

<p style="text-align: center;"><b>The Laws of War in the Age of Terror</b> <b>16 May 2002</b></p>
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**As delivered**

**Introduction**

**Fred Halliday**

Ladies and gentlemen, good afternoon, I'm Fred Halliday, a professor of International Relations at LSE and a member of the steering committee of the LSE Centre for the Study of Human Rights. It gives me great pleasure to invite all of you here, speakers and members of the audience, on behalf of the three institutions that have organised this afternoon's event: the International Committee of the Red Cross will be speaking and has sent delegates to this meeting and has played a very important part in helping to bring this meeting about and set its agenda. The BBC World Service are recording this event, Robin Lustig will be chairing the panel discussions and this meeting hopefully will be broadcast in two BBC programmes later in the year; and our own Centre for the Study of Human Rights, which has held a number of major events in this room over recent years, has played a major part in bringing this meeting about as well.

The afternoon's events will take the form of two panel discussions, each beginning with discussion among the panellists and throwing the discussion open to the floor after the initial panel discussion. The overall rubric of the day, as you know, is The Law of War in an Age of Terror, one might say in an age of terror and of counter-terror, and the first session will discuss that topic: A world of rules and a world of terror. The world of rules is above all the four Geneva Conventions of 1949 and the two additional protocols of 1977 and just to remind you the four Conventions of 1949 cover combatants wounded in the field; the second cover those who are shipwrecked and otherwise in distress; the third which we hear most covers prisoners of war and the fourth covers civilian persons; and the two additional protocols of 1977 cover in extended form the rights of civilians in combat between states and secondly, and very pertinent to this afternoon's discussion, Protocol 2 covers the rules of war and the rights of civilians and of combatants in civil wars or wars in which not all the participants are states, so that includes guerrilla movements, national liberation movements and others including groups which are or are alleged to be terrorist and our speakers this afternoon will address each of these.

On the first panel this afternoon and sitting on the platform with Robin Lustig (**RL**) are Dr. Katerina Dalacoura (**KD**), on the left, who is a member of the International Relations department at LSE. She's the author of several studies of Human Rights in the Middle East and not least in this year she is proprietor of our flagship course on the ethics of war, which needless to say has had double the intake this year than in previous years and she also teaches with me the course on the international relations of the Middle East which has also seen a noticeable uptake this year.

Colonel Terence Taylor (**TT**) from the International Institute of Strategic Studies, formally of the British Ministry of Defence, is an expert on the laws of war and on disarmament and arms control conventions. He has, among other things, worked for the United Nations and also worked as an Inspector in Iraq and is currently the Director of the IISS, the International Institute of Strategic Studies office in Washington.

Louise Doswald Beck (**LDB**), on my immediate left, is the Head of the International Commission of Jurists, she was for a number of years, a leading figure in the International Committee of the Red Cross, as head of the legal division. She's worked in many fields including human rights law, disarmament and in the ever-changing and on-going area of new legal issues and new moral issues related to changing technologies of war, laser blinding weapons being an example and she has in recent years also been a major personality in working for the International Criminal Court.

In the second session, which will be concerned with quiet diplomacy or front page news, in other words, with the ways in which pressure can be brought be it through public shaming and naming and truth tribunals on the one hand, or through what has been and remains the traditional remit of the ICRC, quiet diplomacy and the ability to speak to all parties.

We also have three very distinguished speakers, we have Kevin Clements (**KC**), who's an academic in the United States at George Mason University, he's worked extensively in the fields of nuclear disarmament and security issues and is now head of a very active NGO in London, International Alert. He will be joined by Marion Harroff-Tavel (**MHD**), the Deputy Director of the International Law and Communication at the ICRC, who studied in Geneva and also at the Fletcher School of Law and Diplomacy in the USA and who is the author of several articles on international human rights law and international humanitarian law in a range of journals; and they will be joined by Kenneth Roth (**KR**) who is Executive Director of Human Rights Watch, previously worked in the US Attorney's Office for the southern district of New York, was involved in the Iran Contra investigation and has been working extensively to broaden the range of human rights concerns covered by Human Rights Watch in response to changing international demands and norms.

I want, very briefly, to touch on one or two issues which I think are pertinent to this afternoon's meeting and which are also pertinent to the work of the Human Rights Centre at LSE. The first is that the laws of war, as enshrined in the Geneva Conventions and in the additional protocols pertain directly to the issue of human rights, they are not normally seen as part of the universal declaration of human rights and the subsequent conventions and covenants which have been enacted but they pertain directly to the issue of human rights because they are concerned with the rights of the two categories of people involved in war, the rights of combatants on the one hand and the rights of non-combatants or civilians on the other and therefore it is quite proper that the Centre for the Study of Human Rights and indeed the international human rights community should be concerned with the laws of war and with the challenges to it which have emerged in recent years.

Secondly, I think it is pertinent to say, and particularly in the context of this conference and in the context of what has been happening in recent months, that the international norms and laws and agreements with regard to the conduct of war bind states, all states that are signatory but they bind non-state actors as well. In other words those who are fighting states, be they national liberation movements, be they supposedly terrorist groups, be they underground groups, whatever they are, are also bound by those norms and by those expectations; and I say that partly because while there is quite rightly much discussion about violations or alleged violations of the rules of war by states, I find too little discussion of a sensible kind about the violations of these laws and norms by non-state actors and too little holding of them to account.

At the same time I would argue and this is present in many of these documents, particularly those concerning non-state actors, that we cannot have a meaningful discussion of what is called terrorism or violations of the rules of war in civil conflicts if we

concede the definition of terrorism to those against whom it is directed, if we concede the definition of terrorism to states. The only basis on which to have a meaningful discussion of the issue of terrorism, a term that I think can be defined and should be used, is if we also recognise under certain circumstances the right to revolt. In other words those who challenge states in the name of their own oppressed nation or their own oppressed class, or of a cause which they deem to be just, may, I repeat, may have the right to use force and this is something which is as enshrined in western tradition and in traditions of other societies as any other principle. Just to remind you that the US Declaration of Independence, after stating that certain rights are inalienable, also stresses the right of the people to alter or abolish the government which denies these inalienable rights. John Lock, not the most radical of men, said that the only remedy against unauthorised force is opposition to it by force. This claim to the right to revolt is often abused but it is a historic right, it is a historic norm and part of the discussion which we can and should have is about the conditions under which it can be exercised and the conditions under which it can't be exercised and it seems to me that any discussion of terrorism and of the rights and wrongs of revolt has to take this into account.

The other general point I'd make is that in a world where universal principles and universal norms are frequently challenged from below in the name of identity politics or culture, or from above, the laws of war are singularly exempt from such challenge. If you compare it to discussion of freedom of speech or democracy or the rights of women all sorts of culture reservations, many of them bogus, are introduced, all of them are bogus in my view, but many of them are recently invented. But these norms, while violated in practice, not least in the name of identity politics and nation are universally accepted in large measure and I say that for three reasons.

First of all, and I stand open to correction on this, my general impression is that those states and they are those states who have signed up to the Geneva Conventions of 1949 and to the additional protocols, whatever concerns they may have had have not entered cultural reservations, they have accepted in general that these principles hold. There is therefore a positive reason for saying they are universally accepted, which is not true for example of covenants to do with social and economic rights or other matters. Secondly, all over the world people implicitly support them by denouncing the other side for violating them. Whatever guerrilla groups or states dealing with guerrilla groups may do they are quick to accuse the other side of massacring prisoners, massacring prisoners of war, violating the rules of war and in so doing there is an implicit endorsement of these; and thirdly I would argue against the claim that these covenants or norms are supposedly western or specific to a particular part of the world, that the same distinctions between just authority and just means, between civilians and combatants, between prisoners of war and combatants, these distinctions are present in every major culture and civilisation in the world and to give the other obvious one of which I'm aware the Koran and the Islamic tradition allow of the same distinctions as are made in the western tradition. So we are not dealing with something that is culturally specific here. What we are dealing with are norms which are systematically violated by states and by non-state actors.

I conclude by saying that we live in a world in which human rights in general and the laws of war in particular are being subject to particular pressures, which is why we are here today. There isn't an inexorable forward march of human rights as we have seen in many fields and as we are seeing particularly in recent months. The only way to hold peoples and states to these agreements and to these norms is by what we are doing today, by discussion and by education, by pressure on governments, nothing is foreclosed but nothing is necessarily permanently attained and I think we've seen and will hear of many

examples where this universality or this advance has been eroded and has been threatened in recent months as well as in recent years by states who are derogating from them or even derogating from the authority of international law as well by non-state actors.

I will conclude there by wishing the speakers a successful discussion and hand the panel over to Robin Lustig who will chair this afternoon's session.

### Panel 1: In a World of Rules and Terror

#### Robin Lustig

Thank you very much indeed, good afternoon, welcome everybody, it's marvellous to see a full auditorium for a discussion of this kind. Let me just explain exactly how we propose to operate this afternoon. Each of the two panel discussions will itself full into two parts. The first will be in which the four of us will discuss some of the issues which Fred Halliday has just raised and the second part will be when you will have an opportunity for your input, either to ask questions or to make your contributions. I would not, however, like you to think that you have no role at all to play during the first part, what you are more than welcome to do when we conclude our first part, you may applaud. That way at least the listeners of the BBC World Service will know that you were here, in great numbers.

Hello, welcome to the programme. Today's edition of *Agenda* comes from the London School of Economics where we are in front of an audience in the LSE's Old Theatre.

We're going to be discussing the changing nature of warfare, whether the rules which were drawn up in an era of one kind of war can still be applied in a new era and to new kinds of war.

Is a war against terrorism the same as a war against Nazi Germany? Are rules that were drawn up in the aftermath of the Second World War still relevant in the aftermath of September 11<sup>th</sup>? Is it even appropriate to talk about rules of warfare in an era when armed groups target civilians or send suicide bombers into crowded civilian areas? In other words, can you have a world in which both rules and terror coexist side by side?

With me is a panel of three specialists in this field, who I hope will be able to answer at least some of these questions.

Dr Katerina Dalacoura (**KD**) is a lecturer in international relations here at the London School of Economics and a specialist in the ethics of war. Louise Doswald Beck (**LDB**) is the Secretary General of the International Commission of Jurists; she was formally head of the legal division at the International Committee of the Red Cross and she has been instrumental in lobbying for the creation of the International Criminal Court; and Colonel Terence Taylor (**TT**) is President and Executive Director of the International Institute for Strategic Studies in Washington DC. He is a leading specialist in issues associated with the development of chemical, biological and nuclear and he has served as the United Nations Arms Control Inspector in Iraq.

Katerina Dalacoura, let me start with you and let's see if we can start with a definition. We talk about war, we talk about warfare, does everybody agree on what that means.

**KD:** There is a simple, snappy definition of war, which is the 'organised violence between two or more parties'. But within that there is a lot of discussion, the definition can be very grey.

**RL:** Organised Violence between parties, you already have qualifications there which perhaps don't apply in a war against terror?

**CD:** Absolutely. The conventional – and here the problems begin – the conventional description of war usually refers to war between states. In a situation of warfare where one of the two parties is not recognised as a state or as a belligerent party by the other, immediately we face problems of definition.

**RL:** So, Louise Doswald Beck, as a jurist, can one say that there are rules, that there are laws which do apply in a situation where you have an armed group, an amorphous, perhaps even an anonymous armed group targeting non-belligerents, targeting civilians?

**LDB:** There are various layers of law and I think the problem that we see is that there is massive confusion with the area of law you are dealing with and in that regard then what aspect of that law you are looking at and this is what has lead to all this trouble. So, the point is, from a law point of view, it depends on whether you're looking at war between two sets of armed forces of a state; whether you are looking at an armed group against a state; whether you are looking at an armed group against civilians. It then depends on which area of law then applies to that.

**RL:** Do you recognise what is described as the war against terrorism, everything that has followed after the events of September 11<sup>th</sup> as war as you have traditionally understood it?

**LDB:** These days there isn't a legal definition of war. There used to be, but now one talks about the law of armed conflict. The concept of a war against terrorism actually involves two emotional terms which don't actually mean anything legally. Terrorism has never been defined, there have been attempts made to define it since 1937, many times and they have all come up against problems; and talking about a war which is now no longer defined in the modern world against something else which is undefined by definition is just purely an emotional expression.

**RL:** So, Terence Taylor, might it follow from that in this confused environment that there are actually no rules that apply?

**TT:** No, I don't think that that's correct, I think there are rules which apply. The problem has been both arising from political leaders' statements using the language of war in relation to terrorism and I think that can be very confusing. Louise Doswald Beck is absolutely right in pointing out that the present law, which has evolved to its present state, is now referred to as the law of armed conflict, part of the whole body of international humanitarian law and it has advanced, with the 1977 protocols, the additional protocols to the 1949 Conventions to include non-state armed groups in internal armed conflicts. So the law is in a constant state of development and you can see the various stages and this is both for technical, political and human rights reasons as the law developed; 1918 First World War, after the First War; 1949 after the Second World War and that particular type of conflict; and what is really important, the 1977 additional protocols advance the law to cover non-state armed groups because of the major wars in South East Asia and of course in Southern Africa and it was to deal with that particular issue to try and distinguish

combatants from non-combatants, which is a very difficult area, which some countries still have a problem with, including the United States with regard to the 1977 protocols.

**RL:** But you believe that those protocols in particular do still apply, can be made to apply in an environment where we see the sorts of violent actions which we all know so much about over the last few months.

**TT:** I think you just have to be very clear about which law applies when. If you were to take the campaign in Afghanistan for example, with the US lead military campaign, with non-state armed groups with them operating against the Taliban and other groups, by the way, as well. Those, if you were to operate the definition within the 1977 Protocol 2, which deals with internal armed conflict, these groups have to occupy an area of territory, that's one condition; another condition, they must be an organised armed force and have some kind of military structure; and this is a difficult one, distinguish themselves from the ordinary civilian, non-combatant population, that's the third one. There may be others but those are the key elements and I think you saw all that at play in Afghanistan, so the classic conflict was taking place, prisoners should be taken and treated as prisoners of war, but some of those prisoners that were taken, it seems, may well have carried out acts of terror, not necessarily in Afghanistan but maybe somewhere else and they have to be treated differently. But there is a procedure for that.

**RL:** So, Katerina Dalacoura, does it follow from that then that a group like Al Qaeda, that a government authority like the Taliban in Afghanistan can be seen to be party to and subject to rules, for example, as set out in the Geneva Conventions?

**KD:** It partly depends on their actions, whether they carry arms openly, whether they follow a chain of command, whether they follow and respect the law of war themselves. These are the requirements that a party must fulfil in order to be recognised as a belligerent party.

**RL:** If it's established that Al Qaeda were indeed responsible for flying those planes into the Twin Towers in New York, no rules of war applicable there.

**KD:** Well, the attacks of September 11<sup>th</sup> were not part of an act of war. They lie in the grey area between organised warfare and unconventional warfare with a political purpose, which is what terrorism, is about. So, it is difficult to see which set of rules will apply to these perpetrators.

**TT:** But we must be clear about which applies, I mean, when you say, "Oh there's area here where there's a vacuum, that no rules apply." I personally can't see it. There is an area where criminal law applies, both international criminal law and national criminal laws in the case of these terrible acts in the United States and that covers the attacks on the Twin Towers, and there's also an armed conflict, in my view, going on, it was clearly defined in the laws of armed conflict, both Protocol 1 and Protocol 2 and the Geneva Conventions. So, I can't see where the space is, I know there's a difficulty in seeing when each applies, that's the difficulty.

**RL:** But if an act such as those committed on September 11<sup>th</sup> were not acts of war, how then could one argue that the response to those acts is itself...

**TT:** Well, you're falling into the trap of using the language of war.

**KD:** Yes.

**TT:** I mean if we're trying to talk about which rule applies, you have to talk about the law of armed conflict and that whole panoply of arrangements would go right back to 1918 and before that and the recent developments and the international criminal law which applies, which is developing about finances and all sorts of areas it's getting into. So I think the catch is not to fall into the trap of saying the law, it's a war of terrorism, that's the big trap and I think there are many political leaders...

**LDB:** Yes, I think the problem is that there has to be a proper establishment of the exact facts and that's why you have courts of law to do precisely that, which should have happened with regard to the captured persons. The problem is that you have to establish whether those individuals which flew those planes, were they actually just a group of individual criminals doing that act, in which case you are not looking at the law of armed conflict. Or are you looking at a situation where they are actually persons sent by the government or under the authority of the Taliban in which case then you are, and then you've got the possibility of international criminal law in the one case which is relevant, or otherwise the law of armed conflict in the other case; and these facts are ones where the American government just presumed things and just went ahead on that presumption.

**RL:** But are you suggesting, then, that no action should have been taken, or could have been taken legally, in response to those acts until these facts have been established? Something which may not ever be possible, but certainly would have taken quite a long time.

**LDB:** In the case of a normal invasion or attack by military forces of another country of course you've got the right of self-defence. Of course, every country has the right to take actions which will protect itself. The question is though, before you start attacking another country which is what they did, you have to be sure in your own mind that you are actually acting in self-defence against an armed attack in the international legal sense of the word and that is where you have the lack, as I say, of perhaps analysing the exact facts, except in the media that aspect was not really thought about or brought up.

**TT:** Well, to me it's perfectly clear under the UN Charter that the heinous act that was carried out, or the heinous acts that were carried out in the United States were threats to international peace and security. So, that it in itself, to me, justifies armed action, use of force without resorting to a UN Security Council resolution, whatever. But, you still have to distinguish those particular acts as you go through things which are criminal acts or terrorism, there maybe war crimes which are contrary to the law conflict and it's a very difficult job, they have to sort it out, but there was no reason for any delay in my view.

**RL:** Katerina Dalacoura.

**KD:** The prisoners of war, or the captured people in Guantanamo Bay, they belong to an organisation, Al Qaeda, which was based in Afghanistan...

**RL:** Do we know that?

**KD:** Well, let me finish.

**RL:** Okay.

**KD:** Al Qaeda has had a double role and a double purpose. It took part in the internal war in Afghanistan, it was part of the pro-governmental coalition in that war and it also organised international terrorist acts, we assume. So, these people who are captured have a double role. Now, some of them were part of one set of activities, others were part of another set of activities and in the case of the former the law of war has to apply, in the case of the latter, the international criminal law would apply. So, we have to establish, on an individual basis, with regard to these people on Guantanamo Bay, what it is that they were doing. This is what the US government, which is holding them, is supposed to be doing. So, I'm just going back to what Louise said.

**RL:** Sure, because what they were doing is a determining factor in how they should be classified and how they should be treated.

**KD:** I think so.

**TT:** There needs to be a tribunal established by the country that captures these people to determine their status...

**KD:** Yes.

**TT:** as prisoners of war. If they're captured they all have the status, but whether they have the rights of prisoners of war is another matter and that's what the United States should be doing with those people is establishing a tribunal to say which ones should have the rights of a prisoner, they should all have the status, because it is clear there's a prima face case that they have been in terrorism then they have to be dealt with differently and that's perfectly allowable to do that.

**LDB:** Could I take issue with one point?

**TT:** Just one?

**LDB:** Well, all the rest I agree with. The one issue I would like to take issue with is the question of self defence and the role of the United Nations Charter, in other words I don't see any need for, there wasn't really a need for an immediate reaction and indeed there wasn't an immediate reaction...

**TT:** Three thousand people were killed and.

**LDB:** And they took three months before it built up and fell to negotiators. Under the UN Charter they should have gone to the Security Council, the Security Council should have established there was a threat, well indeed more than a threat, to peace and security and should have adopted the resolution to that effect. I can see...

**TT:** But do you seriously think the Security Council would have...

**LDB:** Yes.

**TT:** ground to halt, people would have...

**LDB:** No.

**TT:** disagreed and so on?

**LBD:** I don't think so. They didn't even try.

**TT:** I think they needed to build a coalition and do something.

**LBD:** They didn't even try.

**RL:** Let me just come back to Guantanamo Bay, because this is an issue which has created a huge amount of controversy and discussion. There is a Geneva Convention which applies specifically to prisoners of war. The Third Convention, Article 28, let me read it, "Canteens shall be installed in all camps where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles of daily use. The tariff shall never be in excess of local market prices, the profits made by camp canteens shall be used for the benefit of the prisoners, a special fund shall be created for this purpose."

It sounds, Katerina Dalacoura, like from a previous age, it sounds anachronistic in the extreme.

**KD:** Well, in a sense laws become anachronistic very quickly. International law is always trying to catch up with political reality, but we can argue that the principle in this Article that you read out, which is that you have to provide captured prisoners of war the basic, sort of very humble...

**RL:** Basic necessities.

**CD:** Yes, I mean this for life.

**RL:** Basic necessities, all right.

**KD:** Is the principle that this Article tries to uphold. Now, of course the language may sound archaic now, but the principle is still valid.

**RL:** I mean, the point, Terence Taylor, is that there is an argument, as you know, that those Conventions were written in a different age, for a different age, to apply to an entirely different kind of conflict.

**TT:** Yeah, but there's nothing new in this and the law has been constantly evolving and I think if you look at the nature of the law, okay, you can pick out little bits of language written in 1918 and it may look a bit archaic now, but the law is constantly updated. I have less of a problem with that, I think as with all the laws of armed conflict one has to remember there is a reciprocal element in this and that's the whole point of some of this language. The US Administration should be worrying about what if some of their men were taken prisoner, or women taken prisoner as well, by the Taliban. Supposing the campaign hadn't gone as well as it had done and some of them would have ended up in the hands of the Taliban, if they would expect and would demand quite rightly, these kinds of rights.

**RL:** But did they have any reason to expect that the Taliban or Al Qaeda even knew what the Geneva Convention said let alone would be prepared to abide by it?

**TT:** Yes, yes, but they can must a coalition, they can develop allies and use this law in their defence and in promoting their cause. Yes, I think it promotes the cause of liberal and human rights.

**RL:** Louise Doswald Beck.

**LDB:** Yes, I've got really two points of that. First of all I can see the self-interest moral argument of reciprocity but strictly legally there's no requirement for reciprocity. The other aspect that I'd like to indicate is the fact that what's described in the Geneva Conventions, drafted in 1949, and if you compare that with the standard rules, drafted by the United Nations and by the Council of Europe and by other bodies for the treatment of all prisoners, including the recommendations made by the treaty implementation bodies, the Committee Against Torture for example – I saw three systems into America as well, they are identical, the only exception I would say is the tobacco, but apart from that, the requirements that all prisoners, whatever they've done, we're looking at mass murders as well, I mean all prisoners in any situation under human rights law, non-delegable human rights law applicable at all times requires the same thing. So, and this is modern now, we're talking about today, so, to argue that this is archaic and also a previous age <UNKNOWN> the absolute opposite is true.

**TT:** Could I take issue on this point of reciprocity, Louise Doswald Beck is absolutely right about if you are in a court of law judging how prisoners had been handled according to the rules, reciprocity doesn't come into that. But in making the law work and speaking as an ex-military person reciprocity is all of it actually, because if you are to be encouraged to implement the law, you're thinking about what would happen if one is in the hands of the other side and so reciprocity is an integral part of making it work even if it doesn't operate.

**LDB:** Could I on that particular point say the only way you are going to make reciprocity work from the point of view of in legal terms, as I said morally but not legally for the Geneva Conventions, but what you need is precisely the International Criminal Court, you need precisely to take the Geneva Convention seriously to prosecute those which are guilty of war crimes and never covers those attracting an non-international internal, yes a non-international armed conflict. If you did that, that's the way you get this done, not by, you know, saying, "Oh, my goodness, none of this is going to apply, I can't expect this" this is how you are going to get it done, the hard way, but it is the only way.

**RL:** But, Katerina Dalacoura, to me as a non-lawyer and as a non-military person it seems that any set of rules, in order for them to work, have to be accepted by everybody and they also have to be enforceable somehow. If in circumstances such as apply since September 11<sup>th</sup> you have a conflict in which one has reason to believe that one party does not accept them and certainly you have no agreed way in which to make them abide by them, can they still be said to be relevant?

**KD:** Well, the situation in Afghanistan at the moment is not such. It is not the case that the government in Afghanistan now does not accept those rules. Are you referring to Al Qaeda?

**RL:** I'm referring to Al Qaeda, yeah.

**KD:** But, here the problems of definition begin, because of course Al Qaeda is not an organisation that would be taking prisoners of war.

**RL:** The point though, I think that American administration officials have made ever since September 11<sup>th</sup> is that they faced a new kind of threat, a new kind of enemy and that

everything that had been laid down in the past, fifty or sixty years ago, couldn't be said to apply because this was something unprecedented.

**KD:** Well, can I...

**TT:** That's nonsense.

**KD:** Yes.

**RL:** Is it? All right.

**LDB:** We all agree on that.

**KD:** This is not a new issue. The victim is new in the sense that the United States has never been the subject of such an attack. The scale possibly is new and the manner in which it was carried out is new, but the problem of terrorism is an ancient problem.

**RL:** Louise Doswald Beck.

**LDB:** Couldn't agree more. It is only because it actually happened to them for the first time, that they got attacked by a group from the outside that suddenly it seems new, but actually sending armed groups, financing certain groups in order to lay bombs elsewhere has been going on for a long time with their knowledge.

**TT:** But terrorism has been, if you look at any major armed conflict, there's always been an element of that in it, including war crimes, including those that do not observe the rules. But I think what I am encouraged by is the steady enlargement of the rules, particularly in relation to international humanitarian law and protection of civilians and so I would say now, although it's easy to be pessimistic in the face of these horrendous events, I think that law has advanced significantly, it has to be promoted, but what we have to be careful about is the language of war, we need to have the distinction between the law of armed conflict and criminal law, both international and national, as long as we're clear about that and I think if we think quietly about it, and this is hard to do in the face of horrible events such as this, I think that it is tough, I wouldn't want to be complacent and every stage as you look back over the years you have seen the law advance because of terrible events and I think that this is what is going to happen now.

**RL:** Katerina Dalacoura.

**KD:** Can I just make an observation? Bin Laden himself, in his first video speech after the attacks of September 11<sup>th</sup>, mentioned the United States' crimes in Hiroshima and Nagasaki, he was referring to the nuclear bombing. That is an example of what Professor Halliday was saying in the beginning of recognising principles and laws even while violating them. Bin Laden could see, he said it, that attacking civilians on a mass scale in this way is wrong. So, even the leader of this organisation recognises the principle behind the rule and the problem here – and here I disagree with Terence Taylor – is he added that "we do to them what they have done to us". This revenge which is, of course, not acceptable legally and even morally.

**TT:** Of course revenge is not allowed under the law of armed conflict, I completely agree with that, but you could look at other cases, I think the point that Katerina makes is very interesting. The Irish Republican Army was always wanting to claim combatant status

and the British Government struggled and seems to have succeeded in preventing that from happening mostly by not allowing them to occupy any territory and have control, unlike the guerrilla movement in Columbia, for example, which control of territory was ceded to them by the Colombian Government, the FARC guerrilla movement and that's a case where they have turned a terrorist campaign into an internal civil war, simply by that act.

**RL:** I want to extend this beyond Afghanistan and September 11<sup>th</sup> just for a second because there has been another conflict just over the last few weeks where the word "terror" and "terrorism" and how to "confront terror and terrorism" has been very much alive and that's in Israel and the Palestinian territories. Louise Doswald Beck, what relevance do you believe international law on armed conflict, the Geneva Conventions could be said to have when you look at what's been happening there over the last few weeks?

**LDB:** The relevance of the Fourth Geneva Convention is still absolutely valid. In other words, what's happened in that part of the world is the fact that there have been violations of occupation law which have been going on for decades. The fact that occupied people have always been recognised I would say under customary law, although it is often written in Geneva Convention as such, the right to resist is absolutely clear and that's why the Geneva Convention itself actually indicates steps that can be taken to persons which actually take resistance type acts, in other words criminal type acts. The problem...

**RL:** Sorry, it can or cannot extend to those acts?

**LDB:** Sorry?

**RL:** It can extend to criminal acts, what I was going to ask you is...

**LDB:** Yes.

**RL:** ...whether there is anything in the Geneva Conventions that says resisting occupation by, for example, blowing up a bus station or a pizza parlour is or is not justified.

**LDB:** No, the Geneva Convention doesn't actually talk about means of resistance, it doesn't even talk about the right to resistance, it's just that in occupied territory it is just a presumption that has been going on for hundreds of years that an occupied people will resist and what is also clear is the fact that when you look at some of the articles in the Fourth Geneva Convention that talks about arrests of people, how you try these people, what can be done in order to capture people; in other words it is a self-evident presumption that this kind of thing is going to happen, but what is clear from the other hand is that it is increasingly understood that rebel movements themselves cannot indulge in actions that involve attacking civilians. Those are criminal actions both in the normal sense of the word but also in the sense of international humanitarian law.

**RL:** So then, Terence Taylor, if you get a state, in this case Israel, which says that it's people are under attack by these groups, that it therefore has a right of self defence, the question arises how far legally can that self-defence go?

**TT:** Using those terms as expressed by you then, their defining the situation as one of armed conflict and so, if you are starting from that point the laws of armed conflict apply, so they would have to use force proportionate to the military objective to be attained, I

mean you can see some examples where they are over the border line on that and on the other side too, for example, suicide bombing would be an illegal attack. It would not be a legitimate military target to put a suicide bomber in the middle of a restaurant to explode themselves and kill 20, 30 people. That would be an illegal act. But you could also, and I think Louise made an important point you could also use criminal law in this context, so it's a kind of double whammy effect, you can catch them whichever way you define it.

**RL:** Katerina Dalacoura.

**KD:** I think this brings us back to the hot potato of defining terrorism. I do not think it is all that difficult to do so. I think that the disagreement with regard to terrorism has been about the cause behind the activity and the...

**RL:** But there's also a disagreement...

**KD:** ...party...

**RL:** ...sorry to interrupt you...

**KD:** ...that's perpetrating it.

**RL:** ...but there's a disagreement about how to deal with it, how to react to it...

**KD:** Yes, of course.

**RL:** ...what is legal and what is not legal in international law when a people, when a state see themselves as under attack by these groups.

**KD:** But we have to first understand what it is before going on to discuss what we can do about it and I think that the problem in the last few months has been a conflation of various different phenomena and the description of these different kinds of groups, all of them as terrorists. Now I am not denying that they are and I think there can exist a definition of terrorism, it is the indiscriminate attack against civilians by an organised group for a political purpose. We can say that this is the definition of terrorism, it's in the textbooks. Now, the problem is that there are various reasons why different groups carry out such attacks and we get into a bind because we do not factor in the cause in our discussion as well as the means used. So the means can be illegitimate but the cause can be a noble one.

**RL:** But, Louise Doswald Beck, in law, cause is not relevant is it?

**LDB:** Normally not, well...

**RL:** If you commit an illegal act it doesn't matter why.

**LDB:** Again nothing legal is terribly straightforward but I would just like to answer that one question...

**RL:** So it seems.

**LDB:** ...first, before I get on to that issue and that is why create another definition of another crime when it is already a crime under international humanitarian law? Why create

all this difficulty when those attacks by suicide bombers aimed at civilians are violations of the law of war and war crimes as such? Why create all this difficulty for yourself and the other point that I think I want to make, again only slightly disagreeing with Terence Taylor, is the fact that the occupying power can take security measures which are indispensable, which includes arrest, which includes raids where necessary, etc., but the trouble is in that situation the level of violence was raised to a degree by the Israeli government, which when it seems, I mean I haven't done any fact finding, but from the outside it seems to have gone beyond what was strictly necessary in order for their security purposes and if that's the case, then it's a violation of the Fourth Geneva Convention, we don't even need then to leap into this is a full scale armed conflict therefore the laws of war applies a proportion and disproportion of military targets etc. That's something they've done themselves, they've raised it themselves it seems on to that level and it's not a bona fide interpretation of what they could have done and for the Fourth Geneva Convention to protect themselves.

**TT:** But on the other hand, if the other side, if we say the Palestinians – and I am not defending one side or the other, I'm just trying to give an objective view of this – if the other side, for example, people from the Palestinian side – I am not saying the Palestinian authority – carry out acts such as these suicide bombings killing, you know, tens of civilians who are doing their ordinary lives, just going to a restaurant or whatever, then their opponents, in this case the Israelis, can carry out such acts as are necessary to force the other side to desist, you know...

**RL:** Such acts as are necessary to force them to desist.

**TT:** ...force them to desist, so some of their rules do not apply when the other side breaks the rules.

**LDB:** I don't agree with that.

**RL:** How would you then, Louise Doswald Beck, define what is legitimate when seeking defend a people, a nation against these kinds of attacks?

**LDB:** Those kinds of actions have occurred in many countries, Northern Ireland was mentioned for one, but there are many situations, we have the ETA for example in Spain and others. Well, you don't see the Spanish Government bombing the entire Basque country because of that problem, and you don't see Britain bombing the whole of, you know, Northern Ireland for that reason, it's just not done. In other words, what you need, when you are talk about necessary, let's say necessary within the law, in other words, especially when you look at occupied territory, the assumption is that you'll try to defend your security by police type means as far as you possibly can and if you are going to start using the military, is to the degree really strictly necessary and you can't just say, "Because we've found ourselves in a situation the rest of it goes by the wayside", that's simply not acceptable.

**TT:** That's not what I'm saying at all, it's not what I'm saying and I agree with every word of what you've just said, amazingly, but there are circumstances where extraordinary acts are carried out, like the attacks on the Twin Towers and so on where responses should be judged differently.

**RL:** Katerina Dalacoura, can you define what you would regard as legitimate, both morally and legally as a response to suicide bomb attacks which kill dozens of civilians?

Police action is what Louise Doswald Beck said, Terence Taylor says it might have to go further than that.

**KD:** Yes. But we're looking at a situation of military occupation. The Israeli army is there to uphold, or was there in parts of the occupied territories to uphold the law. So, by definition, in a bizarre kind of way it cannot be police action it would have to be military action, also because the Israeli government defines it as such.

**RL:** It's obviously...

**KD:** I'm in a bind...

**RL:** Well, it's obviously... everyone is in a bind. I want to try and draw these threads together because the question that we posed at the beginning was can rules apply, do existing rules apply in an age when acts of terrorism are committed? I just want each of you to try to summarise your response to that. Let me start with you, Louise Doswald Beck.

**LDB:** Yes they can and it depends on the level you are looking at. If you are looking at a criminal action which can be responded to by the usual criminal means, namely good police action then that's what you need to do. If you are looking at international crimes, and by international crimes – there are two sorts actually, there's international crimes in the sense of international criminal law, but there's cross border crimes actually. If you are looking at cross border crimes then what you are looking at is cross border police co-operation methods which are necessary. If you are looking at acts which are acts of armed conflict, in other words military style acts by military style operators then it depends on whether you are looking at an international armed conflict or a non-international armed conflict and then again when you are looking at the actors concerned, it depends on whether they're an official armed force or whether they're an armed group and if they are an armed group it depends again on whether they are acting for the government or on their own and then again it depends on their nature, what they get. So in other words, it is a good lawyer's job in other words.

**KD:** Can I...

**RL:** Let me just take Terence Taylor and then I'll come to you.

**KD:** All right.

**RL:** Terence Taylor.

**TT:** Well, I don't think there is a gap between the international criminal law and national criminal law and the law of armed conflict. The problem lies in defining which applies when. Now, in certain conflicts and we're witnessing that right now, both apply in certain areas and dispersed geographically as well. So there has to be a clear understanding of which applies where and to whom it applies. It's fundamental to understand that. So, I think that's the end of it really, but I think the law will need to be developed further in the international criminal law related to terrorism, the criminal law.

**RL:** Katerina Dalacoura.

**KD:** I just want to add an element and the element is politics. We talk about humanitarian law, human rights law, domestic international law, but in fact, and this is part

of the definition of terrorism, its purpose is political. Therefore very often dealing with it has to do, it implies necessarily dealing with the political issues which are raised. Now, this is not to justify the act, I'm not saying that, this is the confusion that usually occurs. All I am saying is that behind all this is a political element which needs to be tackled and it's different in every situation.

**LDB:** I agree with that.

**RL:** There we are going to have to end it on a note of almost total agreement. Katerina Dalacoura from the London School of Economics, Louise Doswald Beck from the International Commission of Jurists, Colonel Terence Taylor from the International Institute for Strategic studies in Washington DC, thank you all very much.

You did your bit very well.

Thank you for that. Thank you, of course, to the panellists. It is now your turn. I know that you all hung upon their every word, I suspect you have a number of things you would like to raise with them, questions you would like to ask, points of clarification – God, the hands are going up already. One down here and then one over there. This one down here first, please wait for the microphone.

### Question 1

Ken Roth from Human Rights Watch. I just wanted to introduce a distinction that I think wasn't quite clear in the conversation and ask the panel's response and that is the distinction between the question of whether you go to war and the question of how the war is conducted, the traditional Latin terms are <LATIN> "Do you go to war?", <LATIN> "How do you conduct yourself in war?" One can quarrel about, you know, whether the United States should have responded militarily to September 11<sup>th</sup>, whether Israel should have responded militarily to the suicide bombers, that's a debate we could have for a long time. Once there is a war, and certainly there was a war in Afghanistan and there effectively was a war in Jenin and other places, then the separate question is how do you act in that war? And there I think there is no ambiguity at all. Even if you are responding to terrorism, you cannot use the means of terrorism, you cannot deliberately target civilians, you can't fire indiscriminately when you are harming civilians, you can't indiscriminately destruct and destroy civilian property, you can't use civilians as shield, you can't block medical services, etc., etc. And I think that, you know, we've merged the two a little bit, because we've allowed the ambiguity about whether you go to war to suggest that there's ambiguity about the way that war is fought.

### Question 2

Sir, I am a British Muslim and I have a little bit of difficulty with the proposition that has been widely <UNKNOWN> that suicide bombing is not a legitimate means of resisting occupation. I would like to ask the panel that if the occupied people were given access to the necessary tools to resist the occupation, that is anti-tank rockets, or anti-aircraft missiles, etc., do they feel that the need for suicide bombing will not be there at all?

**TT:** Well, I think I can, perhaps at the risk of repeating what I said earlier, I think you have to look at not just the means by which the bomb is delivered but what the target is. My complaint was a suicide bomber being in a restaurant full of civilians, plainly not a military target, not even by, on the Palestinian side even suggesting that. They were using a form of terror in order to promote their cause, that is illegal in my view.

**LDB:** Yes, I agree with that. The problem is that aiming at civilians like that, which appears to be the aim for the most part is what is precisely the problem, what is unacceptable. If the same efforts were made towards military targets, in other words the actual occupation force, then that would be different.

**KD:** Can I just say that in the first Palestinian intifada employed very different means to carry out the campaigns. Civil disobedience was the norm, there was no such use of suicide bombings, and that the first intifada contributed to the Oslo agreements that were signed afterwards. This intifada, the way it's conducted, I'm not saying it's not understandable, but it has actually had the opposite result which is a hardening of opinion in Israel and has caused violence on a more serious scale.

**RL:** That's a political judgement that you make rather than a legal one.

**KD:** Yes, yes of course, yes. It's a pragmatic point if I can put it like that.

**LDB:** The law gets developed for good reasons and the thing is attacking civilians doesn't help matters neither militarily nor emotionally and therefore it's a good political reason to decide on such a law because exactly that happens, people get angrier, people do not feel that, "Okay, actually they have a point", it's doesn't help politically at all and that's one of the laws for good reason.

**RL:** Killing a lot of civilians in Hiroshima probably helped didn't it, end a war?

**LDB:** That is an extremely dubious statement.

**RL:** Okay. Now, I shall shut up.

**TT:** It brought a protracted conflict to a close earlier than it would otherwise...

**RL:** There's a gentleman there and a lady just behind. Gentleman first.

### Question 3

Hello, Michael McGinty from the Royal United Services Institute. Returning to the 1949 Convention on prisoners of war, Article 118, not to be pedantic, but to illustrate a point allows for the repatriation of prisoners on the cessation of active hostilities. Now all of this implies a polity to which one can repatriate, etc., etc. Al Qaeda does not have a polity, it is not something which would recognise a legal cessation of hostilities. If you cannot get those chaps in Camp X-Ray legally, then if you are trying to do something in terms of prisoners of war, what do we do with them? Because if they will never recognise the end of hostilities, not recognising victory and defeat and so on as in conventional war, what do the panel think we can provide in terms of international legal instruments for them? Do we have another additional protocol, is it something for the International Criminal Court, or whatever?

**RL:** Terence Taylor?

**TT:** Well, I think you raise, you put your finger on one of the most difficult issues with regard to those prisoners. I completely agree with that and I think there is an issue that these people if they were released now, if we say the conflict is now over in Afghanistan – it's not quite, but, you know, let's hope it will end at some point – if you let them go they will represent their cases, they will represent a continuing threat. So, this is the reason for

holding them now. The legal situation is that you could only really continue to hold them if you have evidence that they have been directly involved in some of these terrorist acts, whether they are in the United States, maybe in Tanzania, also those other attacks as well, but they'll have to have a tribunal to decide whether this is the case or not and if a tribunal decides they have some involvement then they could continue to be held in order that the process of law could be used against them. But in the absence of a tribunal that does that, to hold them just indefinitely I think is not the correct thing to do.

**RL:** Katerina?

**KD:** Can I just say that an idea was mooted by the United States recently to make the prisoners in Guantanamo Bay liable for prosecution because of membership of Al Qaeda, belonging to an organisation which has perpetrated or carried out terrorist acts. But this is not quite within the law, I think and it would actually be a distortion of the law as understood.

**LDB:** Sorry, once again I'm sorry to be so legalistic, but, I mean, the problem is everything as usual being just muddled together. There are actually two different categories you're looking at and that's precisely what hasn't been made clear, hence the confusion. First of all, if indeed these people are the Al Qaeda, and there's a big if there, if they're prisoners of war then indeed it is absolutely correct that unless you have good grounds for holding them under criminal charges, which you can do by the way provided there's good grounds for doing so, then you have to repatriate. So, in other words, that assumes that they are prisoners of war. On the other hand, there has never been, unfortunately, a determination by a tribunal, which should have been done, whether Al Qaeda is entitled as a group for its members to be recognised as prisoners of war and in order for a group which is not an official armed conflict, I mean member of an armed force or acting officially for the armed forces to have prisoner of war status, it has to conform to certain criteria and one of those criteria is that the group as a whole act in accordance with the laws and customs of war. I mean I have to admit I'm not a judge at this point, but I think it would be certainly appropriate for a judge to carefully look at that particular question and then make a determination whether that group, and therefore persons acting for that group, did actually abide by the laws and customs of war.

The other two are whether they are well organised, whether they distinguish from the population by carrying arms openly at least, but that particular determination hasn't been done. So, in other words, if you have got a group of people who have fought against you which do not have prisoner of war status then you do have the possibility of trying them under your national law, but then it has to then be tried under national law for a crime they've committed under your national law and the same thing goes that if those Taliban or whoever who do have prisoner of war status, then you have to send them back and if you're don't send them back at the end of active hostilities and the other side doesn't have to recognise that, I think make a big factor and they'll carry on fighting probably, then you do have to charge them and this again where it's very important to be aware that you've got two sets of law applicable here: human rights law as well as humanitarian law.

You cannot just keep people in a legal vacuum like that, say that they're not prisoners of war therefore we hold them. It means that you've immediately then violated human rights laws, the most basic rules, the person has to go before a magistrate, they have to be charged with something within a few hours even while they do the proper investigations and all of this, the most basic rules which you would have expected from a civilised nation have not been carried out.

**TT:** Well, perhaps I'd just add a point there. What seems to me is clear that any of those captured on the field of battle in Afghanistan should have prisoner of war status until it's determined otherwise and US manuals of military law provide that there should be a military tribunal convened as soon as practical, when the conflict is over and I would over the conflict's not over yet.

**LDB:** That's true.

**TT:** So, but until that time they should have prisoner of war status and if this tribunal determines that some individuals may have been connected with terrorist acts and so on and they are going to be dealt with by another judicial process then the situation changes, but not until then. So, international law already provides for this and US national law also provides for a tribunal at some point.

**LDB:** Exactly.

**TT:** Now maybe it's not ready to do that just yet.

**RL:** Lady there.

#### **Question 4**

Amy Middlemiss from Radio 4...

Two points really. I mean the first one is that it's all very well to have these laws but what do you do if they are flouted and if they are flouted by non-state organisations what are your sanctions then, and if they are flouted by states, such as the US, like in Guantanamo, what on earth can you do to make these laws actually apply? I mean it seems like a sort of very theoretical discussion; and the second very quick point, in relation to the 13 Palestinians that have been taken to Cyprus at the moment, what do you think they're status is legally and internationally and what can we do about that?

**TT:** I'll start. I mean, your first statement, because I'm going to put, leave the legal expert to answer your second one, I know Louise will be far better than I can, but I do have a view on it. But, of the first one, do we abandon the law of homicide because there are a lot of murders...

**LDB:** Exactly.

**TT:** and a lot of people disregard that, or do we abandon the law on burglary because a lot of people commit burglaries, of course not. Why should we expect a higher standard of observance of international law than we get from our criminal law? I think in actual fact we do get a higher standard of observance, if you view it over all of international law. What, as a military person, always surprises me to the extent to which it is applied rather than the other way round. Of course heinous acts are committed, terrible acts are committed, but to show how the law is progressing we have Slobodan Milosevic on trial in the Hague, in an international criminal court being prosecuted and you can, I think, this is a movement forward. So, I don't take that pessimistic view that you take. I think the law is advancing, you don't expect everybody to obey it, of course non-state armed groups are not going to play it by, they don't have governmental rules, they just have their own rules. But many of them want to claim some kind of status under the rules of armed conflict. The IRA have always tried to claim it and other groups have tried it, the Tamils for example and others.

They aspire to getting the status of a combatant. I find, you know, that's interesting too, so I think you have to look at both sides of the question. We're not going to eliminate terrible acts simply by legal means, all sorts of other means have...

**RL:** Louise, the thirteen Palestinians in Cyprus.

**LDB:** I was about Terence Taylor to answer that one because I have to admit I haven't been following the details of that particular issue enough to be able to give careful reasoned answer. So, Terence, would you like to answer that?

**RL:** Katerina, do you want to say anything on either of the two parts of the question?

**KD:** On the first part of the question, just to add to what Terence Taylor was saying. Where would we be if we didn't have these rules? Of course these rules are violated but what would the world be like if we didn't have a standard to which we should aspire?

#### Question 4

Have you any idea what you do if they are not?

**TT:** Well, you put them in the criminal court as we've done and national courts as well.

**LDB:** You know, this is a question of political will. I think this is where its extremely important for a people of a country to say to their own government, especially for example people in Europe, but also people in America, people anywhere, to basically put pressure on their own government to say political will is important if an ally of yours is behaving in a way which is inappropriate, is going to basically make us go backwards in time when it comes to legal values then you should basically object and object strongly and refuse to go along with certain things, because no nation on this earth, however powerful they may be, are literally immune from everything, this is – okay, a global village, everybody talks about it, but it's still true.

In other words however much they may say so no nation on this earth can live completely on their own and in it indispensable therefore that enough pressure, objections, anger is shown when behaviour is done in a way which is inappropriate and we have mentioned before the question of Israel-Palestine, I mentioned before, you know, the various questions of what to do with the United States behaviour for example, this is all a question of political will, but political will is very much influenced, especially in its democracy by the behaviour of its citizens and this is what's so important, because the real danger frankly, by giving up, by being ultra-cynical to a degree of "Well, there's no point" is that we will go back to the law of the jungle and the trouble is that these days the law of the jungle just doesn't include swords and the occasional musket.

You know, we have got a situation whereby extremely fast we can obliterate this entire earth, there are good reasons for the UN Charter, they were done as a result of disasters, there was a disaster of the First World War, therefore biological chemical weapons use was outlawed. There was a disaster of the Second World War and nobody wanted to go back there again and there's reasons for these laws and if you forget the reasons for that and say, "Well, never mind" then you will lead to disaster again, but it will be a worse disaster next time round because the means for obliteration are worse.

**RL:** Thank you. Briefly, Terence, on the – you're the only person not to say anything about those 13 Palestinians in Cyprus.

**TT:** Oh dear. Well, I think, I am not lawyer, so...

**RL:** You're forgiven.

**TT:** There's a deal being struck clearly to try to end this terrible stage in the conflict, it's not going to end the whole conflict and so there are concessions made on both sides in this. I think this is a very natural thing to happen, in a sense the Israelis have given up as long as they are outside Israeli territory, I don't think they've given up totally the legal process against these people. If they were to appear again in that region then they would seize them and take legal process against them. So simply a deal was struck to overcome a particular obstacle and certain countries, who by the way, haven't yet agreed to host them and there's a big row going on about that at the moment.

**LDB:** You can't just transport somebody and deport occupied...

**TT:** They just have. Both sides agreed to it.

**LDB:** Well, people have rights.

**RL:** I am going to take one question right at the top then we are going to bring this part of the session to an end. Gentleman in the white shirt in the middle there.

### **Question 5**

Just to follow on from what Louise was saying about the Geneva Convention. Also Louise has said that Israel has breached many Articles of the Geneva Convention for decades, and in fact Israel has breached every Article of the Geneva Convention and they have all been grave breeches which are war crimes and it incumbent on the high contracting parties to the Geneva Convention to enforce respect of the Geneva Convention. Now this hasn't happened, you know, the Palestinians are left there on their own with no recourse to anything, they've been let down at every stage. Israel has not complied with 69 Security Council Resolutions and countless General Assembly Resolutions and yet nothing has happened. So, you know, the Geneva Convention, the UN Charter, all these human rights conventions are a total sham as far as the Palestinians are concerned because nobody enforces them. So, what do you expect the Palestinians to do?

**RL:** Okay. It's a point about enforcement which we touched on earlier.

**LDB:** Same point as before, yeah.

**RL:** Who enforces the Geneva Convention?

**LDB:** It's up to states to enforce the Geneva Conventions and I take your point that the lack of political will to make sure that everything is enforced as it should be is what's led to a lot of this trouble. Things are not completely one sided, I mean to give the impression that one is 100% white and the other is 100% black is not quite fair. But having said, and I don't think it's quite fair to say that Israel's violated every single one, I haven't checked every single one.

### **Question 5**

<INAUDIBLE>

**RL:** Okay, but the point really is on enforcement.

**LDB:** Yes, exactly.

**RL:** And that's up to the states.

**LDB:** Yes, it's up to the international community to do that...

**RL:** The international community?

**LDB:** And there are means that actually people would use them, in other words, anybody who is suspected of having committed great breaches in principle is supposed to be arrested and tried, that's within the Geneva Convention. In other words, there are means to enforce, it's a question of political will which I mentioned before and that's a question of sufficient determination by the international community as a whole, by states which could have genuinely an affect on the situation and unfortunately for various political reasons it's not being done and this is where indeed those self same states' citizens have to say to their government, you know, "Enough is enough, really we should enforce this now". But you have to find...

### **Question 5**

So what is the point of having these Conventions when they are not enforced?

**LDB:** I should say...

Tell me one, one item that Israel has complied with, one prosecution that the international community has prosecuted Israel for? None! There isn't one, so the Geneva Convention, UN Charter of Human Rights and all the rest of that is a useless sham as far as the Palestinians are concerned.

**LDB:** Well, that is not quite true.

Well, it is actually.

**RL:** All right, hang on. You've made your point, now let Louise make hers.

**LDB:** For a start Israel has allowed the International Committee of the Red Cross to work there for many years. There are many states also occupying territories which no body wants to talk about, which have not allowed the International Committee of the Red Cross to work there for many years. So, that's one big plus point. I know that doesn't answer the point but it is at least one major and important compliant, and there have been certain prosecutions of their own officers which have committed war crimes which Israel has done with vis-à-vis their own officers and there have been steps taken in order to provide medical supplies, etc., I mean things have got very bad recently, but to say throughout the 30 years there's been nothing but violations is simply not true.

**RL:** Okay, I'm going to stop you there, because the panellists certainly deserve a cup of tea. I suspect you do to. We will reconvene in 25 minutes time, at a quarter four. On your behalf may I thank these three panellists. Do come back, we have three more just as good as them. Thank you very much indeed.

Ends