

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

International Meeting on Global Trends and Human Rights

September 2001: Impacts on Human Rights Work

Geneva, 10-12 January 2002

**THE INDIRECT EFFECTS OF THE SEPTEMBER 11TH EVENTS
AND THEIR AFTERMATH IN RELATION TO DRUGS TRADE, ARMS TRADE,
INTERNATIONAL CRIME AND FINANCIAL CRIME**

Stephen Ellis

© 2002, International Council on Human Rights Policy
ICHRP commissioned this document as a Working Paper.
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

INTRODUCTION

1. If the attacks on Washington and New York on 11 September 2001 and their aftermath have any positive outcome, it may be to focus international attention, and to stimulate remedial action, on a great variety of issues associated with the notions of international criminal and/or terrorist networks and failed or collapsed states. It is unclear precisely what form such attention and remedial action will take, or whether the current wave of concern on these matters will prove durable.
2. In any event, actual and possible future reactions to the September attacks raise questions of human rights that the present paper seeks to enumerate and briefly to discuss. It does not attempt to analyse the events of 11 September themselves nor the military campaign in Afghanistan.

DRUGS AND THUGS

3. The events of 11 September have drawn attention in the world's richest countries to the security implications of new forms of international networking. There is sometimes a millenarian tinge, particularly in the USA (where Christian religious observance is widespread) to the realisation that attacks on civil populations by unidentified assailants, using such lethal means as biological weapons or nuclear material, are feasible.
4. In more specialised writings, the dangers to national security of unofficial armed groups of various sorts, ranging from small cells to large warlord armies (in some circumstances labelled as 'terrorists'), using unconventional tactics and weapons and deriving revenue from illegal trade networks, have been discussed for many years past. The modern literature on these subjects may

perhaps be dated to the first treatises by military authors on guerrilla and counter-guerrilla war in colonial territories in the 1950s and 1960s, when Maoist doctrines concerning socially-based armed formations attracted attention.¹ There has for the last decade or more been a growing perception in the West that wars involving ethnic mobilisation and unofficial militias implicated in a range of trafficking, for example in central Asia, the Balkans and parts of central and West Africa, constitute a new type of post-modern war, distinct from earlier types.² Many conflicts since the end of the Cold War are said to be rooted in the traditions of specific cultures that may clash with one another.³ Observers such as the writer who in 1994 predicted that such wars may spread from the former third world to threaten the USA,⁴ or the academic who foresaw a world divided between mass consumers and religious fundamentalists,⁵ now appear to many Americans especially to be prophetic. They are widely quoted today.

5. These views are sometimes crude and are highly debatable, but dissenting opinions are less widely circulated and find less favour with both the general public and important policy-makers, notably in the USA.
6. It seems, to judge both from actions taken by the USA and allied governments since 11 September, and from press and other comment, that remedial action is likely to concentrate on a number of areas. These are as follows:
 7. Eliminating possible centres where some at least of those perceived as terrorists may maintain bases. The Al-Qaeda network has had its main base in Afghanistan since moving from Sudan in the mid-1990s. It appears to have been buying diamonds in Liberia and Sierra Leone and to conduct some significant financial operations via Somalia. It is notable that all of these are so-called 'failed' states.
 - Attacking the financial assets of such groups.
 - Developing an effective military and intelligence response to terrorism.
 - Strengthening international controls on the movement of people, goods and funds.
8. The human rights implications of policy initiatives in these four areas are discussed in more detail below.
9. These four areas of concern coincide or overlap to a large extent with existing campaigns in regard to illicit or illegal trades in drugs and weapons, and against international and financial crime generally. These matters are often grouped together by various administrations, perhaps implying a unity that is not entirely deserved. Bureaus dealing with these concerns in the US State Department and the National Security Council are frequently known to officials in Washington as 'drugs and thugs'.
10. In short, the events of 11 September have drawn unprecedented international attention to a number of inter-related phenomena, and especially international terrorist and criminal networks linked to failed states, often on the mistaken assumption that these are new formations.

¹ E.g. John J. McCuen, *The Art of Counter-Revolutionary War: the strategy of counter-insurgency* (Faber & Faber, London, 1966), written by a US army officer. This work was much used by South African counter-insurgency specialists in the 1980s.

² Mary Kaldor, *New and Old Wars: organized violence in a global era* (Polity Press, Cambridge, 1999).

³ Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster, New York, 1996).

⁴ Robert Kaplan, 'The Coming Anarchy', *Atlantic Monthly*, February 1994, pp.44-76.

⁵ Benjamin Barber, *Jihad vs. McWorld* (Ballantine Books, New York, 1996).

11. Aspects of the US-led War on Terrorism can be usefully seen not only as measures to defend national security, but can also be situated in a longer history of international and great-power attempts to regulate the movement of strategically important commodities and trades and to impose ethical norms that are deemed to be of global relevance. Human rights are among the most important such norms and international campaigns to formulate and implement a universal code of human rights have a long pedigree.
12. The following section attempts to describe this historical context in ways that may illuminate the possible implications for the defence of human rights.

RIVAL VIEWS OF WORLD HISTORY

13. Since the end of the Cold War, a system of liberal global governance has emerged that has no single centre (even if Washington is of key importance) and is not based on states alone. Integral to the system are international financial and quasi-judicial institutions, inter-state bodies and treaties, business corporations and even non-governmental organisations.⁶ The fact that the assailants of 11 September attacked a state institution and a financial and commercial centre is testimony to the acuteness of the attackers' perceptions of where power and influence lie.
14. The fact that major decision-making centres within the system of liberal global governance lie in Europe and North America, and that many of its institutions and ideas are based on models that have their historical origins in Europe, colours political opinions as to the benevolence or otherwise of this system. Liberal global governance is often represented as either generally benign (involving the imposition of superior ethical and legal standards including in regard to human rights, more efficient technology, and higher standards of living at least for substantial concentrations of people) or malign (involving the more or less forceful imposition of formidable techniques of repression and exploitation, leading to growing inequity).
15. Long before 11 September, there were signs that the contemporary system of liberal global governance was not universally regarded as legitimate even in leading industrial countries, as demonstrated by significant popular opposition to such symbolic events as key meetings of the Group of Seven, the World Trade Organisation, the International Monetary Fund and World Bank, and others. In the intellectual sphere, the post-modern movement in arts and letters has challenged key aspects of the ideological coherence and, hence, the legitimacy of the world's current dominant political dispensation, even in its heartlands. While financiers and politicians often exude confidence in the future, in both radical and conservative intellectual circles in the West, a self-doubt as to the evolution of industrial societies has become apparent. It has become common to consider much recent history as a ghastly mistake caused by an over-reliance on theories of modernisation. For example, the US former National Security Advisor Zbigniew Brzezinski estimated in 1993 that at least 167 million lives had been 'deliberately extinguished through politically motivated carnage' since the start of the twentieth century, largely as a result of visionaries creating 'coercive utopias' that largely replaced religion.⁷ Some intellectuals with very different intellectual pedigrees, such as the communist historian Eric Hobsbawm, hold a broadly similar view.⁸
16. In large parts of what used to be called the third world, there has been a widespread popular reaction against what, in retrospect, may be seen as the unprecedented expectations and

⁶ Mark Duffield, *Global Governance and the New Wars* (Zed, London, 2001).

⁷ Zbigniew Brzezinski, *Out of Control: Global turmoil on the eve of the twenty-first century* (Charles Scribner's Sons, New York, 1993), p.17.

⁸ Eric Hobsbawm, 'Barbarism: a user's guide', *New Left Review*, 206 (1994), pp.44-54.

formidable concentrations of power and wealth raised among vast populations in the three decades after 1945. These were generated by massive systems of social engineering made possible by new technology and the bureaucratic organisation associated with states, often introduced by colonial rule or associated with the exercise of European or American influence. In the mid-twentieth century, scientists and assorted experts and politicians and the general public in many parts of the world came to believe that life could be made better, longer and richer by the application of certain techniques of modernisation or development that were believed to be of universal validity. This period from 1945 to 1973 corresponded to the longest and greatest economic boom in the history of the world. It also saw the promulgation of major texts of international human rights law. It witnessed independence from colonial rule in most of Africa and much of Asia, resulting in the existence of 189 member-states of the United Nations today. Hundreds of millions of people became the first in their families ever to receive a formal secular education. Equally vast numbers moved from villages to cities. Populations in third world countries exploded, increasing sometimes by several hundred percent in less than a century. Very substantial numbers of people entered salaried work for the first time, often employed by state organisations.

17. In many parts of Africa, Asia and the Middle East, this transformation turned out to be unsustainable beyond one or two generations. Some states, particularly in Africa, effectively went bankrupt in the late 1970s and early 1980s and, in return for loans, were obliged to delegate key areas of responsibility to the international financial institutions. Attempts at liberal economic reform imposed by the latter, including the wholesale privatisation of state services, have often led to unexpected and undesirable results, including a complex interaction between formal and informal spheres of activity in both politics and economics.⁹
18. Also in the late 1970s, conflicts in the former third world, manipulated by superpowers, began to result not only in a greater demand for arms but also to a change in the boundaries between formal and informal warfare, notably with resistance to Soviet occupation in Afghanistan.¹⁰ With the end of the Cold War, armed insurrectionary groups that had previously relied on funds from one or other super-power turned increasingly to drug-trading or other forms of self-finance, as in Colombia.
19. Considerable numbers of states, especially those situated in former colonial territories, have since the 1970s lost the monopolies of legitimate violence that they are supposed to possess and with which they were formally endowed by the granting of sovereign status. More than a few have lost the means, as well perhaps as the will, to articulate any hegemonic idea at all that could correspond to what is meant by a public policy.¹¹ These are often referred to as 'failed' states or 'collapsed' states. The numbers of such states has grown rapidly since the late 1970s. They have been generally neglected by the rich world in the belief that their condition is not of prime international concern or even, in some cases, that it represents a difficult first step on a virtuous path towards a liberal state that refrains from intervening in social and economic matters.
20. These factors combined have helped to produce a widespread sense of betrayal and resentment in substantial parts of the former third world, sometimes accompanied by a more or less self-conscious search for whatever are deemed 'authentic' values, meaning those considered to have existed before European influence and modernisation. This is the context in which Al-Qaeda and similar networks can flourish.

⁹ Béatrice Hibou, *La privatisation des Etats* (Karthala, Paris, 1999).

¹⁰ R.T. Naylor, 'Loose cannons: covert commerce and underground finance in the modern arms black market', *Crime, Law and Social Change*, 22, 1 (1994-5), p.11.

¹¹ Note that 'policy' and 'police', and 'state' and 'statistics', are concepts emerging from the formation of early national states in Europe in the seventeenth century that seem of ever more questionable relevance to large parts of Africa and central Asia, for example.

CRIME AND POLITICS: SPOT THE DIFFERENCE¹²

21. The existence of such different views of the direction in which history is moving is of the greatest importance for the future of human rights, as it challenges the notion that all the world's people can be encompassed in an effective international code of human rights, a key tenet of liberal global governance.
22. If there are parts of the world that explicitly reject orthodox international views of morality as well as formal international laws and conventions on human rights, as has been the case with the Taliban administration in Afghanistan, then the legitimacy of the international system as a whole is called into question. If there are governments that do not openly question the legitimacy of such a system, but which in practice are unwilling or unable to apply it, then the system of international governance is at risk of rotting from the inside. Such is already the case with the many 'failed' states in Africa and Asia especially those that do not formally challenge international human rights legislation or related norms, but that ignore or even despise them in private. Circumventing international laws while paying lip-service to them may be seen as part of the emerging global phenomenon of informal commercial and political activity, meaning those transactions that take place in spheres not formally countenanced by national or international legislation, including some that may even be illegal. Informal trade and political activity may be situated on a continuum ranging from non-formal activity involving licit goods (such as selling food, textiles or other harmless products without registration) to international trade in illegal and harmful commodities, such as weapons or narcotics, the latter regarded by some governments as tantamount to an act of war.
23. In itself, it is banal to observe that some parts of the world have a serious problem of crime, for crime is always with us. The situation is made much more complex and ambiguous by the fact that activities of major scope which are considered illegal in terms of both international conventions and national legislation, may nevertheless be carried out by senior state authorities that are formally responsible for upholding or promulgating the very laws they are also breaking. Again, this can range on a continuum going from individual officials who corruptly break laws on their own initiative, to entire governments that blatantly disrespect both national and international laws for reasons of self-interest, to the most extreme case of states that themselves promulgate laws explicitly designed to condone or even facilitate crime. An example of the latter is Seychelles, which changed its constitution in order to permit the passage of an Economic Development Bill that would enable persons investing \$10 million in the country to enjoy immunity from prosecution 'for all criminal proceedings whatsoever except criminal proceedings in respect of offences involving acts of violence and drug trafficking in Seychelles'.¹³
24. Al-Qaeda is one example among many of how an international network that itself has no official status can use the physical infrastructure and sovereign status of 'failed' states to mount a formidable challenge to the system of global governance. There are many states in the world that in law enjoy full sovereign rights but that in practice are willing to rent out state prerogatives including the issuing of diplomatic passports, the recognition of phony 'embassies', the provision of end-user certificates for arms-transfers, the registration of front companies and airlines used for smuggling, and the collaboration of central banks in currency counterfeiting – all of which may be useful to money-launderers, smugglers and fraudsters of every type, including those whose interests are purely financial (criminals) and those with political motives (terrorists). It is important to record, though, that the intelligence agencies of major powers sometimes make use of these facilities also.

¹²A title borrowed from Stanley Cohen's article of the same name in the *British Journal of Sociology*, 47, 1 (1996), pp.1-21.

¹³*The Indian Ocean Newsletter*, 18 November 1995.

25. A catalogue of networks abusing the facilities of sovereign states on a major scale would include conventional criminal gangs, both of the highly structured, organised-crime type, but also of the more flexible type seen in societies with a segmentary social structure. It would also include criminal enterprises that have very strong connections to official authorities, such as the Russian and Ukrainian mafias and various Israeli commercial concerns with close links to the Israeli intelligence services. Groups using the facilities offered by failed states, or simply by compliant ones, also include certain multinational companies that are generally regarded as respectable, not to mention the intelligence services and even the political parties of major Western powers. It is beyond doubt that the US intelligence services have on occasion condoned international narcotics trafficking in Vietnam, central America and Afghanistan, deeming this necessary in the light of a greater good;¹⁴ that Western intelligence agencies and politicians aided and abetted the Bank of Credit and Commerce International, later to collapse in the biggest bank fraud in history;¹⁵ that officials of the Vatican bank knowingly condoned law-breaking in the case of the Banco Ambrosiano;¹⁶ and that politicians and political parties in Italy, France and probably elsewhere too have used the facilities offered by sovereign states to generate illicit funds for their own use. States that use – or abuse – their sovereignty in this way do not exist only on the fringes of international systems of governance, but may also be integral to those systems for certain types of operation that do not receive great attention but that are important nonetheless.
26. Even 'failed' states continue to exist in international law, a fact that offers important rights in international legal, diplomatic and financial dealings to whichever person is regarded as the president of such a state. This may result in circumstances in which a government commits major crimes while asserting the privileges conferred by national sovereignty, such as in former Yugoslavia. Or it may produce a head of state who is internationally acceptable but is in reality used as a figurehead by other, less respectable, interests, as in Sierra Leone, or a head of state who commits all manner of crimes and atrocities, offering facilities to others in return for payment, while professing respect for international law, as in Liberia.¹⁷ Moreover, arms manufacturers in some countries are continuing to produce weapons for sale in an environment in which the formal state apparatus has little control.¹⁸ Hence the terms 'failed' or 'collapsed' states, while useful in some ways, miss important aspects of the challenge that states of this type pose to international governance, including in matters of human rights.
27. States like these do not represent simply the dereliction of orthodox theories of the state, as the terms 'failed' or 'collapsed' imply: seen from a more positive point of view, they may articulate historical continuities in a great variety of fields including traditions of political organisation, but also morality and trade. Hence many countries known for their involvement in narcotics trafficking have much longer histories of involvement in international smuggling, such as in the Guajira peninsula of Colombia, dating back to the days of the Spanish main, or in the Balkans or central Asia, where populations historically situated at the junction of large empires have evolved over centuries by playing one power against another. In such areas political-military entrepreneurs may be involved in activities that articulate traditions and codes of morality and honour considered locally as legitimate but which are in contravention of international laws, such as in drug smuggling. Entrepreneurs of this type may wage war in pursuit not only of their

¹⁴Alfred W. McCoy, *The Politics of Heroin: CIA complicity in the global drug trade* (Lawrence Hill Books, Brooklyn, New York, 1991).

¹⁵Peter Truell and Larry Gurwin, *False Profits: the inside story of BCCI, the world's most corrupt financial empire* (Houghton Mifflin, Boston & New York, 1992), esp. pp.118-54.

¹⁶Charles Raw, *The Moneychangers: how the Vatican Bank enabled Roberto Calvi to steal \$250 million for the heads of the P2 massonic lodge* (Harvill, London, 1992).

¹⁷See the exceptionally well-researched report of the Panel of Experts, sent by the Chairman of the UN Security Council Committee established pursuant to resolution 1343 (2001) to the President of the Security Council, 26 October 2001, S/2001/1015.

¹⁸R.T. Naylor, 'The insurgent economy: black market operations of guerrilla organisations', *Crime, Law and Social Change*, 20, 1 (1993), p.47.

immediate economic interests but on behalf of substantial populations which consider them as legitimate, whatever their lack of legal status: in this case, particularly if they are non-state actors, they risk being labelled as terrorists.

28. The point here is that there are many groups in the world that may benefit from considerable legitimacy in their countries of origin even while they contravene international laws. This observation is not intended to condone their behaviour but to suggest that it may not be accurate to regard them as ordinary criminals in any conventional sense.

EXPLICIT CHALLENGES TO HUMAN RIGHTS

29. With these qualifications in mind, we may briefly consider the challenges to human rights posed by the events of 11 September and their aftermath, under the four headings listed above.

The elimination of potential or actual hosts of terrorism.

30. The system for securing international agreement and cooperation on problems perceived as a general threat to the world, or more prosaically on matters conceived to be in the general interest, from crime and environmental control to the management of transport or postal services, is based on the division of the world into sovereign states. The international order has come to include international legislation on human rights and, with the decolonisation of the European empires, a recognition of the rights of nations worldwide.
31. As noted above, a significant number of the world's states are, in reality, incapable or unwilling to conform to many international standards. They may be unwilling or unable to expel from their territories persons regarded as terrorists.
32. Broadly speaking there appear to be two likely responses to this situation by major powers led by the USA following the events of 11 September. These are as follows:
 33. A concerted effort may be made, in which the USA would have to play a leading role, to restore effective sovereignty to those parts of the world regarded as dominated by 'failed' or 'collapsed' states, or other states sometimes said to be 'rogues' that openly and explicitly defy certain international conventions. This would imply a return to the system of international controls and cooperation that was dominant from 1945 until the 1980s, suitably strengthened to take account of current circumstances. It would imply a huge input of finance and technical expertise that appears unlikely to be forthcoming towards all parts of the world. Moreover, there is a growing perception among specialists that conventional theories of economic and political development may not be effective for a variety of reasons. In any event, even 'failed' states may be under the effective political control of some group or other that may have a vested interest in not cooperating with efforts to restore conventional systems of order, even when this is accompanied by financial inducements. This may lead to a growth in the system of international tribunals operating in regard to the former Yugoslavia and Rwanda and in prospect for Sierra Leone.
 34. A second scenario for the medium term may be that major powers effectively deny attention to those 'failed' states deemed to be of little strategic importance, preferring to concentrate attention and remedial action on those (such as Afghanistan) that have proved to pose a strategic threat to the interests of the major powers. This is not a pleasing prospect for supporters of international human rights standards, for at least three reasons. First, because it is impossible to predict whether some 'failed' states that appear to be of marginal importance may not emerge as strategic

threats in future, since a network such as Al-Qaeda could potentially find bases in any one of a number of states. It is worth recalling that Osama bin Laden was based in Sudan until the mid-1990s and is said to have close contacts to Somalia, including in financial matters. Second, because in the meantime ideologies and political forces may emerge in 'failed' states, under conditions where formal education for young people is rather scarce and material difficulties are widespread, which are explicitly hostile to international standards of human rights. If political forces of this type do emerge, they are easily capable of connecting with various other elements of similar persuasion internationally. Third, because international neglect of 'failed' states will lead to further impoverishment of the inhabitants of such countries and may further diminish people's chances of securing respect for their fundamental human rights.

Attacking the financial assets of terrorist groups.

35. The international coalition against terrorism, led by the US government, has announced its determination to eliminate the financial resources of terrorist groups such as Al-Qaeda. To date, the USA and other governments have frozen a number of bank accounts believed to be held by members of the Al-Qaeda network and have closed Al-Barakt, a quasi-bank based in Somalia that was suspected of skimming funds from legitimate transactions on behalf of Al-Qaeda. They have also closed a number of foreign exchange bureaux or non-banking institutions.
36. There are at least three international groups with a potential to take action on terrorist financing. These are the United Nations, whose responsibility is based on the anti-terrorism resolution 1373; the Financial Action Task Force, a body whose membership is voluntary but which consists largely of Western states; and the International Monetary Fund.¹⁹ None of these organisations has a well-developed infrastructure for combating money-laundering, but there is a likelihood that the IMF might come under pressure to make loans conditional on states' taking measures against terrorist funding. The Fund has established a task force on this issue.
37. Certain countries are reported to have taken unilateral steps towards strengthening national oversight on funding since 11 September. This is likely to lead to greater surveillance of international financial transfers in general and a lifting of banking secrecy. This certainly poses a threat to civil liberties, although it is impossible to say at present how great such a threat will be. Perhaps of greater importance for human rights is the threat that financial controls may pose to informal transfer systems between countries, such as the *hawala* system that is particularly important in the transfer of remittances from migrant workers in rich countries to dependants in poor countries.
38. In general, the flow of illicit funding, whether to terrorist groups or others, seems impossible to stop entirely unless there are changes in international financial practices of a type difficult to foresee. As some officials have pointed out, freezing a bank account on the grounds that the money it contains could be used for terrorist purposes in the future is extremely difficult, unless it is owned by a known terrorist group. It is already difficult enough to stop the laundering of money earned in criminal transactions, in which the funds in question have been generated by a crime that has already taken place, making tracking easier. Simply, the amount of money generated by informal trade is colossal and it is lost in the even more colossal sums moved from one account to another every day for legitimate purposes. Some \$2 trillion per day is traded internationally on foreign exchange markets, according to the Bank for International Settlements. The IMF has estimated that some five percent of global GDP may consist of laundered money.²⁰

¹⁹Stephen Fidler, 'IMF mulls approach on terrorist funding', *Financial Times*, 13 November 2001.

²⁰Manuell Castells, *End of Millennium* (vol.3 of *The Information Age: Economy, Society and Culture*, second edition, Oxford, 2000), p.172.

The illegal narcotics trade alone may, according to UN figures, amount to up to \$1,000 billion per year.²¹

39. In the past, an insurrectionary climate tended to arise in a non-legitimate state with a spreading underground economy. In future, it is likely that underground economies will rather become the breeding-ground for forces anxious to challenge the status quo.
40. As with informal trade generally, money-laundering is subversive of key institutions of global governance. It puts a financial strain on countries where illicit profits are generated. The string of bank failures in Japan in 1995 has been attributed by one respected author to the activities of *yakuza* gangsters manipulating finances,²² and it has also been seriously suggested that the 1997 Asian financial crash began in Thailand due to the vast amount of fictive accounting produced by the need to launder heroin profits especially. There is a case to be made for saying that international financial markets have become seriously distorted by the quantity of laundered money finding its way into the system, as money from all sources finds its way into banks, and from banks into various forms of investment.
41. In the end, what binds formal and informal markets into the world economy is money. Officials working to combat money-laundering in rich countries often report their frustration at the lack of cooperation they receive from institutions within their own governments, including officials responsible for trade and investment who may have less concern about the origin of funds invested in their countries. Hence, the ultimate hubs of money-laundering are not the small tax-haven states but the major financial centres of the world. This has become more clear by evidence produced in the wake of 11 September.²³ Banks in the developed world themselves have a vested interest in capital flight from the poor world, which produces very substantial income for them.²⁴
42. On balance, the threat posed to individual human rights by increased surveillance of financial transactions seems to be outweighed by the desirability of greater control of money-laundering of all descriptions, since this is an important aspect of global economic inequity and may indirectly aid the type of radicalisation described above. The elimination of money-laundering seems impossible to achieve, however, as it is so central to the interests of major powers or their financial and business sectors systems.

Developing an effective military and intelligence response to terrorism.

43. This may be considered as having two aspects: first, domestic policing measures and second, overseas military measures.
44. A number of states have already made or are contemplating changes to their legislation with a view to defending themselves against the risk of internal subversion. These include the Anti-Terrorism, Crime and Security Bill in the United Kingdom and provisions for greater international coordination in the European Union. New legislation was passed in the US House of Representatives in October 2001 by 356 votes to 66. Measures such as these, whether they

²¹Ibid.

²²Ibid., p.207.

²³See e.g. Erich Inciyan, Marc Roche and Babette Stern, 'London "is lax on money laundering"', *Guardian Weekly*, 18-24 October 2001. This was originally published in *Le Monde*.

²⁴Mark P. Hampton, 'Exploring the offshore interface: the relationship between tax havens, tax evasion, corruption and economic development', *Crime, Law and Social Change*, 24, 4 (1995-6), pp.293-317. A detailed study is the hearings of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the US Senate, published as *Private Banking and Money Laundering: a case study of opportunities and vulnerabilities* (Government Printing Office, Washington DC, 2000).

are considered justified or not, may be understood in terms of a classic debate about the rights of the individual versus the duty of collective security, well known to human rights and civil liberties activists. In the USA, some media commentators have openly mooted the possibility of permitting forms of pressure, possibly qualifying as torture, against people detained on suspicion of planning terrorist attacks. This is an extreme suggestion, but it can again be seen in terms of classic human rights discussions. Perhaps the broad powers given by President Bush to law enforcement agencies, affecting Internet communication for example, are also to be seen in this way.

45. Emerging trends in regard to military issues, on the other hand, seem less familiar and therefore may perhaps require more reflection on the part of human rights activists. Many commentators see the Al-Qaeda network as a new type of military formation that is informal, but also international and well-articulated. In the first days after the 11 September attack there was some speculation in the media and, it is said, within the US government, that anti-Al-Qaeda military activities would take the form of a 'network war'²⁵ that would have to be waged using a type of organisation adapted to that of the enemy. In the event, however, the campaign in Afghanistan, the main thrust of what is described by the US government as the War Against Terror, has taken the familiar form of a bombing campaign by US and allied forces, combined with ground assaults by non-US forces. This is a formula used already in Bosnia and Kosovo. However, if the tendency towards 'network war' persists, as is likely to be the case,²⁶ further techniques are likely to develop. It is likely that wars of this type will place a high premium on intelligence gathering, implying enhanced use of electronic eavesdropping and human agents, but also of the assassination of certain members of networks deemed to be terrorist, as well as the use of strategic propaganda techniques designed to swing public opinion against such terrorist groups. Techniques like these have already been extensively used in counter-insurgency campaigns, for example in South Africa and Algeria in the 1990s, and also in Israel, Northern Ireland and many other theatres. It seems to be a general rule of war that innovations in organisation and tactics almost invariably draw a response in kind from the opponent, thus causing the protagonists to resemble one another more closely as time goes by.
46. This likely development needs to be seen as part of a much more general shift in the nature of war away from massive, state-inaugurated campaigns by vast armies and in the direction of more diffuse conflicts, formerly known as low-intensity war. This is a misleading name inasmuch as such wars can cause huge numbers of casualties, particularly of civilians. It is a moot point whether they are an improvement on the types of state-centred war that left some 50 million dead in the mid-twentieth century, in reaction to which so many key institutions of human rights were established.

Strengthening international controls on the movement of people and goods.

47. This may be the most significant area of all for the future protection of human rights. Of all the informal or illegal trades in the world, one of the biggest, and one of the most important in terms of human suffering, is the informal labour market. Internationally, this entails illegal migration and people smuggling. Trades in people appear often to be run by networks that have previously dealt in narcotics or other illegal but highly profitable products and which are now seeking to diversify. Such ruthless and profoundly illiberal mafias are able to thrive by exploiting niches where the system of liberal global governance has outlawed certain types of market, such as in labour and narcotics.

²⁵David Ronfeldt and John Arquilla, 'Networks, netwars, and the fight for the future', *First Monday* internet journal, http://www.firstmonday.org/issues/issue6_10/ronfeldt/index.html

²⁶Martin van Creveld, *The Transformation of War* (The Free Press, New York, 1991).

48. These mafias are prepared to break laws, but they are more than just illegitimate businessmen. There is evidence that a 'social capital' of expertise in smuggling or other forms of state evasion or avoidance can confer a competitive advantage that gives certain groups a competitive advantage in illegal and informal markets.²⁷ As already noted, these mafias are not purely criminal bands without political complexion. Many new 'mafia' groups in the rich world may have their roots in the experience of migration, which actually creates ethnic minorities. Ethnic loyalties among immigrants may be supported by internal sanctions that may 'form better rights systems than the official national legal system'.²⁸ Immigrants may also pose threats to stability or even state security in their new countries. It is notable just how many of the people detained in various parts of Europe and in the USA on suspicion of connections with the Al-Qaeda network are second-generation immigrants, suggesting the existence of a quite widespread sociological or psychological identification between members of some immigrants groups and radical networks in parts of the former third world.
49. This, taken together with the existing anti-immigrant sentiment among many European voters especially, threatens to become a toxic brew. For the option of excluding migrants from the poor world altogether, whether desirable or not on moral grounds, does not appear to exist. The world's richest countries have a shortage of labour. The USA has in recent years been admitting more migrants than at any time since the early twentieth century, making a particular effort to attract people with skills, such as computer programmers from India. Although the US economy is likely to have less need of unskilled labour from Latin America or elsewhere if the current recession deepens, people from poor countries cannot be entirely excluded. Interestingly, the USA seems better equipped to deal with this problem than Europe or Japan. For while the resulting changes in the composition of the population of the USA certainly create serious political and social problems, the US government does have the merit of facing up to some of the key aspects involved and discussing them quite openly. It is of great relevance that the USA is a society essentially founded on immigration, in which the notion of receiving the world's huddled masses is an important part of the national myth.
50. Europe and Japan, on the other hand, according to almost all the available indicators, are also likely to require both skilled and less skilled labour on an increasing scale as the result of their rapidly ageing populations and low birth-rates. All the available evidence suggests that in the next two decades the European Union countries and Japan will require millions of immigrants to keep their work forces up to strength and to support a disproportionate number of old-age pensioners. European politicians, media and publics, working within national myths very different from the American one, remain generally unwilling even to discuss this scenario, even though the United Kingdom, Germany and others have made piecemeal changes to national legislation designed to facilitate qualified immigration, rather on the American pattern. Japan is also generally regarded as a country highly resistant to the idea of large-scale immigration.
51. Since 11 September, the perception that immigrants from poor countries may pose an acute security risk has become a potent new additive to what is already an unpleasant mixture. In the immediate and medium-term future, a tendency towards increased migration from the world's poorer countries towards the richer ones, in the context of highly illiberal international migration rules, together with varying degrees of anti-immigrant sentiment in Europe and Japan especially, and accompanying difficulties in evolving suitable social and political mechanisms, promises to be perhaps the most important of all challenges to international human rights.

²⁷See especially the essay by Jean-François Bayart in Jean-François Bayart, Stephen Ellis and Béatrice Hibou, *The Criminalisation of the State in Africa* (James Currey, Oxford, 1999).

²⁸Frank Bovenkerk, 'Crime and the multi-ethnic society: a view from Europe', *Crime, Law and Social Change*, 19, 3 (1993), p.279.

52. The period after World War Two that saw such profound changes to the international order also produced the legal infrastructure that by and large still regulates international migration. The UN Convention Relating to the Status of Refugees was signed in 1951, entering into force three years later, and was designed largely with Europe's experience of the Second World War in mind. In those days, over one quarter of the world's population lived in Europe and North America. Now, rather less than 20% do. It was a time when most of Africa and some of Asia were still under colonial control. Jumbo jets had not been invented. Most of the world's poor lived on the land, whereas now they are more likely to live in cities. The system of laws and rules governing both voluntary migration but also forced migration through war or persecution, as well as internal displacement, is probably the single area of human rights most in need of new attention, and the one which seems most likely to pose threats to the rights of individuals as well as to the system as a whole in the next few years.

CONCLUSION

53. In the aftermath of the events of 11 September, there have already been some expressions of concern from human rights activists in regard to the campaign currently in progress in Afghanistan but also in regard to the threats posed by new security legislation and enhanced surveillance in Western countries. Worries about these measures may be well-founded, but it is also the case that they have long been central to the concept of human rights and civil liberties in classical Western thought, such as the right of the individual to freedom from external surveillance or state control. It is not the intention of this paper to deny the legitimacy of such concerns, but rather to suggest that the main attention in the longer term needs to be devoted to international systems of governance generally and international regulations concerning migration. These are likely to be the areas where universal human rights come under greatest strain in the years to come.