

US ARROGANCE: We're Above The Law & Will Use Force If Needed To Keep OUR War Criminals Free

The American Service-members Protection Act (ASPA) authorises the US to use force to "liberate" any US or allied persons detained on behalf of the proposed International Criminal Court (ICC), which will be based in The Hague, Netherlands.

By Amira Howeidy, Friday, 9 Nov 2001.

We all knew it was coming. Last Friday, US President George W Bush signed an anti-terrorism bill that proposes sweeping new powers for the FBI, extending the agency's ability to search citizens, wire-tap telephone lines and eavesdrop on the Internet. The period of detention allowed for a foreign citizen suspected of terrorist activities has also been increased. The bill -- which has raised concerns over the meaning of civil liberties in the post 11 September age -- came as no surprise to rights advocates in the US and elsewhere.

The US-led alliance's "war on terrorism," now in the fourth week of its offensive against Afghanistan, bypassed internationally-recognised channels of legitimacy such as the United Nations and its Security Council. The result: hundreds or perhaps thousands of Afghan civilians may have been killed (no accurate numbers have been released because the Pentagon says it still doesn't know). But the "war on terror" has meant more than the loss of innocent lives: it has included a myriad of other measures. The blocking of information and images from the war in Afghanistan from reaching the American public, for example. There has also been widespread discrimination against Arabs (and other people of Middle Eastern appearance) both by officials (at Western airports and airlines) and by the Western public. Approximately 900 "suspects" -- most of whom are Arabs-- have been arrested in relation to the 11 September attacks. In the struggle against "terror," several laws have been bypassed, leading to what civil liberties advocates have described as a serious threat to human rights.

The media debate on the choice between "freedom" and "security" -- which is raging in Germany and elsewhere -- reflects the chilling options now facing Western societies. But has the choice been made already?

FBI and Justice Department investigators, frustrated by their failure to extract confessions from four suspects, are contemplating resorting to "pressure" according to a report in the Washington Post on 21 October. Among the alternative strategies under discussion are extracting information using drugs or other pressure tactics, such as those occasionally employed by Israeli interrogators, according to the article. Another idea is to extradite suspected terrorists to US-allied countries in which security services can employ threats to family members or resort to torture. And last Sunday, the same newspaper reported that the CIA is contemplating pursuing an assassination policy of individuals -- a policy that could extend beyond Bin Laden and members of Al-Qa'ida.

Meanwhile, the US State Department -- taking advantage of the frenzy and confusion that followed the terrorist acts -- endorsed the American Service-members Protection Act (ASPA) on November 5. The legislation authorises the US to use force to "liberate" any US or allied persons detained on behalf of the proposed International Criminal Court (ICC), which will be based in The Hague, Netherlands. It also prohibits US military assistance to those states that ratify the ICC treaty except for NATO members and some major non-NATO allies.

The New York based Human Rights Watch described the new law as an attempt to undermine the establishment of a permanent war crimes court. "The United States is forging a global coalition against terrorism, and the State Department has just endorsed a bill that authorises an invasion of the Netherlands," said Richard Dicker, director of the International Justice Programme at HRW. "This makes no sense. It hardly seems like a good moment for the US to be threatening sanctions against dozens of countries simply because they want to bring to justice the perpetrators of crimes against humanity."

For many, it is difficult to find any sense in this new reality. The US Coalition's use of force, for example, appears to be contrary to established international law.

This is the case according to William Schabas, director of the Irish Centre for Human Rights. "The use of force is prohibited by the United Nations Charter (art. 2 (4)), except in two circumstances: self defence (art. 51) and Security Council action under Chapter VII (art. 42)," says Schabas. "It does not allow the use of force for the purpose of 'retaliation.'" Schabas told Al-Ahram Weekly that "the US-led alliance seems to find support for its action by invoking the right of self-defence rather than the right to retaliate. This is a broad and exaggerated interpretation of the right of self-defence."

Normally, he argued, a person (or a state) acting in genuine self-defence is very clear in explaining and justifying its behaviour on this basis. "But the US and UK, with their talk of retaliation, reprisal, 'bringing terrorists to justice' and so on, invoke grounds that are not really compatible with the concept of self-defence."

Schabas acknowledged that the US does enjoy self-defence rights but pointed out that its actions must be conditioned by "proportionality" and by what is necessary to protect itself from attack. In his words, "the US seems to be taking a view that in the name of the war on terrorism it has the right to attack (or 'counterattack') any country it suspects of being insufficiently unsympathetic to terrorism. In effect, this is the legal window dressing of the pax Americana, a justification to attack any country that the US doesn't like, and at any time." To Schabas, one of the unfortunate consequences of all of this is the "marginalisation of the United Nations, which should in fact be taking the lead according to its noble role under the UN Charter." Perhaps it was with this super-power mentality in mind that the US Congress adopted the anti-terrorism bill. According to the American Civil Liberties Union Freedom Network (ACLU), "the bill was adopted in near record time with only one public hearing and little debate."

"All this will have terrible repercussions," was the response of International Law Professor Kamal Abul-Magd. "If the law doesn't give you protection, you are more likely to take the law in your hands."

To observers in the Middle East, the new US laws seem to be a glaring paradox. In this part of the world, the anti-terrorism bill sounded like all-too-familiar a tune. "It's almost identical to the 'emergency laws' faithfully adopted by Third World regimes," says Dawoud Al-Shoryan, a columnist for the London-based Arabic daily Al-Hayat. For many years, the US State Department's Human Rights desk has itself issued annual reports clearly condemning such governments and their "freedom tying" policies, human rights abuses and violations in the name of the emergency law. To El-Shoryan and many others, it seems like the US is now taking such "backward regimes" as their role model. He expressed fear that the American "emergency law" will eventually "become an incubator that will lead to similar laws being issued in several other countries, if Washington seeks to extend its application within its anti-terrorism coalition."

It may not be all doom and gloom, however. After all, says Rights Activist Gasser Abdel-Razek, a stronger global movement seems to be emerging as a result of the September 11 attacks. "It will take different forms, understandably, such as anti-war, human rights, environmental, and anti-globalisation," said Abdel-Razek. "But it will definitely be more critical of Western (that is, US) hegemony, even if its supporters don't call it that."

"Anyone who trades liberty for security deserves neither liberty nor security"
...Benjamin Franklin

"Fascism should rightly be called corporatism as it is a merge of state and corporate power"
...Benito Mussolini

"The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled" Supreme Court of Canada A.G. of Nova Scotia and A.G. of Canada, S.C.R. 1951 pp 32

DEFENCE of CANADIAN LIBERTY COMMITTEE/LE COMITÉ de la LIBERTÉ
CANADIENNE

C/O #401- 207 West Hastings St Vancouver BC Canada V6B1H7
Tel: (604) 687 0588; or (604)872 2128; fax: (604) 872 -1504 or (604) 688-0550
E-MAIL conniefogal@telus.net; www.canadianliberty.bc.ca