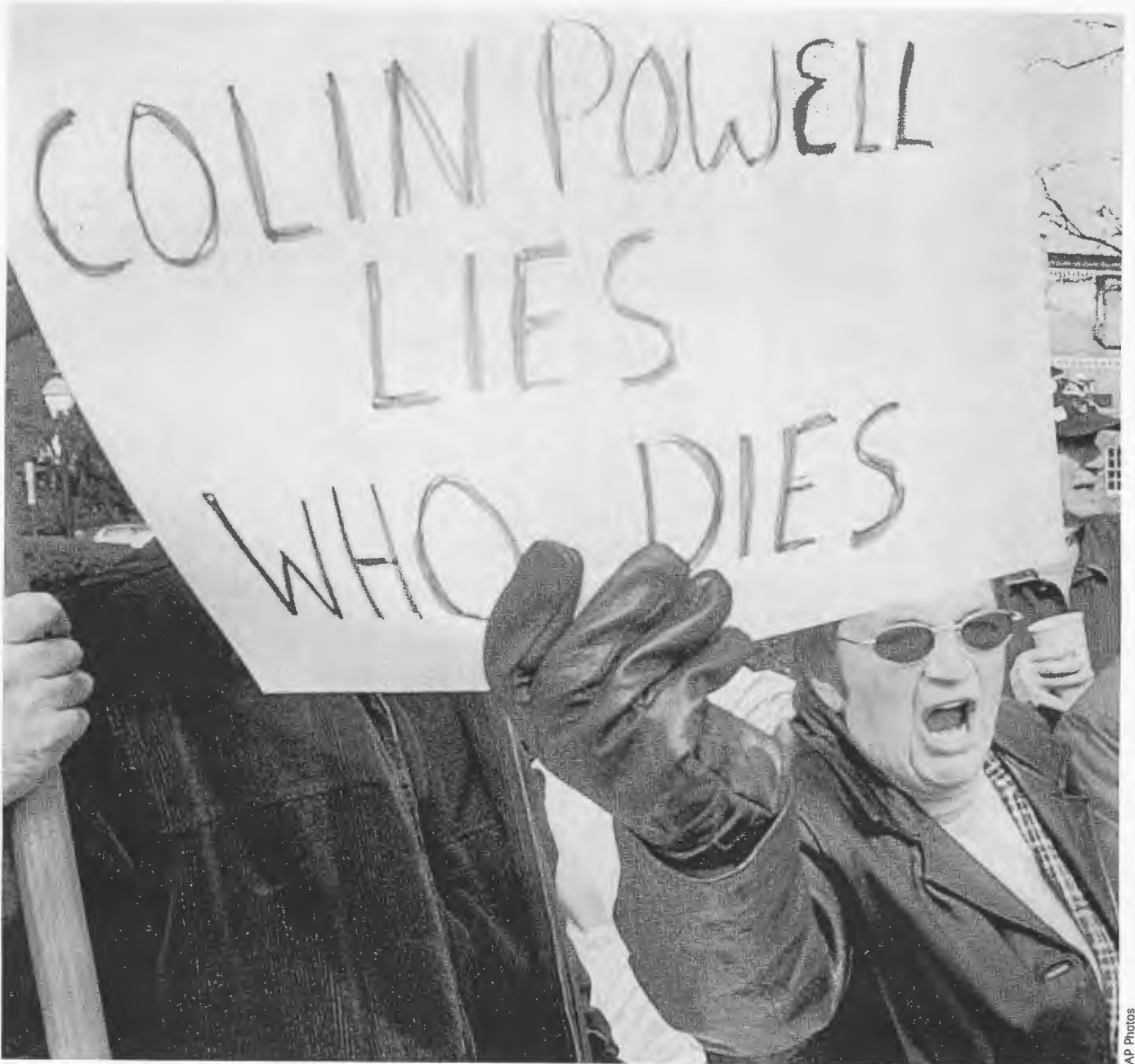
College from 1988 to 2000 and head of a 1991 U.S. Army investigation into how Iraq would fight a war against the U.S., has repeatedly and publicly absolved Iraq from targeting Kurds at Halabja. See, *e.g.*, *New York Times*, Jan. 31, 2003, p. A29.

A Defense Intelligence Agency investigation and report made immediately after the Halabja incident absolved Iraq. The U.S. continued its support of Iraq with full knowledge of the facts.

The "rogue states" condemned by President Bush are "rogue" because they do not submit to U.S. authority. They include, among others, Cuba, Aristide's Haiti, Iraq, Iran, North Korea, Lebanon, Syria, until recently Liberia and Libya, Brazil, Ecuador and Venezuela more recently. Some members of the European Union, most notably France and Germany, timorously, have offered some opposition to the U.S., on the question of Iraq. While they are not called rogues, they have paid a price for this impudence. For those who believe both peace and economic justice require "sovereign equality" among nations, a principle on which the U.N. Charter is based, the "rogue states" deserve our gratitude for resisting, often at a terrible cost, U.S. demands for submission. Nearly all the more than 80 U.S. military interventions in the Western Hemisphere in the past century are evidence that the U.S. intervenes in countries that defy its will and resist its exploitation.

"Our SOBs" — the Somozas of the world — who govern for the benefit of the U.S. and their own selfish interests, have caused many more wars, far greater violations of human rights and most deadly, deeper impoverishment of hundreds of millions of people than all the rogue states which most often are struggling for liberation or self-preservation.

If the U.S. can successfully use the demonization of Saddam Hussein to justify his illegal detention and cruel, inhuman and



AP Photos

Sue Niederer of Hopewell, N.J., shouts at Secretary of State Colin Powell's motorcade as he exits a conference on Friday, February 20th, at Princeton University. Niederer's son, Seth Dvorin of East Brunswick, was killed in early February in Iraq.

degrading treatment and consolidate its control over Iraq through the corruption of law and government, the consequences will be more violence against the U.S., more aggression by the U.S. and more misery for the world.

The brazen humiliation of Saddam Hussein after his capture, the former Iraqi President disoriented, disheveled, mouth probed wide open, a helpless prisoner, was shown repeatedly on TV internationally and viewed by more than one billion people. American Indians understood immediately and were angered again: That is the way they treated our captured Chiefs: Sitting

Bull, Crazy Horse, Geronimo and many others. Filipinos still wince as they remembered the treatment accorded their President Aquinaldo, captured by U.S. treachery in his hideout in northern Luzon a century ago. The Bush administration appears to prefer a fate for Saddam Hussein more like that of the slave rebellion leader Nat Turner nearly two centuries ago — his head on a post.

Later photos showed Saddam Hussein, humiliated before a rich U.S. Iraqi puppet leader and avowed enemy, who was sitting free and comfortable above Saddam Hussein in his cell, a large picture of President George W. Bush hung on the wall.

This conduct advertises to the whole world that the U.S. has no respect for the Geneva Conventions, or mere simple decency.

It must be observed that all the rogue states, the victims of the many U.S. interventions and the U.S. captives mutilated, or humiliated as Saddam Hussein has been, are members of the great majority of the world's population that has beautiful darker skin. They are the poor of the planet, being made poorer, dominated and exploited by the foreign policies of the U.S. and its rich allies designed for domination, exploitation and triage.

The devastating destruction of life and

AP Photo/Nabil Ajluni



British military police show their deep respect for unemployed former Iraqi soldiers waiting for back pay due them since September in Basra, Jan. 8, 2004.

life-supporting infrastructure by the massive aerial assaults of 1991 and 2003, the regular bee-sting bombing of Iraq in between, the vicious armed raids against Iraqis, averaging 25 per day now and constant since May 1, 2003, when Bush claimed the war was over and, above all, the genocidal sanctions strangling the whole society for more than twelve years with virtually no protest in the U.S. mass media, government and political leadership required race-based saturation and demonization to be accepted. Attention must be paid.

Can we remember President Bush's outrage when Iraqi TV. in March 2003 showed several captured U.S. soldiers being escorted by Iraqis in poor light and at a distance that made identification impossible? We might wonder how U.S. soldiers captured in the future, or other U.S. hostages, will be treated.

The most chilling conduct of the U.S. is the total isolation, complete silence about his location and treatment, and denial of all visitation for Saddam Hussein. The spectre created by Guantanamo says anything goes. But the International Covenant on Civil and Political Rights provides that:

No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Article 9(1-3).

It further requires: All persons

deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Tariq Aziz, Iraq's former Deputy Prime Minister, a major figure in international diplomacy for twenty years, has been held in secret without reports on his health, or treatment for eight months now. Unnamed prisoners at Guantanamo have been held for two years with only glimpses of unconscious prisoners being carried on stretchers, and semi-conscious prisoners stumbling with leg chains supported by U.S. soldiers as they leave interrogation.

The U.S. cannot use its criminal war of aggression, or its belated designation of Saddam Hussein as a prisoner of war to escape the international standards of the Covenant on Civil and Political Rights.

The very detention of Saddam Hussein is illegal. The U.S. invasion of Iraq was a war of aggression, an offense called "the supreme international crime" in the Nuremberg Judgment. Prisoners held by the U.S. as a result of this war of aggression must be released, or turned over to the United Nations, or the International Criminal Court, and not a jurisdiction of its choice.

The U.N. and the ICC are legal, independent, impartial, competent and have jurisdiction to act, all conditions required by international law. The U.N., or the ICC, can make a preliminary determination as to whether there is sufficient evidence of criminal conduct to support criminal charges, the necessity and nature of further detention and whether a legal, independent, impartial and competent court exists with jurisdiction to try the charges.

There is no court in Iraq and no existing domestic law. The U.S. war of aggression and occupation have destroyed both. The present U.S. puppet council in Iraq has no legitimacy and is comprised of sworn

enemies of Saddam Hussein, the first qualification for the job. It cannot be foreseen when a new sovereign government capable of creating a legal, independent, impartial and competent court might be formed, but any new criminal code it might enact would be *ex post facto* for any act committed prior to its enactment.

The Security Council does not have power under the U.N. Charter to create a criminal court and its creation of courts for Yugoslavia, Rwanda, Sierra Leone and participation in a court for Cambodia, all under coercion from the U.S. in pursuit of its enemies, cannot create power to do that which its Charter denies it.

Nor are the Security Council's hands clean concerning Iraq. It authorized sanctions, albeit under U.S. coercion, against Iraq that were genocidal, inflicting infinitely greater injury on the people of Iraq than the worst demonization of Saddam Hussein proclaims he did.

The International Criminal Court is legal and presumptively independent, impartial and competent. Its jurisdiction reaches major international crimes against peace, war crimes and crimes against humanity, but only for acts alleged to have been committed after June 30, 2002.

Most important of all, any court that might consider charges against Saddam Hussein must also weigh charges against the United States, its officials and others acting in concert with them. If equal justice under law is to have any meaning, and equality is the mother of justice, power cannot confer impunity for commission of wars of aggression, the supreme international crime, or the plethora of other offenses the U.S. has committed against the people of Iraq.

For there to be peace, the days of victors' justice must end.



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FURTHER READING

Michael Parenti, "To Kill Iraq," 2003.

SALON — Friday, August 1 2003, "Just a Lot of Gas?"

In both the Parenti and SALON accounts of what happened in Halabja, the conclusion is that Iran's military used a chemical weapon in Halabja and later the Iraqi forces gassed Halabja thinking that the Iranian forces were in Halabja.

Divide to Conquer

The Racist Media on Iraq



December 2003, Baghdad. A U.S. soldier and a plainclothes Iraqi sapper look at a makeshift rocket launcher inside a donkey cart. Two makeshift launchers with a total of 52 rockets in their tubes were found.

The above photo is one more evidence of how the racist propaganda and misinformation systems work. The photo was taken in Baghdad, last December. The attacks on the U.N. headquarters in Baghdad, the Jordanian embassy and the occupation forces in that city were always automatically attributed to "Saddam loyalists," of the "Sunni triangle." There are three Arabic words, written in white on this cart which from right to left are Allah (God), Muhammad (the prophet of Islam) and Ali (the leader for the Shias of the world). Together, the three words constitute the most significant and revered Shia religious slogan. This means that those who were operating this rocket launcher in Baghdad were Shia. More than half of the members of the secular Baath party in Iraq were Shia. The overwhelming majority of them sided

with Sunni Saddam Hussein during the Iran-Iraq war and not with Shia Ayatollah Khomeini. Because the majority in Iraq is secular — Sunni or Shia.

Almost all of Iraq's Kurds are Sunni, but that did not gain them favorable treatment from Saddam Hussein's regime. Therefore designations like "Sunni favoritism and privileges" or "Sunni stronghold" or "Shia stronghold" are baseless and are the tools of this racist divide and conquer plan against the peoples of Iraq. Let us forget it, that the occupation dictator of Iraq, L. Paul Bremer, is one of the closest intimates of Henry Kissinger, with whom he worked prior to his Iraq assignment.

Lately we are hearing a new phrase — "Aristide loyalists" — which means that the peoples of occupied Iraq and occupied Haiti, do not have any feelings about their

respective motherlands, and all they have is love for their kidnapped Presidents. Nothing could be further from the truth. One needs to ask why should the "Saddam loyalists" blow up the Jordanian embassy in Baghdad shortly after Jordan granted asylum to the relatives of Saddam Hussein? Who is benefiting from the murder of tens of academicians and intellectuals of Iraq which is encouraging hundreds of academicians to leave? After establishing an imperialist made Islamic Republic in Afghanistan, maybe Iraq is next!

— CAQ

FURTHER READING

GI SPECIAL 2#44, Mar. 25, 2004, www.notinourname.net/gi/.
Samir Amin, "Political Islam," CAQ # 71.

Assault on Iraqi Women

Gregory Elich

Women in Iraq are under siege. Hopes for a brighter future after the fall of Saddam Hussein have been rudely dashed and smothered by a climate of fear and repression. Far from the promised "liberation," women in Iraq find themselves increasingly imprisoned by lawlessness and medieval attitudes, while recent events portend calamitous developments for women.

Daily life in Iraq has become a grim ordeal for women. Rampant crime has become the order of the day since the fall from power of Saddam Hussein's Ba'ath Party. There are no reliable statistics, but kidnappings and rape are now so commonplace that many women have become virtual prisoners in their own homes. Women walking alone or in small groups have become easy targets for criminal gangs, compelling many to stay at home with the curtains drawn, never to venture outside. Abductions are so widespread as to become routine, yet few cases are reported to the police, for to do so would in many cases invite death. A victim "cannot say anything or come to tell us," says Iraqi policeman Ahmad Assimil. "When they grab her, you know what they do with her. For the Iraqi people, it's shameful, so she keeps silent."¹ "In some cases," points out Layla Mohammed of the Organization of Women's Freedom in Iraq, the raped woman is "quietly killed by the family to 'clear' its sullied honor. We receive horrifying accounts. Some victims are left naked in the street after being held for several days. They no longer have any choice but to live as recluses, in shame and silence. A young woman was kidnapped at the hairdresser's where she was preparing for her wedding. It is chaos here."²

Not all victims are released after being raped or held for ransom. The less fortunate are sold as slaves into the booming prostitution trade. According to Iraqi police, the going price for an abducted woman is reported to be around \$90.³

A young Baghdad resident named Najwa reports, "We can no longer walk about freely, or drive cars. Even going to the market has become dangerous."⁴ Many professional women are no longer able to travel to their jobs, while others can



Family members during night raids in Tikrit January 9. Isn't liberation wonderful?

safely do so only when accompanied by male relatives. "Many families are afraid to send their daughters to school because people will kidnap them," said one father of four daughters. Shortly after the war, a Save the Children survey found that over half of the students no longer attended girls' schools, fearing abduction.⁵ And the situation has only worsened since then. "Under Saddam, things were not good, but they were better than now," explains a young Baghdad woman named Zubaida. "Under Saddam, we kept close to the walls, but now we do not go out at all. I want to live somewhere else. Anywhere. I think that anywhere else on the planet is better than Iraq."⁶

Increasingly, women feel pressured to don veils, both because bareheaded women are favorite targets for rapists, but also to avoid harassment from religious extremists. More and more mosques are turning away women not garbed in a head-to-toe *abaya*, and the Al Mustansirriye University in Baghdad has posted a sign ordering female students to wear full *hijab* head scarves and forbidding the wearing of pants, jeans or culottes.⁷

At one time, women in Iraq held an

enviable status in the Middle East. In 1979, the Constitution of Iraq declared the equality of men and women. Compulsory education through age 16 led to greater opportunities for women, and in 1980, women were given the vote and the right to run for electoral office. By the early 1980s, women comprised 40 percent of the workforce and the Unified Labor Code mandated equal pay and benefits for men and women. Then began the erosion of women's rights, starting at around the time of the invasion of Kuwait and the Gulf War of 1991. Hoping to broaden his support among the most retrograde elements in society, Saddam Hussein decided to permit tribal leaders to implement traditional tribal codes, invariably at the expense of women. In 1990, a new penal code was enacted which permitted honor killings of women. Under Article 409, men could murder with impunity female relatives who were suspected of engaging in adultery or premarital sex. Victims of rape could be — and often were — killed in order to clear a family's reputation. According to the U.N. Special Rapporteur on Violence Against Women, by 2002, over 4,000 Iraqi women had become victims of so-called honor killings. Men were allowed up to four

wives, and women were disadvantaged in divorce and inheritance. Article 41 of the penal code permitted husbands to commit violence against their wives, and Article 427 declared that a rapist would not be guilty of the crime if he married the victim. In the years following 1994, high schools were segregated by sex, and women up to the age of 45 were forbidden from travelling abroad unless accompanied by a male relative.⁸ Sanctions imposed against Iraq drove millions into dire poverty. For the most destitute women, there was no other means of survival and support for their families than to resort to prostitution. The Hussein regime was monstrously unforgiving when it came to prostitution, beheading women arrested on such charges. Only days before my journey to Iraq in 2000, it was reported that several prostitutes were arrested and then beheaded. Despite such appalling ruthlessness, it was apparent to me that prostitution was still continuing, a testament to the sheer desperate poverty of these women's lives.

Expectations for an improvement in the lot of women were cruelly shattered. The fall of Saddam Hussein instead energized the most retrograde elements in society, those seeking to bring about an Iraq that would be ruled according to the precepts of political Islam. Houzan Mahmoud, of the Organization of Women's Freedom in Iraq, warns, "Right from the first days of the collapse of the Ba'ath regime, Islamic groups emerged from Iran highly equipped with the dangerous ideology of political Islam, to use against the secular and radical forces in our society... They imposed veiling on women; they are not allowing them to go to work, universities, and even in the streets if they are not veiled. Islamic courts have been set up in Al-Najaf; men who have killed their female relatives under the pretext of these women being prostitutes have received the full support of these courts. Women have also been banned from working in certain professions such as judgeships because the Mullahs are refusing any nominations for female solicitors to work as judges. They clearly want to establish an Iranian or Taliban-style Islamic government, treating women as second class citizens, and they are applying sexual apartheid everywhere against women."⁹

Unfortunately, the lot of women in Iraq only promises to worsen, if the behavior of the U.S.-installed Iraqi Governing Council is any indication. U.S. occupation authorities chose the members of this puppet government; no one voted for them. Religious extremists and nationalists are among those



Iraq, 2003. On the t-shirt of the woman on the right of this photo it says in Arabic "Bush and Alibaba."

who sit on the council, and they have not been shy about imposing their values on the rest of society. Among its first acts, the council replaced International Women's Day (March 8) with that of the birthday of the Prophet Mohammed's daughter, and it also

environment increasingly dominated by aggressive religious extremists, this was tantamount to expunging whatever rights women still retained. The law must be signed by U.S. occupation administrator Paul Bremer in order to take effect. The

HOUZAN MAHMOUD, OF THE ORGANIZATION OF WOMEN'S FREEDOM IN IRAQ, WARNS, "RIGHT FROM THE FIRST DAYS OF THE COLLAPSE OF THE BA'ATH REGIME, ISLAMIC GROUPS EMERGED FROM IRAN HIGHLY EQUIPPED WITH THE DANGEROUS IDEOLOGY OF POLITICAL ISLAM, TO USE AGAINST THE SECULAR AND RADICAL FORCES IN OUR SOCIETY..."

voted to reintroduce the death penalty.¹⁰

In a secret vote on December 29, 2003, the Iraqi Governing Council narrowly passed Law Number 137, which in effect eliminated the Personal Status Code of 1958 that had provided some measure of legal protection for women. In its place, the council decreed that in domestic concerns, individuals would have the "option" of disregarding the civil code and could instead ask a religious court to rule on such matters as marriage, divorce and inheritance. In an

measure is a disturbing harbinger of the future place of women in Iraqi society, once the reins of governance are officially turned over to the Iraqi Governing Council.¹¹

Women's groups reacted immediately to the threat, organizing a demonstration in downtown Baghdad. The rally only drew hundreds, an indication of the climate of pervasive fear stalking the land. "This will send us home and shut the door, just like what happened to women in Afghanistan," warned Kurdish lawyer Amira Hassan



Iraqi lawyers shout slogans during a protest June 16, 2003.

Abdullah. "The old law wasn't perfect, but this one would make Iraq a jungle. Iraqi women will accept it over their dead bodies." Zakia Ismael Hakki, a retired judge, declared, "This new law will send Iraqi families back to the Middle Ages. It will allow men to have four or five or six wives. It will take away children from their mothers. It will allow anyone who calls himself a cleric to open an Islamic court in his house and decide about who can marry and divorce and have rights. We have to stop it."¹² After Yanar Mohammed, a prominent activist on behalf of women, began a campaign to repeal Law Number 137, an Islamic extremist organization named the Army of Shahaba threatened to kill her if she continued her work.¹³

The United States, says Houzan Mahmoud, of the Organization of Women's Freedom in Iraq, "brought to power the most right-wing forces in Iraq in its medieval style government... This imposed ruling council is a group of religious leaders, tribal leaders, and nationalists who have no interest in improving people's lives, freedom, equality, security or the welfare of people. They could only get to power by being imposed on Iraqi people by America, because few people would have voted for them if there were elections to give the people choice. So these are the American democratic values for Iraqi people. They divide the Iraqi people on the basis of religious sects and tribes, as if we are living in the

dark ages."¹⁴ Women, and indeed, all those who care about democracy in Iraq, face a daunting struggle if they are to overcome foreign occupation and domination by repressive obscurantism. As long as the flow of profits for Western investors is ensured, U.S. leaders are unlikely to be troubled by the declining status of women. An Iraq ruled by religious extremists would pose less risk to Western corporate profits than a society which respected the rights of its citizens.



Gregory Elich has published over 40 articles on the Balkans and East Asia in CovertAction Quarterly, Politika, Columbus Dispatch, and other publications. He has been involved in peace activities opposing U.S. wars in Vietnam, Central America, Iraq and the Balkans. He testified at the IAC Commission of Inquiry into NATO war crimes in July 1999.

A different version of this article can be viewed in Swans, www.swans.com

For further information, or to support the women of Iraq, please contact: The Organization of Women's Freedom in Iraq; www.equalityiniraq.com

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International Business Machines and Apartheid

Richard Knight

"It is IBM's policy not to bid for business where it believes its equipment would be used to abridge human rights or for repressive purposes. We know of no case where it is so used."

IBM Operations in South Africa

April 1985¹

For decades, apartheid South Africa relied on transnational corporations for capital and technology.² Today, apartheid is gone but its legacy remains. Victims of apartheid have brought a series of lawsuits in U.S. courts seeking reparations from over twenty companies, including IBM, for their role in human rights abuses.

The apartheid system in South Africa was totally dependent on imported computers and software. No mainframe computers were designed or made in South Africa. "South Africa really needs U.S. companies in certain industries, particularly high tech industries and computers," IBM's representative told investigators from the House Subcommittee on Africa in 1984.³ The number of mainframe computers is estimated to have jumped from over 1,000 in 1974 to 1,500 in 1976.⁴

The white minority government was the largest single user of computers, accounting for at least 25% of sales in South Africa.⁵ IBM was the largest computer company and its computers were used by the prisons, military, government-run nuclear and weapons research facilities and large state-owned companies. IBM computers were also integral to the functioning of the private sector of the apartheid economy. Although the U.S. eventually adopted some computer sanctions, the political will to implement them was often lacking.

IBM in South Africa

IBM began operations in South Africa when in 1952, it sold an "electronic tabulator" to the Division of Economics and sold its first computer there in 1960. By 1971 there were approximately 500 mainframe com-

puters installed in South Africa, nearly half sold by IBM.⁶ IBM had South African sales of \$250 million in 1985, of which an estimated \$180 million was computers. Its market share had fallen from nearly 50% in the early 1970s to 20% in 1985 but was still twice that of its closest competitor. Reflecting its historic strength, IBM by 1985 had installed an estimated 40% of South Africa's computer base. IBM was also a leading supplier of software, with estimated 1984 sales of \$23.8 (R35) million, a 25% market share. Despite its dominant position, increased competition and reduced demand in the mid-1980s resulted in slower-than-expected sales resulting in IBM reducing its work force in South Africa by about 16%, from over 1,900 to 1,600 workers in March 1985.⁷

Sales to the Government

IBM acknowledged in 1975 that one of three dollars of sales in South Africa came from the government. Central government departments and agencies using IBM computers included Departments of the Prime Minister, Inland Revenue, Statistics and Education. IBM computers were also used by provincial governments, municipalities, four Bantustan governments and large state-owned companies.⁸ All these government bodies played a role in implementing apartheid. So central was this business to IBM that the company said that a proposal by U.S. churches that it end all business with the South African government or its agencies was "tantamount to proposing that IBM withdraw from that country."⁹

A basic aspect of apartheid was that everyone was classified by race. That classi-

fication decided all aspects of life including where one could live, what jobs one could hold, if and where one could own land. Central to imposing this system were "influx control" laws and the hated passbook.¹⁰ In 1965, IBM bid on the passbook system but lost out to the British company International Computers Ltd (ICL).¹¹ But IBM continued to seek similar business and in the early 1970s sold the Interior Department an IBM 360/50 mainframe for its race-based population registry, which formed the basis of the system of identity documents for people classified as Colored and Asian known as the "Book of Life."¹² This system was upgraded in the early 1980s to include two IBM 370/158 mainframe computers. The "Book of Life," like the passbook, was central to the enforcement of apartheid laws such as the Group Areas Act that imposed residential segregation based on race. During apartheid 3.5 million Black people were forcibly removed from their homes because the areas where they lived were designated for another race, usually whites. Yet in 1975 Frank Cary, an IBM official, commenting on the expansion on the Interior Department's computerized population registry, told the Atonement Friars, "We feel that the fact it is being done with computers hasn't any appreciable overall effects on the apartheid system. The pass system could be done in many other ways besides computers."¹³ Elsewhere Cary said the government could have as much control of the passbook system by keeping information on "3x5" cards as on a computer.¹⁴

Thousands of people were sent to jail every year for violating apartheid laws, including the pass laws. The Department of

Prisons, which was central to the enforcement of apartheid, used an IBM computer for "financial" purposes.¹⁵

Despite the fact that in August 1963 the U.N. Security Council adopted a voluntary arms embargo, the South African military continued to use IBM computers because the embargo only covered "ammunition of all types and military vehicles." In December, with the U.S. voting in support, the Security Council added to the embargo list "equipment and materials for the manufacture and maintenance of arms and ammunition."¹⁶ In 1970 the Security Council extended the voluntary arms embargo to cover "all vehicles and equipment for use by the armed forces," which would include computers used for administrative purposes. The U.S. abstained on the 1970 extension and continued to allow IBM to provide computers to the South African military.¹⁷

Because of the secrecy around defense matters, the full extent of the use of IBM computers by the military is not known.¹⁸ But the military's use of IBM equipment goes back at least to the early 1970s when the Department of Defence had two IBM 360 mainframe computers. The South African magazine *Management* reported in 1973 that an IBM 360 mainframe computer was installed at the Simonstown Naval Installation. In 1974 *Management* reported the South African Defence Force had leased one 360 and two 370 mainframe computers used for "personnel, financial, and stock control." The SADF's command and control system used an IBM computer and the military reportedly had six major computer centers which also may have used IBM equipment. A logistics supply system for ammunition and military items, known as Project Konvoor, apparently used IBM computers and was run by a private company set up by former IBM staff in 1977.¹⁹

IBM computers also played a role in South African weapons and nuclear programs. South Africa had an aggressive nuclear research program dating back to the 1960s. In 1993 the last apartheid president, F. W. de Klerk, admitted in Parliament that South Africa had built, and then dismantled, six nuclear bombs.²⁰ The purpose of developing these weapons was to blackmail the world into accepting apartheid.

While full details of the role played by IBM computers are unknown, there was an IBM 360/40 mainframe computer in South Africa's secret nuclear facility at Pelindaba. IBM told the American Committee on Africa in March 1978 that this computer was no longer operating at the facility but confirmed that the Atomic Energy Board, which

Government of South Africa. Standard commercial computers are not on the embargo list," IBM told its shareholders in 1975.²³

In November 1977, the U.N. Security Council adopted a mandatory arms embargo against South Africa.²⁴ In February 1978 the Carter administration issued export regulations to implement the embargo that prohibited all sales of computers to the police, military, Department of Prisons and the Bureau of State Security. Presumably after this date IBM had to stop servicing computers sold to these agencies and remove those that it had leased, but IBM compliance is open to question. IBM's South African subsidiary announced it would continue to supply spare parts and service military and police computers as long as supplies lasted.²⁵ By 1977, *Management* and other press sources stopped reporting the specific

make and model number of computers used by the military and other sensitive agencies.

In April 1985, seeking to downplay its links to the apartheid regime, IBM said that no sales were made "to the police, prisons, military, agencies for national security, the Department of Cooperation and Development or the Department of Home Affairs." This, in fact, is no more than what U.S. government export regulations already prohibited and IBM deserved no credit for abiding by the law.²⁶

Sales to the Private Sector

South Africa had an extensive military-industrial complex and the government had 800 to 1,200 contractors for weapons research, development and manufacture who could buy IBM computers with few restrictions even after the imposition of the 1978 and 1985 sanctions.²⁷ IBM computers were used by a number of strategic multinational companies — including Ford, General Motors and Leyland — that produced vehicles for the police and military and the Mobil and Caltex Corporations, which refined oil and sold petroleum products to the police and military. IBM computers were also used by many large South African companies including mining companies like General Mining Union Corporation

IN 1970 THE SECURITY COUNCIL EXTENDED THE VOLUNTARY ARMS EMBARGO TO COVER "ALL VEHICLES AND EQUIPMENT FOR USE BY THE ARMED FORCES," WHICH WOULD INCLUDE COMPUTERS USED FOR ADMINISTRATIVE PURPOSES. THE U.S. ABSTAINED ON THE 1970 EXTENSION AND CONTINUED TO ALLOW IBM TO PROVIDE COMPUTERS TO THE SOUTH AFRICAN MILITARY.

ran the nuclear program, had an IBM 370/155 computer used for "reactor development" and also for "recording and controlling the industrial use of radioactive material."²¹

IBM computers were used by the Council for Scientific and Industrial Research (CSIR), which was involved in both weapons development and nuclear research. CSIR designed the Casspir armored car, widely used by police in the Black townships during apartheid. In February 1978, the sale of computers for CSIR's "weapons research" was banned by U.S. law but IBM continued to supply computers. In 1980, CSIR doubled the capacity of its IBM computers. IBM itself admitted it could not control the use of computers it sold so it is difficult to see how such computer power could be monitored to ensure it was not used for weapons research. The National Institute of Telecommunications Research, which conducted classified military-related research in such areas as radar and communications and had close ties to Armaments Corporation of South Africa (ARMSCOR), had an IBM computer linked to CSIR's computers.²²

IBM justified its computer sales by noting that they were legal under U.S. law. "Since 1963, the United States has forbidden the sale of military equipment to the

(Gencor). Standard Bank used IBM computers and in early 1986 Barclays Bank, South Africa's largest bank, agreed to acquire two large IBM mainframe computers, an IBM 3090/400 and an IBM 3090/200.²⁸

IBM's Personal Computer (PC), first introduced to the world in 1981, provided about half of all desktops sold in South Africa in the mid-1980s. Unlike mainframe computers, most PC sales were through 72 IBM authorized dealers. PCs, despite their name, were actually aimed at the business market. The South African police and military could have, and presumably did, buy PCs from local computer stores without restriction. In addition to sales through its dealers, IBM made direct sales to large clients. This strategy had major success in August 1985 when IBM closed a deal to supply 500 PCs worth \$900,000 (R2 million) to the government-owned company South African Transport Services.²⁹

The Sullivan Principles

IBM and other U.S. companies justified their investment in South Africa by pointing to the "benefits" received by their Black employees. In 1977, IBM was one of the original 12 companies to sign the corporate code of conduct known as the Sullivan Principles.³⁰ IBM, then rated as "making good progress" under the Principles monitoring system, demonstrates the inadequacy of the code. In 1975, 88% of IBM employees in South Africa were white and the company claimed that no Black employees were qualified for management or supervisory jobs. As recently as the early 1980s, 80% of employees were white and only 2.3% of managers were Black. In 1980, IBM had no Black salespeople and by mid-1983 only four, none of whom sold computer products.³¹ Presumably, IBM did not want to send Black salespeople out to its major customers: the government, state-owned corporations and large white-run companies.

Sanctions

The concern of the South African government and multinational companies about existing sanctions and a possible complete cutoff of computers was revealed in a cable to the Secretary of State from the U.S. Embassy in Pretoria in October 1978. "A grave problem would be the supply of spares for existing high technology equipment," the cable noted. The South African

government "has built up a reserve of stocks of more than one year which will act as a cushion, but there is no possibility all replacement parts for imported goods which keep the economy going ('even office elevators') can be produced locally." The cable also revealed: "Multinationals, including U.S. subsidiaries, are determined to undercut any sanction action and have already made plans to camouflage their operations through subterfuges arranged with affiliates in other countries."³²

In September 1985, in order to forestall stronger measures by Congress, President Reagan issued an executive order that prohibited the export of U.S. computers, computer software, or goods or technology intended to service computers to or for the use of the South African military, police, prison system, and national security agencies. This executive order also banned sales to ARMSCOR and its subsidiaries, the weapons research activities of CSIR, the administrative authorities for the Black passbook and similar controls, any apartheid enforcing agency, or any local or regional government or "homeland" entity which performs any of the above functions.³³ The executive order required a system of end-use verification for the export of computers, computer software and technology to South Africa to ensure that comput-

mainframe computers outside the U.S. Thus the U.S. government knew and approved of the use of computers by apartheid's police and military.

By the mid-1980s, export restrictions on computers and the threat of increased sanctions made South African computer users seek to diversify their supply. A major competitor for IBM was Reunert Computers, a subsidiary of the South African conglomerate and defense contractor Barlow Rand, which distributed IBM-compatible mainframe computers made by the Japanese company Hitachi. By the end of 1985, Hitachi computers had captured a 10% market share. The data services manager at Barclays Bank in South Africa told *Business Week* in early 1986 that "[A]s an added protection against possible boycotts by U.S. based companies, we have started buying from Hitachi." Even U.S. companies hedged their bets. "We are not saying we are going to switch from IBM," commented an official at Mobil South Africa, "but there is no question anyone who has his eggs in one basket is concerned."³⁵

Apartheid Challenged

In 1983 the ANC-aligned United Democratic Front was formed and, in a total rejection of apartheid, Black South Africans mobilized to make the townships ungovernable.³⁶ In July 1985, South African President P.W. Botha declared a State of Emergency and sent thousands of troops into the Black townships to quell "unrest." In the U.S., the divestment campaign sought to pressure companies to stop doing business in South Africa by get-

ting individual and institutional investors such as college endowments and pension funds to sell their stock in such companies. By the end of 1986, the movement on college campuses succeeded in persuading some 125 U.S. colleges to at least partially divest. Seventeen states, 19 counties and 83 cities had by then adopted "local sanctions" including divestment of public employee pension funds and selective purchasing in which companies not doing business in South Africa were given preference in the bidding process.

U.S. companies started to withdraw from South Africa and direct investment declined from nearly \$2 billion at the end of 1983 to \$1.4 billion at the end of 1985. Between March and September 1985, U.S. bank loans dropped by \$757 million as banks adopted policies of not making new

... THE U.S. GOVERNMENT KNEW AND APPROVED OF THE USE OF COMPUTERS BY APARTHEID'S POLICE AND MILITARY.

ers exported directly or indirectly to South Africa would not be used by any prohibited agency.³⁴

End user/use licensing and verification is common in export controls of sensitive products and technology. This requirement was especially important in South Africa where government had a network among its departments to handle computer work jointly. The willingness and ability of IBM and other companies to comply in the South African case is open to question. In a letter dated May 2, 1975, Frank T. Cary, then Chairman of IBM, wrote: "Even though we do market and service computers, there is no way IBM can see to it that customers use computers in prescribed ways." Even before the 1978 arms embargo regulations and the 1985 executive order, companies needed individual export licenses to send

loans to South Africa, and in September the government was forced to declare a debt repayment standstill.

IBM Pulls Out

Because of its key role in supporting apartheid, IBM was long a target of the anti-apartheid movement. In 1978, IBM's own employees started a campaign against the company's involvement in South Africa when engineer James Leas sent a letter to IBM's chairman. The company was the target of sit-ins by student groups in New York, Oregon and Rhode Island. In April 1986 IBM chief executive John Akers said, "The economic activity there is worse than it was a year ago, the economic pressure in the United States is heightened, and Mr. Botha is too slow... If we cannot have as successful a business remaining in South Africa as we would have leaving, then I think we would have no choice than to leave."³⁷

On October 21, 1986, IBM announced it was disinvesting from South Africa. IBM's announcement came one day after a similar action by General Motors and nineteen days after Congress passed the Comprehensive Anti-Apartheid Act over the veto of President Reagan. The company remained profitable in South Africa, but Akers admitted the company was feeling the economic impact of the U.S. anti-apartheid movement.³⁸

IBM withdrew by selling its South African subsidiary, which was renamed Information Services Management (ISM), to ISM Trustees, and an employee trust. The company claimed that it sold its subsidiary to a trust to give employees, including Black employees, ownership in the company. But Black employees, 23% of the workforce when IBM pulled out, received only 13% of the equity in the trust.³⁹

IBM continued to sell computers to South Africa with ISM the sole authorized representative in the country.⁴⁰ "We are absolutely committed to continuing the supply of IBM products and services" said Jack Clarke, the managing director of IBM South Africa.⁴¹ In a letter sent to customers, Clarke said that a full range of products and services would be available and that "the new company will be able to respond to their [customers'] needs with greater flexibility than a wholly owned IBM subsidiary. In the current international climate, such flexibility will clearly be to our customers' advantage."⁴²

In October 1987, a new ownership structure for ISM was announced, ironically

linking the company with its major competitor. A new company, Technology Systems International (TSI), was formed as a joint venture of ISM Trustees and Barlow Rand, each of which owned 28%, with the remainder publicly owned. TSI had two subsidiaries, ISM and Reunart Computers.⁴³ This ISM-Barlow Rand marriage appears to have been designed partly to circumvent sanctions. The two TSI subsidiaries cooperated in programming services, manufacture and telecommunications. IBM presumably shared technical information with ISM and Reunert, both of which may well have been involved in maintaining IBM computers sold to the military and other prohibited agencies before the arms embargo. Brian Mehl, managing director of ISM, commented, "What we've done with Technology Systems International is create the best of all worlds for our customers in that we've immediately created an alternative source — we've got IBM and we've got the leading IBM-compatible supplier."⁴⁴

By 1988, IBM claimed reduced sales in South Africa of about \$100 million, reflecting the fact that the company no longer received income from maintenance and service contracts, which were retained by ISM.⁴⁵

Because of its ongoing licensing and distribution agreements with ISM, IBM remained a target of the U.S. divestment movement.⁴⁶ IBM sent vice presidents around the U.S. to argue that it should receive a five-year exemption from the selective purchasing policies imposed by some U.S. states and cities, because it was providing financial assistance to Black business in South Africa and that its agreements with ISM would expire by the end of that period. This strategy succeeded in a number of cities,⁴⁷ but Metropolitan Dade County in Florida revoked the waiver it gave IBM when it became clear that the company did not plan to end all sales to ISM when its distribution agreement expired.⁴⁸

The Aftermath

Apartheid came to an end with nonracial elections and the installation of an ANC-led government in 1994. IBM reinvested in South Africa that year. Initially it owned 52% of IBM South Africa Group, but by the end of 1998 it became a wholly owned subsidiary.⁴⁹

In 2002, two sets of apartheid victims filed lawsuits against transnational companies that had done business in South Africa during apartheid, including IBM. The suits, filed in U.S. District Court seek reparations

from the companies for their role in human rights abuses during apartheid under the Alien Tort Claims Act (ATCA).⁵⁰ *Khulumani et al. v. Barclays, et al.* was filed on behalf of 82 individuals and organizations against twenty-two transnational corporations which the plaintiffs claim aided and abetted the apartheid regime.⁵¹ A series of other cases have been filed on behalf of South African plaintiffs by U.S. lawyer Ed Fagan.

The South African government has opposed these cases on the grounds that they are now seeking investment by these and other multinational companies, that the use of U.S. courts undermines South African sovereignty and that a democratically elected government has been addressing the legacy of apartheid since 1994. The government also notes that the Truth and Reconciliation Commission (TRC) documented apartheid, investigated gross human rights violations, provided amnesty for those who made full disclosure of politically motivated violations and made recommendations on reparations for victims of abuses.⁵²

Supporters of the cases note that the TRC found that companies were significant beneficiaries of apartheid and that none of the defendant companies participated in the TRC process and thus did not receive amnesty. Anglican Archbishop Njongonkulu Ndungane said recently that the lawsuits were filed out of "sheer frustration" after the call for dialogue was ignored by the companies.⁵³ Supporters also note these cases could serve as a deterrent to future abuses by transnational companies.

Unlike the Khulumani case, most of the cases filed by Fagan are class action lawsuits that seek large sums of money (\$100 billion in one case) and include South African companies as defendants.⁵⁴ The Fagan approach has been criticized as overbroad and stretching U.S. law. "I think [the South African] government has been misled in terms of its response to the lawsuits brought by others which sought too much and asked U.S. courts to become a surrogate for the [South African] government," said Michael Hausfeld, the U.S. lawyer for the plaintiffs in the *Khulumani* case.⁵⁵

The legal cases face several legal hurdles. On November 6, 2003, a hearing on a motion by the defendant companies to dismiss all the cases was held before Judge John Sprizzo of the federal Southern District Court of New York. The day before the hearing, the plaintiffs in the cases filed by Ed Fagan fired him.⁵⁶ The companies claim that they abided by U.S. export

restrictions. The judge could rule that the complaints do not tie the actions of the companies directly to apartheid abuses. As of the writing of this article, the judge has

IBM COMPUTERS BROUGHT EFFICIENCY TO THE ADMINISTRATION AND MAINTENANCE OF APARTHEID.

yet to rule. Another hurdle is that the U.S. Supreme Court has agreed to a joint hearing on the appeals of two ATCA cases (*United States v. Alvarez-Machain* and *Sosa v. Alvarez-Machain*). The Court will rule on the scope of the ATCA. If the Court rules that the ATCA does not provide for private action, it would essentially end the ability of individuals to sue under the Act.⁵⁷

Conclusion

IBM's sales directly aided the South African government in implementing apartheid and committing human rights abuses. Some of IBM's role is known but much remains hidden. By the mid-1970s there were 1,500 mainframe computers in South Africa, a large percentage of them made by IBM and many of them sold or leased to the government.⁵⁸ IBM never explained what happened to the computers being used by the military and other prohibited agencies after the imposition of sanctions in 1978 and 1985. Perhaps the apartheid reparation cases will bring more details to light.

IBM's claim that its computers were not used for apartheid human rights abuses does not stand up to scrutiny. IBM's chairman told the 1977 annual meeting "we have investigated each instance brought to our attention where there was any reason to believe IBM computers might be used for repressive purposes, and we have found no such use."⁵⁹ In reality, IBM computers brought efficiency to the administration and maintenance of apartheid. IBM computers used by the prisons, the military, the military-industrial complex and for a race-based population registry aided the government in implementing apartheid policies including those of racial segregation, forced removals and law enforcement. Every government body that used IBM computers had some role in implementing apartheid laws. The ANC recognized that the whole

apartheid economy — the private sector as well as the government — was dependent on foreign capital and technology when it called for comprehensive economic sanctions. IBM and other transnational companies ignored this call and instead, by their actions, supported the apartheid regime.



Richard Knight is a consultant and Project Director of the African Activist Archive Project. He worked for 26 years at the American Committee on Africa (ACOA) and its associate The Africa Fund, which played a major role in the campaign for sanctions against South Africa. For more information on the author and U.S. corporate involvement with apartheid see www.richardknight.com.

NOTES

1. Cited in Richard Knight, *U.S. Computers in South Africa* (New York: The Africa Fund, 1986), p. 8.
2. Apartheid (literally "separateness") was a comprehensive economic, political, legal and social system based on race designed to ensure white wealth and Black poverty. The Population Registration Act of 1950 required that everyone was classified by race as Africa, Indian (Asian), Colored or white. The white minority, 13.7% of the population, by law had a monopoly on political and economic power. There was a long history of Black resistance and repression was necessary to maintain the system. The white minority could vote, Africans were denied the vote. The term Black in this paper includes all those not classified as white.
3. Knight, *op. cit.*, p. 1.
4. Richard Leonard, *Computers in South Africa: A Survey of Companies* (New York: The Africa Fund, Nov. 1978), p. 2.
5. Computer manufacturers such as IBM both sold and leased computers to their customers. In this paper "sales" generally includes leases.
6. *Automating Apartheid — U.S. Computer Exports to South Africa and the Arms Embargo* (Philadelphia: NARMIC/American Friends Service Committee, 1982) and "Foreign Investment in Apartheid South Africa," *Notes and Documents* No. 21/72, Oct. 1972, United Nations, Unit on Apartheid, Department of Political and Security Council Affairs.
7. The total sales of \$250 million included sales/leasing of computers, software, computer service contracts and some non-computer office products such as electric typewriters and dictating equipment. The total sales figure comes from Barnaby J. Feeder, "I.B.M. Is Shedding South Africa Unit; Pressure Is Cited," *New York Times*, Oct. 22, 1986. Based on figures published in the *Financial Mail*, the author estimates IBM computer sales were about \$180 million. See *U.S. Computers, op. cit.* Because of the complexity of mainframe computers, many users had maintenance contracts with systems manufacturers, the cost of which over the life of the computer was high in relation to the capital cost. See *Encyclopedia of Computer Science and Engineering* (New York: Van Nostrand Reinhold Company, 1983), pp. 907–08.
8. *Automating Apartheid, op. cit.*, pp. 97–110.
9. *IBM's South African Business* (Armonk, NY: IBM Corporation, April 1975), p. 1.
10. Through "influx control" laws the government sought to limit the number of Blacks into urban "white" areas, including the Black townships such as Soweto. All those classified as African had to carry a passbook that documented if it were legal for them to be in a "white" area. According to the apartheid government's own statistics, 2.4 million people were arrested or prosecuted for pass law violations between 1974 and 1985.
11. IBM knew of the repressive nature of the pass system against which there were numerous protests. In 1956, over 20,000 women marched in Pretoria against the extension of passes to women. In 1960, five years before the IBM bid, the Sharpeville Massacre occurred when police opened fire into a demonstration against the pass laws killing 69 people.
12. "U.S. Investment in Southern Africa — A Focus for Church Concern" (A Report by an Ecumenical Church Team Who Visited South Africa in Nov. 1971 to Research and Report on the Involvement of U.S. Corporations in That Land), reprinted in *U.S. Business Involvement in Southern Africa*, Part 3, Hearings before the House Subcommittee on Africa, 1973, p. 615.
13. *Automating Apartheid, op. cit.*, p. 15.
14. Memorandum from Tim Smith, Interfaith Center on Corporate Responsibility to the Church Project on U.S. Investment in South Africa, April 3, 1975. This memo provides an overview of a March 31 meeting between the officials of the National Council of Churches, including Smith, and IBM officials including Frank Cary.
15. Leonard, *op. cit.*, p. 5.
16. This extension did not stop sales by U.S. companies to ARMSCOR, which manufactured weapons, but the author does not know of any sales by IBM. ARMSCOR was a government-owned company responsible for the design and manufacture of defense products including arms. ARMSCOR also was responsible for the importation and export of arms, after 1977 in violation of the mandatory arms embargo.
17. Security Council Resolution 181 (1963), Aug. 7, 1963, Security Council Resolution 182 (1963), Dec. 4, 1963 and Security Council Resolution 282 (1970), July 23, 1970. On August 2, 1963, U.S. Ambassador to the U.N. Adlai Stevenson announced the U.S. would end sales of military equipment by the end of the year. However, military equipment was narrowly defined and did not stop many companies from making sales to the military. IBM sold computers. GM and Ford sold vehicles including commercial trucks.
18. In 1977 IBM competitor Control Data told the Interfaith Center on Corporate Responsibility that the Atomic Energy Board, the Uranium Enrichment Corporation and the Department of Defence have "a wealth of computers (all IBM)." Leonard, *op. cit.*, p. 5.
19. Donald F. McHenry, *United States Firms in South Africa: Study Project on External Investment in South Africa and Namibia* (Bloomington, Ind.: Published on

behalf of the Africa Publications Trust by the African Studies Program, Indiana University, 1975), pp. 32-33; *Automating Apartheid*, *op. cit.*, pp. 41-43; Leonard, *op. cit.*, p. 4; and Robert Kinloch Massie, *Loosing the Bonds: The United States and South Africa in the Apartheid Years* (New York: Doubleday, 1997), p. 351.

20. De Klerk became President in September 1989 and shortly thereafter began a process that led to the dismantling of the nuclear weapons prior to South Africa's accession to the Nuclear Non-Proliferation Treaty in July 1991. For details see Waldo Stumpf, Atomic Energy Corporation of South Africa Ltd. at www.fas.org/nuke/guide/rsa/nuke/stumpf.htm.

21. Leonard, *op. cit.*, p. 5; *Automating Apartheid*, *op. cit.*, p. 99; Barbara Rogers & Zdebek Cervenk, *The Nuclear Access* (New York: Times Books, 1978), p. 163. The U.S. sold to South Africa the SAFARI-1 20 MW research reactor which was located at Pelindaba under the "Atoms for Peace" program in the 1965. The Atomic Energy Board was also involved in the Koeberg nuclear power station, built and owned by the Electrical Supply Commission (ESCOM); construction began in 1976 and the first power was produced in 1984.

22. *Automating Apartheid*, *op. cit.*, pp. 52-55, 105-106, and Knight, *op. cit.*, p. 2.

23. IBM proxy statement, 1975. Similarly, in defending these sales, then IBM Chairman Frank T. Cary said in May 1975: "We provide only standard commercial data processing equipment and programs and, to the best of our knowledge, our equipment is being used by the South African government only for such regular business applications as payroll, tax assessment and inventory work." See letter from Frank T. Cary to Rev. J.A. Panuska, Maryland Province of the Society of Jesus, May 2, 1975.

24. Security Council Resolution 418 (1977) covered "arms and related matériel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and shall cease as well the provision of all types of equipment and supplies and grants of licensing arrangements for the manufacture or maintenance of the aforementioned."

25. *Computer Weekly* (UK), March 31, 1978, cited in Leonard, *op. cit.*, p. 9, and Ann Seidman and Neva Seidman Makgetla, *Outposts of Monopoly Capitalism* (Westport, Conn.: Lawrence Hill, 1980), pp. 172-73.

26. One possible violation of the arms embargo: The 1980 *Computer Users Handbook*, an overview of the South African computer industry, listed "Law Enforcement System" software as available from IBM. When asked for promotional material used in South Africa to promote the software, IBM did not deny the "Law Enforcement System" was available but said: "The IBM South Africa doesn't distribute promotional material on those applications. The marketing people use other marketing methods." When later exposed in a Jack Anderson column, IBM denied that the system was available in South Africa, saying that "all we can say firmly is we don't know how the ad got into" the publication. See *Automating Apartheid*, *op. cit.*, pp. 33-34.

27. *Automating Apartheid*, *op. cit.*, p. 54.

28. Leonard, *op. cit.*, p. 8, and Knight, *U.S. Computers*, *op. cit.*, p. 9.

29. Knight, *op. cit.*, p. 10.

30. The "Sullivan Principles" was a voluntary code of conduct for U.S. companies operating in South Africa, drafted by Rev. Leon Sullivan in 1976. Companies pledged to end workplace segregation, adhere to fair employment practices and improve conditions of life for their employees.

31. *IBM's South African Business*, *op. cit.*, p. 2; Knight, *op. cit.*, p. 10.

32. *Automating Apartheid*, *op. cit.*, pp. 8-9.

33. The executive order also included a number of other sanctions. For the text and related documents see www.reagan.utexas.edu/resource/speeches/1985/85se.p.htm. When Reagan came into office in 1981, he weakened the arms embargo export regulations, including allowing some computer sales to subsidiaries of ARM-SCOR. See *Automating Apartheid*, *op. cit.*, pp. 10, 36-39; and Knight, *op. cit.*, p. 2.

34. The Comprehensive Anti-Apartheid Act of 1986 incorporated the executive order's computer sanctions.

35. Cited in Knight, *op. cit.*, p. 4.

36. The African National Congress (ANC) was illegal in South Africa and had to operate underground.

37. Knight, *op. cit.*, p. 10.

38. See Feeder, *op. cit.*; Alan Cowell, "In Pretoria, Stiffer Resolve," *New York Times*, Oct. 22, 1986; and Tamar Lewin, "Pullouts May Spur Flights by Others," *New York Times*, Oct. 22, 1986.

39. Richard Leonard, *IBM Lobbies to Continue Business with South Africa - Millions of Dollars in City and State Contracts at Stake* (New York: The Africa Fund, 1989), p. 2.

40. Richard Knight, *Unified List of United States Companies Doing Business in South Africa* (New York: The Africa Fund, 1990), p. 40.

41. Feeder, *op. cit.*

42. NOTICE TO CUSTOMERS AND ASSOCIATES OF IBM THROUGHOUT SOUTH AFRICA, letter from J.F. Clarke, I.B.B. South Africa (Pty.) Ltd. (no date); and "IBM leak reveals no change in SA," *Datalink*, Jan. 19, 1987.

43. Leonard, *IBM Lobbies*, *op. cit.*, p. 1; and Knight, *Unified List*, *op. cit.*, p. 40.

44. Richard Knight, "Sanctions, Disinvestment and U.S. Corporations in South Africa," in Robert E. Edgar (ed.), *Sanctioning Apartheid* (Trenton: Africa World Press, 1990), p. 78.

45. Leonard, *IBM Lobbies*, *op. cit.*, p. 2.

46. IBM employees also continued their protests. See John Burgess, "IBM Employee Group Criticizes Company's Role in South Africa," *Washington Post*, Nov. 16, 1988.

47. Leonard, *IBM Lobbies*, *op. cit.*, pp. 1-2.

48. J.A. Savage, "South Africa Ties Cost IBM Dade County Business Waiver," *Computerworld*, July 17, 1989.

49. Company documents including exhibit "Parents and Subsidiaries" in SEC Form 10-K for the years 1994, 1995, 1996, 1997 and 1998.

50. A number of cases have been filed against IBM and other companies for human rights abuses under the

Alien Tort Claims Act (ATCA). In 2001 a case was filed, but subsequently dropped, by five Holocaust victims against IBM under ATCA which alleged that IBM tabulators and other equipment was used by the Nazi German government in concentration camps including to catalogue victims (homosexual, Jewish, etc.) and thus "substantially aided the persecution, suffering and genocide experienced in the camps before and during World War II." See:

www.cmht.com/casewatch/humanrights/holocaust.html

There are other ongoing ATCA cases against companies for human rights and environmental abuses in relationship to their operations in Nigeria, Sudan, Burma, Indonesia and other countries. The ATCA has been attacked by the Bush administration and multinational companies are seeking to repeal or limit the law. See: www.hrw.org/campaigns/atca/intro.htm and www.earthrights.org/atca/index.shtml.

51. The defendant companies in the *Khulumani* case are Barclays National Bank, BP, ChevronTexaco, Citigroup, Commerzbank, Credit Suisse Group, DaimlerChrysler and its subsidiary AEG Daimler-Benz, Deutsche Bank, Dresdner Bank, ExxonMobil, Fluor, Ford, Fujitsu (which acquired ICL), General Motors, IBM, J.P. Morgan Chase, Rheinmetall, Rio Tinto Group, Shell, Total-Fina-Elf and UBS (formerly Union Bank of Switzerland). Jubilee South Africa has been supporting the *Khulumani* case. See:

www.cmht.com/casewatch/humanrights/apartheid.html.

52. For details see letter of South African Minister of Justice Dr. P. M. Maduna, MP, to U.S. District Judge John E. Sprizzo, July 29, 2003, available at: www.gov.za/reports/2003/apartheid.pdf.

53. Rory Carroll, "S. Africa shuns apartheid lawsuits," *The Guardian*, Nov. 27, 2002, South African Press Agency, Aug. 27, 2003; and *Khulumani* Plaintiffs' Response To Defendants' Joint Motion to Dismiss, Sept. 8, 2003.

54. Oliver Burkeman, "Sanctions busters sued for \$100bn," *The Guardian* (London), Aug. 9, 2002.

55. Chantelle Benjamin, "Apartheid Victims to Tell Cabinet of Claims," *Business Day* (Johannesburg), Oct. 21, 2003.

56. "Shaky Start for Apartheid U.S. lawsuits," *Business Day* (South Africa), Nov. 10, 2003, and "SA's Views of Reparations Cited," *Business Day*, Nov. 7, 2003, available at www.bday.co.za.

57. The ATCA, passed in 1789, grants jurisdiction to U.S. federal courts over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." See "Reviewing Foreigners' Use of federal courts," *New York Times*, Dec. 2, 2003.

58. A back-of-the-envelope calculation: If 40% of this installed base was manufactured by IBM, that would be 600 computers. If 25% of these were sold to the government, that would be 150 IBM computers.

59. Leonard, *op. cit.*, p. 10.

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John Kerry's Obsession

S. Brian Willson

On March 7, 1969, I arrived at a tiny airbase south of the Bassac River in Vietnam's Mekong Delta as head of an Air Force combat security unit. On March 13, Navy swift-boat commander John Kerry received a bronze star for actions on the Bay Hap River 70 miles further south. Two years later, in April 1971, we would meet at a week-long veteran's encampment on the mall in Washington, D.C., during the historic "Dewey Canyon III: a limited incursion into the country of Congress" organized by Vietnam Veterans Against the War (VVAW).

Kerry, recipient of five war medals, was one of its organizers. I was ecstatic to simply be present with 1,000 other veterans, vigorously opposing a senselessly brutal and racist war still raging.

Thursday of that week, I stood crying outside the packed hearing room of Senator William Fulbright's Foreign Relations Committee listening to John

collective catharsis.

More than eleven years later John Kerry and I reconnected in Massachusetts. I met him in 1983 after he had been elected Lt. Governor under Michael Dukakis. As a lawyer dropout, I was actively involved with other veterans who with John were seeking to craft effective responses to the growing syndrome of psychological and physical problems manifesting among the state's veterans.

In 1984, Kerry ran against a popular congressperson in the Democratic primary for a vacant U.S. Senate seat. I joined a dozen or so Vietnam veterans rallying around Kerry while other veterans sided with his opponent because they believed Kerry had seriously ignored veterans' issues. Kerry won a close primary, then campaigned in the general election against a wealthy businessman championed by General George Patton III.

Kerry's platform was impressively progressive. He called for serious reductions in military spending and weapons production and supported a nuclear freeze. He proposed aggressive efforts to control acid rain and opposed offshore drilling while promising to substantially increase spending on domestic social programs. We veterans, "Kerry's Doghunters," continually fended off criticisms from the far right. Patton accused Kerry of having committed treasonous acts as organizer for VVAW in 1971, "giving aid and comfort for the enemy." Kerry's medal throwing in April 1971 became a target of fierce attacks. Boy, did we vets defend that expression — an act of our own catharsis, atoning for having participated in an illegal and savage war. Then came the shocking revelation from Kerry: "I did not throw *my* medals, but those of a World War II veteran from Lincoln, Massachusetts, at his request."

I felt a painful twinge of betrayal in my stomach, though initially I tried to downplay the significance of the deception. Kerry went on to win. Cameron Kerry attributed his brother's ultimate election success to the "galvanizing energy" provided by the veterans' support. The "doghunters," called "Kerry's commandos" by the press, had succeeded getting an anti-war Vietnam vet-

As a member of Senator Kerry's Veterans Advisory Council, I worried that John was already infected by that stifling phenomenon called Washington groupthink.

Kerry's powerful speech condemning the war and asking for its quick cessation. For the first time I felt validation for a horrible experience that I, like with so many veterans, was just beginning to recover from. I will *never* forget his concluding remarks: "Our determination [is] to undertake one last mission, to reach out and destroy the last vestige of this barbaric war...and...30 years from now...we will be able to say 'Vietnam' and...mean...the place where America finally turned and where soldiers like us helped in the turning." Wow!

The following day John Kerry joined 700-800 vets who threw their medals over a quickly erected fence near the west steps of the Capitol. It was a powerful



Brian Willson at his prosthetist's clinic, San Francisco, 2001.

eran elected to the U.S. Senate.

In 1985 Kerry threw a party for his "doghunters," and it was there that I heard him mention several times that his initials "JFK" (John Forbes Kerry) would one day enhance his aspirations for the White House in the footsteps of his hero, John Fitzgerald Kennedy. I chuckled. Then John said he had a new appreciation for the covert actions used to facilitate U.S. foreign policy, having been briefed about the nation's secrets by the CIA, DoD, and other security agencies. As a member of Senator Kerry's Veterans Advisory Council, I worried that John was already infected by that stifling phenomenon called Washington groupthink.

I began some critical reflection. Rumors had it that Kerry had expressed to peers at Yale his ambitions of following his hero, JFK, to the presidency. At 18 years of age, Kerry had a serendipitous meeting with Kennedy on a Coast Guard boat off Cape Cod. His privileged background ensured his induction into Yale's secret Skull and Bones Society. He had given an anti-war speech at his 1966 Yale graduation *after*

enlisting in a Naval officer program, virtually guaranteeing a trip to Vietnam. And it seemed strange he had made such an effort to carefully document with his own films his actions on a swiftboat in the Mekong Delta. Finally, 1971-1984 was a long time for John to have been silent about the deception of throwing someone else's medals, rather than his own.

During his first term, Kerry did use his prosecutorial skills to initiate an ad hoc investigation into Reagan's illegal contra terrorist activities against revolutionary Nicaragua. Kerry and his staff found evidence tying the contras to drug smuggling while the Iran-Contra scandal was unraveling. These actions indicated Kerry might take seriously campaign promises to bring to the Senate lessons he learned from his Vietnam experiences about illegal and reckless government policies.

In addition, Kerry has consistently won good grades for his support of environmental protections. However, in general, his 19 years in the Senate have been unremarkable. He has championed no particular cause, often following the lead of Senator Edward Kennedy, though they dramatically parted ways over the latest Iraq war.

A close examination of Kerry's record reveals that he

- announced that his first campaign promises to cancel weapons systems and reduce defense spending were ill-advised;
- voted for the Gramm-Rudman Act of 1985 resulting in dramatic cuts in domestic social programs;
- voted against Gulf War I only to soon reverse himself saying he was ill-advised;
- voted for the 1996 Telecommunications Act facilitating media monopolies;
- supported Clinton's "welfare reform;"
- supported Clinton's draconian "Counterterrorism and Effective Death Penalty Act," a precursor to Bush II's Patriot Act which Kerry also supported;
- supported the genocidal sanctions against and continued bombings of Iraq under Bush I, Clinton, and Bush II;
- voted for the Homeland Security Act;
- voted for the "No Child Left Behind" Act;
- questioned the correctness of affirmative action;
- boldly declared that "the cause of Israel is the cause of America";
- supports NAFTA, the WTO, GATT;
- continues to support massive increases in "defense" spending;
- supported Bush II's tax cuts for the wealthy.

Kerry is now the wealthiest of all 100 Senators (around \$500 million), largely due to his wife's fortune. Despite Kerry declaring his intentions to take on the special monied interests that control politics, he is one of the largest recipients of special interest money.

Perhaps most disturbing is Kerry's ardent support of Bush II's 2002 request of Congress to unlawfully transfer their non-delegable war-declaring power to the president to launch first-strike, pre-emptive war

Service: My Vision for a Better America (Viking), he seeks to revive a "bold vision of progressive internationalism," in effect continuing Pax Americana. One particularly revealing statement indicates Kerry's betrayal of the veterans who shared the sentiments of his 1971 speech: "As a veteran of both the Vietnam War and the Vietnam protest movement, I say to both conservative and liberal misinterpretations of that war that it's time to *get over it* and recognize it as an *exception*, not as a ruling exam-

KERRY IS NOW THE WEALTHIEST OF ALL 100 SENATORS (AROUND \$500 MILLION), LARGELY DUE TO HIS WIFE'S FORTUNE. DESPITE KERRY DECLARING HIS INTENTIONS TO TAKE ON THE SPECIAL MONIED INTERESTS THAT CONTROL POLITICS, HE IS ONE OF THE LARGEST RECIPIENTS OF SPECIAL INTEREST MONEY.

as he determined to be necessary to defend national security. This Iraq war was conducted in direct violation of the U.S. Constitution and international law, and every member of Congress who voted for it violated their oath to uphold the highest law of our nation. There were 23 Senators and 133 members of the House of Representatives who voted "NO" on the October 2002 resolution, far more grotesque in lies and fabrications than the 1964 Gulf of Tonkin Resolution that granted unlimited war authority to President Lyndon Johnson.

Sadly, Kerry has forgotten the lessons from Vietnam, if in fact he once understood them. He has been one of the *leading* hawk cheerleaders for war against Saddam Hussein. He claims to have believed in every pretext offered by Bush II. The numerous deceptions visible to so many, strangely were overlooked by this well-educated lawyer. In fact, he declared on the floor of the Senate, October 9th, on the eve of the vote: "In the clearest presentation to date, the President laid out a strong, comprehensive and compelling argument why Iraq's WMD programs are a threat to the United States and the international community."

In John Kerry's 2003 book, *A Call to*

ple, of the U.S. military engagements of the twentieth century. If those of us who carried the physical and emotional burdens of that conflict can regain perspective and *move on*, so can those whose involvement was vicarious or who knew nothing of the war other than ideology and legend" (p. 43, italics added). Kerry is out of touch. Iraq repeated a tragedy that could have been avoided if we had heeded the lessons of Vietnam — lies and consequent quagmires.

Vietnam an exception? Kerry ignores the 200 U.S. overt, and thousands of covert, illegal interventions against "majority world" nations since World War II alone, resulting in the murdering and maiming of millions of impoverished peoples in more than 100 countries as they aspire for a bit of justice, a pattern of wholesale terrorism used to maintain a grotesque, unsustainable global gap between the haves and the have-nots. To so ignore this suggests a total insensitivity to our cultural racism that has enabled such systematic exploitation of "majority world" peoples, an attitude that simply can no longer be tolerated as part of our national policy.

What happened to Kerry's commitment to the historic "turning" of America? Or perhaps he never meant it in the first place. It

could be that John Kerry always has been driven by a burning ambition for the presidency that has guided his actions, including his Vietnam tours of duty and his anti-war actions—and those historic words he uttered in 1971. Kerry is deeply entrenched in the corrupt, U.S. oligarchic structure with his obsession to be president overriding all else. This is where he stands.

It is ironic that John Kerry now sits as an experienced lawyer on the same Senate Foreign Relations Committee before which he testified so eloquently in 1971. In 2002 hearings before the same Committee, he listened to voluminous testimony authoritatively challenging *all* of Bush II's pretexts. Kerry dismissed every piece of evidence offered. I believe Kerry voted in a manner he thought would serve his presidential ambitions, even though it meant defying the Constitution he swore to uphold.

Despite my desire to see Bush II dethroned, I cannot join the growing "Band of Brothers" working on Kerry's presidential campaign. I belong to a different tribe of veterans who are still working for the "turning of America." Whether Kerry truly meant those words or not, many others of us took them to heart. That turning is still desperately needed. The world may not survive if we don't participate in a dramatic turning — away from blinding arrogance and plutocracy and toward loving compassion and authentic grassroots-based democracy.

◆

*S. Brian Willson, a former U.S. Air Force Captain, has been a law-trained peace activist for many years. He continues to study effects of U.S. foreign policy on other countries. In 1987, while peacefully protesting highly publicized Pentagon movements of weapons to Central America, he was struck by a U.S. munitions train in California accelerating to over three times the 5 mph legal speed limit. He survived absent both legs below the knee, while suffering a severe skull fracture, among other injuries. Subsequently he discovered his identity as an FBI domestic "terrorist" suspect and that the train crew had been briefed that Willson planned to "hijack" the train. He walks with the aid of two prostheses. He is author of *On Third World Legs* (Kerr, 1992) and has a website: www.brianwillson.com.*

He is completing a documentary on the history of U.S. intervention in Korea, while being active in Veterans For Peace in northern California. He and his partner permaculture their garden, and generate energy for their household and transportation needs from the sun. In addition to a Juris Doctor, Willson holds a master's degree in criminology/corrections, and two honorary doctorates.

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John Kerry — A Tragic Mistake

John Moore¹

Before we go streaming to the polls to vote for John Kerry in November, we need to understand more clearly who he is and what he stands for. Up to now, Kerry himself has not been very helpful. As a candidate, he has tended to avoid talking about his political connections and his past voting record, and has instead tried to charm us with anecdotes about Vietnam and his military service. But still, these anecdotes provide a good enough place to start.

Kerry was in Vietnam in the late 1960s. During those years American corporations were buying up French rubber plantations, while American entrepreneurs were prospecting for offshore oil and scouting around Saigon for opportunities to sell automobiles, soft drinks and whatever else they thought the citizens of a “developing” country might like to buy when the war was won. Apparently Kerry missed all of this. Maybe he was on

his U.S. Navy river boat all the time. He also failed to notice that all of America’s supporters were on the U. S. payroll. The war ended in 1975, and a year later it was as hard to find a former American partisan in Saigon as to find a former Nazi in Germany. But by that time John Kerry was far away, back in Massachusetts after an unsuccessful run for Congress.

I first heard and saw John Kerry in 1971 when he delivered the most articulate speech of the day, on the steps of the U.S. Capitol when we all tossed back our medals and decorations, by way of apology for participating in that racist and terrible war. At that time there were two different sentiments underlying political positions among the various groups of war protesters. There were those who condemned the war as a cold and rational though misguided plan for the expansion of “capitalist democracy” in Asia — among whom I was numbered. And

there were those who condemned the war as a “tragic mistake,” during which well-meaning though naive political leaders, such as would-you-believe Robert McNamara and Henry Kissinger, were trying to save the Vietnamese people from the invading Communists.² The latter group felt that if the American people and its leaders just heard the truth from their soldiers, they would soon experience some kind of moral revelation and stop the war. John Kerry was of the “tragic mistake” school of thought, as per his celebrated comment to a congressional committee in April of 1971,

IN HIS OFFICIAL AUTOBIOGRAPHY, WHERE HE SAYS THAT IF THE VIETNAM WAR WAS SOME KIND OF AGGRESSIVE, IMPERIALIST EXPANSION, IT WAS “AN EXCEPTION, NOT...A RULING EXAMPLE, OF THE U.S MILITARY ENGAGEMENTS OF THE TWENTIETH CENTURY.” SO WHAT ABOUT GRENADA, CUBA, NICARAGUA, LEBANON, PANAMA, SOMALIA, IRAQ — JUST NAME YOUR FAVORITE MILITARY INTERVENTION.

“How do you ask a man to be the last man to die for a mistake?”³

Kerry’s own participation in the Vietnam War seems morally muddled. One might excuse the participation of common soldiers in Vietnam, privates and young lieutenants, if they had arrived in the condition of brainwashed patriotism instilled by American public schools, the government and some churches, and then realized they were doing something wrong. But Kerry allegedly gave an anti-war speech before he enlisted. So if he knew the war was wrong, why did he go? Vietnam veteran and activist Brian Willson, who knew Kerry well in this period, has suggested that Kerry even then had political ambitions, and was trying to create a political persona that was, as we now say, “electable.”⁴

Having excused the elite and their corporations from any blame for starting an aggressive, imperialist war in Southeast

Asia, Kerry went on to convince them that he was not only an honest, courageous and outspoken person, but one they could trust, and one they could support for political office. Even during the congressional hearing, Sen. Claiborne Pell of Rhode Island thanked Kerry for his testimony and remarked that he hoped Kerry “might one day be a colleague of ours in this body.”⁵

Kerry has continued to provide additional assurances to the ruling elite along these lines. One example is in his official autobiography, where he says that if the Vietnam War was some kind of aggressive, imperialist expansion, it was “an exception, not...a ruling example, of the U.S military engagements of the twentieth century.” So what about Grenada, Cuba, Nicaragua, Lebanon, Panama, Somalia — just name your favorite military intervention. It looks like there are more exceptions than there are examples that fit the rule, and maybe, dare I suggest, there could be

a pattern of foreign involvement.

As a freshman senator in 1984, John Kerry did not disappoint the power elite, and he was soon on the pads of many corporations, especially those in the health care industry and law firms representing the communications industry.⁶ A lower-ranked Boston Brahmin himself, he quickly and literally jumped into bed with other members of the ruling class, first marrying socialite Julia Thorne of Philadelphia and then H. J. Heinz Ketchup heiress Teresa Heinz.⁷ Along the way, he somehow avoided the threats and harassment directed against many other anti-war veterans who were not so well connected.⁸ Kerry soon scrapped his participation in Vietnam Veterans Against the War (VVAW) in favor of Vietnam Veterans of America (VVA), where the emphasis was more on getting veterans’ benefits than protesting U.S. policy, once again enhancing his “electability.”



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After twenty years and three re-elections to the Senate, Kerry has approached issues raised by the Iraq War with two disabilities that are perhaps service-connected—amnesia and myopia. He has forgotten the lessons of Vietnam, if he ever understood them, and he was very fuzzy about what was going on in Iraq. In short, he had the perfect mentality for a Senator in the pocket of the ruling elite.

He was a willing and enthusiastic co-conspirator in his vote of support for the war in Iraq in October 2002, stating his belief that Iraq had a large stockpile of the Weapons of Mass Destruction.⁹ Even more importantly, from the standpoint of his corporate keepers, in September of 2003 he supported Order 39, which offered an open door to American companies who wanted to buy, lease or run Iraqi companies and take profits from them.¹⁰ His campaign remains quiet on this issue.¹¹ But will Kerry say something later? Will he perhaps soon decry the Iraqi invasion as another "tragic mistake," thereby excusing Bush, Cheney, Rumsfeld, Halliburton and the oil industry from all their current shenanigans?

As Kerry moves closer to winning the Democratic nomination, other troublesome aspects of his politics and character continue to emerge. It turns out he voted for the Gramm-Rudman deficit reduction scam, begun in 1985, which through the 1990s devastated the welfare system, and especially the hopes and dreams of working women and disabled people.¹² Later, he voted enthusiastically for the Personal

Responsibility and Work Opportunity Reconciliation Act of 1996, which drastically reduced benefits for poor women and children, and most recently bragged about this vote during the primary campaign. Also, at the first opportunity, he jumped on board the 9/11 express, trouncing civil rights by supporting such legislation as the USA Patriot Act and the Counter-Terrorism and Effective Death Penalty Act. The North America Free Trade Area (NAFTA) program for American economic and political hegemony in the Americas, implemented in 1994, also finds him safely on board.

Looking at Kerry's voting record, we cannot help but note that his brand of neo-liberalism is not sharply divergent from Bush's compassionate conservatism. In sum, by its control of the nomination process, the ruling elite has managed to offer us, in lieu of real choices, a Republican incumbent who started the Iraq War and favors similar pre-emptive strikes elsewhere, has cut education and welfare funds, and has taken large steps toward the suppression of civil liberties. As an alternative, it offers a Democratic challenger who has already demonstrated that he will do what he's told, and is somewhat taller.

Dennis Kucinich, a Democratic candidate who has been labeled "unelectable" and therefore is free to speak the truth, puts it this way: "Senator Kerry voted for the war. Senator Kerry supports the occupation. Senator Kerry supports sending another 40,000 troops to Iraq... I'm wondering if the people of this country are ready to trade a

Republican war for a Democratic war, because that's exactly where we're headed right now."¹³

NOTES

1. The author holds membership card No. 25319 in Vietnam Veterans Against the War, and has also been a member of Vietnam Veterans of America.
2. The shoulder patch issued to U.S. soldiers for Vietnam service is a representation of a section of the Great Wall of China with a breach in the center. Sticking through the breach from the bottom is a gold-hafted sword. During the author's orientation lecture for the U.S. Infantry in 1963, it was explained that the sword represented the U.S. Army defending Vietnam against the invading Chinese Communists.
3. Kerry's "tragic mistake" theme is expanded in his official autobiography, *A Call to Service* (Penguin, 2003), pp. 41-3.
4. See www.brianwillson.com/awolkerry.html.
5. For this remark and a fuller biography, see www.johnkerry.com/about/.
6. Charles Lewis, *The Buying of the President* (Perennial 2004), pp. 364-400. Also see Dana Wilkie and Joe Cantlupe, "Kerry Among Top Recipients in Congress from Special Interests," *San Diego Union-Tribune*, Jan. 30, 2004.
7. Julia Thorne has written a memoir, *A Change of Heart* (New York: Harper Perennial, 1996). Teresa Heinz is a proud Republican.
8. Like many other activists in this period, the author was visited and harassed at home, on the job, at his Army Reserve meetings and in the classroom by the Department of Defense, FBI and local police. See front page, *The Sunday Ramparts*, San Francisco, Feb. 12, 1967.
9. See article by Scott Ritter, former U.N. Chief Inspector in Iraq, www.notinourname.net/gi-special/. Also see "Kerry's Deceptions on Iraq Threaten His Presidential Hopes," by Stephen Zunes, published Aug. 26, 2003, CommonDreams.org.
10. See two articles by Naomi Klein, "Iraq Is Not America's to Sell," in the Nov. 7, 2003, *Guardian* (London), and "Hold Bush to His Lie," in Feb. 5, 2004, *The Nation*.
11. As of Feb. 10, 2004, Kerry's "Tough Questions" to George W. Bush about Iraq, listed on Kerry's campaign web site, do not mention Order 39.
12. See Gwendolyn Mink, *Welfare's End* (Ithaca, N.Y.: Cornell Univ. Press) 1998.
13. See Kucinich statement on www.notinourname.net/gi-special/. Also see his campaign web site, www.kucinich.us/.

Mumbai Diary

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Alejandro Bendana addressing a conference in Manila, Philippines, September 2003

Arriving at midnight, my first impression of Mumbai, India, was not pleasant. Coming from Managua I really did not have much of a right to compare and judge, but upon asking why so many streets were torn up, the taxi driver responded proudly, "we are getting new ones." I was too embarrassed to ask why there were so few sidewalks in most parts of town, witnessing instead small stands and chaotic swarms of moving people competing with vehicles for the limited space available. It resembled Managua during the Santo Domingo festivities. But in contrast to the drunken celebrations in my hometown, in Mumbai people were coming and going in a much more business-like fashion. Poverty was everywhere yet, as one local tradeswoman explained, we are happy here because the poverty was so much greater in the countryside.

The following morning I traveled to the site of the World Social Forum. What a contrast to the Porto Alegre, Brazil, setting of the previous three years! Instead of well-to-do university grounds, the Indian organizers had booked the trade fairgrounds where huge halls and canvas-enveloped rooms welcomed delegates from nearly 150 nations. Yet the dynamism of the WSF was not so much in the debating rooms and working

sessions as in the very streets of the fairgrounds. There politics came alive as dozens of Indian groupings marched back and forth, with dancing and drums — perhaps comparable to Rio's carnivals — brandishing their cause in languages that we foreigners could not understand although the message came across loud and clear. Much different than the rather solemn, straight-faced looking over your shoulder demonstrations that we hold in much of Latin America.

I decided to look up some comrades — one of the unstated purposes of the WSF — from the U.S. who organized an impressive

dozens and then hundreds of Indian activists invaded the hall with much noise, fanfare, slogans, flowers and songs. They were gay, lesbian and transgender activists of all ages. Only after much persuasion did they manage to sit down, because the preference was for dancing and chanting. An invited speaker from abroad did not show up, but that made no difference. It was an impressive lesson where politics and the defense of alternatives can be promoted with contagious smiles and music interrupted by individual testimonies.

The next day I was off to form part of the Jubilee South presentations. "Don't Owe, Won't Pay" was our movement's central message and reason for being, turning the question on its head and demanding instead that the North pay its environmental, moral, historical and social debt to the South. And in case anyone missed our message, there were banners on every public site, courtesy of our multifaceted Philippine coordinating team, and of course a song that we made sure was heard every day in the afternoon concerts we sponsored in front of our booth. Later some delegates complained they could not get the "don't owe, won't pay" tune out of their heads.

"DON'T OWE, WON'T PAY" WAS OUR MOVEMENT'S CENTRAL MESSAGE AND REASON FOR BEING, TURNING THE QUESTION ON ITS HEAD AND DEMANDING INSTEAD THAT THE NORTH PAY ITS ENVIRONMENTAL, MORAL, HISTORICAL AND SOCIAL DEBT TO THE SOUTH.

list of speakers. Turnout, however, tended to be low. The session ended and I hung around for a short while when suddenly

propaganda; Bosnia; Kurdistan; Sasakawa obit; NAFTA layoffs; Prison labor; AFL-CIO in Russia; Private security guards; Walter Reuther.

Number 55 (1996) Police vs. citizen review; Corporate assault on FDA; PR industry vs. activists; Colin Powell; UN at 50/Fidel Castro; Economic intelligence; Spain's dirty war; East Timor - Britain Arms Indonesia; Bosnia.

Number 56 (1996) Noam Chomsky; High-tech surveillance; Militarizing the border; Pepper gas; Guyana; Yugoslavia; Russian nationalism; U.S. and Korea; La Belle bombing.

Number 57 (1996) Racism in the ranks; White collar crime; Common Law courts; INS detention centers; Buying Russian elections; Noam Chomsky on Haiti; U.S.-Israel; Anonymous remailers; Nuclear proliferation in space.

Number 58 (1996) Pilger on Burma; Estrogen & endocrine; Crime & capital globalization; "Counter-Terrorism" documents; Church burnings; AID & environment; Brookhaven; AIDS.

Number 59 (1996-97) Surveillance: ECHELON; NSA's business plan; NIMA; Spooks in the internet; Canadian spies; Privatizing welfare; Mexico and SOA; Afghanistan; CIA and drugs.

Number 60 (1997) Cassini plutonium missing; Japan and Peru; MRTA; Prison labor; Unionbusting; Universities and business; Colombia; Sudan; FBI-CIA teamwork.

Number 61 (1997) Turkey's state killers; Privatizing Hanford; Spying on activists; U.S. torture manuals; Arming Mexico's drug war; NSA, Russia and Dudayev; NATO moves East; Spooks in Congress.

Number 62 (1997) U.S. and Pol Pot; Paramilitary policing; Selling SWAT; Mercenary armies and minerals; Mad Cow disease; Free radio; Che and the CIA; Visit to CIA; Vaclav Havel.

Number 63 (1997) Right-wing think tanks; South African torture; chemical-biological warfare; NSA's Crypto AG; Promise Keepers.

Number 64 (1998) Vietnam; Iraq sanctions; Political control technology; Jihad; Pinochet; Drug war fungus; Burma-Singapore heroin trade.

Number 65 (1998) Philip Agee, Ramsey Clark; Mumia Abu-Jamal; Serb demonization; Bosnia TV disinformation; Media evasions; NGOs in Latin America; Russian reform; War on Cuba; Assata Shakur; Ron Ridenhour; CIA vs. Daniel Tsang; CIA mistaken identities

Number 66 (1998-99) Pinochet; Palestinian Authority; Tomahawks; Sudan; Pentagon bucks; PanAm 103; Laurent Kabila interview; Algeria; Richard Holbrooke; NATO; Iztetbegovitch; FBI's D.C. "espionage" trial.

Number 67 (1999) Mumia Abu-Jamal; NATO bombing and "Greater Albania"; Humanitarian intervention in Kosovo; Roma people; William Walker; Richard Holbrooke; Ocalan; Police militarization; Tupac Shakur; CIA and labor; CIA drug smuggling; Leonard Peltier.

Number 68 (1999) East Timor; Colombia; Panama; Cuba vs. U.S.; Serbia; NATO in Kosovo; KLA and drugs; MPRI; Urban Warrior; Homeland defense; Poverty globalization.

Number 69 (2000) Congo; Chechnya; Colombia; Ecuador; Iraqi oil; Depleted uranium; Yugoslavia; India; Cyprus; Bosnia-Herzegovina; Seattle/WTO;

"Emergency management;" Hunger politics; Global water; Climate; Prison-industrial complex; Military civil disturbance planning; CIA and Cold War.

Number 70 (2001) Bush and environment; Mullah Aid; Dick Held; Non-lethal weapons; Summit of the Americas; Israeli Nukes; Kissinger; Star Wars; Yugoslavia; Antonin Scalia; Bush and Blair; Rep. Rob Simmons; 10 Worst Corporations; Statement by Leonard Peltier.

Number 71 (2001) Depleted uranium; Political Islam; Plan Puebla-Panama; USA Patriot Act; War Criminals; Israel and Hamas; Palestinian right of return; Domestic Anthrax; Plan Colombia; CIA visa machine; DoD vs. environment.

Number 72 (2002) Police violence; ISI, CIA & Taliban; Palestine; Venezuela plotting & coup; Earl Silbert & Enron; US Designs on Iraq; Argentina bankrupted; Attack on Indian Parliament; Global rollback; Elie Hobeika.

Number 73 (2002) Torture; Jenin and Amnesty International; Academia & CIA; Pakistan; 50 Years of Coups-Iran to Venezuela; Plutonium in Space; U'wa vs. Occidental; Why Nato?

Number 74 (2002) Jenin and Human Rights Watch; George Soros stage-managing imperialism; Religious fascists and the CIA in Bosnia; End of Posse Comitatus; Brown & Root; James Petras on Argentina; Rwanda injustice; Rewinding up Bush's war machine; Smashing the Kurds.

Number 75 (2003) Homeland Security Phoenix-Style; Space-Based Imperialism; First Nations Fight Back; Tobacco Smokescreen; Denver Police Files; Victory For Judi Bari; Presidential Deceits; When Will Bush Fall?

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This image of the late Professor Edward Said throwing a stone symbolically in the direction of the Israeli side of the border with Lebanon was taken shortly after the retreat of Israel's military from Lebanon in May 2000, after 22 years of brutal occupation. It was widely mischaracterized by apologists for Israel as Said "throwing stones at Israeli soldiers," a misrepresentation which was typical of so many distortions directed against the life and work of this great scholar and activist.