CRITICAL REFLECTIONS ON THE WAR ON TERRORISM
FROM AN INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

by

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Promoter: Prof. Richard Haines
Co-promoter: Prof. Lucius Botes
Dedicated to the Lord Jesus Christ and God the Father, and in memory of my parents; you will always stay in my mind and in my heart.

Soli Deo Gloria!
ABSTRACT

This study explored the balancing out of the rights associated with terrorist and counter-terrorism attacks by using descriptive case studies of the US 9/11 attacks; and the counter-terrorism attacks on Afghanistan and Iraq.

The research was conducted within a critical theory paradigm, drawing on the ideas of Habermas and other Critical Theorists. The research design was influenced by the securitive and ideological nature of the topic and it was decided that an extensive review of literature would be more suitable than a field study. A small number of interviews added to the richness of the data.

Human rights, needs and international relations were investigated to serve as a theoretical starting-point for the study (Chapter 2). The case studies were subsequently explored against the background of this theoretical approach. This thesis therefore assessed the impact of human rights law on terrorism and counter-terrorism attacks under the Human Rights Act (1998). It considered how the provisions of the Human Rights Act have influenced the formulation and interpretation of anti-terrorism laws, and it examined the role of the judiciary in adjudicating disputes between the individual and the state. It further discussed human needs and the progress on human rights, terrorist attacks, as well as counter-terrorism attacks.

Extensive data was gathered on the 9/11 attacks, and it was concluded that these attacks fall within the definition of crimes against humanity under international human rights jurisprudence. To bring about a truly secure world we must adopt a new paradigm that shifts priority to the security of the individuals and of communities to achieving human security, the honouring of human rights, and respect for the rule of law. This will obviously require a renewed commitment by all individuals and a shared sense of responsibility for all people, all over the world. What we need now is a major course correction – a new
approach which begins with a broader understanding of what defines human rights and the rule of law (Wilson, 2007).

The study also focuses on counter-terrorist attacks in Afghanistan and Iraq (Chapters 3 and 4). It was shown that counter-terrorist attacks had an effect on the global economic system and development policies, which have been dominated by ideological strategies for many years. However, resistance has come from Islamic states, which have realised that new-liberal economic practices are incompatible with their theological and economic traditions. This has caused a situation to rethink global development programmes by political leaders, and to move away from new-liberal schemes towards true global development strategies.

One of the main findings of the study was that the crimes of persecution and torture on the basis of political or religious views have been perpetrated by both parties, namely Al-Qaeda, and the US and its allies. It has been shown that the explored acts of terrorism and counter-attacks represent crimes against humanity, as defined by the relevant provisions of international law.

**Key words**

Development theory, political modernisation and development, sociological approaches, psychological approaches, economic approaches; new terrorist, religious beliefs, martyrdom, suicide attacks, Jihad war, war on terrorism, Human Rights Act, Anti-terrorism Crime and Security Act, judiciary human needs, conflict resolution
A WORD OF GRATITUDE

I cannot adequately thank all the individuals who have helped me in the writing of this thesis. One individual I must single out is Prof. Richard Haines (my promoter). He encouraged me and placed his wealth of experience and keen insight at my disposal. I am also indebted to Prof. Lucius Botes (my co-promoter), for his valuable contribution.

I have read everything I could lay my hands on, and combined it with many individual interviews. I started thinking about this topic in 2005, but started my writing in January 2007 in the heart of South Africa (Bloemfontein), bearing in mind that wood must be collected for the fireplace for the winter months, and plenty of biltong and rooibos tea.

My gratitude to the Nelson Mandela Metropolitan University is limitless. Whilst writing about this challenging subject, the Latin abbreviation “In Excelsis Deo” (Glory to God in the highest Heavens) keeps on coming up in my mind, I therefore can only answer this call.

Anton A. Fabbriciani
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masjid  Literally, a place of prostration; a centre of prayer, a mosque, but not one where congregational prayers can be held

minbars  Pulpits

mujahid (singular)  Muslim fighter in a religiously sanctioned cause

mujahiddun (plural)  Muslim fighters in a religiously sanctioned cause

mujtahid  Qualified interpreter of Sharia law

Mukhabarat  Ba’athist intelligence services

muqawamam  Resistance

muqqalid  A follower of a particular mujtahid

al-Mutassimum  The infallible ones (usually refers to the Shi’a imams)

muthaqaf  Educated person

Najaf  The main Shi’a religious city in Iraq, site of the shrine of Imam Ali

nasibi (singular)  A derogatory term applied by the Shi’a to all extremist Sunnis who are assumed to deny the elevated status of the Household of the Prophet

nawasib (plural)  

Nowruz  Iranian New Year

rafidhi (singular)  Literally, ‘rejectionist’, that is, a person who has rejected the legitimacy of the first three Caliphs of Islam; a derogatory Sunni term applied to the Shia’a

Risala al’amaliyya  Practical instructions; rulings of a mujtahid on matters of religious ritual

sadda (plural)  Descendants of the Prophet; in the Shia’a religious hierarchy, sadda are entitled to don a black turban and expect to be addressed as such

Sadawi  The Arabic term for Safavid, the rules of Iran and Iraq in the sixteenth and seventeenth centuries; also, a derogatory name for the Shi’a

salafi  Ultra-orthodox Sunni Muslim

Samarra  A city north of Baghdad, site of the shrines of the two Imams al-Hadi and al-Askari

sayyld (singlular)  Descendant of the Prophet; in the Shi’a religious hierarchy, a sayyid is entitled to don a black turban and expects to be addressed as such
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>shahid</td>
<td>Martyr in a religiously sanctioned cause</td>
</tr>
<tr>
<td>Sharla</td>
<td>The corpus of Islamic law and ordinances</td>
</tr>
<tr>
<td>sheikh</td>
<td>Elder, local leader, also a religious leader; amongst the Shi'a, a sheikh is the title applied to a cleric who is not a descendant of the Prophet; he wears a white turban</td>
</tr>
<tr>
<td>Shu’ubiya</td>
<td>A movement in the Islamic middle centuries that postulated Persian literacy superiority over the Arabs</td>
</tr>
<tr>
<td>shuyukh</td>
<td>Elders, local leaders, also religious leaders. Amongst the Shi’a, shuyukh is the title applied to clerics who are not descendants of the Prophet; they wear white turbans</td>
</tr>
<tr>
<td>souq-el-mraydi</td>
<td>Local thieves’ markets of Baghdad</td>
</tr>
<tr>
<td>Tafsir</td>
<td>Quaranic exegesis</td>
</tr>
<tr>
<td>ta’ifi</td>
<td>Sectarian</td>
</tr>
<tr>
<td>ta’ifiya</td>
<td>Sectarianism</td>
</tr>
<tr>
<td>takfir</td>
<td>Derogatory term applied by the Shi’a to all extremist Sunni who justify the anathematisation or killing of the Shi’a</td>
</tr>
<tr>
<td>tawaffuq</td>
<td>Accordance</td>
</tr>
<tr>
<td>thawra</td>
<td>Revolution</td>
</tr>
<tr>
<td>ulema</td>
<td>Muslim religious scholars</td>
</tr>
<tr>
<td>umma</td>
<td>Nation; also applies to the worldwide community of Muslims</td>
</tr>
<tr>
<td>usuli</td>
<td>Fundamentalist</td>
</tr>
<tr>
<td>Wahhabi</td>
<td>Follower of a fundamentalist Sunni act of Islam, founded in the eighteenth century by Muhammad ibn Abd-Wahhab; in Iraq, the term is loosely applied by the Shi’a to all extremist Sunni</td>
</tr>
<tr>
<td>wakils</td>
<td>Agents</td>
</tr>
<tr>
<td>waqf</td>
<td>Muslim religious endowment</td>
</tr>
<tr>
<td>Watan</td>
<td>Fatherland, country</td>
</tr>
<tr>
<td>wilaya</td>
<td>Authority; can also apply to an administrative province</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>Wilayat al-Faqih</td>
<td>Literally, the ‘Authority of the Jurisprudent’; the term applies to the system in power in Iran</td>
</tr>
<tr>
<td>wilayet</td>
<td>Province</td>
</tr>
<tr>
<td>ziyara (singular)</td>
<td>Visitations or pilgrimages to the Islamic shrines</td>
</tr>
<tr>
<td>ziyarat (plural)</td>
<td></td>
</tr>
<tr>
<td>Ziyaral al-Arbai’in</td>
<td>The term applies to the mass commemoration of the anniversary of forty days of mourning after the death of Imam al-Hussein</td>
</tr>
</tbody>
</table>
## GLOSSARY

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 September</td>
<td>Referred to as 9/11; the day when four aircraft were hijacked by Islamic terrorists in the United States – two of which destroyed the World Trade Center in New York, one which partially destroyed the Pentagon, and a fourth which crash-landed in a field in Pennsylvania</td>
</tr>
<tr>
<td>Al-Libi, Ibn al-sheikh</td>
<td>He ran several training camps in Afghanistan in the 1990s and went on to become a high-ranking member of Al-Qaeda</td>
</tr>
<tr>
<td>Al-Qaeda</td>
<td>A terrorist organisation (‘The Base’) with the leader Osama Bin Laden responsible for major terrorists attacks</td>
</tr>
<tr>
<td>Anthrax</td>
<td>A serious disease affecting sheep, cattle and people, causing death</td>
</tr>
<tr>
<td>Arbitrary</td>
<td>Based on personal opinion or impulse, not any reason or system</td>
</tr>
<tr>
<td>Axis of Evil</td>
<td>Phrase used by George W Bush in January 2001 to characterise Iran, North Korea and Iraq</td>
</tr>
<tr>
<td>Azzam, Abdullah</td>
<td>Described as ‘the Godfather of the Jihad’. His vision of a Pan-Islamic jihad provided an ideological basis for Al-Qaeda</td>
</tr>
<tr>
<td>Behead</td>
<td>To cut off someone’s head, especially as a punishment</td>
</tr>
<tr>
<td>Bill of Rights</td>
<td>A statement of the basic rights of the citizens of a country</td>
</tr>
<tr>
<td>Civil rights</td>
<td>Civil rights are those rights which are, or which it is argued should be, protected constitutionally or legally as fundamental rights, that everyone should enjoy, irrespective of his or her status</td>
</tr>
<tr>
<td>Cold War</td>
<td>It describes a state of extreme hostility between superpowers, associated with an arms race, diplomatic conflict, and hostile measures of every kind, short of overt military action</td>
</tr>
<tr>
<td>Cold War</td>
<td>The name normally given to the period of intense conflict between the United States and the Soviet Union in the period after the Second World War.</td>
</tr>
<tr>
<td>Conflict</td>
<td>Serious disagreement or difference of opinion</td>
</tr>
<tr>
<td>Constitution</td>
<td>A system of laws and principles according to which a state or other organisation is governed</td>
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<td>Term</td>
<td>Definition</td>
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<tr>
<td><strong>Coup d’etat</strong></td>
<td>Sudden, forcible and illegal removal of a government, usually by the military force</td>
</tr>
<tr>
<td><strong>Epic</strong></td>
<td>Worthy of notice because of the scale and nature of the difficulties involved</td>
</tr>
<tr>
<td><strong>Equality</strong></td>
<td>The principle that human beings are of identical worth or are entitled to be treated in the same way: equality can have widely differing applications</td>
</tr>
<tr>
<td><strong>Ethnicity</strong></td>
<td>Refers to a combination of racial, cultural and historical characteristics into which human groups are divided, can be hostile political families</td>
</tr>
<tr>
<td><strong>Extortion</strong></td>
<td>Obtain something by violence</td>
</tr>
<tr>
<td><strong>Fatwa</strong></td>
<td>Binding religious edict under the banner of the World Islamic Front for Jihad against the Jews and Crusaders</td>
</tr>
<tr>
<td><strong>Gulf War</strong></td>
<td>A major war in the middle East between Iraq, and a range of Western and Arab powers</td>
</tr>
<tr>
<td><strong>Human needs</strong></td>
<td>Circumstances in which something is lacking. A need to be satisfied</td>
</tr>
<tr>
<td><strong>Human rights</strong></td>
<td>Rights to which people are entitled by virtue of being human; universal and fundamental rights</td>
</tr>
<tr>
<td><strong>International Law</strong></td>
<td>Usually divided into public international law and private international law</td>
</tr>
<tr>
<td><strong>IRA</strong></td>
<td>IRA tends to be applied rather loosely. It refers to the long tradition of ‘trouble’. Religious cleavage with very long-lasting resentment between British/Protestant denominations and the Irish/Catholics</td>
</tr>
<tr>
<td><strong>Iraq War</strong></td>
<td>War led by the USA and UK as from 20 March 2003 against Iraq, to overthrow Saddam Hussein</td>
</tr>
<tr>
<td><strong>Islam</strong></td>
<td>Islam is the religion of the followers of the Prophet Muhammad who are usually called Muslims</td>
</tr>
<tr>
<td><strong>Islamic Fundamentalism</strong></td>
<td>Mostly used in the US and the UK to denote the teaching of the Quràn and the Sharia (Islamic Law)</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Islamic politics</td>
<td>The mantra, there is no separation between religion and politics in Islam</td>
</tr>
<tr>
<td>Jihad</td>
<td>Jihad originally had a core meaning of religious war against non-believers</td>
</tr>
<tr>
<td>Justice</td>
<td>A moral standard of fairness and impartiality. Social justice is the notion of a fair or justifiable distribution of wealth and rewards in society</td>
</tr>
<tr>
<td>Law</td>
<td>Established and public rules of social conduct, backed by the machinery of the state, the police, courts and prisons</td>
</tr>
<tr>
<td>Mujahideen</td>
<td>Muslim guerrillas fighting the Soviet Union in Afghanistan following the invasion of Afghanistan in 1979</td>
</tr>
<tr>
<td>NATO</td>
<td>The North Atlantic Treaty Organisation (NATO), established in 1949, was the culmination of Western responses to a growing perception of a threat from the Soviet Union in the years following the end of the Second World War</td>
</tr>
<tr>
<td>New Terrorist</td>
<td>Terrorists who are inspired by fanatical religious beliefs and are willing to seek martyrdom through suicide</td>
</tr>
<tr>
<td>Nuclear Proliferation</td>
<td>The spread of Nuclear weapons to states not yet possessing them</td>
</tr>
<tr>
<td>Qutb, Sayyid</td>
<td>His ideas formed the philosophical and theological foundation for the modern jihadist movements</td>
</tr>
<tr>
<td>Resolution</td>
<td>The action of solving or settling problems</td>
</tr>
<tr>
<td>Shair’a</td>
<td>Is a general term for Islamic Law, referring, as near as it is possible to make an analogy, to the body of precedents and their interpretation, which makes up common law in the Anglo-American conception of law</td>
</tr>
<tr>
<td>Shii</td>
<td>The Shii trend in Islam developed as a result of politics surrounding the governance of the early Islamic community, the Unima. They also believe in the significance of Ali.</td>
</tr>
<tr>
<td>Shock and Awe</td>
<td>Achieving Rapid Dominance</td>
</tr>
<tr>
<td>Sunni</td>
<td>Sunni refers to those Muslims in the majority trend in Islam</td>
</tr>
<tr>
<td>State</td>
<td>An association that establishes sovereign power within a defined territorial area, usually processing a monopoly of coercive power</td>
</tr>
<tr>
<td><strong>Suicide Bombers</strong></td>
<td>Human beings who are prepared to sacrifice their lives for the rewards in the afterlife</td>
</tr>
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</tr>
<tr>
<td><strong>Taliban</strong></td>
<td>The ruling force in Afghanistan from the mid–1990s until late 2001</td>
</tr>
<tr>
<td><strong>Terrorism</strong></td>
<td>Terrorism includes any use of violence towards political, moral or religious ends which is not carried out by the official military institutions of a state</td>
</tr>
<tr>
<td><strong>United Nations</strong></td>
<td>A voluntary association of approximately 190 states, whose primary aim is to maintain international peace and security, solve economic, social and political problems through international cooperation, and promote respect for human rights</td>
</tr>
<tr>
<td><strong>Vietnam War</strong></td>
<td>The war between North and South Vietnam in which America was involved, dominated American political life, and cast doubt on the willingness of the USA to become involved in a military confrontation with communist forces. The ‘War on Terrorism’ of 2002 by G.W. Bush resurrected the Vietnam Ghost</td>
</tr>
<tr>
<td><strong>War</strong></td>
<td>Armed conflict between two or more parties, usually fought for political ends</td>
</tr>
<tr>
<td><strong>War on terror</strong></td>
<td>Announced after 9/11 to initiate a global struggle to combat and defeat international terrorism</td>
</tr>
<tr>
<td><strong>Weapons of mass destruction</strong></td>
<td>For example, nuclear weapons, bombs, missiles produced or resulting from nuclear energy</td>
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CHAPTER ONE
INTRODUCTION, PURPOSE OF THE STUDY AND RESEARCH QUESTIONS

Introduction and rationale

Over the last few years there has been an increased demand to evaluate the War on Terrorism in terms of human rights. The focus has been placed on comparing innocent people being killed by those seeking political change (terrorists) and those killed by people (governments) using violence to prevent such change.

Increased terrorist attacks and retaliation by various governments provide the rationale for conducting an analysis of the crime of ‘terrorism’ and counterattacks against the background of human rights. Such a study is important because terrorists not only sacrifice themselves but have little compunction about killing large numbers of civilians. From a human rights perspective, using violence to bring about change is not inherently worse than using violence to prevent such change. A balance must therefore be found to ensure that the rule of law and human rights are not violated by such events.

Literature shows that little attention has been paid to the question why terrorists will actually go as far as sacrificing themselves and innocent people to bring about change. The 9/11 attacks in the United States (US) proved that the terrorists were willing to sacrifice themselves and the lives of innocent people to bring about change. In view of the sparseness of literature available on human rights and fundamental human needs, it is evident that there is a lack of sufficient information in terms of formal research: the proposed study consequently aims to find a balance between the protection of human rights and counter-terrorist attacks, as well as the role that unmet human needs play in terrorism.
The preceding discussion underlines the need for an exploration on ways in which terrorism can be fought within the framework of the rule of law. There is also a need for an exposition on the unyielding drive of people to meet the unmet needs of the individual, group, and society. The rationale of the proposed study is based on a situation where people insist on defining themselves in terms that deny the existence of universal rights and human needs.

The study will investigate three states, namely Afghanistan, Iraq, and Sudan. Afghanistan will be researched because it was pointed out by the Bush administration as the breeding ground for terrorism. Originally, Taliban training camps to be destroyed were identified in Afghanistan, and Al Qaeda training camps were also targeted for destruction.

Iraq was identified as the extension of the war on terrorism. The aim was mainly to overthrow Saddam Hussein and to destroy any weapons of mass destruction that may have been in his possession.

1.1 Why Afghanistan?

The war in Afghanistan was the beginning of the war on terrorism. The invasion of Afghanistan was motivated by the hunt for weapons of mass destruction and by the efforts to capture Osama bin Laden. This, together with the fury caused by the terrorist attacks of 9/11, convinced the Bush administration that the time has come to remove Al Qaeda and the Taliban from Afghanistan.

The war in Afghanistan was not easy - there were virtually no maps of the region (War in Afghanistan, 2001 – present). The 9/11 attacks also lead to new questions being asked about the nature of terrorism and the role that states should play in international violence.

The research will make assumptions about the reasons motivating people to take their own lives and those of civilians in order to further their own goals or to express their
grievances or feelings. Questions dealing with aggression and antisocial behaviour as a response to human needs and frustrations will be the core problem in a particular section of the research.

The research further deals with the quest for recognition and identity as a reason for intense conflict and the fact that people can be motivated to such an extent that they are prepared to sacrifice their own lives in search of their needs.

1.2 Why Iraq?

This study will also explore the invasion of Iraq and the fall of Baghdad. The US and its allies invaded Iraq on 20 March 2003 under the American code name ‘Operation Iraqi Freedom’ and the British military code name ‘Operation Telic’ (Blix, 2004:8).

Approximately forty other nations joined the US in this war against terrorism - the original coalition forces amounting to approximately 300 000, of which 98 per cent consisted of US and British troops (Dexter, 2008). Most of the fighting was done in the Sunni Triangle, which consists of Baghdad, Anbar, and Salah al Din. The Iraqi resistance was described as a type of guerrilla warfare and tactics used by the Iraqis included mortars, missiles, suicide bombs, and snipers (Storm, 2009).

Further research will include an examination of the trial of Saddam Hussein and others in terms of human rights. If the trial was unfair, their human rights were violated and Saddam’s execution was a serious violation of the human right to life and the prohibition on cruel and inhumane punishment. This is especially true if the statements of international human rights groups, which include Human Rights Watch, Amnesty International, as well as UN bodies such as the Working Group on Arbitrary Detention and the High Commission for Human Rights, are taken seriously. The above groups claimed that the Iraqi Special Tribunal and its legal process did not meet international standards for a fair trial.
1.3 Statement of the purpose

The purpose of the study is to explore terrorism and the war on terrorism within the context of human rights and human needs globally. The latter are precisely two aspects which, according to the journal *Foreign Affairs*, needed to be addressed by the new administration of the US (succeeding George W. Bush), when coming into power.

1.4 Research questions

1.4.1 Primary research question

The proposed study will be guided by the following primary research question:
In what specific ways have the rights of the stated groups been violated or protected by counter-terror actions? Subsequent to this: in what way does the denial of the identity and recognition of a group (of a human need) lead to conflict?

1.4.2 Secondary research questions

In order to fully explore the primary research question, the following secondary questions need to be addressed:

- If the denial of a human need causes conflict, does this also lead to the denial of Human Rights?
- Does the quest for human rights represent the balancing out of the rights on terrorist attacks and counter-terrorist attacks, as a barometer for justice and fairness for a free and democratic society?
- Why do the unmet needs of individuals drive them to such an extent that they are prepared to sacrifice their own lives?
- What does democratic and effective government entail, and can terrorism be combated while still honouring the rule of law?
- How should one think about terrorism, human needs, human rights, and counter-terrorism attacks?
1.5 Conceptualisation

This study will be based on the conceptualisation in Figure 1.

The study will illustrate that human needs come first in the conceptual framework. It will then be argued that unfulfilled human needs are the primary cause of terrorism. Terrorism led to the war on terrorism, which will subsequently be discussed. Counter-terrorist attacks and human rights will follow. Balancing out the rights of all parties will next be dealt with, followed by torture and human rights.

\[\text{Foreign Affairs, September/October 2008:139}\]
An in-depth literature study of relevant and contemporary sources on the above-mentioned aspects will serve as backbone of the study.

1.6 Concept clarification

**Human Needs** – Theorists argue that one of the primary causes of conflict is people’s unyielding drive to meet their unmet needs on individual, group, and societal levels. The pyramid of human needs, that range from the basic physiological needs such as food to self-actualisation, is well-explained by Maslow’s hierarchy of needs (Burton, 1990b).

**Terrorism** is a term used to describe violence or other harmful acts committed against civilians (Davis, 2003:79; McDermott, 2006).

**War on Terrorism** – The ‘war on terrorism’ is a term used by the Bush administration (NATO and the War on Terrorism). The aim of the war on terrorism is to put an end to international terrorism (Dugard, 2005).

**Counter-terrorist attacks and Human Rights** – The debate on the power balance between human rights and counter-terrorism will remain contentious (Hubschle, 2005). UN guidelines to assist countries to strike a balance between human rights and combating terrorism have been established in a number of resolutions adopted by the General Assembly, Security Council, and Commission on Human Rights (Schlager, 2005:289).

**Human Rights** – It is widely accepted that terrorism constitutes a violation of human rights, especially the rights to physical integrity, life, freedom, and security; it also impedes on socio-economic rights (AU, 1999:109).

**Torture and Human Rights** – Torture has been described as a ‘cruel assault upon the defenceless’ and as ‘inherently abhorrent’. Torture has been widely used in situations to obtain information (Van Althuis and Van der Wolf, 2001:210-211; Cook, 2003) in criminal justice (Stubbs, 1987:375-76) as a form of punishment (Stubbs, 1987:365) or in political society as a means of suppressing opposition.
1.7 Paradigmatic perspective

1.7.1 Interpretivism and Critical Theory

The study will be conducted within an interpretivist frame of reference, which, broadly speaking, focuses on the inter-subjective world, socially constructed multiple realities. The underlying rationale for this frame of reference in a study is to search for patterns of meaning and to understand and describe meaningful social interaction. Interpretivism involves ways of making sense of the meanings that human beings give to their actions. This also implies that the individual and the meaning of individual action are framed by the wider social context in which human beings find themselves. A basic assumption is that politics/education/religion/ is connected with an understanding of meaningful human action, thus connected inter alia to the culture, tradition and national aspirations of people (Waghid, 2002).

Within an interpretivist frame of reference, and particularly suitable for this study, is Critical Theory, as expounded by Jurgen Habermas. For the purpose of the research Critical Theory is adequate because it meets three criteria, which will guide the research. Drawing from Max Horkheimer (1982), Critical Theory is only adequate when it is explanatory, practical and normative at the same time. It must thus explain what is wrong with current social reality, must identify the ‘actors’ to change it and provide both clear norms for criticism and achievable practical goals for social transformation. Horkheimer believes that any truly critical theory of society has as its object human beings as producers of their own historical form of life (Horkheimer, 1993:21). According to Habermas a critical approach to research has a ‘dual perspective’ (Habermas, 1996: Chapter 4). This dual perspective has been expressed in different ways: critical approaches have dual methods and aims – as mentioned above, they are explanatory and normative at the same time, adequate both as descriptions of the social context and as practical proposals for social change.
Critical thought is fundamentally linked to the critical theories of society that emerged from the members of the Frankfurt School (1923) and their contemporaries (Horkheimer, Adorno, Marcuse, Fromm) as they sought to challenge the traditional forms of rationality that defined the concepts of meaning and knowledge in the Western world during a critical moment in the history of the twentieth century. As such, the work of critical theorists was driven by an underlying commitment to the notion that theory and practice must inform the work of those who seek to transform the oppressive conditions that exist in the world (Darder, Baltodano and Torres, 2003:8-9).

In a Critical Theory frame of reference, the notion of hegemony refers to a process of social control that is carried out through the moral and intellectual leadership of a dominant socio-cultural class over subordinate groups (Gramsci, 1997). Critical enquiry incorporates this notion of hegemony in order to demystify the assymetrical power relations and social relations that sustain the interests of the ruling class. Hegemony also refers to the powerful connection that exists between politics, economics and culture. To understand how hegemony functions in society provides critical thinkers with the basis for understanding not only how the seeds of domination are produced, but also how they can be challenged and overcome through resistance, critique and social action (Darder, Baltodano and Torres, 2003:14-15).

This frame of reference thus incorporates a theory of resistance that is based on the assumption that all people have the capacity and ability to produce knowledge and to resist domination. However, how they choose to resist is clearly influenced and limited by the social and material conditions in which they have been forced to survive and the ideological formations that have been internalised in this process. According to Darder et al. (2003), the principle of resistance seeks to uncover the degree to which oppositional behaviour is inter alia associated with the need to struggle against elements of dehumanisation. The notion of emancipatory interests serves as a central point of reference in determining when oppositional behaviour reflects resistance that can support counter-hegemonic purposes. The latter term refers to those intellectual and social spaces where power relations are reconstructed to make central the voices
and experiences of those who have historically existed within the margins of mainsteam institutions. This is achieved when a counter-hegemonic context is forged out of moments of resistance, through establishing alternative structures and practices that democratise relations of power, in the interest of liberatory possibilities.

In line with a Critical Theory point of departure, the following assumptions underlie this research: There are structured contradictions in the material world and/or exploitation which can be objectively known only by removing tacit ideological biases. Reality is also shaped by social, political, cultural, economic and gender values. Social reality is thus conflict filled and governed by hidden underlying structures (of oppression). The critical approach will guide the study to search for disguised contradictions hidden by ideology, to open spaces for hidden voices, to empower people to change society radically and to critique and transform social and political systems. Critical enquiry as it is understood at the basis of the research is driven by an emancipatory interest – its purpose is to contribute to change in people’s understanding of themselves and their practices and free them from the constraints of society. As such it “engenders self-reflective activity amongst individuals to bring about a clear articulation of arguments in an atmosphere of openness to overcome ideological distortions generated within social relations and institutions” (Carr & Kemmis, 1986: cited in Waghid, 2002).

1.8 Research methodology

Based on interpretivism, a qualitative approach will be used, striving to comprehend the conflict in situations where human rights and human needs are ignored (Creswell in Fouché and Delport, 2002; Wimmer and Dominick, 2000). The choice of a methodology for the research was influenced by the securitised and ideological nature of the topic, and the sensitivities surrounding it, thus rendering the use of an empirical study unsuitable.

The study will thus be conducted through a descriptive, critical review of existing literature, driven by theoretical considerations such as the aim of the study and the research questions. To be able to frame terrorism and the war on terrorism within a
human rights perspective, an extensive historical descriptive analysis is attempted, drawing primarily on textual data. The textual data will focus on particular cases of terrorist and counter-terrorism incidences, initiated by the 9/11 attacks in the US. Sources of data will include existing scholarship on the topic, primary as well as secondary sources, which include articles in professional journals; research reports; legal documents; specialised index publications; standard reference materials; newspaper reposts; television broadcasts; scientific books and the internet.

All the data will be analysed, interpreted, and integrated, followed by findings and recommendations.

1.9 Research design

According to Bless and Higson-Smith (1995:46), “[t]he plan of how to proceed in determining the nature of the relationship between variables is called a research design”.

The instrumental case-study design (qualitative) has been selected, since it should assist the researcher in gaining a clear understanding of, and acquiring knowledge regarding the social issues under investigation. Furthermore, it should provide him with multiple sources of information and facilitate the process of exploring and describing the phenomenon clearly (Mark in Fouché, 2002). According to Bless and Higson-Smith (1995), a case-study design involves the comprehensive and systematic investigation of a few cases. The strength of a case-study design is that it is useful for learning about situations which might be poorly understood or of which not much is known (Leedy and Ormrod, 2001).

According to Wimmer and Dominick (2000), a case-study design is advantageous to research because it provides a large amount of information and detail about the research topic and allows the researcher to deal with a wide variety of raw data. It includes methods to collect both descriptive and explanatory data within a study. Lindegger (2002) adds yet another advantage, stating that this design gives way for original ideas to surface from vigilant and detailed observation.
There are, however, also limitations to the case-study design. Cases might lack scientific rigour and case-studies may not be generalisable. This is often characteristic of interpretivist studies and should not necessarily be regarded as a limitation. It may also be time consuming and the research might generate large quantities of data that the researcher may find hard to analyse (Wimmer and Dominick, 2000). Furthermore, Lindegger (2002) states that problems might emerge with regard to the validity of the information, and that causal relations are often hard to test. Once again, this is not necessarily a limitation to qualitative interpretivist studies.

Since the researcher is aware of the limitations of the proposed design, he intends to prevent these challenges from affecting the quality of the study by, for example, eliminating biased views and continuously monitoring all interpretations in order to provide a rigorous study.

The above-mentioned design has been selected to provide the researcher with a holistic view of real-life events experienced during the war on terrorism and to produce a rich description of the perception that the abuse of human needs cause interpersonal conflict, which then results in the denial of human rights.

1.10 Data collection strategies

1.10.1 Literature study

As stated previously, the study will be conducted mainly through a literature (meta)analysis instead of primary research. According to Borg and Gall (1989:174) an integrative literature review can be conceptualised as a research project. This means that the study of literature can be applied as a methodology and not merely as a review of literature within which to frame the empirical investigation.

The choice of a literature review as main method of this study was motivated by the vastness of sources to be found on this theme, and also the intention to conduct a
descriptive study and analysis in terms of a critical paradigm. Because of the sensitive nature of the topic, fieldwork was not regarded as suitable for the investigation.

1.10.2 Qualitative technique

- **Face-to-face interviews**
  To add to the value of the literature study, face-to-face, semi-structured interviews will be conducted in order to generate qualitative data on detailed views and opinions regarding the war on terrorism. A set of predetermined open-ended questions on an interview schedule will be developed to guide the researcher during the interviews, and participants will be guided and encouraged to share their experiences and views on the war on terrorism from a human needs and human rights perspective (Greeff, 2002).

  The researcher aims to gain additional information by means of the individual interviews. Holstein and Gubrium (2003) describe interviewing in qualitative studies as a unique form of conversation which provides the researcher with empirical data about the social world, simply by asking participants to express their views.

  A benefit of conducting face-to-face interviews is that it enables the researcher to gain the participants’ cooperation by establishing a relationship with them, which facilitates the production of high response rates (Leedy and Ormrod, 2001). Within this study, establishing such relationships should enable the researcher to gain additional information on the information gathered in the literature review.

  The interviewer will audiotape all interviews and use handwritten notes to support the recordings. This will assist him with the transcriptions for analysis purposes. Observations will be noted during the interviews, especially with regard to non-verbal cues.

- **Field notes**
  The researcher will utilise field notes during the research process. Field notes will contain descriptions of the researcher’s reflections regarding conversations, interviews,
moments of confusion, intuitions, and the stimulation of new ideas during the study (Mayan, 2001).

For the purpose of this study, field notes will include any observations noted during interviewing, notes written from news reports (Harrison, 2004), discussions with experts in the field, as well as any additional information provided by the participants during the implementation of the questionnaire. According to Mayan (2001), the researcher is provided with the opportunity to gain a clear view of his/her thoughts by making use of field notes. The latter can be of assistance in planning the next step during the process of data collection.

1.11 Data analysis and interpretation

Mayan (2001:21) provides the following explanation of data analysis:

…[t]he process of observing patterns in the data, asking questions of those patterns, constructing conjectures, deliberately collecting data from specifically selected individuals on targeted topics, confirming or refuting those conjectures, then continuing analysis, asking additional questions, seeking more data, furthering the analysis by sorting, with the information.

During this process the researcher will consider all the collected data, including the field notes and interview transcripts, to form a clear understanding of the information (Terre Blanche and Kelly, 2002).

1.12 Triangulation of the findings

According to Stake (2000:443), “[t]riangulation has been generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation”.

Triangulation is applied in this study by using different views and opinions on the topic to check for accuracy. This means that the reviewed literature will be critically analysed in order to facilitate the verification and validation of the findings.
1.13 Role of the researcher

Within the interpretative field of study, the role of the researcher as interviewer entails being an active participant, which includes becoming a vital part of the data (Wimmer and Dominick, 2000). Because the researcher is rigorously involved in the experience of the participants, it is necessary to continually recognise participant bias, values, and personal interests relating to the research topic and process (Creswell, 2003).

In this study, the researcher's functional role entails being a transcriber and analyst of the data obtained through the literature review and interviews, as well as triangulation of the data.

1.14 Quality criteria

1.14.1 Trustworthiness (reliability, dependability)

When applying mixed methods in research, the trustworthiness of data should encompass the various topics discussed during the stages of the study. The term ‘trustworthiness’ refers to the way in which the inquirer is able to persuade the audience that the findings of the study are worth paying attention to and that the research is of a high quality (Lincoln and Guba in Jonson and Turner, 2003).

The researcher will triangulate all data collected during the research process, including the review of the literature, interviews, field notes, and the research diary in order to search for common themes to provide reliable findings.

Furthermore, the researcher will strive to eliminate any bias that might be brought to the study by constantly reflecting on the research process.

1.14.2 Validity

- Credibility (internal validity)

Mayan (2001) describes internal validity as the accurate presentation of a particular context or event as described by the researcher.
Durrheim and Wassenaar (2002) refer to credibility as the assurance that the researcher’s conclusions stem from the data. The researcher will establish credibility by applying triangulation to the methods of data collection and data analysis in order to determine if there are any discrepancies in the findings. The researcher will strive to produce findings that are believable and convincing, indicating that it is adequate for measuring what it is supposed to measure, therefore ensuring content validity.

- **Transferability/Generalisability (external validity)**

According to Durrheim and Wassenaar (2002), generalisability is the degree to which generalisations can be made from the data and content of the research to the wider population and settings. Generalisability is thus regarded as the way in which the reader is able to transfer the findings to other contexts.

The researcher will use rich, thick descriptions of the participants and contexts by supplying a large amount of clear and detailed information about the war on terrorism to ensure transferability (Creswell, 2003; Mayan, 2001). However, since interpretivist studies aim at providing rich descriptions of the perceptions of selected participants, the aim will not be to generalise the findings of this study.

1.15 **Ethical considerations**

It is important that research cannot simply be conducted by anyone and anywhere. Strydom (2002: 63) draws on the work of Babbie and adds: “Anyone involved in research needs to be aware of the general agreements about what is proper and improper in scientific research”. It is essential that, throughout the research process, and due to the sensitivity of the topic, the researcher follows and abides by ethical guidelines.

1.15.1 **Privacy, confidentiality and anonymity**
All the information and responses shared by the participants during the study will be kept private, and the results will be presented in an anonymous manner in order to protect the identities of the participants.

All audiocassettes will be destroyed as soon as the study has been completed.

1.16 Possible contributions of the study

As previously mentioned, there is a lack of sufficient literature on human rights and human needs, and this study may contribute to an increase in literature on Political Science, Political Economy, and Development Studies.

This study might motivate professionals and governments to consider the implementation of more appropriate strategies in foreign policy and strategic planning for advisors. To date studies on terrorism have not yet considered human rights and human needs, and research on these aspects may enrich scholars and academics at tertiary level.

Concluding comments

The threat of terrorism requires multiple solutions such as the establishment of democratic institutions with functioning judiciaries and an active civil society for the prevention of religious and political extremism.

It remains, however, a delicate matter to find the right balance between legitimate security concerns, on the one hand, and the protection of human rights, on the other hand.

The study will deal with the theoretical and methodological issue of needs which contribute to the explanation and handling of conflict and terrorism. Concomitantly, the issue to be examined is the question of ethnic, national, and religious conflicts which generate much of the political violence that is currently racking the world community and world politics, and causing the loss of lives.
The research will attempt to demonstrate that human needs theory is an attempt to account for the causes of violence and disorder which lead to terrorism, revolution, and war.

The study on terrorism and conflict and the resolution thereof needs a sound foundation in terms of which both the analysis and practical strategies for resolution can be conceptualised. The research, therefore, will explore the possibilities for the development of a sound foundation in terms of which human needs can be addressed to eliminate conflict.

In Chapter 2 the role of human rights in international relations will be examined.
CHAPTER 2

HUMAN RIGHTS IN INTERNATIONAL RELATIONS

Introduction

In this chapter the role that human rights play in international relations will be examined and evaluated. In addition, the focus will be on looking beyond the 'War on Terrorism' for opportunities to correct major strategic errors and to develop a framework according to which countries can adjust their security and rights to reflect more justifiable and effective policies.

This section will also state and explain that now is the time to move towards a new paradigm based upon respect for human rights, an anti-terror justice, and long-term political vision that can reduce the global intolerance which is the breeding ground for terrorists.

It will further be demonstrated that Iraq has now replaced Afghanistan as the training ground for international terrorist activities. In addition, the chapter will illustrate that America and its allies meant to use 'shock and awe' tactics to force the enemy into submission by destroying its leadership.

Furthermore, the chapter will endeavour to demonstrate the need for sound human rights principles in international politics. It will also search for answers to 'cure' international terrorism. Justice will also be investigated: political justice, the rule of law, social justice, economic justice, finally ending with the argument that the identity and security of a person or a nation are vital.

The first section of the chapter will subsequently focus on the three terrorist attacks that lead to the declaration of the War on Terrorism as announced by the then President of
the US, George W. Bush. An explanation will further be given of concepts such as ‘terrorism’, the organisation called the Taliban; Al-Qaeda as a terrorist organisation. The chapter will also investigate why individuals are prepared to sacrifice their own lives and those of innocent individuals, as suicide bombers. The Islam religion will be focused upon, as well as the concept ‘Jihad’. Finally, the chapter will conclude with reasons why human needs cause conflict and the damages which unmet human needs have on the development of individuals.

2.1 Human rights

Human Rights refer to the basic rights and freedoms to which all humans are entitled, and include the right to life and liberty, freedom of thought and expression, and equality before the law.² The United Nations Universal Declaration of Human Rights states, “All Human beings are born free and equal in dignity and rights, and should act towards one another in a spirit of brotherhood”.³ The United Nations is the only international entity with jurisdiction for legislation.

Human Rights include equality rights, which guarantee equal citizenship, equality before the law and non-discrimination;

- Political rights, which protect the liberty to participate in politics by expressing oneself, protesting, and participating in a republic.
- Welfare rights (Economic rights) include the provision of, for example education, paid holidays and protection against severe poverty and starvation.
- Liberty rights, which protect freedoms in areas such as belief and religion, association, assembling and movement.
- Security rights prohibit crimes such as murder/enforced involuntary suicide, massacre, torture and rape.
- Due process rights protect people against the abuses of the legal system such as imprisonment without trial, secret trials and excessive punishments.

³ UNIVERSAL DECLARATION OF HUMAN RIGHTS adopted by General Assembly resolution 217 A (III) of 10 December 1948.
- Group rights, which protect the various rights of groups.

Following the Second World War, the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. This was the first international legal effort to limit the behaviour of states and keep them responsible for their behaviour against their citizens. In 1976, the International Covenant on Civil and Political Rights was adopted by the United Nations. It commits 155 state parties to work together toward the granting of economic, social, and cultural rights (ESCR) to individuals (Universal Declaration of Human Rights, 1949). Today one of the principal aims of international law is the protection of the human rights of the individual against his or her own government (Frost, 2005).

Humanitarian laws, which seek to reduce the suffering of combatants and civilians in time of war began to develop in the nineteenth century after the adoption of the Geneva Convention. Humanitarian intervention permits states to intervene forcibly in states whose treatment of their civilians is in contravention of human rights conventions. The League of Nations period saw three important developments in the international protection of human rights, namely (Bull, 1980/81):

- The mandates system established in 1919 as a sacred trust of civilization to promote the welfare of peoples not yet able to stand by themselves under the strenuous conditions of the modern world; ⁴
- the international Labour Organisation, created in 1919 to improve the working conditions of employees; and
- the minority treaties, designed to safeguard the rights of ethnic, religious and linguistic minorities in the Balkans and Eastern Europe (Shaw, 2003:273-274).

The enormity of the atrocities committed by the Nazi regime dramatically changed the nature of international law. This experience compelled statesmen to accept the need for a new world order.

⁴ Article 22 of the Covenant of the League of Nations.
A good start was made by the International Commission of Jurists, when during its Biennial conference, 160 international lawyers from around the world adopted a declaration on upholding Human Rights and the rule of law in combating terrorism. This declaration acknowledges that terrorism poses a serious threat to human rights, and affirms that all states have an obligation to take effective measures against acts of terrorism, but it sets out the boundaries as follows: In adopting measures aimed at suppressing acts of terrorism, states must adhere strictly to the rule of law, including the core principles of criminal and international law and the specific standards and obligations of international human rights law, refugee law and where applicable, humanitarian law. These principles, standards and obligations define the boundaries of permissible and legitimate state action against terrorism. The odious nature of terrorists’ acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights (Martin, 2004).

There is no conflict between the duty of states to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. Both contemporary human rights and humanitarian law allow states a reasonably wide margin of flexibility to combat terrorism without contravening human rights and humanitarian legal obligations (Martin, 2004). The Declaration further affirms eleven principles that states must give full effect to in the suppression of terrorism, and calls on all jurists to act to uphold the rule of law and human rights while countering terrorism (Martin, 2005).

The Berlin Declaration (available at www.icj.org) restores the balance that was lost in the aftermath of 9/11. It is a declaration that should be displayed in law offices and judges’ chambers throughout the world. Logically, however, this is not sufficient. To combat terrorism it is necessary to probe more deeply and tackle the root causes of the humiliation, anger, and frustration that can be manipulated to draw recruits for terrorist action. In a constantly changing foreign policy, it may be too soon to find clear
assessments of the human rights benefits and costs of what has been called the war on terrorism.

The issue to be addressed in this chapter is the consequences of the War on Terrorism for the individual human rights of the Afghans, Iraqis, British, Americans, Spaniards and others. In other words, in what specific ways have the rights of the stated groups been violated or protected by counter-terror actions? The United Nations, in conjunction with governments abroad have come to the rescue of human rights and the rule of law, as part of their reconstruction strategy in post-conflict zones. Also of importance is the ending of the Cold War. This has provided more scope for international responses, which have prevented further mass human rights abuses.

For example, in some violence-struck countries such as Sierra Leone, the United Nations successfully intervened militarily to prevent further human rights abuses against civilians (Robertson, 2001), and embarked on a comprehensive reconstruction programme for the country. There have also been significant advances in the implementation of human rights globally. Some governments with policy guidance from human rights organisations have begun constructing intergovernmental instruments of accountability for mass atrocities such as tribunals and truth commissions.

An example of this is the International Criminal Tribunals, which were established to overhear crimes against humanity, and were the first since the Nuremburg and Tokyo trials. The 1988 Rome Statute, which was ratified by 120 countries, but opposed by the United States, Israel and China, created the mandate for an International Criminal Court (ICC) which would have jurisdiction over four categories of crimes: war crimes, crimes against humanity, genocide and aggression (Schabas, 2001).

The 1998 Rome Statute of the ICC does not mention global terrorism as a category of crime over which it has jurisdiction. It could, however, be argued that 9/11 attacks might be dealt with under the rubric of crimes against humanity. However, the ICC can only deal with crimes committed after 2002. Furthermore, the ICC relies on powers of
search, seizure and arrest based on a state sovereignty model that seem outdated when dealing with global Islamist terrorist networks. What makes Al-Qaeda unique is that it is a de-territorialised terrorist network spread across the globe, based upon a loose cell infrastructure. Because of this it has a global reach and the capacity to strike at will. This was demonstrated by Osama bin Laden in his 1998 declaration of war against the US. He called upon all Muslims to go forth, sword in hand to kill all infidels in a Jihad against Jesus and the Crusaders, restoring the Seventh Century Islamic Caliphate. This is a war declaration on all non-Muslims, leaving no common ground for negotiation – having no respect for life in the process.

We only have to consider the two-thousand-year-old Roman maxim: *Inter arma silent leges* (In times of war, the laws are silent), to realise that the above issues are not being faced for the first time (Walzer, 2004). The debate on law and rights during wartime is extremely old and one can learn something from its historical perspective and values.

Governments must be accountable to their citizens; among their primary responsibilities are the establishment of legislative powers and the rule of law. If during a war some rights are suspended, the question remains: in the War on Terrorism (which is unlike all other conventional wars), which rights may be legitimately suspended?

The war in Afghanistan in 2001 was justified on the grounds that the Taliban regime had harboured and aided terrorist groups. The war in Iraq in 2003 was based upon a perception that Saddam Hussein was in possession of weapons of mass destruction (WMD), and also the regime’s putative support of Al-Qaeda. Human rights abuses were not primarily stated as the reason for the war against terrorism. Human rights indeed only became significant after the invasion of Iraq, when other reasons for war had been declared invalid.

Most scholars in the Human Rights field have been critical of the War on Terrorism, and perceive it to be damaging to the cause of human rights. For Aryeh Neier, who spent twelve years as Executive Director of Human Rights Watch, of which he was a founder, before joining the Open Society Institute (OSI) and the Soros Foundation Network as
president, the War on Terrorism is not the way to build democracy and promote human rights globally. He states that the invasion and counter-insurgency war in Iraq have resulted in unprecedented levels of anti-Americanism. Neier is also of the opinion that the US has violated human rights in the treatment of terror suspects at Guantanamo Naval Base and Abu Ghraib prison, and now faces charges of hypocrisy if it seeks to take up questions of human rights and democratic freedoms with foreign governments.

One principle that guides human rights is that the rule of law is important. This has been proved in the Padilla and Hamdi cases, where the rule of law and constitutional accountability were confirmed in the Supreme Court decisions in 2004. These two US Supreme Court decisions inspired the British House of Lords ruling that the British government had violated the European Convention on Human Rights by detaining seventeen foreigners suspected of terror offences under the Anti-Terrorism Crime and Security Act without charging them or putting them on trial.

The conditions in prisons holding terrorism detainees and political prisoners serve as a legitimate test for a democratic political system. Judging by this standard the United States has failed totally. The abuse of prisoners at Guantanamo Naval Base and Abu Ghraib serve as examples.

The focus of this thesis is on human rights, firstly in US foreign policy and secondly in the treatment of foreign terror suspects in US custody. However, the damaging implications of counter-terror measures, especially for American citizens, also should be highlighted. This is demonstrated by the USA Patriot Act of 2001, which grants unprecedented powers to homeland security agencies to invade the privacy of individual citizens on the slightest circumstantial evidence, with few mechanisms of accountability (ACLU, 2003; Brown, 2005; Hentoff, 2003; American Civil Liberties Union, 2003; Ashby,

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7 Hamdi v Rumsfeld 124 S Ct. 2633, 159 L. Ed. 2d 578 (2004).
8 A(FC) and others (FC) (Appellants) v Secretary of State for the Home Department.
Terrorism and its impact on human rights is not a new phenomenon. Even before the Second World War attempts were made to address the problems caused by terrorism for international law.

This led to the adoption by the League of Nations of its Convention for the prevention and punishment of terrorism. Terrorism has been on the agenda of the United Nations in one form or another since 1972. It can, however, be said that terrorism inevitably has a direct impact on human rights in at least two ways:

(a) The act of terrorism amounts to interference with the victims' most fundamental rights, namely their right to life and moral and physical integrity; and
(b) a State's reaction to a terrorist act or threat interferes with the fundamental human rights of that State's population.

States are directly responsible under international human rights law and the international human rights treaties to which they are parties. In a case which appeared in the European Court of Human Rights, Ireland v United Kingdom, which concerned the United Kingdom's response to IRA terrorist activities, the court noted as follows:

…it is not required to rule on the terrorist activities in the six countries of individuals or of groups, activities that are in clear disregard of human rights. The Court has only to give a decision on the claims made before it by the Irish Republic against the United Kingdom.

In more recent years, even in a non-terrorist context, it has become accepted that, for example in, Article 2 of the European Convention on Human Rights ('ECHR'), the right to life should be enforced. This,

…enjoins the State not only to refrain from the international and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the
commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.\textsuperscript{12}

The Court continued to consider when such positive obligations could be said to have been violated:

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life. Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2. For the Court... it is sufficient for an applicant to show that the authorities did not do all that could reasonably be expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.\textsuperscript{13}

\section*{2.2 International relations}

Iraq was pointed out as a state sponsor of terror by the United States in 1990 and it has maintained poor relations with the United States since the Gulf War (CNN, 2000-03-09). Tensions with the United States remained high throughout the 1990s. Operation Desert Fox was launched against Iraq in 1998 after Iraq failed to meet the demands of the


\textsuperscript{13} Ibid, paragraph 116.
'unconditional cooperation' in weapons inspections (CNN, 1998-12-16). After the September 11 attacks, the Bush administration claimed that Iraq was a threat to the United States, because Iraq could begin to use its alleged weapons of mass destruction to aid terrorist groups such as Al-Qaeda (Schlager, 2005).

This motivated the administration of George W Bush to call upon the United Nations Security Council to send weapons inspectors to Iraq to find and destroy the alleged weapons of mass destruction (CNN, 2002-11-08). The United Nations Security Council (UNSC) Resolution 1441 was passed unanimously, which offered Iraq 'a final opportunity to comply with its disarmament obligations' or face 'serious consequences'. This resolution did not authorise the use of force by member states. Saddam Hussein allowed UN inspectors access to Iraqi sites, while the US government continued to assert that Iraq was being obstructionist (News Hour, 2003).

The burden of proof was on Iraq to show that it had no Weapons of Mass Destruction. Before the United Nations weapons inspectors had completed their inspections in Iraq, the United States assembled a 'coalition of the willing' to support the war against Iraq. Consequently, on 20 March 2003, the United States and its allies launched the invasion of Iraq. Iraq had violated 17 different UN resolutions since the end of the 1991 Gulf War, and routinely shot at United States and United Kingdom planes patrolling the no-fly zones (British House of Commons). The United States and its allies toppled the regime of Saddam Hussein on 1 May, 2003 (Whitehouse News Release, 2003).

The war continued against the United States and its allies by the Sunni supporters. The Sunni loyalists saw themselves as fighting a religious war to liberate Iraq from foreign non-Muslim occupiers (Crimes and Criminal Procedures). Statistics show that more than 3000 soldiers from the coalition have been killed or detained. A study by Johns Hopkins University also estimates that approximately 650 000 Iraqi civilians had been killed by July 2006 (Tavernises and McNeil, 2006).
Some member states of the US have criticised the idea of a 'War against Terrorism' with the argument that it is impossible to launch a war against a tactic. Their argument is that functionally a war is waged against tangible opponents such as the military force of a country (Carroll, 2004) (for example, against Germany in World War II). Also, because terrorism is difficult to define, the United Nations still does not have consensus on a definition for terrorism. Therefore the War against Terrorism has no uncontroversial meaning.

This criticism is largely based on the argument that 'one man's terrorist is another man's freedom fighter'. It should, however, be noted that since the 1960s the United States government has declared several 'wars' on intangible concepts. There has been the War on Poverty, the War on Drugs, the War on Inflation; Richard Nixon's declared War on Cancer and a general War on Crime. These wars have led to a great increase in federal law.

The idea that the War against Terrorism intends to reduce or eliminate acts of terrorism, is rejected by a large number of critics. They point out that many terror 'suspects' are targeted without evidence (Socialism and Liberation, n.d), while known anti-Cuba terrorists such as Luis Posada Carriles and Roberto Ferro, are overlooked.

Arabic scholars have argued that the Iraq War (War on Terrorism) will polarise and anger the Arab world, creating new groups (other than the Taliban and Al-Qaeda) of Islamic extremists who will cause a new wave of terrorist attacks. The message of the War on Terrorism to extremists and terrorists may well be that conventional forces cannot do serious damage to the United States and its allies, but that irregular forces such as suicide bombers, can.

An important question that needs to be answered is whether the quality of nation building in Iraq is more important than the military outcome. Once the United States and Britain leave Iraq, no oil deals made by them can survive, unless the Iraqis feel that those deals benefit their own country.
The lesson in this 'War on Terrorism' and the invasion of Iraq is that it seems to be a solution to one of the problems in the entire Middle East region. The events of September 11 did not start the problems in the Middle-East, it merely accelerated it, and the war on terrorism forced it to a point beyond return. Therefore, the task is to establish Human Rights norms and to find adequate means to enforce them.

To understand this clearly, the thesis will investigate whether human rights are still a fundamental part of democratic politics, since human rights define the boundary between individual freedom and government tyranny. This study will also evaluate the impact of the war on terrorism on human rights, as well as investigate the counter-terrorism strategy.

A number of scholars argue that war is necessary in defence of liberal democracy, while others assert that it is time to move away from the war model towards a new paradigm based on respect for human rights for all (Doyal, 2001). This will also be investigated.

2.3 The three terrorist attacks that initiated the War on Terrorism
2.3.1 September 11, 2001 terrorist attacks

The four commercial airlines that were hijacked and routed to California from Dallas International were the following:

- American Airlines Flight 11, a Boeing 767-200, which crashed into the northern side of the North Tower of the World Trade Centre
- United Airlines Flight 175, a Boeing 767-200, crashed into the South Tower.
- American Airlines Flight 77, a Boeing 757-200, which crashed into the Pentagon.
- United Airlines Flight 93, a Boeing 757-200, crashed into a field in Southwest Pennsylvania just outside of Shanksville approximately 240 km northwest of Washington DC.\textsuperscript{14}

Three buildings in the World Trade Centre complex collapsed due to structural failure as a result of these incidents (National Commission on Terrorist Attacks upon the United States, 2004). During the hijacking some passengers and crew members were able to make phone calls using the Cabin GTE air phone services (CNN, September 13, 2001). They were responsible for the reporting of the events which had taken place in the airplane.

The terrorists apparently took control of the aircraft by using knives and box-cutter knives to kill flight attendants, a pilot, and Captain John Ogonowski of Flight 11 (National Commission on Terrorist Attacks upon the United States, 2004). It is reported that some noxious chemical spray was used on American Flight 11 and Flight 175, to keep passengers out of the first-class cabin, so as to prevent them from moving forward and attempting some or other rescue tactic (Ahlers, 2004). Bomb threats were made on three of the four aircraft, but according to the Commission Report of 9/11 these bombs were probably fake.

On United Airlines Flight 93, black box recordings revealed that crew and passengers attempted to seize control of the plane. One hijacker then gave the instructions to roll the plane, but soon afterwards, the aircraft crashed into a field near Shanksville. It was learned afterwards from the Al-Qaeda leader, Khalid Shaikh Mohammed, that this aircraft targeted the United States Capital (Watson, 2007), and was given the code name, ‘The Faculty of Law’ (CNN, September 12, 2002). These attacks created widespread confusion in the United States, where all international civilian air traffic was banned from landing on US soil for three days, and aircraft already in flight were given instructions to turn back or to be redirected to airports in Eastern Canada (O’Mara, 2006).

\textsuperscript{14} http://www.registry.faa.gov/aircraftinquiry/NNumSQL.asp?
There were 2973 fatalities, not including the 19 hijackers: 246 on the four planes (nobody on the four aircraft survived) (CNN, September 11, 2001). Among the fatalities were 343 New York City Fire Department fire fighters, 23 New York City Police Department officers, and 37 Port Authority Police Department officers (New York Metro, September 5, 2002). Lieutenant General Timothy Maude was the highest ranking person killed at the Pentagon (Arlington National Cemetery, September 22, 2001). and John P. O’Neill was a former Assistant Director of the FBI who had assisted in the capture of Ramzi Yousef and was Head of Security at the World Trade Centre. He was killed whilst attempting to rescue people from the WTC2 (CNN, September 20, 2001). An additional 24 people remain listed as missing.15

According to the Commission Report, 1366 people died who were at or above the floors of impact in the North Tower (1 WTC). Hundreds were killed instantly by the impact, while the rest were trapped and died after the tower collapsed.16 As many as 600 people were killed instantly or trapped at or above the South Tower site of impact (2WTC), while 18 managed to escape in time. An estimated 200 people jumped to their deaths from burning towers, and landed in the streets or on rooftops of adjacent buildings.17 Obviously no rescue plans were in place, and the intense heat would in any case have prevented rescue helicopters from landing in an attempt to rescue people from the burning buildings (National Commission on Terrorist Attacks upon the United States. US Congress, August 21, 2004).

According to the Associated Press, the city identified over 1600 bodies, whilst approximately 1100 people remained unidentifiable (Cauchon and Moore, 2002). Bone fragments were still being found in 2006 whilst workers were preparing to fix the damage caused to the Deutsche Bank. The average age of all the dead in New York City was 40 (CBS News, May 18, 2004). Besides New York, New Jersey was the

16 http://www.sfgate.com/cgi-bin/article.cgi?
hardest hit state, with the town of Hobolden sustaining the most fatalities (CBS News (February 23, 2005)).

According to the 9/11 Commission Report, approximately 16000 people were below the impact zones, and they survived, evacuating the towers before they could collapse. Within hours after the attacks, the FBI was able to give the names of the suspected pilots and hijackers (Beveridge, 2002). On the day of the attacks, the National Security Agency intercepted communications that pointed to Osama bin Laden (Beveridge, 2002). These were also picked up by German intelligence agencies (Federal Bureau of Investigation, September 14, 2001).

The National Commission on Terrorist Attacks upon the United States was formed by the United States Government and is commonly called the 9/11 Commission. It released the information in its report dated 22 July 2004, stating that the attacks were conceived and implemented by members of Al-Qaeda (Blackhurst and Lashmar, 2001). As far as international reaction to the 9/11 events was concerned, it was recorded that the Palestinians celebrated jubilantly (Tagliabue and Bonner, 2001), and in China there were public demonstrations of enthusiasm by Chinese students during the night after the attacks (National Commission on Terrorist Attacks upon the United States, 2004).

Leaders in most Middle Eastern countries, including Afghanistan condemned the attacks, Iraq being the exception (BBC News: Mixed response from Arab World). Law enforcement was tightened and intelligence agencies in several countries, for example Italy, Malaysia, Indonesia and the Philippines, arrested people who were suspected of being terrorists (Hamilton, 2002).

Following the attacks, George W. Bush’s job-approval rating was measured at 86 per cent (CNN, May 8, 2002). Other countries like the UK, India, Australia, France, Germany, Indonesia, China, Canada, Russia, Pakistan, Jordan, Mauritius, Uganda and Zimbabwe introduced 'anti-terrorism' legislation and froze the bank accounts (USA
Today, September 16, 2001) of businesses and individuals they suspected had ties with Al-Qaeda.

After the 9/11 attacks, many Islamic organisations provided the victims with financial support, medical assistance, food and residence.18

Also, immediately after the attack many relief funds were provided to aid survivors and the families of victims (Barrett, 2003).

The terrorist attacks on the Twin Towers and the Pentagon on September 11, 2001 changed politics around the world. President Bush cited the War on Terrorism and the spread of freedom as important US goals in Iraq. However, could either of these two goals justify a war? Saddam Hussein had no connection with the perpetrators of 9/11. He was also not part of Al-Qaeda, and his Ba’ath Party was nationalist and secular, aiming at unifying the Arab nation without any regard to religion. Sunni fundamentalists, like Al-Qaeda, reviled Saddam Hussein’s regime as corrupt, while Saddam on the other hand considered the fundamentalists a threat and treated them with brutality. With this War on Terrorism the Sunni Arab’s centre (Iraq) has become what Afghanistan was during the Taliban – an inaccessible region dominated by foreign terrorists linked to Al-Qaeda.

With these attacks and the subsequent war Al-Qaeda has been given new strength and has encouraged thousands of new recruits. The foreign terrorists have done real damage to the prospect of a successful outcome in Iraq. In 2003 they blew up the United Nations headquarters in Baghdad, killing Sergio Vieria de Mello, the UN representative in Iraq and a diplomat (Galbraith, 2006:89-90).

The US President at the time of the invasion, George W. Bush decided on the war in Iraq, neglecting to address the issue of how post war Iraq would be governed. Would the United States run a prolonged occupation as it had done in Germany and Japan?

18 http://www.Islamicity.com/articles/articles.asp?
Would there be a provisional government and how would it be chosen? Would there be elections? When and how? How would Iraq’s constitution be written and what would be in it? What was the US position on federalism for the Kurds, or the Shiite desire for an Islamic state? What would be done about the Iraqi military and the Ba’ath Party? (Morris, 2003).

For eighty years Sunni Arabs had been the guardians of Iraqi unity, keeping the country together by force; the invasion by America ended the Sunni rule. Now all the pillars that had ruled Iraq had been destroyed, the military, the security and the Ba’ath Party.

So why was New York attacked? What was the reason Bin Laden declared war on America? Why did Bush invade Iraq? Was it because of Iraq’s oil reserves? Was it because America wanted to show that it could run the world? Will we ever know the real reason? Whatever the answers to these questions are, innocent lives are being sacrificed. It is feared that this situation could ignite a third world war and it is imperative that solutions be found.

Let us start at a point that first and foremost honours the rule of law, particularly regarding human life and human dignity.

2.3.2 11 March 2004: Madrid train bombings

The 2004 Madrid train bombings consisted of a series of coordinated bombings against the Cercanias (commuter train) on the morning of 11 March 2004, killing 191 civilians and wounding 2050.¹⁹ According to the European Strategic Intelligence and Security Centre, it is the only terrorist attack in history recorded where non-Muslims collaborated with Muslims.²⁰

¹⁹ ig&hl=ES&q=%2211-m%22&btnG=Buscar+con+Google&meta
²⁰ http://www.esisc.org/attentants%20de%20Madrid.pdf
An official Spanish investigation judiciary established Al-Qaeda involvement. Ten explosions occurred aboard four commuter trains. The three commuter trains involved in the explosions were the following:

- **Calle Telle** (train number 17305) – Four bombs exploded on this train.
- **El Pozo del Tio Raimundo Station** (train number 21435) - two bombs exploded on this train.
- **Santa Eugenia Station** (train number 21713). One bomb exploded on this train.

According to the Spanish judiciary, the explosives used in these bombings were detonated by mobile phones. A group of Moroccan, Syrian and Algerian Muslims inspired by Al-Qaeda (together with Spanish police informants) were suspects (Conline News Hour, 2006).

According to the National Memorial Institute for the Prevention of Terrorism (MIPT), individuals from a Moroccan Islamic group carried out the attacks and those who invented the new kind of rucksack bomb used in these attacks, were those who had been taught in training camps in Jalalabad, Afghanistan (MIPT, Spain overview 2004).

Official statements issued shortly after the Madrid attacks identified the European Terrorist Association (ETA) as the prime suspect, but this group which usually claims responsibility for their actions, denied any involvement. One of the bombs did not explode because there were two wires connected to the detonator. The perpetrator used a mobile phone requiring a sim card to activate the alarm and thereby detonate the bomb. The analysis of the sim card allowed the police to arrest the perpetrator. This evidence confirmed that the attacks came from an Islamic Group with Al-Qaeda involvement.

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This allowed the police to arrest three Moroccans and two Hindu Indians for the attacks. Only one of the five (the Moroccan, Jamal Zougam) was finally prosecuted. In the aftermath of the bombings there were massive street demonstrations across Spain as the country tried to come to terms with what had happened (CNN, 2004). The international reaction was similar to that of the Spanish.

In October 2003 Bin Laden had explicitly threatened Spain in his message to President Bush concerning the Invasion of Iraq:

> We reserve the right to retaliate at the appropriate time and place against all countries involved, especially the UK, Spain, Australia, Poland, Japan and Italy.27

Also, in October 2003, the Global Islamic Media website (the main Al-Qaeda Internet Presence) called for an attack on Spain. The attacks were timed to coincide with the Spanish general elections only three days later. Millions of people took to the streets across Spain, demanding to know who was behind the attacks. The Madrid attacks were unusual in the Al-Qaeda Litany – due to the fact that they were not suicide attacks. It was probable that the group intended a second attack and on that occasion to ‘martyr’ themselves. This is borne out by the fact that when the police raided the attackers’ flats the seven bombers present killed themselves with suicide belts rather than face the law. In his 15 April 2004 communiqué Osama bin Laden proposed a commitment to cease operations against any state that pledged not to attack Muslims or to intervene in their affairs.

This truce was 'available for a period of three months' and was roundly ignored.28

2.3.3 7 July 2005 London bombings

On the morning of 7 July 2005, three bombs exploded within fifty seconds of each other on three London Underground trains and a fourth bomb exploded on a bus nearby Tavistock Square an hour later (BBC, July 11, 2005). The bombings killed 52 commuters and the four suicide bombers, injured 700, and caused a day-long

27 aljazerra.net/nr/exeres/8E8EA580-943C-4FBF-9ABD21B4762YFEC3D.htm
28 http://www.news.bba.co.uk/2/hi/europe/4655240.stm
disruption of the city’s transport and mobile telecommunications infrastructure countrywide (BBC, North Rachel July 12, 2005).

Originally it was thought that there had been six explosions underground. After the explosions a Code Amber Alert was declared, bringing trains into stations and suspending all services (BBC, July 12, 2005). The bus explosion took place close to the British Medical Association. As a result a number of doctors in or near the building could provide medical assistance (Campbell and Lawville, 2006).

A police press conference held on 12 July 2005, provided further details concerning the explosions. According to the police report, all four suspects travelled to Luton in Bedfordshire by car, and then to London by train. They were recorded on CCTV arriving at King’s Cross Station (BBC News, July 12, 2005). On 22 March 2007, three men were arrested in connection with the 7/7 bombings. On 9 May 2007 police made four further arrests; three in Yorkshire and one in Selly Oak, Birmingham (BBC News, July 12, 2005).

On the same day as the explosions, 7 July 2005, the BBC reported that a website known to be operated by associates of Al-Qaeda was discovered, along with a 200-word statement claiming responsibility for the London attacks. The announcement by Al-Qaeda claimed that the attacks were a response to the British involvement in the 2003 invasion of Iraq (with the US troops), as well as their invasion of Afghanistan. The report also warned other governments involved in Iraq, particularly Denmark and Italy to withdraw their troops from Iraq as well as from Afghanistan (Cole, 2005). Newspapers in Iran reported that the British and US authorities were responsible for the bombings, and were seeking justification for their War on Terrorism (and also to harass Muslims living in Europe) (BBC News, July 11, 2005). However, on 1 September 2005 Al-Qaeda officially claimed responsibility for the attacks in a videotape aired on the Arab television network, Al Jazeera (Bennetto and Herbet, 2005).

No other terrorist incidents occurred outside London, but many other countries raised a terror alert, for example; Canada, the US, France and Germany. Police sniper units were also reported to be following Al-Qaeda suspects in Britain. The armed teams were ordered to shoot to kill if surveillance suggested that a terrorist suspect was carrying a bomb, and refused to surrender when confronted. The bombings were the deadliest attacks in London since a V2 rocket killed 131 people in Stepney on 27 March 1945, near the end of World War II.30

The bloody attacks in Madrid in 2004 and London in 2005 revealed the face of post-September 11 terrorism. In a way the new pattern of attacks represents a triumph for the US and its allies’ counter-terrorist teams.

It seems that Al-Qaeda lacks the power and courage to conduct another 9/11, although Bin Laden still yearns to launch another 'Spectacular'. It seems rather that Al-Qaeda is forced to resort to more conventional forms of terrorism – such as car bombs and small explosives on buses and trains.

2.4 The declaration: War on Terrorism

The ‘War on Terrorism’ is a term used by the Bush Administration. The aim of the War on Terrorism was to put an end to international terrorism, and it was declared as a result of the September 11, 2001 attacks on the US for which Al-Qaeda claimed responsibility (Washington Post, October 2, 2006).

US President George W. Bush stated, “[t]his war on terrorism begins with Al-Qaeda but will not end there. It will continue until every terrorist group has been found, stopped and defeated” (White House News, September 2001). President Bush stated further, “Every nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime” (White House News, September 2001).

The War on Terrorism was launched by the US with the support of NATO and other allies. The phrase Global War on Terrorism (GWOT) (Whitehouse News, December 2001) is the official name used by the United States military. In the same war the United States-led coalition that invaded Iraq in 2003, toppled President Saddam Hussein (BBC News, March 18, 2003 a).

The Bush Administration has been accused of acting in violation of international law, Human Rights (BBC News, March 18, 2003 b) and the US Constitution in its execution of this War on Terrorism. The accusation was made particularly with regard to the internment of prisoners of war in its military prison at Guantanamo Bay, Cuba.

In accordance with the US Government’s own measures, international terrorist incidents have been on the rise (Washington Post, April 26, 2005 a) since the declaration of the War on Terrorism. However, the US and its allies have claimed victories, in the sense of the first democratic elections in Afghanistan and Iraq, and the capture of the alleged 9/11 planner Khalid Sheikh Mohammed (Progress in the Global War on Terror speech on September 7, 2006). This War on Terrorism has resulted in high military casualties on both sides, as well as high civilian casualties in Afghanistan and Iraq. The United States has defined terrorism under the Federal Criminal Code. Chapter 113B of Part I of Title 18 of the Code states the following:

Section 2331 of chapter 113b:

... activities that involve violent...<or life-threatening acts>... that are a violation of the criminal laws of the United States or of any State and... appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and ... <if domestic> ... (C) occur primarily within the territorial jurisdiction of the United States... <if international> ... (C) occur primarily outside the territorial jurisdiction of the United States...  

31 http://www.caselaw.lp.Findlaw.com/casecode/18/parts/i/chapters/113b/toc.html
With respect to defining his policy as the War on Terror, the previous President of the US, George W. Bush, stated:

...today's war on terror is like the Cold War. It is an ideological struggle with an enemy that despises freedom and pursues totalitarian aims... I vowed then that I would use all assets of our power of Shock and Awe to win the war on terror. And so I said we were going to stay on the offense two ways: one, hunt down the enemy and bring them to justice, and take threats seriously; and two, spread freedom.32

The United States strategy in the Global War on Terrorism as from January 2007 is based on two strategy papers (The National Security Strategy, and the Strategy for Countering Terrorism) (Remarks by President Bush on the Global War on Terror [25]).

The 'War on Terrorism' is sometimes described as a struggle between liberal democracy and its uncompromising enemies (Ignatief, 2004:125-131; Berman, 2003:182-183). The attacks on Al-Qaeda and the overthrow of the Taliban regime in Afghanistan have been justified as legitimate measures of self-defence (Elshtain, 2003). It is difficult to 'strike a balance' between human rights and security in a 'War on Terrorism', because it requires complex and uncertain judgments.

The universal right to freedom puts others at risk, and this risk may threaten human rights. We also need to analyse clearly which human rights are under threat of terrorism, and which risks we ought to take. The International Council on Human Rights Policy sees a special role for professional human rights organisations. 'Terrorism' is "dangerous, and we are not irrational to be afraid" (Palti, 2004 a).

It is clear that the extremist Islamic ideology of Al-Qaeda is a grave threat to human rights. The September 11 attacks and the War on Terrorism call on us to rethink the strategies for human rights in this new world (dis)order.

32 http://www.state.gov/r/pa/ei/wh/rem/64287.htm
The events of September 11, 2001 and similar events such as 11 March 2004 and those of 7 July 2005, posed a major challenge to the political integrity of the Human Rights Act (Cooper and Marshall-Williams, 2000). The meta-question behind these terrorist attacks is our concern for equal dignity for all. The problem of political violence arising out of conflict, for example, in Northern Ireland has produced a large body of anti-terrorism legislation, (Donahue, 2000), with the European Court of Human Rights in Strassburg having been frequently called upon to adjudicate in conflicts between terrorist suspects and the state (Brannigan and McBride, 1993). The problem of human rights standards being used to legitimise restrictions on political freedom and on civil liberties was also evident in this early period (Ewing and Gearly, 1997).

The debate over the power balance between human rights and counter-terrorism will remain contentious in the future, fuelled by the abuse of detainees, so-called ghost detainees, permissible interrogation methods, and the applicability of the law of war. The bulk of the debate is taking place in the United States itself, in regard to the three June 2004 Supreme Court cases dealing with enemy combatants held in the United States and in Guantanamo as references.

It can also be predicted that the 'Global War on Terrorism' will continue, and that it may even intensify and become the barometer for legitimising the basis for aggression around the world. It may also be that formulating and executing policies of torture and indefinite detention without trial will be promoted in the future (Lewis, 2004). However the language of Human Rights is not the same all over the world, and there remains a robust debate not about whether human rights have a place in the new security sensitive paradigm, but what that place should probably be.

Not only will the courtroom most likely be the place where opposing sides will bear the burden of persuasion, but the debate will also go on amongst the public. Also, on the international level the debate will be hammered out and laws will be enforced and formulated. It is vital that all people involved in Human Rights discussions, should approach this debate with gusto and determination. The new trend towards the criminal
prosecution of suspected terrorists within the jurisdiction is to be welcomed, regarding how things should actually be done (Guardian, August 5, 2004; August 18, 2004; August 26, 2004). At the European level, the Council of Europe has published a very good set of guidelines on the role of human rights in counter-terrorism (Council of Europe, July 11, 2002).

The basic building blocks of human rights, namely equality of esteem and a respect for law and a commitment to the democratic process, remain in place, but the challenge is to ensure the survival of these ideas especially in difficult times (for example the War on Terrorism) (Guardian, September 21, 2004). UN guidelines to help states strike a balance between human rights and combating terrorism have been established in a number of resolutions adopted by the General Assembly, Security Council and Commission on Human Rights. These resolutions emphasise the fact that “states must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with such International Law.”

Balancing the rights of individuals with those of the state is a goal that the UN strives to attain in Human Rights. It is vitally important that the UN and member states should continue to balance out these rights, so as to achieve freedom and democracy in states (Schlager, 2005).

The UN contribution through norm setting, codification of the Human Rights Law, facilitation of communication among member states, drafting and preparing of effective legal instruments, remains the answer to counter-terrorism. Terrorism often thrives in countries where human rights are abrogated; this however should serve as enough motivation to strengthen actions to combat violations of human rights (Gearty, 2005).

With this in mind, terrorist acts should be viewed as assaults on the fundamental rights of human beings. Since terrorists utilise sophisticated weaponry and even weapons of
mass destruction, the UN activities concerning disarmament, must gain renewed relevance (Palti, 2004).

The War against Terrorism is not just a matter of national security, it is also a struggle to maintain values – values such as justice, respect for human rights for others, respect for human dignity and the equal treatment of individuals before the law (Joyner, 2004:240-257).

The Bush Administration stated that it intended basing its counter-terrorism strategy on defeating terrorists and their organisations. Terrorists should be identified, located and destroyed. It is also vital that terrorists should be denied sponsorship, support and sanctuary (National Strategy for combating terrorism, 2003).

Emphasis was therefore placed on ending state sponsorship to terrorists and maintenance of an international standard of accountability. In order to combat terrorism, all countries willing to abide by the counter-terrorism strategies of the US, should endeavour to persuade or compel those countries which remain unwilling and reluctant to adopt similar strategies, to join in the attempt to eliminate terrorism. An important step in the strategy to fight terrorism, is the destruction of terrorist sanctuaries and havens.

Additionally, the counter-terrorism strategies should focus on diminishing the underlying conditions that terrorists seek to exploit by strengthening the weak states and winning the 'war' on ideals.

Furthermore, the strategy focuses on defending US citizens and interests at home and abroad by implementing a National Strategy for Homeland Security and endeavouring to attain domain awareness, while enhancing measures to ensure integrity, reliability and availability of infrastructures at home and abroad. Importantly, the strategy should integrate measures to protect US citizens abroad and ensure an integrated incident management capability.
The former UN Secretary-General, Kofi Annan set out an alternative vision of the complementarity of human rights and counter-terrorism:

Our responses to terrorism, as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms, and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension (Annan, 2003).

Years and even decades after Annan’s vision, governments and societies like Peru, Guatemala, Sri Lanka, Turkey and Northern Ireland are still struggling to overcome the destabilising effects of conflicts and struggles against terrorists in which the rule of law and respect for human rights were ignored (Carter Centre, 2003).

All governments should reaffirm their commitment to supporting the essential work of human rights defenders. Respect for human rights, democracy and the rule of law are essential elements of a free and fair society. The abuse of these elements in the course of efforts to combat terrorism can ultimately be self-defeating and deny the distinction between those who stand for the rule of law and those who defy it (Haydar, 2005).

2.5 Terrorism

In today’s world, no one is innocent, no one is neutral. A man is either with the oppressed or he is with the oppressor. He who takes no interest in politics gives his blessing to the prevailing order of the ruling classes and exploiting forces (George Habash).

Terrorism is a term used to describe violence or other harmful acts committed against civilians (Davis, 2003:41; McDermott, 2006:171). It can further be described as acts which are intended to create fear, or ‘terror’, which are perpetrated for an ideological goal, and involves the deliberate targeting of civilians. Terrorism is often used by political organisations particularly to further their objectives; right-wing and left-wing political parties, nationalistic and religious groups, revolutionaries and even by ruling
governments (Encyclopaedia Britannica) (A list of terrorist attacks can be found in Appendix N).

Due to the nature of terrorist acts and attacks, terrorism is a crime in all countries where such acts occur (Khan, 1987). In November 2004 a United Nations panel described terrorism as any act:

…intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act (UN, 2004).

The Law Enforcement Assistant Administration in the United States formed a National Advisory Committee for Criminal Justice, which classified terrorism as follows:

- **Civil Disorders** – Collective violence interfering with peace, security and normal functioning of a community.

- **Political Terrorism** – Violent criminal behaviour designed primarily to generate fear within a community.

- **Non-Political Terrorism** – Terrorism not aimed at political purposes but at individual or collective gain rather than political objectives.

- **Quasi-Terrorism** – A fleeing person who takes hostages is classified as a quasi-terrorist. Such methods are similar to those of a 'true' terrorist but the purposes are quite different.

- **Limited Political Terrorism** – Genuine political terrorism is characterised by a revolutionary approach; limited political terrorism refers to acts of terrorism which are committed for ideological or political motives, but which are not part of a concerted campaign to capture control of the state.
- **Official or State Terrorism** – refers to nations whose rule is based upon fear and oppression similar to terrorism.

Research has also shown that terrorism is most common in nations with intermediate political freedom, and nations with the least terrorism are nations with the highest degree of democracy (Harvard Gazette Archives, 2004). However, one study shows that there is an exception to the tendency that modern suicide terrorists target a democracy - a state with a considerable degree of political freedom (Pape, 2005:1-19).

Terrorism has now become part of our everyday lives: terrorist acts occur on every continent and in almost every country. The atrocities of 11 September 2001 influenced millions of people to use air travel less. It is consequently believed that several international airlines dependent on United States business went bankrupt. The holiday and travel industries on both sides of the Atlantic suffered major losses. The fear generated by the destruction of the World Trade Centre had a severe effect on social and economic factors all over the world.

It was once envisaged that terrorist groups would use nuclear and biological weapons to kill, not thousands, but hundreds of thousands of civilians. This vision has become a reality (Davis, 2003:1-40). The so-called 'New Terrorism' is inspired by fanatical religious beliefs and its activists are willing to seek martyrdom through suicide. They rarely set out aims that are attainable; they give no warnings; they do not engage in bargaining; they find no compromise in solutions to problems, and they are eager to carry out the mass slaughter of non-combatants.

The 'New Terrorism' was reportedly the cause of the attacks on the United States on September 11, 2001. The US government blamed Al-Qaeda, an Islamic fundamentalist network, and in particular their leader Osama bin Laden (Mclean and McMillan, 2003:532-534).
Sheila Camerer of the DA stated (during an interview conducted with her) that fighting terrorism both domestically and internationally has become “like being in favour of motherhood and apple pie, it puts you on the side of the angels” (Camerer, 2007). According to Camerer the events of September 11 2001 gave rise to the important UN Security Council Resolution 1373 which ruled that international terrorism was considered a threat to international peace and security. Douglas Gibson (during an interview conducted with him on 15 June 2007) stated that locally, the whole of South Africa should unite to form a front against terrorism (Gibson, 2007). He further indicated that President Mbeki should have helped unite the world against terrorism by calling an urgent meeting of the Council of NAM to ensure that all the organisation’s member nations become part of a global force to combat international terrorism.

The fundamental political question which faced the Bush Administration was whether their politics had impacted on terrorism, by failing to destroy Al-Qaeda, and whether or not the antagonism towards the US within the Sunni Arab world had worsened due to the invasion of Iraq. It has become clear that the number of young Muslims willing to commit to acts of terrorism is growing faster than the ability of the United States to capture these terrorists.

However, since the May 2003 wave of terrorist attacks inside Saudi Arabia, the Saudi Security Services have become more cooperative with the Central Intelligence Agency and Federal Bureau of Investigation of the US in destroying Al-Qaeda networks operating in Saudi Arabia (Risen, 2007:179).

The use of force becomes necessary to stop the violation of Human Rights, especially when terrorists base their actions on ideologically-driven religious arguments to justify their behaviour. The question that now remains, is what kind of force can be justified and will be effective, also when and against whom should it be used legitimately? (Holzgrefe and Keohane, 2003).
2.6 Taliban

From the mid-1990s until late 2001, the Taliban were the ruling force in Afghanistan (Rashid Taliban, 2000:27-29) and saw themselves as the religious, military and revolutionary elite in Afghanistan, but did not necessarily have strong support in the country (McDermot, 2006:159-161; Davis, 2003).

The Taliban were also ethnically distinct from many Afghans, because they were mostly Pashtuns from Kandahar in the South, the Sunni branch of Islam, whereas Northern Afghans were referred to as the Shia.33

The purpose of the Taliban was to declare war against the United States and Israel and any of their allies (Rashid, 2000:1). Also, this movement was the call to all faithful Muslims to take up the holy war, or Jihad against all enemies of Islam. As a fundamentalist organisation, the Taliban was not only interested in Islamic purity, but also rejected modernity and wished to create a medieval Islamic society.

The repression of women under the Taliban was almost complete; they were forced to wear the restrictive traditional dress (the burka), and were forbidden to work, to be educated, or to appear in public unless accompanied by a male relative (Physicians for Human Rights, 1998). Men, on the other hand were forced to wear beards, under penalty of imprisonment (Encyclopaedia of Islam and the Muslim World, 2004). The United Nations declared sanctions against the Taliban regime because of their human rights abuses, and extreme restrictions on women in public, and because of the sheltering and aid given to the Islamic terrorist Osama bin Laden (Robertson, 2004:270-272).

After the September 11 attacks the USA delivered the following ultimatum to the Taliban (Bush, 2001 a):

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- Deliver to the US all the leaders of Al-Qaeda.
- Release all imprisoned foreign nationals.
- Close down all terrorist training camps immediately.
- Hand over every terrorist and their supporters to appropriate authorities.
- Give the United States full access to terrorist training camps for inspection.

In response, the Taliban stated that no evidence irrefutably linked Bin Laden to the September 11 attacks. Shortly afterwards, on 7 October 2001, the United States, aided by the United Kingdom, Canada, and a coalition of other countries (including several from the NATO alliance), initiated military action in Afghanistan (code-named Operation Enduring Freedom), and bombed Taliban camps.³⁴

On 14 October the Taliban offered to hand over Osama bin Laden to a neutral country if the United States halted the bombing.³⁵ The United States rejected this offer and responded with air attacks, using B-52 bombers and AC-130 gun-ships, Tomahawk cruise missiles and 200-pound Joint Direct Attack Munitions (Mclean and McMillan, 2003:5-6).

The Taliban, however, prepared for defence by referring to a training manual, known as the Encyclopaedia of the Jihad, which was released in Afghanistan in 1996 and transferred to a CD-ROM in 1999. It contained different aspects of guerilla warfare, how to use explosives, surveillance protocol, kamikaze attacks and interrogation techniques. The alliance that took place between Al-Qaeda and the Taliban was merely tactical and not based on religious grounds. Al-Qaeda follows an extremist form of Islam alien to the vast majority of Arabs and Muslims. Nevertheless, altogether 2000 battle-hardened Al-Qaeda soldiers (the 055 Brigade) were integrated into the Taliban forces. This meant a shift from a local-defence approach to an international-offensive approach (Mohammad-Mahmoud, 2007:49; Keegan, 2007:94-99).

³⁴ http://www.globalsecurity.org/military/ops/enduring-freedom.htm
The war in Afghanistan in late 2001 was a war of self-defence, undertaken, justifiably in many people’s view, on the grounds that the Taliban regime had harboured and aided a terrorist group which had declared war on and attacked the United States.

In 2003 George W. Bush delivered what al-Swahili would call a 'target' and which many Muslims subsequently favoured targeting: an occupation force of 150,000 US troops on Iraqi soil. As a result hundreds lost their lives in insurgency attacks, a situation justified by Al-Zarqawi in an audio recording on 18 May 2005: “The shedding of Muslim blood... is allowed in order to avoid the greater evil of disrupting jihad” (Atwan, 2007:255).

2.7 Al-Qaeda

Labelled a terrorist organisation by the United Nations Security Council (Office of the Director of National Intelligence, 2005), Al-Qaeda supports the radical Islamic fundamentalists, who aim to overthrow pro-Western Muslim Governments (United States Department of State. Foreign Terrorist Organisation, 2006). Of all Muslim enemies the US is regarded as enemy number one (Davis, 2003:89).

Al-Qaeda is a world Islamic front for Jihad against Jews and Crusaders. Jamal al-Dadl provided the Central Intelligence Agency (CIA) with information about Bin Laden.36 Some documents found by the CIA refer to Al-Qaeda as 'the Base', one of these documents outlining a discussion between Bin Laden and Abu Rida, a member of Al-Qaeda (Bergen, 2006:28).

The United States Department of Defence defines the organisation (Al-Qaeda) as: A radical Sunni Muslim umbrella organisation established to recruit young Muslims into the Afghan mujahideen and is aimed to establish Islamist states throughout the world, overthrow 'un-Islamic regimes', expel US soldiers and Western influence from the Gulf, and capture Jerusalem as a Muslim city.

http://www.guardian.co.uk/waronterror/story/0,1361,573975,00.html
36 http://www.frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi
This definition was given in response to a request made by Moazzam Begg, who was being held in extrajudicial detention in the Guantanamo Bay detainment camps. Begg was being accused of assisting or being a member of Al-Qaeda (Moazzam Begg's dossier, 2003). Al-Qaeda evolved from the back streets of Maktab al-Khadamat, a mujahideen organisation which sought to establish an Islamic state during the Soviet War in Afghanistan (The Jamestown Foundation, 2004).

When Osama bin Laden travelled to Afghanistan in 1979 to support the resistance movement against the invasion of the Soviets, he realised that the Muslim fighters were not competent. Bin Laden therefore decided to use his wealth and influence to recruit Muslim workmen to Afghanistan. This was made possible through cooperation with the Palestinian Muslim Brotherhood leader, Abdallah Azzam. New members were recruited in Saudi Arabia, Yemen, Algeria and Egypt. Shortly after those recruits arrived in Afghanistan, training facilities, specialising in guerrilla warfare, were built.

With up-to-date weaponry, training and coaching, the Mujahideen (as these troops were known) matched the Soviets and even forced them out of Afghanistan. By the end of the war Bin Laden had approximately ten thousand well-trained soldiers with up-to-date equipment (Davis, 2003:90-94).

The September 11, 2001 attacks are attributed to Al-Qaeda, who apparently acted in accordance with the 1998 Fatwa issued against the United States and its allies. After the attacks of September 11, Bin Laden praised the events (Esposito, 2002:22) and legitimised the actions to the general Muslim public by stating that this was due to the oppression which Muslims were living under in the West. He further stated that America was massacring Muslims in 'Palestine, Chechnya, Kashmir and Iraq' and that Muslims retain the 'right to attack in reprisal'. He concluded that the 9/11 attacks were not targeted at women and children, but at “America’s icons of military and economic power” (The Guardian, 2002).

37 http://www.ict.org.il/articles/fatwah.htm
Evidence has since shown that the original targets were nuclear power stations on the east coast of the United States. But this was altered as it was thought that the US retaliation would be severe (Washington Post, 2004). Immediately after these attacks by Al-Qaeda, the United States and its allies gave an ultimatum to the Taliban regime, which they believed harboured Al-Qaeda, either to “surrender Bin Laden, or surrender power” (The Portsmouth Herald, 2001). Under intense aerial bombardment by the US infantry, the Taliban were destroyed and Al-Qaeda training camps were severely damaged (US Release Videotape of Osama bin Laden, 2001). In October 2004, Bin Laden appeared to claim responsibility for the 9/11 attacks in a videotape released through Al Jazeera, saying he was inspired by Israeli attacks in the 1982 invasion of Lebanon (Bin Laden’s speech, 2004).

Since the September 11 attacks Al-Qaeda funding has decreased dramatically. The arrests or deaths of key figures in the financial committee have made fundraising difficult. Despite the apparent reduction in overall funding, it remains easy for Al-Qaeda to find small amounts necessary to fund terrorist operations (Phillips, 2006).

Prior to 9/11 Al-Qaeda used Afghanistan as a base to plan attacks worldwide. Since 9/11 things have changed dramatically for Al-Qaeda. They have lost their Afghan base, and exist today as a loose collection of networks. These networks are used to carry out attacks and provide guidance, funding and training (Cetron, 2007). Reportedly, Al-Qaeda remains interested in chemical, biological, radiological and nuclear attacks. Documents found in Al-Qaeda facilities contain information on the usage and impact of such forms of warfare.

It has been reported that Al-Qaeda has a biological weapons programme with the ability to produce anthrax. According to the Director of Central Intelligence, George Tenet, Al-Qaeda’s ability to conduct an anthrax attack is one of the most likely threats to the United States today (Phillips, 2006). Al-Qaeda might even consider a chemical attack on their targets, as they are well prepared and able to do. The Intelligence Community
Experts predict that attacks on the Western World will continue. Al-Qaeda is still targeting the US with the aim of inflicting mass casualties (McDermot, 2006:174-175).

Usually the training camps of terrorists in the Middle East are situated in the middle of the desert, often surrounded by high mountains (If there are no mountains in the vicinity, the camps are extremely well hidden). The recruits live in tents, whereas the instructors live in flat-roofed buildings. Training in the camps centre around knowledge and effective operations, and many recruits die in barbaric ceremonies.

To attain rank in these training camps takes time; high-ranking terrorists would usually have worked through the ranks, sometimes even starting from childhood, with the first lesson as an observer, which involves keeping watch. Training in terrorist groups differs from one to another. Generally, modern weaponry is used, and training on a one-to-one basis is sometimes done when they learn how to make bombs or use machine guns. Moreover, the training camps do not only offer physical training, but also learn about politics and religion, and continuous motivation plays an important role (Davis, 2003:43-44).

Between 2001 and August 2006 the Leaders of Al-Qaeda cumulatively released 44 messages by audiotape or videotape. The intent seemed to be that, as leader, Bin Laden would cyclically reaffirm the purpose of Al-Qaeda’s campaign, speaking to and about his combatants and discussing his plans.

For the 9/11 attack on the US Al-Qaeda operatives had to travel to the US and penetrate the country’s security measures. This is no longer necessary since Al-Qaeda has autonomous and independent branches in various countries. Moreover, the modus operandi of local branches does not require direct instructions from the global leader in order to carry out operations. The Madrid bombing is an example of such local planning and execution of attacks by local members of Al-Qaeda.
What makes Al-Qaeda different from other Islamic organisations, such as the Muslim Brotherhood, is the flexibility of its ideology and wide range of goals. Richard Clarke (2004), a former White House counter-terrorism coordinator, states that the Senior Administration figures in the US failed to understand the nature and level of the threat that Al-Qaeda posed to the US in the 2000s. Clark further explains that behind every terrorist network there is a state that protects and sponsors it. Consequently, once such a state is destroyed, the terrorist network will come to an end. This, he states, is why the US has been eager to prove a link between Saddam Hussein and Al-Qaeda.

Al-Qaeda is entirely new in the history of terrorism. It has a strategy but has no geographical location; its membership is distributed across the world and has no obvious identification. This makes it difficult to defeat. It cannot be seen, it is difficult to understand and therefore impossible to defeat. Consequently the Bush message that he was destroying the infrastructure of terrorism appears not to be true. Al-Qaeda members usually receive their instructions via a PC connected to the Internet. This makes it impossible to destroy. Also, for this reason the success and survival of the organisation does not depend on individuals or even groups. Bin Laden, for example, is not indispensable. Against this background, the prospects of negotiations with Al-Qaeda seem poor and a waste of time. An organisation like Al-Qaeda is giving back to the Muslim world something that they have wanted for a long time: a chance to fight back. To counter Al-Qaeda would mean to address the recruitment process.

At the moment it seems that the US presence in Iraq has given Al-Qaeda greater support in the Islamic world, therefore it can be predicted that Al-Qaeda will grow stronger and expand its sphere of activities (Abdel Bari Atwan Al-Qaeda). This entire political conflict revolves around how the US can alter its foreign policies towards the Middle East and more specifically towards Muslims in general, and lastly to what extent the US can convince Al-Qaeda to cease attacks on the US and its allies. The 9/11 Commission concluded that Al-Qaeda is not in a position to bargain or even negotiate with the US. The Commission stated that with Al-Qaeda there is no common ground –
not even respect for life – on which to begin a dialogue. It can only be destroyed or isolated (The 9/11 Commission Report: 362).

So, to end this conflict, what can be expected from both parties? Northern Ireland can serve as an example: When heavy-handed approaches were replaced in the mid-1980s with a change of tactics, it led to political reform. Indeed, Britain learnt in Northern Ireland that only by political reform can terrorists be demobilised (Arreguin, 2002:559). To confirm the former as a successful approach, one has to observe the Al-Qaeda attacks on Spain. The replacement of the Spanish government and a new approach to terrorism prompted Al-Qaeda to announce an immediate ceasefire against Spain. This episode was followed by the offer of a truce to European countries as a whole, on the condition that they withdraw their troops from Iraq and stopped interfering in Muslim affairs. The United Kingdom rejected this truce and was attacked 15 months later. Al-Qaeda, who claimed responsibility for the attack in London on 7 July 2005, stated that they had done so in retaliation (for the massacres which Britain had been part of in Iraq and Afghanistan) (July 7 2005: www.qal3ati.com).

Osama bin Laden also offered a truce to America (which was aired by Al Jazeera). This included the following statement:

We do not object to a long-term truce with you on the basis of fair conditions that we respect… In this truce, both parties will enjoy security and stability and we will [be able to] rebuild Iraq and Afghanistan, which were destroyed by the war. There is no shame in this solution other than preventing the flow of hundreds of billions to the influential people and war merchants in America.

This offer was immediately rejected by the White House spokesperson, stating: “We do not negotiate with terrorists. We put them out of business” (McClellan, 2006). The two conflicting parties seem to have entered a zone where there are no conclusions and no answers. It seems that neither side was eager to rapidly end the conflict. Bin Laden declared that al-Qaeda would not surrender. Donald Rumsfeld, the ex-Minister of Defence, stated in a speech before the National Press that the US would not surrender (Mohammad-Mahmoud, 2007:80-87; National Security Strategy of the United States of
America, 2006). Therefore it can be concluded that the War on Terrorism was clearly in a deadlocked situation.

2.8 Suicide Bombers

A suicide attack is an attack in which the attacker intends to kill others and knows beforehand that he or she will die during the process (Jackson, Wade and Reiter, 2007). Suicide attacks are found throughout history, for example Samson’s suicidal destruction of a Philistine temple (as recorded in the Book of Judges 16:30 in the Bible) and the Japanese Kamikaze pilots in World War II. According to one of Al-Qaeda's leaders the benefit of a suicide bomber is that “[t]he martyrdom operation is the most successful way of inflicting damage against the opponent and the least costly to the mujahideen in terms of casualties”38.

Suicide bombers are human beings who are prepared to sacrifice their lives for the promised 'rewards' in the afterlife. The greater the loss to the enemy, the greater their death, so they believe (Pape, 2005). The latest suicide bombers are highly sophisticated; they spend months, sometimes even years working on assignments. They will utilise impressive skills and intelligence on their tasks before executing the mission. Suicide bombers are also prepared to acquire any skill which is required, for example, learning how to fly a commercial aircraft (Olivetti, 2002).

Suicide bombing as a terrorist attack may thus ‘work’ as a tactic in the sense that fewer lives are lost than any conventional military tactic, which is targeted at unarmed civilians with the objective to kill as many as possible.39 The September 11, 2001 attacks, for example, involved the hijacking of four large passenger jets which were deliberately flown into the towers of the World Trade Centre in New York and the Pentagon near Washington DC, killing everyone aboard the planes and thousands more in and around the target buildings. Besides loss of life, the attacks had a devastating financial effect

38 http://www.fas.org/irp/world/para/ayman-bk.html
39 http://www.washtimes.com/commentary/20050723-092116-9131/r.htm
on the United States.\textsuperscript{40} Al-Qaeda, who was responsible for this, also caused a trillion dollar drop in global financial markets within one week, and triggered a massive increase in military and security expenditure, with the beginning of the War on Terrorism by the US and its allies.\textsuperscript{41}

Islamic militant organisations, for example Al-Qaeda, Hamas and the Islamic Jihad continue to argue that suicide operations are justified according to Islamic Law, despite Islam’s strict prohibition of suicide and murder.\textsuperscript{42}

Since the bombings in London, there have been many scholastic refutations of suicide bombings. In an article, entitled ‘The Hijack Caravan’ (\textit{Ihsanic Intelligence}, a London-based Islamic research base), recorded the following\textsuperscript{43}:

The technique of suicide bombing is anathema, antithetical and abhorrent to Sunni Islam. It is considered legally forbidden, constituting a reprehensible innovation in the Islamic tradition, morally an enormity of sin combining suicide and murder and theologically an act which has consequences of eternal damnation.

Islamists often call the suicide attack an act of \textit{isshtahad} (act of martyrdom operation) and the suicide bomber a \textit{shahid} (ultimate witness).\textsuperscript{44} In April 2002, the White House Press Secretary, Ari Fleischer, made the first efforts to replace the term suicide bombing with the term homicide bombing.\textsuperscript{45}

Supporters of the term homicide bombing argue that since the primary purpose of such attacks is to kill other people rather than to end one’s own life; the term homicide is a

\textsuperscript{40} http://www.adl.org/presrele/ISIME-62/4153-62.asp
\textsuperscript{41} http://www.cnsnews.com/ForeignBureaus/archive200107/for20010723d.html
\textsuperscript{43} http://www.ihsanic-intelligence.com/dox/the-hijacked-caravan.pdf
\textsuperscript{44} http://www.roozoneonline.com/archives/2007/02/002139.php
\textsuperscript{45} http://www.wordspy.com/words/homicidebombing.asp
more accurate description for such an attack. So, why do they do it? An extract from the Koran explains:

O ye who believe! What is the matter with you, that, when you are asked to go forth in the cause of Allah, ye cling heavily to the earth? Do ye prefer the life of this world to the hereafter? But little is the comfort of this life, as compared with the hereafter. Unless ye go forth, He will punish you with a grievous penalty, and put others in your place; but Him ye would not harm in the least, for Allah hath power over all things (Koran, 9: 38-9).

The power of this emphasis in honouring religious duty, the desire for death and the reward of the hereafter should not be underestimated (Hille, 2006:352-361).

Suicide bombing is not only done for religious rewards, as political motivation also plays an important role. For example, the bombings in Madrid and London were intended to drive coalition forces out of Iraq. After a suicide attack, family, friends and fellow members of their organisation gather to celebrate, rather than to mourn. The tent and the food for the celebration are normally paid for by the organisation of which the suicide bomber was a member.

Bin Laden’s homage to the 11 September martyrs (Al Jazeera, 2002), describes the nineteen suicide attackers as “men who purged the history of the 'umma' through the conquests in New York and Washington”. For Bin Laden the character of the martyr is refined through religious duty and 'the great sacrifice'; a two-edged sword ensuring the personal salvation of the individual whilst inflicting mortal damage on the enemy (Al Jazeera, September 15, 2002). The men and women who become suicide bombers apparently feel that by carrying out a martyrdom operation they can fight back and reclaim lost dignity (Pape, 2005:233).

2.9 Islam

Apart from Christianity, Islam is the most influential religion on earth and Islamic fundamentalism continues to spread the Muslim faith amongst Islamic nations. 'Islam' is the correct name for the religion that the Muslim prophet Muhammad claimed God
(Allah) revealed to him through the angel Gabriel, and ‘Muslim’ is the correct term for a follower of Islam (Anderson, 1976:91). The Muslims have their lives directed by the book they believe is the word of God – the Koran (Wilson, 1965:30). Whatever Muslims believe and do, the Koran inspires their beliefs and actions. It should also be noted that there are different traditions of Islam (e.g. Sunni, Shiite, and Sufi) and also different interpretations of the Koran (Ankerberg and Weldon, 2005:7-9).

Islam today consists of two principal schools – the majority Sunni (90%) and the minority Shiite (10%) (Martin, 1970:259-275). The question arises why the Islamic belief is so important (Morey, Islamic Invasion: 21-23).

Firstly, there are more than one billion followers of Islam worldwide. Secondly, the collective power of Islam is able to dramatically influence the world economy through OPEC. Furthermore, the growing religious influence of Islam outside Islamic nations is unmistakable. Islam also has the ability to play a key role in the social stability or instability of dozens of governments around the world. One of the principal goals of Islam is to bring Islamic Law to every nation.

The basic religious duties, which are required to be kept by all Muslims, include the following (Ankerberg and Weldon, 2005:18-20):

The most important duty of all is to recite the creed of Islam: "There is no God but Allah and Muhammad is his prophet". Islam also involves prayer. The Muslim must recite prescribed prayers five times a day. He must adopt a physical posture: standing, then kneeling, hands and face to the ground, etc. The place of worship is called a mosque. Honouring the month of fasting called Ramadan. Eating is permitted at night. For an entire month Muslims must fast during the day. They are required to give 2.5 per cent of their currency plus other forms of wealth as alms to the poor, and acts of charity is also a Muslim duty. An important religious duty is further to undertake a pilgrimage to Mecca, Muhammad’s place of birth. This is required at least once in a lifetime by all Muslims.
Jihad may be interpreted as internal (as a spiritual struggle) or external (defending Islam). When the situation warrants this, duty requires Muslims to go to war to defend Islam against its enemies. Anyone who dies in a holy war is allegedly guaranteed eternal life in heaven and is considered a martyr for Islam.

An example is Saddam Hussein’s attempts to gather support for his takeover of Kuwait (1990) and his war against America by issuing a call to Muslims for a holy war against the West. "Osama bin Laden declared a Jihad against the Americans occupying the land of the Two Sacred Places”, as stated in an Osama bin Laden Fatwa, 1996:

Terrorizing you while you are carrying arms in our land is a legitimate duty we are morally obliged to fulfill… in order to re-establish the greatness of the umma and to liberate the occupied sacred places… our youths are different from your soldiers. Your problem will be how to convince your troops to fight, while our problem will be how to restrain our youths (Atwan, 2007:57).

This is how Osama declared war on the world’s superpower. No serious study of Al-Qaeda can ignore the Islamic background and history from which they emerged. Without Islam there would be no Al-Qaeda. It is said that the people in the West do not understand the deep connection many Muslims feel with their past and how many lament the lost glory of the umma (nation). The sense of historical loss is often defined by feelings of disappointment and humiliation.

For centuries Muslim civilisation was the greatest military power on earth. Bin Laden wants to re-establish this influence in the Muslim world and he has become the figurehead for a resurgent Muslim identity which is linked to a Salafis interpretation of Islam. Of course, not all Muslims are Salafis. But Islam is the defining feature of the daily lives of most Muslims.

Islam influences every aspect of a Muslim’s existence, for example: behaviour, education, clothes, eating habits and personal relationships. This is why the Jihad should never be underestimated. Under certain circumstances it becomes a Muslim’s
sacred duty. The model of *mujahid* was provided by the Prophet Muhammad himself and has a range of applications, from exercising restraint, to offering oneself as a sacrifice for a noble cause (Atwan, 2007:57).

**Differences between Islam and Christianity** (Moucarry, 2005)

<table>
<thead>
<tr>
<th>Islam</th>
<th>Christianity</th>
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<td>They believe God is mighty. He is sovereign and his power is boundless. Islam has been entrusted with the mission of establishing God’s kingdom. This means implementing the Sharia Law. All major prophets have demonstrated God’s power through defeating their enemies.</td>
<td>God is powerful, but is humble. The Messiah is described as the suffering servant. This is demonstrated through the suffering and death of Jesus Christ. The risen Christ did not take revenge on his enemies who put him to death. One day everyone will give an account of their lives.</td>
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<th>Religious Tolerance</th>
<th>Religious Tolerance</th>
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<td>Islam accepts religious pluralism to a certain extent. The “People of the Book” (Jews and Christians) have the right to live alongside the Muslim community, provided they acknowledge Islamic authority. Non-monotheistic people have no legal status within the Muslim community; they must either convert to Islam or go elsewhere.</td>
<td>Christianity is a non-violent kingdom that expands through the power of the Holy Spirit (cf. John 18:36; Acts 1:8). During the Old Testament force was legitimate for implementing God’s Law, and to protect God’s people against their enemies. The New Testament introduced a radical change to God’s Kingdom. God is the King of the universe. His sovereignty means He governs all nations, including those who do not recognise his authority (cf. Matt. 22:21; Rom 13:1-5).</td>
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2.10 Jihad

Jihad is sometimes referred to as the Sixth Pillar of Islam, although it does not possess official status as such in Sunni Islam (Esposito, 2005:93). Jihad originally had as its core religious war against non-believers. Jihad justifies violent resistance if, under certain circumstances, a sacred Muslim leader declares this when he feels that Muslims are being suppressed. Jihad is seen as a personal moral duty to conquer sin in your own life, or to overcome evil in society (Robertson, 2004:257). There is also consensus amongst Islamic scholars that the Jihad will always involve an armed struggle against persecution and oppression (Jawed, 2001).

Moreover, military training is seen as an Islamic obligation and not an option. Potential Jihads are taught that training must be undertaken in secrecy, and it must include intense physical training to improve fitness and stamina. Public gymnasiums are not places for Muslims, where loud music plays and improperly dressed men and women are working out. On the other hand, martial arts training and survival camps are highly regarded in the training programme. For example, training on how to use an AK-47 is recommended (Doyle, 2006:21).

When the term Jihad is used to describe warfare, such as Al-Qaeda’s attacks on civilians, perpetrators of such violence often cite collaboration with non-Islamic powers as a justification (Human Rights Watch, 2005).

The idea of Jihad originated from the teaching that if a person dies in the course of performing Jihad, he is absolved of all sin and immediately enters heaven. One restriction of this doctrine is that it is not allowed for Jihad to be declared against another Muslim society. Jihad teaches that only through physical force will the Islamic Community remove political, social and economic obstacles (Nasiri, 2006:1-2).

Muslim scholars explain that there are five kinds of Jihad fi sabillillah (struggle in the cause of God):
• **Jihad of the heart/soul** is an inner struggle of good against evil.

• **Jihad by the tongue** is a struggle of good against evil waged by writing and speech, one of the weapons in a Jihadi arsenal.

• **Jihad by the pen and knowledge** is a struggle for good against evil through scholarly study of Islam *ijtihad* (legal reasoning) and through science (medical science).

• **Jihad by the hand** refers to a struggle of good against evil waged by actions or one’s wealth, by taking care of elderly parents, or political activity to further the cause of Islam.

• **Jihad by the sword** is armed fighting for God, or a holy war, the most common usage of the word amongst the Muslim brotherhood (Understanding Jihad, 2005).

On the other hand, Shia Muslims classify Jihad into two categories only: the Greater Jihad and the Lesser Jihad. The Greater Jihad refers to the struggle inside oneself to obey God (Arabic: Allah) and reject sin (http://www.al-islam.org/al-tauhid/greaterjihad.htm). The Koran asserts that if the use of force is prohibited, the evil would then reach such an extent that the places of worship would become forsaken and deserted (The Koran, 22:40).

Radical Islamic thinkers in the Twentieth Century advocated that all non-Muslims are the avowed enemies of Islam and would destroy it if they could. In that way the attacks are justified in terms of Islamic beliefs. Under Osama bin Laden Jihad is the duty of every Muslim and that is to kill Americans and their allies, both civil and military, in any country where possible (Irujo, 2004). Jihad is believed to be an order from God (Allah) (Nasiri, 2006:286).

Muslims strive to live their lives by the book – literally. There are two main sources in Islam: the Koran – believed to be the externally true and trustworthy word of Allah as revealed to Muhammad – and the Hadith. For Muslims, the Hadith texts are

indispensable, as they explain or complement the Koran. Shariáh is a set of guidelines drawn from both the Koran and the Hadith. Shariáh governed the Islamic state established by the Taliban from 1996-2001 (Abdullahi, 2003:47).

According to the Koran, Allah gave the Muslims permission for jihad in the second year of hijra in order to defend them and deter their enemies from attacking them. The Koran very clearly states: "Fight in the cause of Allah those who fight you and do not transgress, for Allah loves not the aggressors" (2:190). However, peace may be made with those who give up hostilities: "But if they desist let there be no hostility except against the wrongdoers" (2:193).

Jihad as combat is perceived as having two expressions – offensive and defensive (Atwan, 2007:61-63). The aim of offensive Jihad is to come to the rescue of the oppressed and deter tyrants who might contemplate attacking Muslims. The US occupation of the land of the Two Holy Places (23 August 1996) was cited by Al-Qaeda as a reason for their declaration of war (Mohammad-Mahmoud, 2007:70-71): However, the call for Jihad is not restricted to Saudi Arabia or even the Middle East. In a statement shortly after the 9/11 attacks, Bin Laden claimed that Muslims “are being violated in Palestine, in Iraq, in Lebanon, in Sudan, in Somalia, in Kashmir, in the Philippines and in every place” (CNN, February 2002).

In the same vein, Al-Qaeda spokesman Sulieman Abu Ghaith justified the 9/11 attacks as “but a tiny part of the exchange for those killed in Palestine, Somalia, Sudan, the Philippines, Bosnia, Kashmir, Chechnya and Afghanistan”.47

The problem for the United States and its allies is that nothing in Islamic Law or tradition prevents Muslims from taking up defensive Jihad. Bin Laden makes it clear that Muslims who support the United States are, by definition, apostate.48 In a speech posted to a number of Islamic Internet forums in July 2003, Bin Laden stated, “In order

47 http://www.memri.org/bin/articles.cgi?Page=archives&Area=sd&id=SP38802
48 http://www.time.com/time/asia/magazine/1999/990111/osama.1html
to establish the Islamic state and the religion, there must be... jihad” (Special Dispatch Series, 2003).

Islamic tradition distinguishes between major Jihad, i.e. spiritual warfare, and minor Jihad, i.e. holy war. Minor Jihad means that Muslims are under obligation to wage a holy war against their enemies in two cases:

- When Muslim communities come under threat of hostile nations; or
- When Muslims are prevented from preaching Islam in non-Muslim territories.

Today many Muslims and their political leaders speak of social Jihad, meaning social reform aimed at implementing more 'justice' in Muslim societies (International Relations and the Study of Islam and World Politic in the Age of Global Jihad).

Al-Qaeda has made mistakes since its inception. Their 1998 Fatwa stated that it is permissible to kill 'Crusaders and Jews', and this was met with widespread sympathy; even among Al-Qaeda’s own ranks. One of Al-Qaeda’s high-profile members in London, Khaled al-Fawwaz, published a statement in Al-Quds al-Arabi, expressing his opinion that it is not permissible to kill American citizens just because their government happens to be hostile towards Arabs.

Many Muslims remain divided about the attacks of 11 September. There are some that see it as catastrophic while others believe that the attacks exacted revenge against the Americans, their enemies (Atwan, 2007:254-255). Some regard September 11, as a day that changed the world. These attacks targeted highly emblematic places: the World Trade Centre in New York was a symbol of America’s economic power. The Pentagon in Washington represents America’s military power; a third hijacked plane was believed to be heading towards the White House, the headquarters of political authority in the USA.

All nineteen terrorists were well educated and trained as pilots. America was shocked that their country was so hated in many parts of the world and in particular by Muslims.
The United States and Britain went to war in Iraq without the support of the international community and without giving the United Nations inspectors the time needed to complete their work. The war in Iraq represents this bloody history of relationships between Muslims and the people of the West. The majority of the Iraqis rightfully celebrated the downfall of the Saddam regime (Williams and Roach, 2006:1-23).

Working for global justice is one of the main challenges facing Christians and Muslims today. Therefore, political justice through democratic, rather than authoritarian and repressive regimes remains the goal. Economic justice means having fair trade with all countries. Cultural justice is achieved by acknowledging the right for cultural diversity worldwide and religious justice by including freedom of religion in a democratic system, honouring human rights and the rule of law.

If a Muslim converts to Christianity, he can be persecuted, reviled, kicked out of his family, lose his job, and in certain Islamic countries be put to death (Rhodes, 2007:136).

2.11 Human needs and conflict

Owing to a lack of evidence, it is impossible to state with certainty that fundamental human needs are historically and culturally constant. However, there is nothing that prevents one from speaking of the socio-universal character because people everywhere want to satisfy their needs. It is therefore important to reflect on the nine fundamental needs proposed by Manfred A. Max Neef, with contributions by Antonio Elizalde and Martin Hopenhagen. The nine fundamental needs according to Neef and others are the following:

Table matrix of needs and satisfyers

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<tr>
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<th>Being</th>
<th>Having</th>
<th>Doing</th>
<th>Interacting</th>
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<tbody>
<tr>
<td>1. Subsistence</td>
<td>Physical Health</td>
<td>Food, shelter</td>
<td>Rest, work</td>
<td>Environment</td>
</tr>
<tr>
<td>2. Protection</td>
<td>Care</td>
<td>Security</td>
<td>Planning</td>
<td>Living space</td>
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3. Affection  Self-esteem  Friendship  Expressions  Togetherness
4. Understanding  Receptiveness  Literature  Study  Schools etc.
5. Participation  Willingness  Rights and duties  Cooperate  Churches
6. Idleness  Tranquility  Games  Relaxing  Free time
7. Creation  Imagination  Abilities  Work  Productivity
8. Identity  Sense of belonging  Religion  Recognition  Loud rhythm

The schema proposed by Max Neef can be used for purposes of diagnosis, planning, assessment and evaluation. The matrix of needs and satisfiers may serve, at a preliminary stage as a participative exercise of self-diagnosis for groups located within a local space. The outcome of the exercise will enable the group to become aware of both its deprivations and potentialities.

Human needs theorists argue that one of the primary causes of conflict is people’s unyielding drive to meet their unmet needs on the individual, group and societal level (Northrup. 2005). An example of this is the Palestinian conflict, which involves the unmet needs of identity and security. Countless Palestinians feel that their legitimate identity is being denied, both on personal levels and on a national level. On the other hand, numerous Israelis feel they have no security individually because of suicide bombings; nationally because their state is not recognised by many of their close neighbours, and culturally because anti-Semitism is growing worldwide. In other words Israeli and Palestinian unmet needs directly and deeply affect all the other issues associated with this conflict (John, 2000).

If a resolution is to be found, the needs of Palestinian identity and Israeli security must be addressed and satisfied on all levels. According to John Burton, needs such as recognition and identity seem to be even more fundamental than Maslow’s basic needs like food and shelter. He argues further that denial of the needs of recognition
and identity would lead to alternative behaviour in order to satisfy them. This may include ethnic wars, street groups or domestic violence (Burton, 1998).

Burton further states that if conflict resolution is to be taken seriously, it has to be assumed that societies must adjust to the needs of people, and not the other way around (Burton, 1998). Human needs theorists offer a new dimension to conflict theory. Their theory states that needs cannot be traded, suppressed, or bargained for (Carrol, Rosati and Coale, 1998). Therefore the human needs approach turns its back on the old traditional negotiation models that do not take into account non-negotiable issues.

These old models include the interest-based negotiation models that view conflict in terms of win-win or other consensus-based solutions, also old conventional power models (primarily used in the field of negotiations and international relations) that construct conflict and conflict management in terms of factual and zero-sum game perspectives (Carrol, Rosati and Coale, 1998).

The human needs approach, on the other hand, supports collaborative and multifaceted problem-solving models and related techniques, such as problem-solving workshops or an analytical problem-solving process. These models take into account the complexity of human life and the insistent nature of human needs.

According to Burton, there is no reason why human needs should be a source of conflict once their existence is recognised and institutions are adjusted accordingly. To complicate the human needs approach, Burton states that a Muslim-Christian conflict would require an extensive facilitated analysis that will include the tracing back of colonial origins, class aspects, leadership, motivations and a host of circumstances that trigger behavioural frustrations (Siqueira and Sandler, 2006). Problem-solving approaches therefore evaluate the fundamental sources of conflict while maintaining a focus on fulfilling people’s unmet needs. Human needs theorists further agree that although needs cannot be compromised, they can be addressed in a generally win-win or positive-sum way (Rothman, 1997).
An example of this win-win process is the Kosovo conflict. When the Albanians obtained protective security, the Serbs also gained this protection; so both sides gained (Peace Watch, 2000). However, there are many questions and uncertainties relating to the human needs approach to solving conflicts. Confronting problems concerning human needs is an example. What needs are involved in conflict situations? Which needs are more important than others? Which needs should be pursued first? These are questions that must be answered.

Some critics of the human needs approach assert that many conflicts involve not only needs but interests as well. Therefore conflict resolution cannot come about by just meeting human needs. Consequently, if the needs of both parties are met, the conflict will probably still be present. Only if both needs and interests are dealt with, can conflict resolution come about (Carrol, Rosati and Coale, 1998).

Bradshaw and Burger (2007) argue that one should accept logically that the Truth and Reconciliation Committee is a final contribution towards a stable and peaceful society. The TRC can only be a part of the large process. Reparation will have to follow in Iraq and Afghanistan. Economic justice must be achieved through back–up counselling for victims of abuse etc. This is a long term process that must be managed. Furthermore the high incidence of crimes, corruption, point to the fact that many issues need to be addressed to achieve peace, stability and democracy in the Middle East.

What is however needed is a link between public participation, sustainable development and conflict management in Iraq and Afghanistan. It is therefore clear that conflict management approach that highlight conflict issues without addressing them substantively, add little value to the development process to achieve peace and democracy.

Most human needs practitioners agree that issues of identity, security, and recognition are critical in many intractable conflicts. Ignoring the underlying needs and
just negotiating the interest, may lead to a temporary settlement, but rarely bring about long-term resolution. We find ourselves thrust into a deadly conflict of potentially large scale, concerning the 9/11 attacks and the counter-terrorist attacks, owing to the different directions this conflict has taken and the numbers of civilian casualties and loss of lives other than the military. Do human needs play a role in this conflict? Most certainly the answer is yes. How can we successfully deal in resolving these human needs issues? (Haddad and Hilal, 2002).

Western fear of radical Islam is not new. Immediately after the end of World War I, Bury (1919) wrote that he saw Islam as a totally peaceful religion as long as Muslims did not feel threatened by foreign intruders (Bury, 1919). The mass media and other agents of socialisation in Arab and Muslim lands, never cease telling their people that the Western-led United States is largely responsible for their debacle. The mass media were the reason that many Muslims and Arabs deeply resent the West, and this has resulted in Jihad.

Bringing peace, stability and order in the Middle East is long overdue. The problems that arise there may slip past the point of resolution.

Conclusion
The so-called 'War against Terrorism' can be argued to be an 'illegal' war. The United Nations played no part in this war. Members of the United Nations Security Council, such as France and Germany, withheld their support from the US in its decision to attack Iraq and also to get rid of Saddam Hussein. But despite this refusal by France and Germany, the US and its allies proceeded with the attack on Iraq, their 'War against Terrorism'. An ultimatum was given to Saddam Hussein stating that he had 48 hours to leave Iraq or he would face an invasion by the coalition of America and its allies. America kept its word and launched the first air strikes of the war, shortly after the deadline expired.
There was continuous unprecedented opposition against America and its allies, mainly due to the failure to find 'weapons of mass destruction', which remained the primary reason for military action. Baghdad was bombed, but America and its allies gave the assurance that only military targets were hit. In the first week of war Britain too defended the oil fields in the South, preventing them from destruction, and assuring that the wealth of the oil would be available to rebuild a new and democratic Iraq (Jervis, 2006:3-52).

Originally America and its allies thought that they would use a shock and awe tactic, forcing the enemy into submission by destroying its leadership. This however failed and the bombing continued. The increasing body count caused the Americans and British to question their actions, especially when no weapons of mass destruction were found. Through all the fighting the suicide bombers continued their attacks on the Iraqi military, Iraqi police and anyone assisting America and its allies (Davis, 2003:275-282).

On ground level the emergence of a new terrorist tactic caused great concern. This was the capturing of any foreigner, irrespective of whether they were military or civilian, male or female, Muslim or Christian and then the beheading of the person. The reason for this kidnapping and beheading tactic was an attempt to strike fear into the hearts of all those helping Americans and their allies (Haydar, 2005).

According to Gabriel Weimann, an expert on Islam, based at the Washington Institute of Peace, “these beheadings are an example, par excellence, of the principle of the theatre of terror”. This was worsened by the fact that these acts were videotaped and then placed on the Internet for the world to watch. This ceremony would end by holding the victim’s severed head aloft as if it were some trophy.

World television and newspapers shared horrific pictures depicting Iraqi prisoners being forced to commit sexual acts with each other, and also being strapped to electric wires. The Bush Administration stepped in and stated that all those involved would be punished – but what good could be done? The human rights of the hostages and
prisoners had already been violated. Finally, on 30 January 2005, for the first time in nearly 50 years, the Iraqis turned out to vote again. Suicide bombers caused havoc all day long, with car bombs exploding and the death toll increasing.

Despite the elections being deemed a success for democracy, the terror groups claimed that the elections were not democratic, as the voting took place while the country was under the control of a foreign power (Davis, 2003:275-282).

One of the most crucial recommendations of the 9/11 Commission report, is that there must be more monitoring and reviewing of governmental counter-terror measures. Questions have also been raised regarding any unjustified encroachments on civil liberties and human rights. We need now to look beyond this ‘War on Terrorism’ for opportunities to correct major strategic errors and to develop a framework so that countries can adjust their security and rights in a more justifiable and effective way.

Now is the time to move towards a new paradigm based upon respect for human rights, also an internationally coordinated anti-terror justice strategy and a long term political vision that can reduce the global intolerance which is the breeding ground for terrorists.

The attacks of 9/11 with the accompanying shock and fear which it caused, would motivate any government of any country to put a price on the lives of its citizens, even if it meant violating international Human Rights policies and hunting down the perpetrators.

As can be seen, we are faced with difficult issues for assessment. Making any definite assessments at this stage would be premature. The 11 March 2004 Madrid train bombings were less severe than 9/11 New York. The 11 March 2004 attacks in Madrid, Spain, were a direct result of the invasion in Afghanistan by the US and its allies. It can however be said that with some exceptions the American response to 9/11 caused some setbacks for the cause of human rights policies internationally.
As long as these terrorist attacks are combined with a war model of response, the prospects for human rights look poor. The first Fatwa by Osama bin Laden dates back to 1998 and was declared against the United States. In 1993 the first attempt to blow up the World Trade Centre was recorded. This declaration of war on America according to Bin Laden, was because of the oppression by the West on Muslims worldwide.

Osama bin Laden stated clearly that it is every Muslim’s responsibility to pick up the jihad struggle against Westerners, which can be seen as a holy war, conducted by Islamic fundamentalists. Human needs most certainly play a role in this conflict. The feeling which Osama bin Laden is experiencing as oppression and repression by Westerners on Muslims, can be described as a human need which is unfulfilled.

So after all is said and done, what then is the cure for terrorism? Is it justice, political justice, the rule of law, social justice, economic justice, the recognition of identity and security?

History will tell if former President Bush was correct in asserting that the invasion of Iraq made America more secure. The National Intelligence Council (CIA) stated that Iraq had now replaced Afghanistan as the training ground for international terrorist activity. According to Juan Cole, an Iraq expert at the University of Michigan, Iraq had become a failed state, the sort that produces terrorists, under the Bush Administration.

Yet, despite all the problems in the War of Terrorism, President Bush and his Administration can celebrate a major victory. Under him, the US military has carried out its first ever occupation of an Arab country, and has also changed the nature of politics there (Ricks, 2007:430-439).

In the beginning, the war in Afghanistan seemed to be uncomplicated. The US and its allies invaded, drove out Al-Qaeda and 'established' a democratic government. However, the Taliban started to re-establish themselves in Afghanistan and the Obama
administration, succeeding Bush, desperately tried to find a solution. However, the Obama administration soon learned that more troops cannot decisively defeat the Taliban, because the latter is a shadowy guerrilla force that can attack and retrieve if deemed necessary. It seems at this stage that the only viable strategy for the Obama administration is to acknowledge defeat and stop the war on terrorism. If Obama proceeds with the timeframe that he adjusted, most of the US troops will depart at the end of August 2010. Under a 'status of forces agreement', signed by the former President, George W. Bush, all US troop must be removed by the end of 2010.

The prospects are that after the general elections in 2010 in Iraq, oil production and the supply of electricity, medical and other services are likely to improve after years of stagnation. Greater stability in the area and a democratic system could contribute to the improvement of the above services in the country.

Chapter 3 will subsequently focus on the war in Afghanistan.
CHAPTER 3

TERRORISM IN INTERNATIONAL RELATIONS
The War in Afghanistan (2001 – 2009)

Introduction

This chapter will examine and evaluate the War in Afghanistan, the hunt for weapons of mass destruction and the destruction of terrorist training camps. The latter were originally stated as the casus belli for the war on terrorism, which contextualises the research question in Chapter Two. They also highlight the problems with international human rights and international law. Central to this chapter are thus an investigation of the counter-terrorist attacks against the background of Human Rights.

There are, however, signs which must be welcomed in terms of development. Human Rights are political by nature and they require political will to be implemented and public scrutiny to be maintained. Torture and the denial of the most basic civil and political rights and freedom are not the result of economic under-development, but the consequence of abuses committed by individuals or groups.

This chapter concludes by making certain assumptions about the war on terrorism and why certain people are motivated to take their own lives and those of innocent civilians.

The War in Afghanistan, which was a result of the September 11 attacks on the New York World Trade Centre, began on 7 October 2001. This was also the beginning of the War on Terrorism. The goal of America in Afghanistan was to capture Osama bin Laden and to destroy the Taliban and Al-Qaeda. The Taliban have made a comeback since 7 October 2001, although to date there has been resurgence in the Taliban regime. Afghanistan was a home for Osama bin Laden and also a base for terrorist

training camps, like Al-Qaeda and the Taliban.

This brings us back to the question, why did Al-Qaeda attack the US in the first place? Al-Qaeda’s struggle can be said to be first and foremost a battle for the soul of Islam. Thomas McInerney and Paul Vallely in their book, Endgame: The Blueprint for Victory in the War on Terror, Washington, DC, Regency 2004, stated that the War on Terrorism must focus on the real threat to the United States and that is Al-Qaeda. They also mention three central elements needed to win the War on Terrorism (Burke, 2007a):

- dismantling and degrading the Al-Qaeda terrorist network;
- establishing a new US foreign policy that does not needlessly create new Al-Qaeda terrorists; and
- bolstering homeland security against future terrorist attacks.

The first attacks on Afghanistan were carried out solely by the US and Britain. After the invasion of Afghanistan by the US and Britain, troops and aircraft from Australia, Canada, Denmark, France, Germany, Italy, the Netherlands, New Zealand and Norway, amongst others, supported the US and Britain.51

Meetings with Afghanistan leaders were arranged to take place in Germany. These meetings were organised by the United Nations.52 The Taliban, however, were excluded from these meetings. The meetings produced an interim government for Afghanistan, as well as an agreement to allow a United Nations peace-keeping force to enter Afghanistan.

These meetings also included UN resolutions, which condemned the Taliban for their participation in terrorism and for their involvement with Al-Qaeda and other terrorist

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50 The Taliban Resurgence in Afghanistan (http://www.cfr.org/publication/105511).
groups. The UN not only condemned the Taliban regime, but also ensured that a peace-
keeping mission under the UN is still present today.\textsuperscript{53}

According to then US Deputy Secretary of Defence, Wolfowitz, weapons of mass
destruction were chosen as the rationale for the War on Terrorism. He stated further
that this was the only rationale that could really gain support in, as well as outside, the
United States, and inside the United Nations. This, combined with the fury caused by
the terrorist attacks of 9/11, appears to have convinced the US government that it was
now the time to remove Al-Qaeda and the Taliban regime from Afghanistan. This was to
be supplemented by the elimination of Saddam Hussein and Iraq's alleged weapons of
mass destruction as another potential source of aggression against the US. Fighting in
Afghanistan was not easy. For example, maps of the area were virtually non-existent
and America and its allies were forced to rely on aerial photographs that had been taken
by US spies.

Al-Qaeda struck symbolically at the heart of financial power, the World Trade Center,
and the Pentagon, the military power. Had the third plane reached its intended target,
the White House, the seat of American democracy would also have been demolished.
From a Jihad perspective this was a great military triumph, and Bin Laden was now
perceived to be a leader who could deliver\textsuperscript{54}.

After the September 11 attacks, academics and politicians all spoke with one voice.
These events were a defining moment in global history. They argued that international
politics and international relations would never be the same again. They compared
these attacks with the outbreak of the two world wars and the collapse of the Soviet
Union and the end of the Cold War. They argued that the world had seemingly entered
a new era, an era of global terror in which old international relations rules no longer
applied (Sater, 2003).

\textsuperscript{53} http://www.akdw.org/news/afghan051001.html.
\textsuperscript{54} http://www.cnn/2004/world/meast/01/22/sprj/nirq/main.index.html
On the other hand, people began looking for meanings and explanations as to why America was targeted in the attacks. Logically many different explanations were suggested. The answers and explanations were framed in many different arguments. The long and the short of it is that September 11 was seen as something new, a new world being born. George W. Bush called the attacks an act of war not just against United States, but also an attack on the civilized world (Peters, 2005:281-288).

Previously terrorism was regarded as a marginal issue. But the 9/11 attacks led to new questions about the nature of terrorism and the role that states and non-states have to fulfill in such international violence.

This led the US to develop a foreign policy devoted to combating the threat of terrorism. President Bush broadened the range of the threat to include Iran, Iraq and North Korea, calling them an 'axis of evil', accused of spreading weapons of mass destruction. The American foreign policy towards Iraq changed and the removal of Suddam Hussein was seen as an integral part in neutralising this new threat of global terrorism (Pubantz and Moore, 2003).

The September 11 bombing showed the barbarism and the deliberate killing of innocent civilians by the followers of Osama bin Laden. For many the prime lesson drawn from 9/11 was the failure of Western governments to identify the threat posed by Bin Laden. In some parts of the world the violence of September 11 was seen as an appropriate response to the inequalities and violence enacted by American global supremacy. What follows now is a description of the first military contact made by the US and its allies in Afghanistan over the past couple of years.

### 3.1 The War on Terrorism

In September 2002 word began to circulate that a war on terrorism was inevitable. To justify the War on Terrorism the Bush administration looked for the worst-case scenarios: weapons of mass destruction, asserting that Saddam Hussein possessed
chemical and biological munitions and was in the process of developing nuclear weapons. This they combined with the possibility of sharing these weapons of mass destruction with terrorists who could use them against the US (Fouda and Fielding, 2003:98-100).

Ike Skelton (Blabock, Kadiyali and Simon, 2005).and a group of seventeen other congressional leaders warned Bush that the War on Terrorism would be extremely difficult to fight, due to its ethnic tensions, its isolated economic system and the rugged territory. They also requested that Bush tell the American people what they were getting themselves into. Skelton (Blabock, Kadiyali and Simon, 2005).further stated that the American people must be clear about the money and the number of soldiers that would be needed to capture Hussein. He concluded by warning that Bush had to be sure that by removing Hussein he would not only win the battle, but could then lose the war. There was no White House response to Skelton’s remarks (Blabock, Kadiyali and Simon, 2005).

However, President Bush addressed a UN General Assembly, sketching the picture that Iraq was a grave and gathering danger (Van Natta and Banner, 2003). In case anyone present did not understand the implications, the administration also issued a document titled, ‘The National Security Strategy of the United States of America’. This formalised the pre-emption doctrine outlined by President Bush. The former President went further and stated that the Iraqi dictator must not be permitted to threaten America with atomic weapons, nor could they afford to wait for more evidence.

Ultimately, 77 of 100 senators and 296 of 435 House members voted to authorise the War on Terrorism. On the other hand, the majority of the House of Democrats voted against the war (Henshall, 2007a).

After the 9/11 events the Bush administration seemingly displayed a lack of interest in the Afghan opium problem. In fact, the White House and Pentagon went out of their way to avoid taking on the Afghan drug lords (Wright, 2006).
According to a CIA source, a US intelligence team started to identify potential bombing targets in Afghanistan after the 1998 bombings of two US embassies in East Africa by Al-Qaeda. By 2001, the team had compiled a list of potential bombing targets throughout Afghanistan. The list included approximately 25 major drug labs. After 9/11 the list was handed over to the White House but they refused to order the bombings of any of the drug-related identified facilities. According to a CIA source, these drug targets have been tracked for years. The British, on the other hand, were hoping that the US would bomb the targets because most of Britain’s heroin came from Afghanistan.

Within a year after 9/11 Afghanistan was under attack. Those who are not Human Rights activists would have difficulty showing that the United States and its allies were justified in bombing Afghanistan to compel them to turn over Osama Bin Laden (Carroll, 2004).

Faced with the remarkable failures of the military in the War on Terrorism, the US asked the United Nations to carry some of the costs. Throughout the United Nations debate on the War on Terrorism, the Bush administration insisted on its prerogative to act unilaterally.

In a news conference former President Bush stated that there is only one question: “Has the Iraqi regime fully and unconditionally disarmed themselves, as required by the UN Resolution 1441, or did they ignore the resolution?” (Bush, 2001a).

When the Americans and their allies failed to discover weapons of mass destruction, the Bush administration shifted its stance from being 'absolutely certain' about the existence of the weapons and argued that the United States was entitled to act against any nation that merely shows the intent to develop weapons of mass destruction.

56 For a critique of 'humanitarian law' as a theoretical framework for understanding contemporary politics, see Teitel 2002.
Few nations today trust the United States to establish a government that is permitted to act independently. This is due to the fact that the United States shifts the goalposts for their own benefit. Because of this, world opinion is strongly in favour of the United Nations taking over (US public opinion, according to polls since April 2003 conducted by a Programme on International Policy Attitudes (PIPA) at the University of Maryland) (9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States, 2004).

The original casus belli to start the War on Terrorism was to save the world from a tyrant developing weapons of mass destruction and cultivating links with terrorism (Allawi, 2007). In the early stages of the war these claims collapsed and a new reason for war took centre stage, to establish democracy in the whole of the Middle East. Since the War on Terrorism began, the predictions of many analysts have proven accurate: particularly the consequences of the cycle of violence: begetting more violence (Richardson, 2006).

This US-led war against terrorism was undertaken with the general recognition that it might well lead to the proliferation of weapons of mass destruction and a bigger threat of terrorism. The Afghan campaign of 2001, and the effort to stabilise the country afterwards, was regarded as the first leg of the War on Terrorism.

Even as plans for the war in Afghanistan were being drawn up, the US intelligence was launching operations designed to disrupt terrorist networks, attack extremists and dissuade states from offering their support to militants (Stone, 2004).

There was also the physical damage caused to Al-Qaeda in this first phase of the War on Terrorism: The war wiped out nearly two decades of establishing Islamic radical camps in Afghanistan. Afghanistan had provided a unique haven from which the terrorist group Al-Qaeda could plan and execute its attacks. In short, by late 2001, the War on Terror put an end to the concentration of Islamic militants in Afghanistan (Galbraith, 2006).
The War on Terrorism allowed the Islamic militants to imagine themselves as glorious defenders of the Islamic faith, receiving the highest praise in the Islamic religion. Al-Qaeda became stronger after their failure to kill Americans wherever they might find them. This news of their failure excited a new generation of radical Islamics (Burke, 2007a).

Bin Laden followed up failure with a series of press conferences and interviews. During one of his interviews he stated that: “Terrorism can be commendable and it can be reprehensible”. He continued: “[t]errifying an innocent person and terrorizing him is objectionable and unjust, also unjustly terrorizing people is not right. Whereas terrorizing oppressors and criminals and thieves and robbers is necessary for the safety of people and for the protection of their property. The terrorism we practise is of the commendable kind”. On December 17, 2001 Bin Laden wrote that he felt betrayed by the Muslims who had failed to join him (Mohammad-Mahmoud, 2007).

Even before the Bush administration began with the War on Terrorism, there were several warnings that starting this war would lead to a proliferation of weapons of mass destruction, as well as terror for deterrence or revenge purposes.

The Bush administration announced publicly that the next targets after Afghanistan and Iraq could be Syria and Iran. However, there was considerable pressure by the United States on the Security Council of the United Nations to agree to the US war plan on terrorism, even though much of the world opposed it (Chomsky and Achcar, 2007).

3.2 The attack on Afghanistan

3.2.1 2001: The original attack

On Sunday 7 October, 2001 US and British forces began the War on Terrorism with
aerial bombing, targeting the Taliban forces and Al-Qaeda.\textsuperscript{57} Attacks were reported in Kabul (the capital of Afghanistan), Kandahar (home of the Taliban’s Supreme Leader, Mullah Omar) and in Jalalabad, where training camps of the Taliban were attacked. The Bush administration justified these attacks as a response to the September 11 attacks on the US. In response, the Taliban stated that these attacks were an “attack on Islam”.\textsuperscript{58}

A pre-recorded videotape of Osama bin Laden was released before the attack on Afghanistan. \textit{Al Jazeera}, an Arabic satellite news channel, aired this recording where Bin Laden stated that America would fail in Afghanistan and then collapse, as the Soviet Union had. He ended by calling for a war of the Muslims, a Jihad, against the US and its allies. The US attacks were focused on the three cities as mentioned, Kabul, Jalalabad and Kandahar. The Taliban air defences were completely destroyed and Al-Qaeda's training camps severely damaged. The US campaign then focused on the command, control and communication targets of the Taliban. Meanwhile thousands of Pashtun militiamen from Pakistan moved into Afghanistan to assist the Taliban against the US and its allies. After the aerial attacks the US Special Forces raided deep into the Taliban heartland. Within a short period of time the Taliban were starting to retreat (Watson, 2007) (cf. Map of Afghanistan: Figure 2).

\textsuperscript{57} \url{http://www.archives.cnn.com/2001/US/10/07/gen.america.under.attack/index.html}.

\textsuperscript{58} \url{http://www.australianpolitics.com/news/2001/01-10.07.shtml}.
3.2.2 2002: Operation Anaconda in Afghanistan

The number of US-led coalition forces operating in Afghanistan eventually grew to over 10,000. A Taliban leader, Mullah Saifur Rehman began to regroup his troops to fight the US-led forces. They numbered more than 1000 troops and their intention was to use the Shaki-kot Mountains of Paktia province to launch guerrilla attacks in a Mujahideen-style offensive, similar to that used in the battle to fight the Soviet forces during the 1980s. The Taliban forces used the hit and run tactic on the US and its allies. They would open fire and then retreat in their caves and bunkers (CNN, March 14, 2002). By 6 March

2002 eight Americans, seven Afghan soldiers and an estimated 400 Taliban troops had been killed in the fighting (CNN, December 14, 2002).

Al-Qaeda fighters along with tribal protectors in Pakistan regained their strength and later launched cross-border raids on the US and its allies. Guerrilla units of between 5 and 25 men regularly crossed the border from Pakistan to Afghanistan to ambush US convoys and patrols. Because of these tactics by the Taliban forces, the Pentagon requested that the British Royal Marines be deployed on account of their highly trained mountain warfare knowledge. The British Royal Marines conducted a number of missions over several weeks, but had little effect in these difficult circumstances. The Taliban, on the other hand, avoided combat and hid away in their caves and tunnels in the Afghanistan mountain ranges or across the border in Pakistan (CNN March 14, 2002).

3.2.3 2003: Renewed Taliban insurgency

During September 2003 the Taliban forces regrouped and launched a renewed Jihad or holy war against the US and its allies in both Afghanistan and Pakistan (Associated Press February 14, 2003). According to an Afghan source and a report from the United Nations, small mobile training camps were erected by Al-Qaeda and Taliban forces along the border of Pakistan to train new recruits in guerrilla warfare and terrorist tactics (Owias, 2003).

The Taliban established a new mode of operation: gathering into groups of around 50 to launch attacks on isolated outposts and convoys and then breaking up into smaller groups of 5-10 men (Owias, 2003). Al-Qaeda forces in the East of Afghanistan had a different strategy: they would concentrate on catching the US troops in ambushes.⁶⁰

As from January 2006, NATO forces started to replace US troops in Southern Afghanistan. The British 16th Air Assault Brigade formed the core of the forces along

with troops and helicopters from Australia, Canada and the Netherlands.\textsuperscript{61} It is also here in the southern part of Afghanistan where the deadliest spate of violence was experienced since the original deployment of troops back in 2001.

In July, Canadian Forces launched Operation Medusa in an attempt to clear the Taliban fighters out of the area. The fighting with NATO forces was intense throughout the second half of 2006. NATO has been successful in achieving tactical victories over the Taliban, but could not have overwhelmed them in 2006, and a continued operation was called for in 2007.

In January 2007 British Royal Marines mounted Operation Volcano to clear insurgents from firing at marked targets in the village of Barikju, north of Kajaki (Associated Press 2003). The ministry of defence in Britain announced that it intended to increase the number of British troops to 7700 committed until 2009. In addition, more armoured vehicles were promised, along with 4 MRLS systems and further light field guns.\textsuperscript{62}

\subsection*{3.3 Counter-terrorist attacks and human rights}

There have been multiple accounts of human rights violations in Afghanistan.\textsuperscript{63} The fall-out of the US-led invasion, the resurgence of Taliban forces, record-high drug production, re-armed warlords, are among the primary causes for the human rights abuses against hundreds of thousands of innocent Afghan citizens.\textsuperscript{64}

It is not only now that Afghanistan is suffering from human rights violations; this has been going on for the last twenty years. With the Soviet invasion of Afghanistan, mass killings, torture and landmine plantings were at the order of the day.\textsuperscript{65} The Taliban, who ruled Afghanistan from 1996 until 2001, when US forces destroyed them for the first

\hspace{1cm}\textsuperscript{61} http://www.news.bbc.co.uk/2/hi/south-asia/4961368.htm.
\hspace{1cm}\textsuperscript{62} http://www.mod.uk/DefenseInternet/DefenseNews/DefensePolicyAndBusiness/1400/extraUKTroopsTo.
\hspace{1cm}\textsuperscript{63} Enduring Freedom: Abuses by US Forces in Afghanistan (http://www.hrw.org/reports/2004/afghanistan03041).
\hspace{1cm}\textsuperscript{64} Who are the Taliban? (http://www.infoplease.com/spot/taliban.html).
\hspace{1cm}\textsuperscript{65} The Taliban’s War on Women: A Health and Human Rights Crisis in Afghanistan.
time, were notorious for their human rights abuses, especially towards women. 66

Mujahadeen leaders, some whom presently serve in the current government in the Afghanistan funded their fight against the soviets, with opium money, writes Gretchen Peters in her book *Seeds of Terror* (2006). This money was always utilised by the Taliban to fund their rule in Afghan. By 2007 more than 3 million Afghans were involved in cultivating a yield of some 8,200 metric tons of poppies, according to the United Nations Office on Drugs and Crime (UNODC). In 2007 the value of opium was nearly ten times that of wheat, making it extremely difficult to persuade farmers to switch crops (Zabriskie, 2009).

According the United Nations (UN) Al-Qaeda and the Taliban still have access to massive supplies of weapons and are using the Internet for communication and to co-ordinate their actions and fund raising. However, at least 144 countries have blocked a total of $103.8 million in assets worldwide of Al-Qaeda since the attacks of 9/11 on the US. Due to the freezing of assets of Al-Qaeda its associates are now converting other parts of its assets, not frozen into gold, diamonds and precious stones, such as Lapis Lazuli and sapphires.

The Security Report of the UN recommends that all countries become parties to the International Convention for the Suppression of the Financing of Terrorism and join the Kimberley Process that regulates the flow of rough diamonds. The group is also responsible to monitor the council bans on Bin Laden, Al-Qaeda and the Taliban.

Security Council Resolution 1390 in January 2002 required all states to freeze all financial assets of anyone associated with these two groups and also to prevent them from travelling and acquiring weapons. This report further suggests that countries tighten restriction on arms brokers, and that arms manufacturing countries become members of the Wassenaar Arrangement on Export controls. However, according to

66Who are the Taliban? (http://www.infoplease.com/spot/taliban.html).
Wurst, Al-Qaeda and the Taliban still have access to funds (Mahmood-Mamdani, 2009).

In 2006 opium production in Afghanistan, which is the major source of funding for the resurgent Taliban, increased by 50 per cent. In addition, according to Amnesty International, the Taliban are responsible for the killing of teachers, abducting aid workers and burning down schools in Afghanistan.67

The research figures by Amnesty International show that bombs carried by suicide attackers, or planted along the roadside, killed 756 civilians in 2006.68 Afghan warlords and political strongmen, who are supported by the US and its allies, are responsible for numerous human rights violations, which include kidnapping, rape, robbery and extortion.69

In March 2002 top officials at the CIA authorised controversial, harsh interrogation techniques.70 These interrogation techniques included shaking, shackling prisoners in a standing position, keeping the prisoner in a cold cell and dousing them with water, and water boarding.71 Water boarding involved pouring water over a detainee’s face until he believed he would suffocate or drown. The US operated a secret prison in Kabul where these techniques were employed.72

More than 100 prominent US law professors stated that water boarding is considered to be torture.73 The CIA in return responded that they do not consider water boarding as a

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67 The Resurgence of the Taliban in Afghanistan (http://www.pinr.com/report.php?)
73 Open letter to Attorney General Alberto Gonzales (http://www.hrw.org/english/docs/2006/04/06/usdom.13130.htm).
form of torture. There are over 330 documented cases in which US personnel are alleged to have abused or killed detainees in Afghanistan, Iraq and at Guantanamo Bay. In the Bagram torture case two prisoners were chained to the ceiling and beaten to death. The most severe punishment a US soldier received was five months in a military prison.

Widely used cluster bombs scattered as many as 200 bomblets over a wide area in Afghanistan. Routinely, these do not explode on impact and remain to exact a death toll for years. Villages were razed. Human Rights Watch reported that the village of Chowkar Kareg, 40 km north of Kandhanan, was bombed at night by US planes. “Many of the people in the village...ran out of their homes, afraid that the bombs would fall on their homes. All witnesses stated that aircraft then returned to the area and began firing from guns” (Kolhatkar, 2007:1).

When asked to respond to this report, a Pentagon spokesperson said on 2 November 2001, “The people there are dead because we wanted them dead” (Kolhatkar, 2007:1). Hundreds of thousands were starving with no means to deliver food, due to the fact that the bombing had destroyed it (Chomsky, 2007c:2). A spokesperson for the UN High Commissioner for Refugees warned, “We are facing a humanitarian crisis of epic proportions in Afghanistan with 7.5 million short of food and at risk of starvation” (Chomsky, 2007c.:2).

The UN Food and Agricultural Organisation pointed out that the bombing had disrupted planting that provided 80 per cent of the country’s grain supplies (Gilbert, 2004.). Also, an unknown number of Taliban soldiers were killed, those who survived were denied standards of treatment set out by the Geneva Convention.

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Troops at Konduz surrendered under the impression they would be treated fairly and handed over to the UN international courts (Cockburn, 2001). After surrender, however, the soldiers were tied to each other and taken to the Northern Alliance fort at Mazar-i-Sharif. It soon became evident to the prisoners that they had been misled. The prisoners then started to riot, killing CIA interrogator Dave Span. Span’s CIA colleague subsequently shot three prisoners in cold blood. Over the following four days, Northern Alliance troops, US Special Forces and British troops, with the aid of US Air Force bombers, slaughtered 600 prisoners.

Of the 600 placed in the fort’s sub-cellar, only 60 prisoners survived. Newsweek reported afterwards that diesel fuel was poured into the basement and set alight on the assumption that the fire and the fumes would kill any remaining Taliban soldiers (Glass, 2002). When this strategy failed, the cellar was flooded with freezing water. Dozens of dead prisoners were afterwards found with their hands bound and bullet-holes through their hands.

Other prisoners were blindfolded, chained and deported to Camp X-ray in Guantanamo Bay (Glass, 2002). Stephen Shalom, a professor at William Paterson University in New Jersey pointed out that such US behaviour in Afghanistan was likely to produce more recruits for terrorist organisations like Al-Qaeda:

The decision to become a terrorist is not one that people make lightly. To kill civilians and in the process commit suicide – takes a degree of fanaticism not easily achieved except under extreme circumstances, where deep anger and frustration become unleashed. It takes years of suffering at the hands of an arrogant oppressor, or of watching loved ones brutalized. This is why terrorism rarely leads to peace, but instead to more terrorism, in an escalating cycle of violence. Terror by one side does not justify counterterrorism, but one usually provokes the other, nonetheless. The US war in Afghanistan will probably add to the number of terrorists who hate the United States. Every innocent civilian who dies in that war has relatives, and these relatives are unlikely to draw as the lessons of these deaths that violence is wrong or that killing civilians is unacceptable. On the contrary, this is the sort of situation that can drive someone to adopt nihilistic violence or see civilians as
legitimate targets. This will especially be the case when the country responsible for the dead relatives behaves in an arrogant manner (Shalom, 2002).

The fact is that the United States is ignoring international law, human rights conventions and international institutions such as the United Nations. In fact, the message that the United States is sending throughout the World is one that lives of people other than Americans, are not worth much. To worsen matters, the former Vice-President of America, Dick Cheney, stated that the War on Terrorism might last 50 years or more (Pilger, 2002).

The US Army delivered an apology, as well as financial aid to the families of 19 Afghan civilians killed and wounded by a special force unit of US marines near Jalalabad on 4 March (Gilbert, 2004.). The Afghan dead and wounded were left strewn along a 16km highway. This was done in a counter-terrorism attack in response to a suicide-bomb attack on the marine’s convoy.

The killing of large numbers of civilians by American forces through lack of discipline or heavy air strikes has marked the campaign in Afghanistan. Between 27 and 29 April an operation by special forces in Herit led to the deaths of at least 49 civilians and the displacement of 1600 families, according to UN investigators (Sharani, 2005).

In the minds of the Afghan population the perception is growing that the Western troops have little respect for civilian lives. It is believed that the public strongly supports the socio-economic provisions of the Universal Declaration of Human Rights, which affirms in Article 25 that, “everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (Chomsky, 2007b). If so, then the public must firmly oppose the 'moral values' of the former Bush Administration in Afghanistan.
The massive attacks of 9/11 prompted international action to coordinate efforts against terrorism. It is important to note that the UN system provides the legal framework through which modern Human Rights Law is drawn up and implemented by governments (Dugard, 2005). With the UN Charter serving as the basic framework agreement, international Human Rights Law is built on UN documents, which include: The Universal Declaration of Human Rights, the Declaration on Principles of International Law concerning friendly relationships and cooperation among states, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. These laws articulate the Human Rights Laws to which all people are entitled.

Among the key fundamental rights within the above UN documents are vital guarantees, which include (Wright, 2006):

- the rights to life, liberty and security of person;
- the right to be equal under the law;
- the right to have access to effective legal remedies by component national tribunals;
- the right not to be subjected to arbitrary arrest or detention;
- the right to a fair and public hearing by a national tribunal;
- the right to a public trial;
- the right not to be subjected to arbitrary interference with regard to privacy, home or correspondence;
- the right to leave your country; and
- the right to seek asylum.

No less important are the more than 20 international Human Rights instruments working through the UN. Similarly, since 1960, the UN organs have defined, prohibited and punished certain acts of terrorism as international crimes. However, granting human rights to individuals is dependent upon individual states (McMahon, 2003).
The events of September 11 have motivated the Security Council to change the legal framework related to terrorism. This is most clearly seen in Security Council Resolution 1373 (S.C. Res. 1373, 2001), which sets out a number of considerations critical for coordinating international cooperation to prevent and suppress terrorist acts.

The afore-mentioned resolution reaffirms the legal principle established that all governments are duty bound not to organise, instigate, assist or participate in terrorist acts directed against another state. Resolution 1373 also asserts that terrorist acts are a threat to international peace and security under Chapter VII of the Charter.

Against this background, all states must prevent and suppress the financing of terrorist acts, freeze financial assets (this was done by Saudi Arabia to Osama Bin Laden) and prohibit their nationals from contributing economic resources that are used for such acts.

Governments must also ensure that those who commit such acts are brought to justice and punished under domestic laws. The events of 11 September affirm the reality that terrorists now have the intentions and capabilities to engage in acts of mass destruction (Report of the Secretary-General’s High Level Panel on Threats, Challenges and Change, 2005).

The secret of counter-terrorism and human rights lies in the balancing of the rights to privacy and the requirements laid out by the National Security. It seems vitally important that in the general war on terrorism and member states, especially UN member states, should address this balance on a continuing basis. It is the UN that plays the principal role in drafting, preparing and implementing legal instruments aimed at counter-terrorism.

However, the fight against terrorism is not just a matter of national security, it also includes matters such as values, justice, respect for human rights, human dignity and the treatment of individuals in law. The basic building blocks of human rights - equality
of esteem, a respect for law and a commitment to the democratic process remain in place but this needs to be honoured by all citizens to ensure that Human Rights legislations come alive and play the desired role in active society (Dugard, 2005).

Terrorism exploits uncertainty everywhere and anytime. We don’t know where or when the next attack may be. And we don’t know whether we - or our loved ones - will be in the wrong place at the wrong time. The events of July 7 - together with the train bombings in Madrid on March 11, 2004, remind us that there are at least two forms of terrorism. The first might be called 'mass-terrorism': an attack that uses non-conventional means to kill large numbers of people (Sprinzak, 1998). The paradigm for this kind of terrorism is a nuclear explosion in a major city (The attacks of 9/11). A second threat, one that materialised in both London and Madrid, is that of smaller scale attacks that kill fewer people.

It has been argued that the contribution of Amartya Sen 1985 to human rights has expanded and deepened human rights discourse by opening up new lines of enquiry in both Ethics and Economics and by promoting cross-fertilisation and integration on the above-mentioned fields. With regard to Ethics, Sen has challenged the exclusion of poverty, hunger and starvation from the characterisation of fundamental freedoms and human rights, and has contributed to the development of a framework in which authoritatively recognised international standards in the field of human rights can be conceptualised and understood within the framework of human rights for all.

Also, in Economics, Sen has pioneered new paradigms and approaches that focus on human rights centered concerns. With the contributions of Sen no uncertainties exist that Sen has succeeded in bringing the two scholarly disciplines, namely Ethics and Economics, closer together so that a proper research on either one of these disciplines will not be complete unless both disciplines are attended to and taken into consideration (Vizard, 2004).
3.4 Interrogation techniques in Afghanistan

As in Guantanamo, interrogation in Afghanistan operated without specific guidance. The Bush administration decided that interrogation would not be constrained by the Geneva Conventions (Golden, 2005). However, the pressure was on to use aggressive techniques. A policy was developed where prisoners would be shackled and isolated for at least the first 24 hours (sometimes 72 hours) of captivity. Interrogations in Afghanistan aimed at extracting information by “removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs, and implementing sleep and light deprivation” (Physicians for Human Rights, 2005).

In the days after September 11, much of the world stood shoulder to shoulder with the United States. There were candlelight vigils outside the US Embassy in Tehran, despite police orders to disperse (Sands, 2001). The French Daily, Le Monde, declared ‘Nous Sommes Tous Americains’ ('We are all Americans') and the German Chancellor called the terrorist attacks a declaration of war against the civilized world (Colombani, 2001).

Subsequently, on September 13 NATO voted that the attacks on 9/11 were an attack against all nineteen of its members (Drozdiak, 2001). It was inevitable that this sense of solidarity would fade with time. Europe was uneasy about the Guantanamo Bay Prison almost from the start. Spain promptly refused to extradite eight terrorist suspects to the United States (McGrory and Fletcher, 2001). The situation worsened when Defence Secretary Rumsfeld told reporters on 11 January 2002 that prisoners were unlawful combatants who do not have any rights under the Geneva Convention. Combined with newspaper reports on prisoners and the way in which they were treated, British, French, Belgian and Australian citizens were, among others, starting an agency in Europe. Tension ran high in England in particular (Economist, January 26, 2002).

On 16 January, 2002 the United Nations’ High Commissioner for Human Rights called on the US Administration to provide the prisoners with a competent tribunal to determine their status. The US Administration subsequently refused.
The US insisted that prisoners were being treated humanely, refusing to give independent monitors access to the base. At the same time a number of international groups, including the UN Working Group on Arbitrary Detention, condemned the detention at Camp Delta. According to a US spokesperson the purpose of holding the prisoners at Guantanamo Bay was and is to put them beyond the rule of law, beyond the protection of any court and at the mercy of the victors. However, international condemnation was not unanimous and several countries took great comfort from the prison at Guantanamo Bay (Steyn, 2003).

According to a spokesman for the US Military in Afghanistan, it was “legitimate to use lights, noise and vision restriction and to alter, without warning, the time between meals, to blur a detainee’s sense of time and to make use of sleep deprivation was within the Lexicon” (Van Natta, 2003).

In February 2002 prisoners at the base camp in Afghanistan began a hunger strike. By mid-March 3 prisoners had been admitted to hospital. Prison officials claimed that they did not know what had happened to the prisoners. By September 2002 57 prisoners were being treated for mental illnesses (Seelye, 2002). The number of attempted suicides rose steadily for the next year. For example, a young Saudi prisoner hanged himself in his cell. He suffered irreversible brain damage, and after three and a half months regained consciousness but since then was permanently disabled (Rose, 2004). By June 2003 the number of prisoners under mental health supervision had risen to about 90 (Canover, 2003).

More than 120 prisoners were taking Prozac or other anti-depressants. According to information some inmates speak in a childlike voice, nonsensical. They sing childish songs, which they repeat continually. They are also allowed to draw pictures with crayons and spend their days lying on the floor or beds.78

78 Yee, for God and Country, 101-02.
In November 2002, at a CIA-run prison north of Kabul, Afghanistan, code-named The Salt Pit, a young case agent ordered Afghan guards to strip a prisoner naked, chain him to a concrete floor, and leave him outside overnight. By the morning the prisoner had frozen to death. The Justice Department indicated it would not bring charges against the case agent because it would have been impossible to prove the prisoner had not been abused by guards during the night. The prisoner, who was in his early twenties, has never been identified. By the time of his death it was unclear if he had done anything wrong or whether he had been connected with terrorism. Ironically, the CIA case officer was promoted (Priest, 2005).

According to US military documents, two prisoners were killed at Bagram Air Base in December 2002. They had been chained to the ceiling, kicked and beaten over a period of several days. One US soldier admitted striking the prisoner 37 times, destroying his leg muscle tissue. One of the two prisoners had been captured by Afghan militia men and turned over to the US. He was sent to Guantanamo where he was kept for more than a year before being released without charges (Golden, 2005). Only later did the true facts come to light: Originally the US military officials said that the two prisoners had died of natural causes. After investigation by the New York Times the military acknowledge that the prisoners had been killed by US soldiers (Jeht, 2005). A total of 28 US soldiers have been implicated in these two deaths (Hendren and Mazzetti, 2004).

In June 2003, at a site near Asadabad, Afghanistan, a prisoner was kept without water for several days. On the fourth day an interpreter saw the prisoner lying on the ground, handcuffed. Afterwards it was found that the prisoner was already dead. The US military reported that he had died of a heart attack. He was eighteen. The interpreter no longer works for the US military (Clark, 2005).

In late 2003, the International Red Cross reported a worrying deterioration in the psychological health of a large number of detainees. They also warned the Bush administration that indefinite detention would continue to take its toll.79 In June 2004, 

79 Rose My Freedom.
The International Red Cross Report (ICRC) found an increasing incidence of mental illness mostly caused by prolonged solitary confinement. During this period of attack on Afghanistan the prison at Guantanamo had become an international pariah.

At times, within months of their arrival prisoners were finally told they would not be shot. The prisoners then began to suffer the chronic despair that comes from indefinite detention. Such uncertainty could lead to insanity.

Conclusion

The 'War on Terrorism' initially started with the attack on Afghanistan (Shalom, 2002) and the Taliban were quickly overcome by the US. Initially it was believed that Osama bin Laden had been wounded and killed, only to find out later through video and broadcast tapes that it was not the case. However, with the defeat of the Taliban in Afghanistan, the Bush Administration could set their minds on other main targets in the 'War on Terrorism'.

After the 9/11 attacks former President Bush went to the UN and obtained a Security Council Resolution, authorising action in Afghanistan. Originally the US refused NATO offers of help against Afghanistan, rather preferring to work with a mission-led coalition led by the willing.

The US and President GW Bush's concern with Weapons of Mass Destruction (WMD) is not unsubstantiated. Evidence found in Afghanistan proved that Al-Qaeda was actively seeking WMDs and that there was no reason to believe that they would not use these weapons. It is also not only the problem of the US and the Europeans, but everyone who is not part of Bin Laden's world, should be concerned. Consequently, many fear that a full-scale world war could ensue.

The 9/11 attacks have been diversely interpreted; some are of the opinion that they constitute the opening of a new Third World War between radicalised Islam and the
Modern West. Since the late 1970s the rise of radical Islam has caused continued instability in the Middle East. The War on Terrorism, according to former President Bush would be fought at several different levels and in several different stages. The first phase necessitated the occupation of Afghanistan, and the elimination of the regime, sheltering Bin Laden. However, this would only be part of a wider and more assertive strategy. Bush made it clear when he spelled it out by stating that there could be no compromise. Nations must choose to be on the same side as the US or to be against it. He proceeded by stating that after dealing with Afghanistan, Iraq would be next.

The international reaction to these attacks assumed many different forms. A number of countries initially decided to side with the US. Some countries felt that it was entirely legitimate for the US to wage war against those who had attacked them on September 11, 2001. However, this was not a green light to retaliate at all which had frustrated them in the past. There were also dangers involved in Bush’s strategy: That he could alienate all Muslims around the world, and that international opinions might turn against the US, or that the US might be in a position where retreat would not be easy (Baylis and Smith, 2005).

So why did former President Bush decline the offer of the Afghanistan government to hand over Bin Laden to a neutral country for trial, if the US government had evidence of Bin Laden’s involvement in 9/11? It seems to have escaped most people that the Taliban was the government and not Bin Laden or Al-Qaeda (Steele, 2001). Bin Laden and most of the Al-Qaeda members had fled Afghanistan at that stage. The West, however, saw the Taliban as a fundamentalist Islamic regime with hostile feelings towards Western values, and no respect for Human Rights. One example of such abuse was the forcing of Westernised women in Kabul to wear the traditional burka, excluding them from education, as well as assaulting them when they showed their faces in public (Gilbert, 2004).

The Taliban were punishing thieves by cutting off their hands and displaying the bodies of those they executed for more serious crimes such as adultery, rape and murder for a
period of four days. Was it the abuse of Human Rights that motivated the US war against Afghanistan?

Were there more obvious reasons for the war against Afghanistan? Logically, control over Afghanistan would provide the US with an immense reserve of oil and gas, and would also provide an alternative route (other than through Iran) to export this oil and gas (Chomsky, 2007c).

Looking at the above-mentioned facts, we can only come to the conclusion that the US appeared to have had a secondary agenda.

How is it possible for 19 Arabs to hijack four planes and kill themselves in order to also kill thousands of innocent civilians? On the other hand, how is it possible that the US responds by waging a war that is likely to kill more than a million innocent people, leaving the rest of the population impoverished?

To answer these questions it is important to understand why some people are so motivated to take their own lives and those of many innocent civilians. Is John Burton not correct in his argument that aggression and antisocial behaviour are in fact responses to human needs and frustrations?

Injustice is therefore the failure in people’s beliefs and actions to properly recognise other people’s identity, for example what they are, and what they have been through. So the ultimate injustice to be done to individuals is to treat them as mere objects.

The logical question that now arises is: Are the Americans not denying the Arabs their identity and the recognition that Burton is speaking about? A movement like Al-Qaeda offers the Arabs recognition of their identity by making them heroes and by promising them rewards in the hereafter because they defended the Islamic identity.

While the oppressed are striving for proper recognition, the powerful oppressors are
striving to maintain their own identities by looking down upon the people they dominate and exploit. In other words, the greater the upholding of this sense of 'superiority', the more pronounced the reaction on the part of the people who 'need' to challenge the state of affairs where their identities are oppressed or denied. So it can be said that it is this power of denial of identity that awakens the human need for identity and recognition that causes conflict (cf. Manfred Max Neef's exposition of the nine fundamental human needs: par. 3.5).

Furthermore, it can be said that the most intense conflict is derived from this denial of the recognition of identity. Subsequently, the oppressed person is then more readily prepared to sacrifice his life as a result of this human need.

It seems fair to state that the 9/11 attack on the Twin Towers was wrong and worth counterattack. There have been some suggestions that the outcome of the war is precisely what Bin Laden had hoped for (Atwan, 2007).

According to Axel Honneth, it is through this quest for recognition (acknowledgement, respect, esteem, admiration, love), the condition for attaining selfhood, that people tend to strive for and to create relations of mutual recognition, relations based on a commitment to justice, and to create and sustain social orders in which the significance of all people is recognised (Honneth, 2006).

The Bush administration was finally beginning to realise that it could no longer ignore the fact that Bin Laden was still on the loose, and that the situation was becoming an awkward political issue for the administration (Difilippo, 2006). Al-Qaeda had also grown into a more dangerous organisation than it was prior to the 9/11 attacks. It had become a more decentralised organisation, acting on instructions without them coming directly from Bin Laden.

The war plan by the Bush administration offered three targets in the War on Terrorism: Al-Qaeda, Afghanistan’s Taliban and Iraq. After the Second World War, a new
framework of International Law was established, which included the Geneva Convention. This new framework did not legitimise such unlawful conduct as was experienced in Afghanistan. Under the Geneva Convention prisoners of war are supposed to have special status.

The Bush Administration is therefore returning to the period before there was an international framework for dealing with war crimes, or dealing with crimes against humanity. The Bush Administration has claimed the right for itself to carry out certain acts of aggression against prisoners, civilians, terrorist and terrorist suspects, and also to deny them legal protection and rights (Tucker, 2003).

By doing this, the Bush Administration is stripping people of their fundamental human rights (Balken, 2003). What is going on in Guantanamo Bay involves the worst violations of human rights since the Second World War and since such acts have been criminalised. This is going back to a totalitarian state at its best.

In the midst of the Second World War, Winston Churchill condemned the use of excessive power to imprison people without charge, as the most odious crimes against humanity (Lewis, 1989). On the cover of the book, Terrorism by Eqbal Ahmad, is a photograph of Ronald Reagan sitting in the White House with a group of mujahideen from Afghanistan. These mujahideen later developed into the Taliban and Al-Qaeda (Ahmad, 2002).

Ironically, these mujahideen were trained to use arms and were coordinated by Pakistani intelligence under the supervision of the CIA, with the support of Britain and other powers. It would have been legitimate if they had been trained to defend Afghanistan, but this was not the case. The training was not to defend the Afghans, but to fight the Russians. What these mujahideen were trying to do was to protect Muslim lands from 'the Infidels'. It therefore takes some discipline not to believe the historian Arno Mayer’s immediate post–9/11 observation that since 1947, the US has been the chief perpetrator of pre-emptive state terror and innumerable other rogue actions,
causing immense harm, always in the name of democracy, liberty, and justice (Mayer, 2001).

If the current President of the US, Barack Obama sticks to his plans he will withdraw all US troops by the end of August 2010. Much will obviously depend on the smooth emerging of a new government and prime minister in Iraq. Several issues, if not handled correctly could reignite conflict.

The dispute over the ownership of the oil-rich Kirkeell area in Iraq, which is still dominated by the Kurds will probably still not be resolved in 2010. Mr. Obama will mainly attempt to re-impose peace in that region although the numbers of troops have been reduced in 2009 from approximately 125 000 to 50 000. But this cannot continue as a ‘status of forces agreement’ signed by G.W. Bush, which undertakes that all troops must be removed by the end of 2011.

General Stanley McChrystal, the commander of US and Allied Forces in Afghanistan received instructions from President Obama to employ a presenting strategy for victory: generally by supporting the Afghan army to beat the Taliban and deny sanctuary to Al-Qaeda. The lessons learnt in Vietnam may have to offer some light on the War of Terrorism: and that is that wars of this kind cannot be victorious. In World War II. American armed forces fought badly in Africa in 1942–1943 and also not so well in Italy 1943–1944, before getting it right in France and Germany in 1944–1945.

In Vietnam in 1965-1967 the US applied an incorrect strategy trying to fight an unconventional war with conventional forces. Only in 1968 did the US under Gen. Abrahams improve their strategy by introducing a true counter-insurgency. Instead of ignoring the South Vietnamese army, Abrahams built up the local forces until they could stand and fight largely on their own. Gen. McCrystal of the US in Afghanistan is now implementing a war strategy, which resembles the strategy of Gen. Abraham’s in Vietnam in 1968. Obama’s intention is to find a midway which could be a win-win situation for all parties (Thomas and Barry, 2009).
The next chapter will investigate the war in Iraq.
CHAPTER 4

TERRORISM IN INTERNATIONAL RELATIONS
The war in Iraq (2003 – present)

Introduction

In the previous chapter, the focus was on the War in Afghanistan, and this chapter will critically reflect on the War in Iraq, which is a continuation of the War on Terrorism. In the history of conflict and war, there are few instances that match the invasion and occupation of Iraq in terms of complexity.

This section will explain the overthrow of the Iraqi regime, which was achieved in record time, and will examine, from a developmental point of view, the early control of the war and the fall of Baghdad. Reference will be made to the prosecution of Saddam Hussein for his violation of human rights, and an evaluation will be done of his trial and subsequent execution. Mention will also be made that elections were held in Iraq for the first time and that a constitution was drawn up in record time. It will also be pointed out that Iraq is one of the most invaded and violated territories in the history of the world, so that over a long period of time the people who live in the country have developed survival and accommodation skills.

Because the Iraq War was not primarily about saving the Iraqi people from mass slaughter, and since no such slaughter was ongoing or imminent, Human Rights Watch at the time took no position for or against the war. In this chapter questions under investigation therefore relate to matters concerning the way in which communities dealt with the War on Terrorism after the atrocities of 9/11. Furthermore, does this provide answers to the world on how to deal with terrorism? And: did the horrific act of terrorism bring the world closer to a new global order based on international human rights and the international rule of law?
Against the background of the preceding questions, it will be shown that the urge to declare war in response to atrocities on the scale of 9/11 is understandable. However, it will be argued that one of the principal aims of international law is the protection of the human rights of the individual.

It will further be demonstrated that the Iraq War polarised and angered the Arab world, revitalising Islamic extremists. The chapter will conclude by evaluating the reasons why Iraq was attacked by the US and its allies.

4.1 The War on Terrorism: Iraq

The US invasion of Iraq in 2003 was based on a poor war plan. It can be said to have been a campaign plan for a few battles rather than a war plan as such. Its incompleteness became clear in the aftermath of the war.

“It was a horrible war plan,” said Patrick Clawson of the Washington Institute for Near East Policy, “because everybody was saying that you need to fight the war in such a way that you stand up a new authority afterward – and the war plan didn’t have a depth of thinking about that.” (Chomsky and Achcar, 2007). (Refer Figure 3: Map of Iraq: War on Terrorism):
In the Iraq war the Americans provided the majority of forces on the ground, in the air and at sea. Although the British contribution was welcomed by the US, it was that of a junior partner. Nevertheless, the overthrow of the regime in Iraq was achieved in record time by the US and their allies.\textsuperscript{80}

The hunt for Saddam’s weapons of mass destruction (WMD), the \textit{casus belli}, was quickly forgotten when the coalition realised there were no WMD to be found. The Iraqis fielded a sizeable army but their resistance had not been powerful enough. The Americans came, saw, conquered and then realised that they had no aftermath plan (Schlager, 2005).

However, there were no public cheers for democracy, no indication that this was the people’s choice. The war was launched because Saddam Hussein, President of Iraq,

\textsuperscript{80} The Law of War in the War on Terrorism, http://web.ebscohost.com Retrieved 03/08/2007
refused to co-operate with the United Nations inspectors in their search for his forbidden weapons of mass destruction.\textsuperscript{81}

Iraq fielded an army of nearly 400 000 soldiers, equipped with tanks, armed vehicles and artillery against an army not even close in numbers, but still the Iraqi army was defeated. The latter army did not fight at the frontier, it did not fight at geographical obstacles, it hardly defended the cities, and did not even defend the capital, Baghdad, where many of the world media predicted that Saddam would stage his Stalingrad (McDermot, 2006:174-175).

After the capture and fall of Baghdad, no trace of the government could be found. The US high command distributed packs of cards, each bearing the photographic image of a wanted man. Fortunately, this yielded results (Bergen, 2006) and the Deputy Prime Minister was arrested (Tariq Aziz), as well as a number of important role players in Saddam’s regime.

The invasion and occupation of Iraq comprised an index of errors of commission and omission (McDermot, 2006:174-175). Elections were held despite the Sunni boycott and constitutions were drafted in record time, even though there were flaws. Both Saddam’s sons Qusay and Uday were killed during a gun battle in the northern city of Mosul.

Finally, the mystery of the whereabouts of the dictator himself became known. An intelligence team working through Saddam’s family tree, identified his whereabouts. A party of American infantry soldiers, revisiting a farm already searched, discovered the entrance to an underground hiding place. When the trapdoor was lifted a heavily bearded Saddam was found (Galbraith, 2006:89-90). He held up his hands and announced that he was the President of Iraq and ready to negotiate. No incriminating evidence connecting Hussein and his regime with the 9/11 plotters or with Al-Qaeda, the organisation, was found.

\textsuperscript{81} National Security Strategy of the United States of America March 2006.
Iraq is one of the most invaded and violated territories in the world, so the people who live in that country have long possessed survival and accommodating skills. For this reason America and its allies should have made an effort to study the Iraqis and the terrain thoroughly before invasion (Keegan, 2007:1-8).

Ali al-Wardi, an Iraqi sociologist, claims that due to frequent invasions which devastated Iraq, the Iraqis would rapidly regress from civilisation and revert to the culture and values of tribal nomads. Because the people of Iraq are divided amongst themselves with regard to sectarian, ethnic and tribal issues, it appears that there is no way to resolve this other than by adopting a democratic system. There was ultimately no surprise about the collapse of Hussein and his people, since he had waged war against Iraq many times before. He had exhorted the population to stay loyal to him, and his execution caused cheers and joyful celebrations (Allawi, 2007:1-16; Galbraith, 2006:1-13).

In March 2003 the US government announced that diplomacy had failed in Iraq, and that it would proceed together with a coalition of allied countries, called the 'Coalition of the Willing', to rid Iraq of its alleged weapons of mass destruction. On 16 September 2004 Kofi Annan, the then Secretary General of the UN, indicated that the invasion of Iraq was not in conformity with the UN Charter, and therefore illegal (Annan, BC News).

As the war proceeded no weapons of mass destruction could be found in Iraq, neither could any link be found between Saddam and Al-Qaeda. These two reasons were originally given as the *casus belli* for the war on terrorism (Pena, 2006:25-35).

Maj. Gen. John Batiste, who commanded the 1st Infantry division in Iraq for a year, said that the initial US approach helped create the problems that followed. He said that the US had violated two principles fundamental to success. In other words, he argued that the US approach to the war failed to heed two of the most basic rules of military operations: Firstly, have everybody working toward the same goal, with one person in

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charge. Secondly, have enough people and machines to complete the job. Col. Teddy Spain, Chief of US military police forces in Baghdad, agreed with Batiste’s assessment (Ricks, 2007:115-148).

Much has been written about the decisions of George W. Bush and Tony Blair concerning Iraq. Ultimately both Bush and Blair stated that the judgment of their decision-making will rest with posterity and the Almighty (Hakki, 2002).

The following question needs to be addressed: What would have happened if the coalition had not taken action against Saddam Hussein? He would still have been in power, using torture as a governing policy and a tool to abuse human dignity and human rights (Schlager, 2005).

The question is whether the world would rather have had a Saddam free to abuse human rights, to terrorise his own people – free to trade and pass on his regime to his sons with the same outlook and beliefs? It is well-known that Hussein had negotiations with jihadists to join him to fight the West and that he never abandoned the dream of acquiring nuclear weaponry (Bergen, 2006:28).

It was important for the West to defeat terrorism, which implies that terrorists must be denied safe places to train or gather. For this reason the invasion in Iraq is understandable. However, the greatest benefit of the invasion of Iraq was the advancement of democratic values in the Arab world. As a result of the defeat of Iraq, the first free and fair elections ever took place in an Arab country. The signs of people taking up the struggle across the Middle East against jihadists, is even more significant. In Iran students and bus drivers have been among the people determined to take up the fight against Islamist establishments. In Lebanon open public protest has forced Syria to withdraw its forces and give the nation breathing space again.

After years of oppression, the people in the Middle East deserve the opportunity to enjoy the same rights and freedoms as the Westerners (Garrett, 2005:85-93).
4.2 **Weapons of Mass Destruction (WMD)**

Originally the Clinton Administration pursued a policy aimed at keeping Iraq from threatening its neighbours with its programmes concerning WMD. However, maintaining UN sanctions imposed in 1990, kept Hussein under control. Also, on several occasions the United States bombed targets in Iraq. One such an occasion was in 1993 when Hussein tried to kill former President Bush (Senior) in Kuwait. A second occasion was in 1996 when Saddam’s forces invaded the Kurdish city of Erbil and also when he expelled the UN from Iraq while they were doing weapons inspections back in 1998 (Arce and Sandler, 2005:49;183). President Clinton persisted with the no-fly zone in the North for the Kurds, and extended the Southern no-fly zone to the 33rd parallel just south of Baghdad.

President Bush (Senior) also authorised a CIA programme to assist the Iraqi opposition. The Clinton Administration continued to support this programme, but his Iraq policy was criticised by many. There were some who felt that the continuation of sanctions imposed was too severe on Iraqi children, while others thought that not enough was being done to remove the Saddam regime (Arce and Sandler, 2005:49;183).

In retrospect, the Clinton policy served the US well. Saddam did not threaten US interests, neither did he develop Weapons of Mass Destruction. On the other hand, the US continued to protect the Kurds in Iraq and its major focus on the protection of Human Rights helped to prevent mass killings as had occurred previously in the 1980s and 1990s (Schlager, 2005).

However, sanctions destroyed the middle class in Iraq and countered the technological development of the country, for example, there was no cell phone technology in Iraq (Galbraith, 2006:67-69).

According to the US and British governments, the Iraqi government of Saddam Hussein continuously undermined the weapons inspection programme conducted by the UN
Special Commission (UNSCOM). Iraq’s refusal to comply with the UN weapons inspections was the direct result of the bombing in 1998, as previously mentioned. The use of chemical weapons had been outlawed by the League of Nations during the 1920s and the ban had been sustained throughout the Second World War and afterwards. UNSCOM worked inside Iraq for more than seven years, discovering and destroying many of Saddam’s weapons of mass destruction (WMD), but eventually they withdrew in 1998 (Hakki, 2002).

UNSCOM was replaced by UNMOVIC under Resolution 1284 of the Security Council of the UN. Saddam, however, declined to respect Resolution 1284 and alternatively refused the UN inspectors access to Iraq. This ultimately led to Saddam's downfall. Due to his refusal to co-operate and respect Resolution 1284, the US and Britain requested a new UN Resolution, which would authorise joint military action (Dunne, 2002:93-102). This was finally submitted to the Security Council as Resolution 1441.

This resolution required the Iraqi government to prove that it had no weapons of mass destruction and to co-operate with the inspectors of UNMOVIC. There was also a warning that if Iraq failed to co-operate, serious consequences would follow.

UNMOVIC’s inspection teams arrived in Iraq on 25 November 2002, led by Hans Blix, a former Swedish foreign minister. The UNMOVIC teams were accompanied by the International Atomic Energy Agency (IAEA), numbering almost 100 inspectors. The Iraqi government wanted to provide paper evidence that it had nothing to hide, while the US and Britain wanted material verification that all Iraqi WMDs had been destroyed. However, President Bush was not prepared to follow Blix, or anyone else, through the long process of inspection, and on 19 December President Bush declared Iraq to be in breach of Resolution 1441 (Hakki, 2004).

This declaration met with acceptance in the US, and its stance against terrorism evoked popular support. In Europe Bush could, however, only count on Italy, Spain and Britain.
On 17 March 2003 President Bush issued an ultimatum to Saddam and his family that they were to leave Iraq within forty-eight hours (Blix, 2004:8).

4.3 The invasion - 2003


Approximately 40 other nations joined the US in this war against terrorism. The original coalition of military forces amounted to approximately 300 000, of which 98 per cent were US and British troops. Originally the resistance came largely from the Fedayeen and Coyalists of Saddam Hussein’s Ba’ath Party. Most of the fighting was done in the Sunni Triangle, which consists of Baghdad, Anbar and Salah Ad Din.

The Iraqi resistance has been described as a type of guerilla warfare, the tactics included the use of mortars, missiles, suicide bombers and snipers. The coalition nations, together with the United Nations, began to work to establish a democratic state (USA Today, April 30, 2004). President Bush declared that the US troops would remain in Iraq challenging the insurgents to 'bring 'hem on'.

On 22 July 2003 Saddam Hussein’s two sons (Uday and Qusay) and one of his grandsons, together with 300 top leaders of the former regime, were killed. On 13 December 2003 on a farm near Tikrit, Saddam Hussein was captured in Operation Red Dawn (Guardian, January 19, 2004). On 31 March 2004 Iraqi insurgents in Fallujah ambushed a convoy of four American private military contractors who were delivering food. The four contractors were killed by grenades and small arms fire, and their
bodies set alight. Their burned corpses were dragged through the streets before they were hung over a bridge crossing the Euphrates.\textsuperscript{89}

On 31 January 2005 the Iraqis elected a transitional government in order to draft a permanent constitution. The beginning of 2006 was characterised by government talks, growing sectarian violence and continuous anti-coalition attacks. At the same time the United Nations described the environment in Iraq as a 'civil war-like situation' (UN News Centre, November 25, 2006).

A 2006 study by the John Hopkins Bloomberg School of Public Health has estimated that more than 601 000 Iraqis have died in violence since the US invasion and less than one third of these deaths came at the hands of coalition forces (Hopkins, 2006).

The current government of Iraq took office on 20 May 2006, following the approval by the members of the Iraq National Assembly. In September 2006 The Washington Post reported that the Marine Forces in Iraq had filed a secret report, stating that there was almost nothing the US military could do to improve the political and social situation in the Anbar province (Washington Post, September 1, 2006). Iraq was listed fourth on the 2006 Failed States Index compiled by the American Foreign Policy magazine, with Sudan listed first (Foreign Policy, 2005). On 17 November 2006 the US elections removed George W. Bush’s Republican Party from control of both the United States House and the Senate. The failure in Iraq was quoted as the main reason for this.

The most deadly attacks since the Iraq invasion occurred on 23 November 2006. According to the Associated Press, suspected Sunni-Arab militants used five suicide car bombs and two mortar rounds on the capital's Shiite Sadr City Slum to kill at least 215 people and wound 257.\textsuperscript{90} On 28 November 2006 Marine Corps intelligence reported that the US and Iraqi troops were “no longer capable of militarily defeating the insurgency in Al-Anbar”, and that “nearly all government institutions have disintegrated,

\textsuperscript{89} Residents hang slain Americans bodies from Bridge CNN.com (http://www.cnn.com/2004/WORLD/meast03/31/iraq.main.
\textsuperscript{90} http://www.msnbc.msn.com/id/15866123. 2006-11-23.
or been thoroughly corrupted and infiltrated by Al-Qaeda” (Washington Post, November 27, 2006).

A bi-partisan report was released by an Iraq study group on 6 December 2006. The group was led by former Secretary of State, James Baker and former Democratic congressman, Lee Hamilton. They reported that the situation in Iraq was ‘grave and deteriorating’ and that the ‘US forces seem to be caught in a mission that has no foreseeable end’. The report also made 79 recommendations, which included the re-establishing of diplomatic ties with Syria and Iran, and intensifying efforts to train Iraqi troops (News Hour, December 19, 2006).

On 10 January 2007 Bush made a televised address to the American public in which he proposed an increase in the number of troops in Iraq, by 21 500. He also proposed an employment programme for the reconstruction of Iraq. An amount of 1.2 billion dollars would be allocated for such programmes (Whitehouse News, January 20, 2007). However, on 7 February 2007 British Prime Minister Tony Blair announced that the UK would reduce its troops in Iraq (BBC News, February 21, 2007). Danish Prime Minister, Anders Fogh Rasmussen, also announced the withdrawal of Danish troops from Iraq.91 On 30 March 2007, the US Senate approved a bill to remove all combat soldiers from Iraq by 31 March 2008.92

4.4 The battle of Baghdad

By the time the Baghdad battle began, coalition airpower had already inflicted massive damage to Iraq’s Republican Guard. It had already destroyed much of Iraq’s command and control capability and had damaged many units to the point of them ceasing to operate. The coalition had achieved an unprecedented degree of “air dominance that caused on-call destruction of targets with minimum collateral damage.” (Hakki, 2002). It became apparent that the Republican Guard had been destroyed, and the Iraqi armed

92 http://www.reuters.com/article/topnews/idUSN2037063920070329?
forces that remained, could not manoeuvre effectively against the advance of the coalition forces. On the other hand, the US Marine Corps was inherently more vulnerable to attack than the airpower. Nevertheless, the US Marines advanced with remarkable speed. At ground level the sudden advance of the US foot soldiers to Baghdad International Airport exposed the weakness of the remaining Iraqi forces. This enabled the coalition forces to launch armoured penetration raids into Baghdad.

Events such as the above proved to the Iraqi forces that they were not capable of defeating the coalition forces and that the rumours that the coalition forces had been defeated, were false. (Branigan, 2003:5). The sheer speed of the foot soldiers, the air-strikes, and penetration of Special Forces largely paralysed and defeated most of the Iraqi resistance in the north as well as in the west of Iraq. Still, Hussein's regime believed that they could rely on the mass mobilisation of the Iraqi people through the army. But this did not happen. As a result, Hussein's regime had little or no ability to conduct any kind of mass urban warfare (Cordesman, 2003:94-114).

The fall of Baghdad
By April 2003 coalition forces had effectively defeated the organised resistance in Baghdad. Although US intelligence estimated that most of the Iraqi Republican Guard had been destroyed, there was possibly one Iraqi brigade along with Special Republican Guard forces in the area of Tikrit. Even so, most of the remaining 10 regular army divisions surrendered or collapsed (Cordesman, 2003:94-114).

Ironically, military victory does not necessarily mean political victory. Like the Afghan war, the Iraq war had no 'clean' ending. Although President Bush declared the fighting over in May 2003, no senior official in the Iraqi regime had surrendered (Sanger, 2003:1). The problems of peace-keeping and nation-building began while the fighting still raged. Most Iraqi forces surrendered. This left Iraq's population deeply divided along sectarian lines between Sunni and Shiite, along ethnic lines between Arab, Kurd, and Turcoman, and along tribal lines, as well as between the supporters of the regime and
those who had suffered under it. From the start there was the threat of continued resistance from Saddam’s supporters.

These internal problems were made worse by the fact that US and British forces were not manned and organised to occupy urban areas or to secure the country. This led to massive looting, which did far more civil and economic damage than the fighting. The initial US and British nation-building effort was badly understaffed, and was primarily organised for humanitarian emergencies, rather than for security and economic reconstruction. The coalition forces also failed to provide any clear set of goals and plans for nation-building that could serve to motivate or reassure the Iraqis, before, during and after the war (Dunne, 2002:93-102).

Nevertheless, the nation-building efforts began to gather momentum in July 2003, but still faced serious resistance from pro-Saddam, pro-Ba’ath and anti-US factions. However, the US and its allies were confronted in their nation-building and peacemaking efforts with a state of violence, resulting in an average of almost one American casualty per day, and sometimes as many Americans were killed per day as during the war itself (Dunne, 2002:93-102).

Victory in Iraq had much the same character as victory in Afghanistan (Cordesman, 2002). The enemy’s main forces had been destroyed, but hostile elements remained. The inability to rapidly succeed with nation-building, gave hostile elements time to regroup, which stimulated internal conflict in Iraq.

4.5 The life of Saddam Hussein leads to the Dujail trial

4.5.1 Introduction

If the trial of the Iraqi President and others was unfair, their human rights were violated and Hussein’s execution was a serious violation of the human right to life and the prohibition of cruel and inhumane punishment. In respect of international criminal law, it is possible that an international crime had been committed. Evaluated legally, if this is the case, there may not be only a moral duty, but also a legal duty to bring the
perpetrators of the crime to justice. The defence lawyers laid out a detailed account of the flaws that made the trial a violation of the internationally protected human right to a fair trial.93

The Iraqi Special Tribunal (IST) did not address the allegations that the trial and execution was illegal, biased, and not independent from political interference. The tribunal summarily dismissed these allegations, as if they were groundless and malicious. In fact, every independent legal expert that reviewed the trial, found it to have been unfair (Issam, 2005).

The UN working group on Arbitrary Detention issued two legal opinions stating that the trial was unfair. Some non-governmental organisations such as Human Rights Watch and Amnesty International, as well as the International Action Centre and the Transitional Justice did speak up weeks before the execution of Saddam. The most comprehensive statement was made by Human Rights Watch, which comments that the trial, “… reflects a basic lack of understanding of fundamental fair trial principles, and how to uphold them in the conduct of a relatively complex trial. The result is a trial that did not meet key fair standards. Under such circumstances, the soundness of the verdict is questionable. In addition, the imposition of the death penalty – an inherently cruel and inhumane punishment – in the wake of an unfair trial, is indefensible” (Human Rights Watch, November 2006).

If we are to take international criminal justice seriously, we ought to investigate those who abuse it. Abuses in these processes are classified as the most serious and damaging of all crimes to the system of international criminal justice. There is also state responsibility for violations of the conventions by the state parties, on the one hand (Truskett, 2004). On the other hand, there is the individual responsibility of those who have contributed, or are alleged to have contributed to an unfair trial.

93 http://cdpublishing.org August 2006
The international community did little to stop either the trial or the execution, despite the perception that the trial was unfair.

### 4.5.2 Methods of torture by Hussein and his regime

The victims of torture or their families have reported several methods of torture to international human rights groups such as Amnesty International and Human Rights Watch (Power, 2005).

An example of such torture was eye gouging. A Kurdish businessman in Baghdad was executed in 1997. This case was reported to Amnesty International. When, at the request of the family, the body was retrieved, the eyes had been gouged out and the empty eye sockets stuffed with paper.

Piercing of the hands with an electric drill was used on political detainees. A case was reported to Amnesty International where acid was poured into one of these victim's open wounds.

During the Iraq invasion in Kuwait, victims were caught and hung by their wrists and gradually lowered into acid baths. This was reported by David Scheffer, a US Ambassador for War Crimes. Photographic evidence was produced. Victims were also blindfolded, stripped of their clothes and suspended for hours by their wrists, hands tied behind their backs, until shoulders, muscles and ligaments were dislocated.

Women were reportedly raped and sexually abused and broken bottles were forced into victims' anuses.

It was also reported that victims were told that they were to be executed. When brought before a firing squad, blanks would be fired at them.

Victims were also forced to lie face down, then beaten with a cable on the soles of their feet until they lost consciousness (called 'Falaqa'). Beating of victims was also done
with various objects such as whips, hosepipes, metal rods and canes. Extraction of fingernails and toenails, and the extinguishing of cigarettes on various parts of the body have also been reported. Evidence also exists that body shocks were inflicted on various parts of the body such as the genitals, ears, tongue and fingers (Foreign and Commonwealth Office London, 2002).

4.5.3 Chemical attacks executed by Saddam Hussein in Iraq during the period 1987-88

According to Human Rights Watch, at least 60 villages in the north of Iraq, as well as the town of Halabaja, were attacked by Hussein’s soldiers. They used mustard gas, nerve gas or a combination of the two in the attacks, which were targeted at the Kurds in this region (Human Rights Watch, 2006).

Human Rights Watch also reported that the Iraqi regime used chemical weapons for at least four complementary purposes:

- To spread terror and fear amongst the civilian population
- To harass and kill retreating guerillas
- To attack base camps of the Kurdish guerillas
- To inflict punishment on civilians for supporting for the Kurdish guerrillas.

The use of chemical weapons is prohibited under any circumstances, and is by nature indiscriminate.

4.5.4 The trial of Saddam Hussein and others

Saddam Hussein’s trial resumed on 30 December 2006. He was charged with crimes against humanity by the interim Iraqi government. The coalition Provincial Authority voted to create the Iraqi Special Tribunal (IST) consisting of five Iraqi judges. Hussein, along with eleven senior Ba’athist officials, remained in the custody of US forces at Camp Cropper in Baghdad.
On 18 July 2005 Hussein was charged by the Special Tribunal with a series of charges relating to mass killings of the inhabitants of the village of Dujail in 1982, after a failed assassination attempt against him.  

Meanwhile international human rights groups, including Human Rights Watch, Amnesty International as well as UN bodies such as the Working Group on Arbitrary Detention and the High Commissioner for Human Rights, stated that the Iraqi Special Tribunal and its legal process did not meet international standards for a fair trial. The United Nations Secretary-General (Kofi Annan) also declined to support the proceedings, expressing similar concerns over fairness as well as over the possibility of a death sentence in Hussein's case. The latter called the court a “play aimed at Bush’s chances of winning the US presidential elections.” Saddam rejected the charges against him and stated, “[t]his is all theatre. The real criminal is Bush” (The American Spectator, October 11, 2005).

International spectators pleading for a fair trial for Saddam and other Ba’ath party officials were former Malaysian Prime Minister Mahathir Mohamad; former US Attorney General, Ramsey Clark; former French Minister of Foreign Affairs, Roland Dumas and former Algerian President, Ahmed Ben Bella (Issam, 2005).

During the opening sessions of the trial, Hussein rejected the tribunal’s legitimacy as well as its independence from the control of foreign occupation (BBC News, November 5, 2006). All the defendants pleaded not guilty after the charges were read. Subsequently, on 7 December 2005, Hussein refused to enter the court. His complaints included, among other things, that he had not been able to change his clothes for four days (San Diego Union Tribune, October 19, 2005).

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Instead of cross-examination during the court proceedings Hussein was complaining (on 12 December 2005), that his US captors had tortured him. He stated: “I have been beaten on every place of my body, and the signs are all over my body”.

On 5 March 2006, Saddam made political statements from the stand. He got into an argument with the judge, and this caused the trial to proceed in camera. On 19 June 2006 the Chief Prosecutor called for the death penalty for Saddam and four defendants (Daily Telegraph, June 2006). On 27 June 2006 two of Saddam's lawyers announced in a press conference that the trial had been conducted on an unfair basis by the US authorities using Iraqis as a front. They also stated that the United States had refused to provide adequate protection for the defence lawyers, despite several requests having being made.

4.5.5 The verdict

On 5 November 2006, Saddam was sentenced to death by hanging, for the killing of 148 Shiites in Dujail. When the judge made this announcement, Hussein shouted, “[l]ong live the people. Long live the Arab nation. Down with the spies – God is great” (New York Times, November 5, 2006).

After the verdict an appeal was mandated by the Iraqi judicial system. There were, however, speculations that the appeal could last for years. The actual execution was therefore delayed. However, on 26 December 2006 Saddam’s appeal failed and the death penalty was declared (Kerr, 2006). No further appeals were legally possible and the execution had to take place within 30 days from the failure of his appeal. On 30 December 2006 Hussein’s execution was carried out. The former Iraqi Vice-President, Taha Yassin Ramadan was sentenced to life in prison (BBC News, November 5, 2006), but the sentence was later changed to death by hanging on 12 February 2007.

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98 http://www.timesonline.co.uk/article/0112089-140939100.html.online.
The former Ba’ath party officials involved included Abdullah Kadhem Roweed Al-Musheikhi, his son Mizher Addullah Roweed Al-Musheikhi, and Ali Daeem. Ali was sentenced to 15 years in prison. Mohammed Azawi Ali was acquitted due to a lack of evidence (BBC News, November 5, 2006).

4.5.6 International reaction to Hussein's verdict

The following paragraphs will give a brief exposition of the international reaction to the verdict of Saddam Hussein. It will also provide an indication of the view of different governments and different organisations on capital punishment and Human Rights.

In Europe, the UK and Italy were not in favour of the death penalty, while German Chancellor Angela Merkel welcomed the court judgment against Saddam Hussein: Former British Prime Minister Tony Blair stated that he was against the death penalty, whether Saddam Hussein or anybody else was involved, and Prime Minister Romano Prodi stated that Italy was opposed to capital punishment, always and in all cases.\(^99\) The Foreign affairs committee member Konstandin Kosachev of Russia indicated that he doubted if the death penalty would be carried out.\(^100\)

In the US President George W. Bush said in a statement, “Saddam Hussein’s trial is a milestone in the Iraqi people’s efforts to replace the rule of a tyrant with the rule of law, and today, the victims of this regime have received a measure of the justice which many thought would never come” (Whitehouse News, November 2006).

In New Zealand and Australia, the guilty verdict was met with approval, but both Prime Minister Helen Clark of New Zealand and Mr. John Howard, Prime Minister of Australia, objected to the death penalty.\(^101\) According to Howard, the real issue is that Hussein was tried in a transparent fashion, which marked democracy and the rule of law.\(^102\)

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However, in the Middle East, Foreign Minister spokesperson Mohammed Ali Hosseni stated that Iran welcomed the death sentence (BBC News, November 5, 2006).

In reaction to the verdict against Hussein, Louise Arbour, the UN Human Rights Chief, called for a moratorium on executions after Saddam was sentenced to death. She further requested that defendants should be granted a fair appeal, and concluded that persons accused of major human rights violations should be guaranteed the right to a fair trial. This is regarded as the key to consolidate and strengthen the important process of ensuring justice and countering impunity that Iraq had embarked upon. The former President of the European Union (EU) impelled Iraq not to carry out the death penalty against Saddam Hussein. He further stated that the EU opposes capital punishment in all cases and under all circumstances.

4.5.7 Evaluation of the trial of Saddam Hussein

As previously stated, the death sentence was passed on Saddam Hussein on 5 November 2006 for crimes against humanity.

Al Maliki, the newly elected president of Iraq, is a Shiite who suffered as much as the Kurds under Hussein and his Sunni-dominated regime. The Shiites and Kurds strongly approved of the death penalty being carried out, since they were seeking revenge for decades of oppression. Maliki would have faced the intense wrath of his own community had Saddam been acquitted or given a lesser sentence for the systematic elimination of 148 Shiites blamed for an attempt to assassinate the dictator in 1982. The Sunnis lost their power and privileges when Saddam was defeated, and it was feared that this would intensify the surge in sectarian slaughter between the Sunnis and the Shiites, which could cause an all-out civil war in Iraq (Sachs, 2003).

There were, however, many in Washington who feared that Saddam would testify in court about the support he had received from former President Ronald Reagan during the 1980s, when Saddam was slaughtering thousands of his fellow citizens with nerve gas and other poisons (Issam, 2005).
It became clear that the Iraqi judges were under pressure from the US to announce their verdict against Hussein in the final run-up to mid-term elections in the US as a desperate attempt by the Bush Administration to win votes for the Republicans. It was Donald Rumsfeld (at that stage Reagan’s personal contact on Iraq) who flew to Baghdad on several occasions during December 1983 to March 1984, while Iraq was at war with Iran, a war started by Iraq. Rumsfeld was sent to reassure Saddam that, despite the public condemnation of the use of chemical weapons, the US Administration stood firmly behind him. Despite Rumsfeld’s involvement with the Hussein regime he has, as far as is known, never been publicly questioned on his role in aiding Baghdad (Schlager, 2005).

At that time the Reagan Administration believed that Iran was a threat to Saudi Arabia and the Gulf States, as well as to Jordan and Egypt. In 1982, this belief motivated the Reagan Administration to remove Iraq from the State Department’s blacklist of states aiding terrorism. The US consequently turned a blind eye to Iraq’s use of chemical weapons (not only against Iran, but also against the Kurds in Iraq), and provided them with secret support against Iran.

The US provided loan guarantees worth billions of dollars to Baghdad with which Hussein bought weapons and technology. Twenty years later George W. Bush cited Hussein’s alleged weapons of mass destruction as justification for invading Iraq and toppling the regime that earlier US administrations, including his father, had treated as an ally.  

Several days before Saddam Hussein was sentenced to death for his crimes against humanity, one of his translators declared that executing him would 'open the gates of hell' in Iraq. US officials and their Iraqi allies had great hopes for the special tribunal set up for the court case of Hussein and other members of his regime. They believed that it would convince partisans of the older order that Saddam was really the monster worth

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103 Blanche, Ed. Middle East Judging Saddam. December Issue 373, p. 36-38.
overthrowing, and it would provide a showcase for impartial justice in the new Iraq (The Economist, 2007a).

The entire trial of Saddam was carried out under unacceptable circumstances: The first chief judge resigned because of political interference (an offence and violation under both the Iraqi Constitution and the statutes of the Iraqi Special Tribunal, now the Iraqi High Tribunal). The second judge was dismissed because of an alleged involvement in the Ba’ath party and the third judge was appointed simply to carry out the political wishes of the Iraqi government.104

Throughout the proceedings of Hussein's court case not a single piece of evidence or legal argument was produced to show that the Revolutionary Court was a summary court, which is the only basis for a conviction. The Iraqi High Tribunal is not required to find guilt 'beyond reasonable doubt', but rather the standard of proof is only whether the Tribunal is 'satisfied' that the charges have been proved.

In accordance with international law, the right of the accused to be informed promptly of any charges against him is guaranteed. Article 9, paragraph 2 of the International Covenant on Civil and Political Rights, ratified by Iraq on 25 January 1971, stipulates that:

Anyone who is arrested shall be informed at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him (International Covenant on Civil and Political Rights Act 9, March 23, 1976).

The above right is also guaranteed under Iraqi law. Act 19, paragraph 4.1 stipulates:

...to be informed promptly and in detail of the content, nature, and the reasons for the charges directed against him (Supreme Iraqi Criminal Tribunal Law, October 18, 2005).

This means that the defendant should be formally apprised of the charges at the beginning of the trial. In fact, the trial cannot start and the court cannot assert

104 Blanche, Ed. Middle East Judging Saddam. December Issue 373, p. 36-38.
jurisdiction over the case before a formal indictment is issued against the accused by an investigative judge. Under Iraqi law, it is the investigative judge, not the prosecutor, who conducts the pre-trial investigation, gathers the evidence, including reception of testimony of witnesses, and decides whether the accused should be referred to trial. If the investigative judge determines that there is enough evidence to support a finding that the accused has committed a crime within the jurisdiction of the special tribunal, he issues an indictment called ‘Qarar ihalet’ (referral decision), in which he summarises the facts and the crime attributed to the accused as well as the specific section of the law under which the accused shall be held responsible.

It is, however, not clear whether the trial court in the case against Saddam Hussein had released the original indictment issued by the investigation judge.

On 4 January 2007 an independent United Nations Human Rights expert called on the Iraqi government to halt the other executions and revise its judicial system to comply with international law. This was called for due to 'glaring flaws' in the trial of Saddam Hussein and his co-defendants.

Mr. Alston, a law professor at New York University, cited three major flaws in Saddam Hussein’s trial: Firstly, the trial was marred by serious irregularities denying Hussein a fair hearing. Secondly, the Government engaged in an unseemly and evidently politically motivated effort to expedite the execution by denying time for a meaningful appeal and by closing off every avenue to review punishment. Thirdly, the humiliating manner in which the execution was carried out clearly violated human rights law. The right not to be subjected to cruel, inhuman or degrading punishment was violated when Hussein was mocked by his executioners and this was shown to the world in video, as a morbid public spectacle.

Alston concluded by stating that if the then Government of Iraq was serious about departing from the predetermined and arbitrary justice meted out by Saddam himself, a number of reforms had to be adopted urgently, adding that as a first step, the execution
of Hussein’s two co-defendants, Baryan Ibrahim Al-Hassan and Awad Hamad Al-Bandar, would have to be halted.105

4.5.8 The Execution

The trial of Saddam Hussein and others started on 19 October 2005. The Iraq Special Tribunal formulated formal charges against Saddam and his co-defendants, based on the 1982 massacres in the town of Dujail.

This was not the first charge against Saddam. As early as 1993 Warren Christopher, the then US Secretary of State, had sought to prepare a war crimes charge sheet against Saddam and other leadership members of the Ba’ath party (Allawi, 2007:433). Also throughout the 1990s various organisations made it their mission to prosecute Hussein. In July 2003, the UN held a number of sessions in Baghdad, where they discussed the regime’s war crimes and justice for the victims of Hussein and his regime (Knikmeyer and Sebti, 2006).

By the summer of 2005 the Special Tribunal was prepared to commence with the trial of Saddam. The defendants took every opportunity to attack the Special Tribunal as a forum, the laws under which they were charged and the judges who were responsible for a verdict (Barria and Roper, 2005:349-368).

The defence team’s strategy was to relate the crimes that the defendants were accused of to the emergency conditions of a country during wartime. The strategy was to some extent successful, but failed to address the overwhelming evidence of the killing of minors. The Tribunal was clearly not totally impartial, for example, that Iran’s charges against the former regime could be ignored.106 This resulted in the charge of 'Crimes of Aggression', under which Saddam could have been tried for his start of the Iran-Iraq war, to be dismissed. The Special Tribunal was held inside the Green Zone, protected

106 The quote is from Juan Cole, Christian Science Monitor, 23 February 2006.
by US troops. A far better arrangement would have been to have the trial outside Iraq with international judges (Kerr, 2006).

Not surprisingly, the worldwide reaction to the execution of Saddam Hussein was varied, as already discussed in this chapter. Closer to home in Baghdad the reaction to Saddam’s execution followed sectarian ethnic lines, with the majority of Shiites and Kurds, who were often brutally persecuted by Saddam (Issam, 2005), celebrating in the streets, while on the other hand the Sunni population angrily grieved because Saddam had elevated them to power and protected their interests for decades.

A statement by the newly elected Prime Minister of Iraq’s office stated that the execution of Saddam brings an end to all the attempts to return to a dictatorship. Similarly, Iran rejoiced at the news of Saddam’s execution (Chandler, 2007). In the same vein, the former Information Minister of Kuwait, Saad bin Tafla al-Ajmi declared Saddam’s execution to be the ‘best gift for humanity’ (Chandler, 2007). However, many human rights activists were cautious to express an opinion on the outcome of the trial and the rushed execution. Richard Dicker, a director of Human Rights Watch’s International, stated that the test of a government’s commitment to human rights is measured by the way it treats its worst offenders.

Several countries have abolished the death penalty around the world, despite the fact that a preponderance of the population are in support of it (Steiker, 2003). Examples are Germany in the late 1940s, the United Kingdom in the 1960s, Canada in the 1970s and France in the 1980s. Each abolished the death penalty despite a proportion of approximately two-thirds of the population favouring this method of punishment (Koh, 2002).

However, supporting the death penalty in today’s international political climate comes at a price. This practice allows a nation’s allies and adversaries to question a country’s moral leadership concerning international human rights (Koh, 2002). The question now
arises whether the death penalty was a violation of the human rights of the accused Saddam Hussein?

In answering this question while keeping Hussein's case in mind, a number of other issues have to be addressed. Firstly, the inflictor of the penalty must be authorised to impose the penalty and also ensure that it is carried out. Courts are authorised to do this. Secondly, the recipient of the penalty must be guilty of an offence, and must have been found guilty through a reputable procedure. Thirdly, the purpose of punishment is to secure the rights of the non-criminal, and as requital serve a proper measure of justice on the guilty. Fourthly, punishment must be aimed at any breach of the law, regardless of who has been harmed.

It has been said that all punishment works by depriving people of things that they value, whether money, liberty or life (Truskett, 2004). These principles allow the defender of the death penalty to claim that it is an appropriate method of punishment to deter crimes of a sufficient degree of gravity. Therefore: was the death penalty in Saddam’s Hussein case appropriate, or were his human rights violated? The answer must be yes, the punishment fitted the crime. Therefore it was legitimate!

4.6 Negotiating a Constitution and final draft

The current Constitution of Iraq was approved by a referendum, which took place on 15 October 2005. The main reason for the creation of a transitional period in the Iraqi political process was to allow members of the Iraqi Constitutional Committee to write a permanent constitution.

Through a permanent constitution, it was reasoned, the Iraqi state would be refashioned in ways that would reflect the values and aspirations of its myriad communities. The Constitution was also a means to address historical wrongs and establish a new democratic dispensation.
It took three months after the constitutional elections before a government could be announced. The Constitution was also drafted to replace the Law of Administration for the State of Iraq during the Transitional Period (the “TAL”). The fear that the Iraqi Constitution would enshrine *Sharia* law and its purported negative effects on women’s rights was exaggerated.

Islam’s moral basis for legislation underlined the new constitution. The wording of the Constitution reflected the need to strike a balance between Islamic law and democratic principles. The Constitution affirmed Islam as the religion of the state and stipulated that no law could be passed that would violate its principles.

There were two other issues that the people wanted to reflect in the Constitution: Firstly, providing special status for the holy shrines of the Shia and secondly granting Marijiyya a constitutionally recognised position. The final Constitution, which was presented to the Iraqi public, was a document that would have been unthinkable in the recent past. The thrust of the new Constitution, besides the human rights given to individuals, was the adoption of federalism and decentralisation (Roseman, 2005). Power was given to regions and provinces which would enjoy considerable autonomy from the centre. In case of disputes between federal and regional authorities, the region’s law would prevail.

A region would therefore be responsible for its own internal security. With regard to natural resources, and especially oil, the Constitution was silent about who had control over all undiscovered and unexploited oil fields. Existing oil fields would continue to be operated by the central government, but new fields or expansion of existing fields, were presumed to be within the jurisdiction of the region. Natural resources were assets that belonged to all the people of Iraq, presumably allowing the citizens of the regions to claim these rights.

The original draft of the Constitution included a ban on all parties that called for terrorism (Allawi, 2007:403-418). The final version of the Constitution of Iraq is now
available with 144 articles in both an official Arabic version and an unofficial English translation.\textsuperscript{107}

4.7 Aftermath of the Iraq War

Among the American dead, many were NCOs or junior officers. The number of Iraqi dead has not yet been confirmed. After Hussein’s demise, looters appeared in their thousands and began to pillage. Initially their targets were the office buildings of the regime in the government quarter of Baghdad. They then turned to non-government facilities, including hospitals and schools, stealing anything that was portable, i.e. computers, air-conditioning units, and later removing anything else. During this period, valuable documents essential for reconstruction were destroyed (Garrett, 2005). Later on copper wire was stripped out of telephone networks, rendering communication almost impossible. There were also cultural damages. For example, Iraq as one of the world’s oldest civilisations, was a treasure trove of antiquities, originally collected by European scholars. It was initially thought that the Iraqi National Museum had been emptied, but fortunately it was discovered that the museum staff had been able to hide almost all the exhibits.

After a short period of time there was nothing more to steal and to carry away, and US troops established order in the streets. After the fall of Baghdad, all authority had vanished; there was no government, no army and no police. It was clear that many Baghdad residents were relieved that Saddam had been overthrown (Hakki, 2002). Looters burned the Iraq National Library, which held ancient manuscripts and editions of every book published in Iraq and every newspaper printed in Baghdad since the mid-nineteenth century.

By not protecting Iraq’s museum and the National Library, the Bush Administration failed in its legal duty as an occupying power to safeguard the country’s cultural heritage. This can be described as incompetence. The soldiers were professional but

unfortunately their political counterparts were so focused on providing a reason for war that they failed to make even elementary plans following military victory (Hakki, 2002).

The Bush Administration argued that their failure to restore law and order in Baghdad was because of the ease and speed of the military campaign. However, Rumsfeld thought that the oil ministry was important, which is evident from the protection which was given to it (Gilbert, 2004). The British troops in the South of Iraq took the pragmatic view that the priority was to establish law and order; therefore they worked with anyone who appeared co-operative to restore essential services. Electricity was restored in Basra and most other facilities such as schools and hospitals were operating efficiently. Crime was also under control, the streets were safe and terrorism was crushed.

A new Iraqi police force with an initial strength of 40,000 was created. Training academies were established and Western police leaders were brought to Iraq to instruct the trainers in Western policing methods. Recruitment remained a difficulty. It was also decided to exclude members of the Ba’ath party from new government employment. An amount of one-hundred-million dollars was made available for reconstruction by the US treasury, but in the long term finance for reconstruction would be supplied by Iraqi oil revenue (Allawi, 2007).

The UN Security Council extended its approval of post-war arrangements in Iraq by adopting Resolution 1551, which recognised the Coalition Provincial Authority and urged the establishment of a constitutional conference to assist the Iraqi Governing Council in establishing the future Iraqi government. The governments who opposed the war were France and Germany, and they also continued to express their hostility against the Coalition’s actions. Russia was initially an opponent, but later supported the US.

However, France and Germany remained hostile and also declined to provide troops for the international force, which by 2004 consisted of troops from thirty-five countries, such as Japan, South Korea, Portugal, Norway, the Czech Republic, Romania, Denmark, the
Netherlands and Italy. One area in which the Coalition forces made no progress was the inspection teams, UNSCOM and UNMOVIC, relating to the allocation, possession and development of weapons of mass destruction.

On the whole, the majority of the American people remained supportive of their former President and armed forces, but this was not the case in Europe, where the French and German remained hostile. In Britain opinions started to change. Many professional politicians and the media raised concerns whether Britain had gone to war for unsubstantiated reasons (Hakki, 2002).

The Muslim world in general and the Arab world in particular, were convinced that the West was prepared to use its overwhelming military superiority to perpetuate the subordinate position of the Muslims. George Bush Senior’s proclamation of a new world order had persuaded many in the West that the world’s future could be managed within a legal framework, i.e. discussion and conciliation. Bush's son’s warning to bring other enemies of nuclear weapons to book, i.e. Iran and North Korea, was found unsettling by his political opponents (Keegan, 2007:204-220; Galbraith, 2006:102-114).

As mentioned previously, the US left a trail of incomplete reconstruction plans, and the Iraqis experienced daily chaos on the streets, confusion and shortages. During this struggle the new Iraqi government was silent about how to extricate the country from its current predicament.

The corrupt state of Hussein was replaced by an inefficient, incompetent and corrupt state of the new order. Where does this leave the Iraqis? Time was running out; the Iraqis had gone through many hardships under the old regime, and under the War on Terrorism. But somehow they have kept the light of hope burning, hoping that they would find solutions to their difficulties (Allawi, 2007:453-460; Cordesman, 2003:559-572).
4.8 Counter-terrorist attacks and Human Rights

Project Censored reported the following information relating to Human Rights abuses: This project is managed by the Department of Sociology at the school of Social Science at Sonoma State University. Over 250 people were directly involved in the production of the 2007 Censored Publication. For thirty years Project Censored has released an annual list of the most important news stories not covered by the corporate media in the United States (Phillips, 2007).

The CIA has refused to grant any independent observer or Human Rights group access to its high-level detainees to determine their physical and mental health. Supporters of the use of harsh or abusive interrogation techniques have argued that in an unconventional war against suicidal terrorists who do not abide by the traditional rules of war themselves (Risen, 2007:30), such use is justified.

On 25 October 2005 the American Civil Liberties Union (ACLU) released documents of forty-four autopsies held in Afghanistan and Iraq, where twenty-one of the deaths were listed as homicides (Phillips, 2007). The documents indicated that the detainees died during and after interrogations by Navy Seals’ Military Intelligence and Government Agency (OGA). As such, the documents presented solid evidence that US operatives tortured detainees to death during interrogation, as indicated by an attorney with ACLU, Amrit Singh.

According to Singh, the public has a right to know who authorised the use of torture techniques and why these deaths had been covered up. The Department of Defence released the autopsy reports in response to a Freedom of Information Act request filed by the ACLU, the Centre for Constitutional Rights, as well as Physicians for Human Rights, Veterans for Common Sense, and Veterans for Peace. One of the forty-four US military reports reads as follows:
Final Autopsy Report: DOD 00 3164, (Detainee) died as a result of asphyxia (lack of oxygen to the brain) due to strangulation as evidenced by the recently fractured hyoid bone in the neck and soft tissue haemorrhage extending downward to the level of the right thyroid cartilage. Autopsy revealed bone fracture, rib fractures, contusions in mid abdomen, back and buttocks extending to the left flank, abrasions lateral buttocks. Contusions, back of legs and knees, abrasions on knees, left fingers and encircling to left wrist. Lacerations and superficial cuts, right 4th and 5th fingers. Also, blunt force injuries, predominately recent contusions (bruises) on the torso and lower extremities. Abrasions on left wrist are consistent with use of restraints. No evidence of defence injuries or natural disease. Manner of death is homicide. Whitehouse Detainment Facility, Nasiriyah, Iraq (American Civil Liberties Website, 2005).

Another report from the ACLU indicates:

A 27 year old Iraqi male died while being interrogated by Navy Seals on April 5, 2004, in Masul, Iraq. During his confinement he was hooded, flex-cuffed, sleep deprived and subjected to hot and cold environmental conditions, including the use of cold water on his body and head. The exact cause of death was 'undetermined' although the autopsy stated that hypothermia may have contributed to his death (American Civil Liberties Website, 2005).

An overwhelming majority of the so-called 'natural deaths' reported on in the autopsies were also attributed to arteriosclerosis cardiovascular disease (heart attack). Usually persons under extreme stress and pain may have heart attacks. A thorough check of Lexis Nexis and ProQuest electronic data bases, using the keywords ACLU and autopsy, showed that at least 95 per cent of the daily papers in the US did not report on this (Schlager, 2005).

The testimony of Jais Korpinsiki, a US Brigadier General Commander of the 800th Military Police Brigade, was given on 21 January 2006 in New York City at the International Commission of Inquiry on Crimes against Humanity committed by the Bush Administration:
General (Ricardo) Sanchez, Commander of Coalition ground forces in Iraq, signed the eight page memorandum authorizing a Laundry List of harsh techniques in interrogation to include specific use of dogs and muzzled dogs with his specific permission.

Karpinski further testified that Major General Geoffrey Miller had been specifically selected by the Secretary of Defence to go to Guantanamo Bay to teach new and improved interrogation techniques to Military Intelligence. When asked how far up the chain of command responsibility for the torture orders went, Karpinski replied, “[t]he Secretary of Defence would not have authorized without the approval of the Vice President” (Jamail, 2005).

The question with the condemnation of this type of behaviour is, what right do US soldiers have when captured in Iraq or in any other foreign country, to ask for fair treatment for themselves? All of this happened despite the fact that US laws prohibit torture; it is never permitted, not even in times of war.108

Allegations of serious human rights abuses by coalition forces in Iraq include the following:

- Torture of prisoners at Abu Ghraib
- The illegal use of white phosphorus
- Murdering of 24 civilians in Haditha
- Murdering of 11 civilians in Ishaqi
- Kidnapping and murder of an Iraqi man named Hashim Ibrahim Awad, who was under investigation
- Gang-rape and murder of a 14 year old girl and the murder of her family in Mahmudiyah, who were also under investigation
- The bombing and shooting of 42 civilians under investigation in Makaradeeb (MacKay, 2004).

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108 Community Evaluator: Rabbi Michael Robinson, PhD. Student Researchers: Michael B Januleski Junior and Jessica Rodas.
Controversy over whether inappropriate methods were used by Shia and Kurdish Iraq government forces and coalition forces on Sunni insurgent members in Fallujah in 2004.

The following are reports of human rights abuses by private military contractors working at Abu Ghraib prison:

- Killing over 12 000 Iraqis from January 2005 to June 2006 (Knikmeyer, 2005).
- Suicide attacks on the Iraqi civilian population by the Insurgents.\(^{109}\)
- Bombing of the UN headquarters in Baghdad in August 2003, killing a top UN representative and 21 UN staff members.\(^{110}\)
- Beheadings of several diplomats.\(^{111}\)
- A bomb in February 2006 at one of the holiest Shiite shrines killing 165 worshippers.\(^{112}\)
- Murdering of non-military personnel.\(^{113}\)
- Torture or murder of members in the new Iraqi Army.\(^{114}\)

In May 1990, four years before his death, Prof. Johan Heyns, the moderator of the Dutch Reformed Church (DRC) SA, had the following to say about violence (Karsten, 2007:60-72):

> Violence affects the human body and soul. It dehumanises man in such a way that he is unable to fulfil his destiny as a human being. In this light, violence is the exact opposite of love. Man, who is created in the image of God, may therefore never use violence against anyone else, but he may also not suffer violence at the hand of another. However, it is also a sign of civilization, apart from being a demand of Christianity, not to try to change the opinion of your opponents through violence" (Karsten, 2007:69-70).

Heyns also stated (December 1990) that a political policy should not cause people to suffer, must not exploit them and discriminate against them, because to love one’s neighbour implies respect for the person created in God’s image (Karsten, 2007:70).

On the other hand, Chris Hani, the Secretary-General of the South African Communist Party, regarded violence as the only option because of the exclusion of all inhabitants, except whites, from political processes in South Africa. This can serve as an example of John Burton’s theory that a state of conflict is caused by the non-recognition of a group or the denial of its identity (Burton, 1998).

When evaluating the War on Terrorism in terms of Human Rights, some critical questions need to be asked and answered:

Are war and violence the best means by which to promote solidarity with oppressed people? This does not seem to be the case. The question that the War on Terrorism raises, especially in Iraq, for the future of global governance is simple: Does the political will exist in the United Nations to seriously take on and address human rights issues? (Dunne, 2002:93-102) A positive consequence of the war in Iraq was that it developed a consideration of reforms in international law and international institutions, which might help to prevent the continued occurrence of violent events. However, in principle, it can be argued that the War on Terrorism is probably illegal from the viewpoint of most bodies of statutory international law.

Looking objectively at the War on Terrorism, it can be concluded that it liberated people from an oppressor and from long-standing tyranny; destroyed a state that was a threat to the peace and security of the Middle East and the rest of the world, and an arena where terrorists operated, sponsored materially and ideologically by Iraq; bringing the dictator Saddam Hussein to justice for his genocides and crimes against humanity; and prevented the succession of a similar leader and dictator, by restoring sovereignty to the Iraqi people. It laid the foundation of a democratic state, and vested human rights law as
a rule of law, guaranteed by the United Nations.\textsuperscript{115} The primary reason for criticism of the war is that the Bush Administration failed to strongly present its own rationale for the war.

The legal case for the War on Terrorism is twofold: Firstly, the United States argued that Iraq was in breach of sixteen separate UN Security Council resolutions, which, according to international law, the Security Council is obligated to enforce. Secondly, the argument was grounded on anticipatory self-defence: Based on intelligence reports that documented Hussein's efforts to acquire weapons of mass destruction, as well as evidence about his support of international terrorism, the US further argued that the Iraqi ruler was a threat to the national security of the United States, and in general to world peace and security (Jervis, 2006).

Absent from the debate on the war, however, is any serious discussion of its moral legitimacy in terms of human rights, both with regard to the Iraqi people and in terms of human rights globally.

### 4.9 Civil war and Human Rights

A civil war is a violent conflict within a country fought by organised groups. Their aim is to take over power in a region or to change government policies. A major reason for the prevalence of civil wars is that they are difficult to end. Their long duration seems to stem from the manner in which these conflicts are fought: namely by rebel groups using guerrilla tactics, usually operating in rural regions.

The civil war in Iraq began in 2004 as a primarily urban guerrilla struggle by Sunni insurgent groups, hoping to drive out the US and to regain power held by the Sunnis under Saddam Hussein. The Bush Administration attempted to put in place an Iraqi government based on a power-sharing agreement among Shiite, Sunni and Kurdish leaders. Negotiations on power sharing are common in the midst of civil wars, often with the help of outside intervention by other states or international institutions.

Could Iraq in 2007 be one of the rare cases in which power sharing successfully ends a civil war? It appears, however, that power sharing will not last in the case of Iraq. One of the reasons is that there are many significant Sunni groups that seem to believe that, without US troops, they could win back control of Iraq.

There are also many Shiites who believe that as the majority group, they can govern Iraq. However, both the Sunnis and the Shiites are highly factionalised.

Ironically, more incidences of civil war may be the only way to reach a point where power sharing could become a feasible solution in Iraq. More fighting holds the possibility of clarifying the balance of power and of creating pressure for internal consolidation, thereby providing stronger grounds for either a victory by one side or the negotiation of a settlement. The Iraq Study Group is correct in stating that Washington should be setting up diplomatic mechanisms for such eventualities. US troops may play a positive role in preventing human rights abuses by Iraqi army units.

Nevertheless, there is still hope for an Iraqi government based on negotiations among Sunni, Shiite and Kurdish leaders, despite the violence which is tearing Iraq apart. As stated above, continued civil war could persuade Shiite leaders that they cannot fully enjoy oil profits and political control without the cooperation of Sunni groups. Even if US combat troops manage to lower the rate of killings in Iraq, the chances are that US troops will remain in the area to keep sectarian and factional groups at bay (Fearon, 2007:2-15).

How then, can this civil war be ended? Two bold steps: slowing down the build-up of the Iraqi army and police, and threatening to 'manipulate the military balances of power among Sunnis, Shiites and Kurds to coerce them to negotiate'. Some of the extreme insurgent forces in Iraq, such as Al-Qaeda, will fight to death to expel the US and to achieve their personal goal, which is to dominate Iraq. There is no dispute about the civil war in Iraq: Insurgents, militias, terrorists and death squads are killing civilians at an
alarming rate. Some argue that US involvement is necessary to prevent the further spread of conflict and destabilisation beyond Iraq’s borders (Byman and Pollack, 2006).

The claim that Iraq is engaged in a civil war not only implies high levels of sustained violence, but also that the Iraqi government is too weak to protect its citizens. Historically speaking, the invasion of Iraq has been a major destabilising factor in the Middle East (Satloff, 2003). When the Bush Administration was told that they were creating instability in Iraq, their reply was, 'that’s democracy'. In line with this, many still maintain that the US is promoting their own interest in Iraq, regardless of the cost. (Chomsky, 2007c:52).

A study group of the Hopkins Bloomberg School of Public Health estimated that more than 601 000 Iraqis have died as a result of the violence, and less than one third at the hands of coalition forces. According to the 2007 Failed States Index produced by the Carnegie Endowment for International Peace, Iraq moved from being the world’s fourth most unstable country in 2006 to the world’s second most unstable country in 2007.

The Arab-Sunni faction and the Arab-Shiite faction are the main two participants in the violence. Since August 2003 Sunni militants, targeting crowds of Shiite civilians, have used suicide car bombs as weapons. Killings have taken place in a variety of ways, such as inter alia kidnapping, drilling holes in people’s feet, removing of the eyes, execution-style killings, and beheadings. In some cases video tapes of the execution are distributed for propaganda purposes. An article in the Washington Post of 20 August 2006 stated that a full-blown Iraq Civil War might result in the death of hundreds of thousands of people, and turn millions of them into refugees.

Two political scientists, Snyder from Columbia University and Vinjamuri of Georgetown University, examined 32 civil wars fought since 1989. Of the nine instances in which human rights abuses were reduced, peace was secured and the degree of democracy

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improved. In general, according to the above scientists, trials helped to end abuses only where local criminal justice institutions had already been established.

4.10 Obama and the War on Terrorism

The approval ratings of 70 per cent that Obama enjoyed at the beginning of 2009 fell by the end of that year to around 50 per cent.\textsuperscript{119} If Obama honours the planned schedule he will withdraw all US troops by the end of August 2010. Much will obviously depend on the smooth emergence of a new government and prime minister in Iraq. Several issues, if not handled correctly could reignite the conflict. However, the dispute over the ownership of the oil-rich Kirkeell area in Iraq, which is still dominated by the Kurds will probably still not be resolved in 2010. Mr. Obama will mainly attempt to re-impose peace in that region although the number of troops has been reduced from 125 000 to 50 000 in 2009. This cannot continue because of the 'status of forces' agreement, signed by ex-President G.W. Bush, undertaking that all troops must be out at the end of 2011. Oil production, the supply of electricity, medical and other services are likely to be improved in Iraq in 2010.\textsuperscript{120}

General Stanley McChrystal, the commander of US and Allied Forces in Afghanistan, received instructions from President Obama to employ a presenting strategy for victory by supporting the Afghan army to drive back the Taliban and deny sanctuary to Al-Qaeda. The lessons learnt in Vietnam may shed some light on the situation of the war on terrorism, and that is, that wars of this kind are non-victorious.

In Vietnam in 1965-1967 the US employed the incorrect strategy, trying to fight an unconventional war with conventional forces. Only in 1968 did the US under Gen. Abrahams improve their strategy by introducing a true counter-insurgent war. Instead of ignoring the South Vietnamese army, Abrahams built up the local forces until they could stand and fight largely on their own. In Afghanistan, Gen. McCrystal is now employing a similar strategy to that of Gen. Abrahams in Vietnam in 1968. Abraham’s strategy was

\textsuperscript{119} The Economist: The World in 2010: Peter David Mr Obama’s unpromising year, pp. 57 – 58.
\textsuperscript{120} Xan Smiley, Iraqis Rule Iraq, Economist 2010.
to compromise, leading to a win-win situation to all parties.\textsuperscript{121}

A fundamental error of the Obama Administration is possibly that they embrace the idea that if you solve the problem of big countries, it would solve all problems. The Obama Administration promised to solve the big problems, swiftly and decisively - this includes the war on terrorism. One could conclude that Obama’s leadership style falls somewhere between Bill Clinton’s liberal deliberations and George W. Bush’s impulsive judgements.

\textbf{Conclusion}

The war in Iraq has cost the US $337 billion, and if it continues for another few years the figure will reach the $700 billion mark. “Osama bin Laden does not have to win, he will just bleed us to death”, said Michael Scheuer, a former CIA counter-terrorism official (Sterngold, 2005). John Deutch recently wrote in the New York Times that he recommends, “[t]hat Iraq be allowed to evolve peacefully and without external intervention”. If the US had to withdraw its troops and the Iraqis began rectify their own administrative processes, the Jihad groups would be deprived of the killing and maiming activities that they have recently become used to. A united Iraq would leave the Jihad groups as they were left in Bosnia - with no role to play. In such a scenario the Jihad groups would return home and start wars against their own governments. This happened after the Afghanistan war in Algeria, Egypt and Saudi Arabia.

The Madrid and London bombings were a direct response to the Spanish and UK government’s military activity in Iraq.

The US and the UK planners of the Iraq war were well aware that the war was likely to increase terror and WMD proliferation, as many analysts warned (Jervis, 2006). The National Intelligence Council (NIC) predicted that an American-led invasion of Iraq

\textsuperscript{121}The Surprising lessons of Vietnam: Evan Thomas and John Barry, Newsweek no 16, 2009.
would increase support for political Islam and that it would result in a deeply divided Iraqi society prone to violent internal conflict. The NIC confirmed these expectations two years later. A further prediction by the NIC was that due to the invasion of Iraq, the new globalised network of diffuse Islamic extremists would spread its operations. Iraq has replaced Afghanistan as a training ground. A CIA report states that Iraq might prove to be an even more effective training ground for Islamic extremists than Afghanistan, because it serves as a real-world laboratory for urban combat.

Two years after the invasion of Iraq a high-level government review of the War on Terrorism expressed the same opinion (Jehl, 2005). Shortly after the bomb attacks on London’s public transportation system in July 2005 the British Royal Institute of International Affairs (Chatham House) released a report, stating: “There is no doubt that the invasion of Iraq has given a boost to the Al-Qaeda network in propaganda, recruitment and fundraising, while providing an ideal training area for terrorists”.

Reports by an Israeli think tank and Saudi intelligence concluded that the vast majority of foreign fighters in Iraq were not former terrorists, but became radicalised by the invasion of Iraq and responded to a call to defend their fellow Muslims from 'crusaders' and 'infidels' who were mounting an attack on the Muslim religion and Arab culture (Garrett, 2005).

French intelligence concluded that what the war in Iraq has done is to radicalise the people and to convince them to support terrorism (Bender, 2005). A Senior CIA analyst responsible for tracking Osama bin Laden from 1996, Michael Scheuer (2005:110), writes, “Bin Laden has been precise in telling America the reason he is waging war on America”. None of the reasons has anything to do with the freedom, liberty and democracy in the US, but everything to do with US policies and actions in the Muslim world.

Nevertheless, the end of the campaign to defeat Hussein and his forces was successful. The Kurdish north settled into peace and a form of self-government and the Shia in the
south also accepted the regime sponsored by the British occupiers (Hoggett, 2005:418-428) while Baghdad and the Sunni triangle relapsed into disorder.

Arrangements, however, for the future government of Iraq had been signed between the Coalition Provisional Authority (CPA) and the Iraqi Government Council (IGC), an appointed interim administration, on 15 November 2003. Negotiations between the IGC and the US and Shia community resulted in the promulgation of the Transitional Administrative Law (TAL) on 8 March 2004, which was to be transformed into an Iraqi Interim Government (IIG), by 30 June 2004.

The IIG was entrusted with the functions of government until the elections to establish a Transitional National Assembly of Iraq (TNA), not later than 31 January 2005. The TNA intended to select an Iraqi Transitional Government which would in turn draw up a Constitution to be ratified, under which a definite national government was to be elected by democratic procedures (Keegan, 2007:220-221).

The Kurds of the north will accept the new constitution as long as it recognises the rights they have acquired. Among the rights that they seek are those of control over the rich oil fields around Kirkuk. The Shia of Iraq, like the Kurds, have also greatly benefited from Saddam’s downfall. He was a figurehead of Sunni hegemony within Iraq. The latter is the minority community in the Arab world. Sunni, although a minority in Iraq, are the majority in Baghdad, and are also better educated and richer. Hussein also repressed the Shias in Iraq, refusing them the right to celebrate their rituals and excluding them from government.

The holding of elections and the referendum in 2005 brought a fair representation of communities into the government. The presence of a large US army in Iraq, together with its internal instability, made Iraq important to its neighbours such as Iran, Saudi Arabia, Syria, Jordan, Turkey and Israel (Keegan, 2007:220-221). Iraqi territory contains the second largest oil reserves in the world; therefore the limitation of Iraqi oil supplies to the world market benefits Iran.
The interest of Saudi Arabia in Iraq’s future takes a different form. The Saudi royal family is threatened by the rise of Shia power in Iraq. The US on the other hand has come to regard Saudi Arabia as a suspect in the Global War on Terrorism (GWOT), because many leaders of Al-Qaeda are Saudi nationals.

If Iraq has become the centre in the war on Terrorism, it is so because the US decided to invade the country: Iraq was not the breeding ground for Al-Qaeda under Saddam Hussein’s rule. In February 2003 an audiotape of what was believed to be the voice of Osama bin Laden called for Muslim resistance in Iraq against the US and its allies. This stated the following:

We stress the importance of the martyrdom operations against the enemy – operations that inflicted harm on the United States and Israel that have been unprecedented in their history, thanks to Almighty God... We also stress to honest Muslims that they should move, incite and mobilize the [Islamic] nation, amid such grave events and hot atmosphere so as to liberate themselves from those unjust and renegade ruling regimes, which are enslaved by the United States ... Regardless of the removal or the survival of the socialist party or Saddam, Muslims in general and the Iraqis in particular must brace themselves for jihad against this unjust campaign and acquire ammunition and weapons. ¹²²

It is nevertheless believed that Al-Qaeda is taking advantage of the US situation in Iraq and that it is also linked to some of the terrorists attacks there. Al-Qaeda may have had a hand in the bombing of the UN headquarters in Baghdad in August 2003 ¹²³ and the bombing of the Red Cross in Baghdad in October 2003. ¹²⁴

From a Human Rights perspective the war in Afghanistan was regarded in late 2007 as a war of self-defence, on the grounds that the Taliban regime harboured and aided a terrorist grouping that had declared war upon and physically attacked the United States. The war in Iraq was somewhat different. It was based upon a perception of Saddam

¹²² Bin Laden Tape: Text.
Hussein’s possession of, and intention to possess weapons of mass destruction (WMD) and his regime’s putative support for terrorist groups such as Al-Qaeda, only to find that both grounds for war were based on flawed evidence (Jervis, 2006).

Both former UK Prime Minister Tony Blair and former President George W. Bush placed great emphasis on Saddam Hussein’s treatment of dissidents and his genocidal attacks on Kurds (in 1988) and Marsh Arabs in the aftermath of the 1991 Gulf War.125 (Saddam Hussein was later captured, tried and executed for genocidal attacks on Kurds back in 1988). When the initial two reasons for the invasion of Iraq crumbled, both leaders utilised the line of human rights abuses to justify the War on Terrorism.

To conclude: Why then did former President George W. Bush invade Iraq in 2003? Bush himself stated in his speech to the National Endowment for Democracy, that the reason why he invaded Iraq was to bring democracy to the Middle East.126

However, a poll taken by Gallup in Baghdad released the following statistics on why they thought the US had invaded Iraq:

- 1 per cent agreed with Bush, that the war was going to bring democracy to the Middle East;
- another 4 per cent said it was to destroy weapons of mass destruction;
- 5 per cent thought that it was to help the Iraqis; and
- 43 per cent were of the opinion that the motive of the US was to take over Iraqi oil (Pincus, 2003).

It is also suggested that the real motive why Bush invaded Iraq was to add Iraq to the Saudi Kingdom as countries under the full control of the United States. These two countries account for almost two-fifths of global oil reserves, which imply that through these two countries, the US controls half of the world’s oil reserves. When evaluating

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the facts, one is tempted to agree with the Iraqi poll that 9/11 was a smokescreen to attack Iraq and ensure that the US gains control of the world’s richest oil reserves.
CHAPTER 5

TERRORISM AND HUMAN RIGHTS

Introduction

This chapter demonstrates that after 9/11 and the subsequent War on Terrorism human rights remained a fundamental part of democratic politics since they define the boundary between individual license and government tyranny. In line with this, Chapter 6 builds upon a body of literature that evaluates the implications of the military actions and anti-terror legislation that constitute the War on Terrorism globally, for human rights.

The repercussions of the War on Terrorism on the individual human rights of Afghans, Iraqis, Britons, Americans and others are evaluated, and an attempt is made to answer the following question: In what specific ways have their rights been violated or protected by counter-terror measures? In addition to determining the impact of the new counter-terror context on human rights, there is a further need to identify ways in which human rights and security concerns can be reconciled in the future. A way is needed which takes seriously the security threat of Islamist terrorism whilst advancing the normative case for respecting human rights in the international order. This section thus brings together counter-terrorist policies since 9/11, as well as developing a counter-terror strategy which takes human rights seriously. It shows that evaluating human rights does not answer the question of how best to respond to terrorism.

It transpired in the previous chapters that, after the Iraq War, there exists an opportunity to correct major strategic errors and to develop a framework that combines security and human rights for the individual.
It will be shown that the Nuremberg tribunal and its charter contributed to embodying the ideals of the rule of law giving voice to moral institutions, and that the Tokyo War crimes tribunal was based on the Nuremberg trials.

This study also underlines the assumption that for the Universal Declaration of Human Rights to work, it has to be complemented by the effective prosecution of the worst violations of Human Rights standards. A subsequent conclusion will illustrate that a balance must be found to ensure that there is regression on the establishment of fundamental values, and that the rule of law and human rights do not become victims of current events. A struggle for freedom can only be successful if it honours Human Rights as a moral system. Human needs have influenced the fields of Philosophy and Psychology and have placed the spotlight on Politics, Economics and Social Science in general.

It is clear that the events of 11 September 2001 have posed a major challenge to the philosophical and political integrity of the Human Rights Act. After the 9/11 attacks and the subsequent War on Terrorism, the question is whether human rights have irretrievably lost their status in international law? And: Must human rights now remain a fundamental part of democratic politics since they define the boundary between individual treatment and government policies?

This chapter builds upon literature that evaluates the implications for the above questions against the background of Human Rights (also refer to Chapter 2 on human rights). Examples will include: what have been the repercussions of the War on Terrorism for the individual’s human rights? In what specific way have the individual rights been violated or protected by counter-terror attacks? In addition to determining the impact of the counter-terror context on human rights, there is a further need to evaluate cases that have gone through court to be able to reconcile relationships for the future.
The attacks of 9/11 fell within the definition of crimes against humanity under international human rights jurisprudence. To bring about a truly secure world we must adopt a new paradigm that shifts priority to the security of the individuals and of communities to achieving human security, the honouring of human rights, and respect for the rule of law. This will obviously require a renewed commitment by all individuals and a shared sense of responsibility for all people, all over the world. What we need now is a major course correction – a new approach which begins with a broader understanding of what defines human rights and the rule of law (Wilson, 2007).

Sufficient time has passed since the attacks of September 11, 2007 to answer in depth Michael Ignatieff’s question, “whether the era of human rights has come and gone?” (2002). It has definitely not gone, but we are challenged in many ways to respond to profound concerns over human security in terms of human rights, for example by the war on terrorism. There is an enormous responsibility to uphold international human rights. At the same time, there must be more commitment to and implementation of laws at all levels to support a sound environment.

The first observation, therefore, is that merely valuing human rights does not answer the question of law in responding to terrorism. However, human rights are important because they are an indispensable component of liberal democratic politics - a system of politics which insists on the importance of individual rights and a systematic review of executive power by the judicial and legislative forums.

Academics and scholars of development are in agreement that development is about releasing the community of the poor from poverty so that they can take responsibility for their own destiny, enhancing their human dignity (Swanepoel, 2006). The challenges for the future include the high unemployment rate to be addressed in developed countries, and the unfinished task of restructuring devastated financial sectors in countries such as Iraq, Afghanistan and Darfur/Sudan. International collaboration will play a critical role in making the most of these opportunities. A critical task of the International Monetary Fund (IMF) for the future will be to further governance reform in countries were needed.
5.1 The war on terrorism and Human Rights

5.1.1 Terrorism and Human Rights

The US-led coalition justified the invasion of Iraq for various reasons, of which only one was humanitarian. The Security Council of the United Nations did not approve the invasion and the Iraqi government violently opposed it.

Human Rights Watch usually takes no position on whether a state should go to war. However, an exception is made in extreme circumstances where humanitarian intervention is needed. Because the Iraqi war was not primarily about saving Iraqi people from mass slaughter, Human Rights Watch initially took up no definite position concerning the war (Verstichel, 2005).

The invasion of a country, without the approval of the United Nations Security Council, damages International Law, which is needed to protect human rights. It is estimated by Human Rights Watch that over the last twenty-five years of the rule of Saddam Hussein and his Baáth Party, his government murdered or removed approximately a quarter of a million Iraqis, if not more. There were times in the past when killings in Iraq were so intense, that humanitarian intervention (which is usually a last resort), was justified. This was during the 1988 Anfal genocide in which the Iraqi government killed some 100,000 Kurds. There were other incidents of wanton killings, such as the suppression of the uprisings in 1991 (Waltz, 2002:437-448).

The logical question from a human rights point of view is, if Saddam Hussein committed or arranged such mass atrocities in the past wasn’t the overthrow of his government justified? From a Human Rights Watch point of view the answer is in the negative.

To justify action from a Human Rights Watch point of view, there must be evidence that a large-scale slaughter of human beings is planned, before military action to intervene will be justified. There were claims, however, that Hussein, especially with his history of
attacks against the Iranians and the Iraqi-Kurds, was planning to deliver weapons of mass destruction through terrorist organisations, but to date no such allegations have been proven.

It is true that the Human Rights Watch devoted enormous amounts of time and money to interview witnesses and survivors of the Anfal genocide against Iraqi Kurds. Even soil samples were taken to prove the use of chemical weapons. Human Rights Watch even travelled worldwide trying to convince some governments to institute legal action against Iraq for genocide. No one was, however, prepared to do so (Dugard, 2005). Governments feared that such legal action against Iraq would be too provocative – and it would undermine future commercial deals with Iraq.

In summary, humanitarian interventions can only take place to stop a future mass slaughter of people. In Iraq during 2003, this was not an issue. Was military intervention then the answer? The answer appears to be negative, since too many lives were at stake. What other methods then remain, that could be utilised? Criminal prosecution? It has been proven that a legal document does have an effect on a dictator, for example in the case of Pres. Charles Taylor of Liberia (Dugard, 2005).

Paul Bremer III, the US administrator in Iraq, disbanded the entire Iraqi army and the police force, and this had an effect on Iraqi internal security. The Bush Administration insisted that the accused Saddam and his co-defendants be tried before an Iraqi court in front of Iraqi jurists. But after three-and-a-half decades of Ba’ath Party rule, the Iraqi judicial system did not have the capacity to organise, or the expertise to try complex cases of genocide against humanity. The logical alternative was for the International Criminal Court (ICC) to overhear these cases but, since its jurisdiction only began in July 2002, it was also not an option. The invasion of Iraq by the US and its allies thus failed to meet the requirements of a humanitarian intervention (Wilson, 2007:143-157).

The most immediate reaction to terrorism was the Limitation of Rights in the countries affected or threatened by terrorism. The USA Patriot Act, passed in 2001, drastically
limited the rights of suspects accused of terrorism. One clearly visible aspect of the War on Terrorism is the new anti-terrorist international alliance. During the War on Terrorism a number of autocratic regimes have become allies with the United States. Examples are Pakistan, Uzbekistan and other Central Asian countries, all of which have a negative human rights’ record.

Since their governments have offered military bases to the US troops, the human rights abuses of the latter regimes have been overlooked. Initially, the justification for the war on terrorism was the threat that Saddam Hussein was developing weapons of mass destruction. It was only after the invasion of Iraq, when no proof of such activities could be found, that the US leaders shifted the emphasis to the struggle against tyranny and the protection of the rights of the Iraqi people.

In this way, the US leaders treated human rights as a second-best justification when the first reason was discredited.\textsuperscript{127} The incidents of torture in the Abu Ghraib prison have further compromised the human rights aspects of the War on Terrorism, perceived by a growing number of Muslims worldwide as justifying a Jihad (Holy War) against the West.

Terrorism is by no means a new phenomenon in the world. Indeed, it was directly referred to in Principle VI of the 1975 Helsinki Final Act. Nevertheless, the attacks in the United States on September 11, 2001 brought a new dimension to this old threat of terrorism against human rights. Human rights advocates, government officials and academics continue to debate on how to prevent and punish acts of terrorism, while safeguarding citizens. Questions asked vary from which legal paradigm applies, is it military law or civil law, the criminal law or the human rights act? Which law should be applicable, and which law should enjoy priority? And further: What checks and balances exist to ensure that a proper equilibrium is struck when weighting the government’s responsibility to protect its citizens against its obligation to respect human rights? If

\textsuperscript{127} There would have been no sufficient reason for the intervention on human rights grounds as international law does not permit intervention some years after genocide takes place.
military law for example is applied, certain practices might be in contradiction of those under civil law.

The principal issues that arise in applicable law are: freedom from arbitrary detention, the right to a fair trial, equality and non-discrimination. Additional to the above issues are: the prohibition of the use of torture, inhuman or degrading treatment, etc. During the course of the War on Terrorism, numerous human rights concerns have been raised with the United States regarding their counter-terrorism practices and policies.

The High Commissioner for Human Rights, Mary Robinson, and the Secretary General of the Council of Europe, Walter Schwimmer, as well as Ambassador Stoudmann, issued a joint statement calling for

…all states to ensure that any measures restricting human rights in response to terrorism strike a fair balance between legitimate national security concerns and fundamental freedoms... recalling that certain rights may not be derogated from under any circumstances. These rights include the right to life, freedom of thought, conscience and religion, freedom from torture or cruel, inhuman or degrading treatment, and the principles of precision and non-retroactivity of criminal law except where a law imposes a lighter penalty (Mtshaulana, Dugard and Botha, 1996).

In December 2001, Ambassador Johnson of the US confirmed that the US President had declared a state of emergency as a result of the September 11 attacks. In January 2002, Johnson confirmed that two countries (the US and the UK) had declared a state of emergency.

The US Constitution allows only the suspension of the writ of habeas corpus during a national emergency. The balancing of human rights and counter-terrorism measures has been a strong recurring theme at the Human Dimension Institute meeting (HDIM).

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129 The other human right issue most consistently raised is the continued application of capital punishment.
130 A writ requiring a person to be brought before a judge or into court to investigate lawfulness of his restraint.
At the 2003 HDIM, the International Helsinki Federation criticised the detentions at the US Naval Base at Guantanamo Bay, expressing concern about a 'second class justice system' for non-US citizens held there.

Also in 2003, during a seminar in the Hague on Human Rights and Terrorism, a forum was provided for discussing a broad range of issues during which the US, along with Russia and Uzbekistan, were criticised for human rights violations related to counter-terrorism measures.

Although a variety of concerns have been raised with the United States regarding human rights and counter-terrorism measures, none has received so much attention as the condition and status of detainees and the possibility that some of them might have been subjected to torture or cruel, inhuman, or degrading treatment or punishment. These concerns were heightened when reports based on interviews with intelligence officials indicated that abusive techniques, possibly rising to the level of torture, were being used by US interrogators questioning suspected terrorists. In early May 2004, when lurid images of abuse by US soldiers at the Abu Ghraib prison in Iraq appeared on the front pages of US newspapers and, immediately thereafter in the media globally, fears of abuse were substantiated (Schlager, 2005).

The combating of international terrorism has been on the agenda of the international community for more than sixty years (Dugard, 2005). In 1937 a convention for the prevention and punishment of terrorism was drafted in response to the assassination of King Alexander I of Yugoslavia. The convention was ratified only by India, and never came to force. The end of the Cold War resulted in a radical change of attitude towards international terrorism.

In 1994, the General Assembly of the United Nations condemned all acts of terrorism as: 131

[c]riminal acts intended or calculated to provoke a state of terror in the general public, a
group of persons or particular persons for political purposes, which are in any circumstance
unjustifiable, whatever the considerations of a political, philosophical, ideological, racial,
ethnic, religious or any other nature that may be invoked to justify them.

The above resulted in the 1997 International Convention for the Suppression of Terrorist
Bombings.\textsuperscript{132} The latter convention makes it a \textbf{criminal} offence for any person to
unlawfully and intentionally place or detonate an explosive device in a place of public
state or government or \textbf{transportation} system with the intent to cause serious bodily
injury or destruction.\textsuperscript{133} A state is required to exercise criminal jurisdiction over such
crimes.\textsuperscript{134} This Convention was followed by the International Convention for the
Suppression of the Financing of Terrorism in 2000.\textsuperscript{135}

Since the attacks of 9/11 in New York, combating international terrorism has become a
major concern for the international community. The Security Council of the United
Nations has adopted a number of resolutions, such as Resolution 1373 (2001) and
Resolution 1566 (2004), under Chapter VII of the Charter, calling upon states to prevent
and suppress the \textbf{financing} of terrorist acts. In April 2005, the General Assembly of the
United Nations gave its approval to the International Convention for the Suppression of
Acts of \textbf{Nuclear Terrorism}. Against this background, it is an offence to possess
\textbf{nuclear} material or to make a \textbf{nuclear} device with the intent to cause death, bodily
harm or to damage the environment.

The first war crimes to be prosecuted at international level were against German
Soldiers for their acts in violation of laws and custom of war at Leipzig in the early
1920s.\textsuperscript{136} Generally speaking, war crimes are crimes committed in violation of
international humanitarian law during armed conflicts. Various preconditions for war
crimes prosecution are built into the Rome statute. Firstly, there must be a nexus

\begin{itemize}
\item \textsuperscript{132} (1998) Article 37, International Law.
\item \textsuperscript{133} (1998) Article 2, International Law Commission (ILC).
\item \textsuperscript{134} (1998) Article 6, International Law Commission (ILC).
\item \textsuperscript{135} 2000 Article 39 International Law Commission (ILC).
\item \textsuperscript{136} Art 228-230 of the Treaty of Versailles.
\end{itemize}
between the criminal conduct and the armed conflict. Act 30 of the Rome Statute states that for criminal liability to take place there must be **intent and knowledge**, intent in relation to the conduct, knowledge in relation to the consequence.

The Rome Statute states under article 8(2)(a) that the following acts committed during international conflict against persons or property under the provisions of the Geneva Convention will amount to war crimes:

- Wilful killing;
- torture or inhuman treatment (including biological experiments);
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; and
- wilfully depriving a prisoner of war or other protected person of the right to fair and regular trials.

The persons protected by article 8 (2) (a) are combatants who are considered 'hors de combat'. The notion of protected property is not defined in any of the Geneva Conventions but is generally regarded as property found in territories occupied by foreign forces, which would include medical units, medical transport and hospital ships. These may not be destroyed except in cases of military necessity (Kittichaisaree, 2001).

Article 8 (2) (b) of the Rome Statute prohibits attacks on civilians and attacks against civilian objects. 137 Civilians are also protected against 'misuse', the use of civilians to render certain points excluded from military operations, 138 and the starvation of civilians. 139 Several of the provisions of article 8 (2) (b) deal with the prohibition of poisoned weapons and poisonous gases. 140 141 A new crime under the statute is sexual crime. In terms of article 8 (2) 9b) (xxii), it is a war crime to commit rape, sexual slavery or any form of sexual violence, which is also a breach of the Geneva Convention. 142

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137 Rome Statute Article 8 (2) (b) (ii).
138 Rome Statute Article 8 (2) (b) (xxiii).
139 Rome Statute Article 8 (2) (b) (xxv).
140 Rome Statute Article 8 (2) (b) (xvii).
141 Rome Statute Article 8 (2) (b) (xviii).
142 Rome Statute Article 8 (2) (b) (xxii).
The severity, shock and fears associated with the 9/11 attacks would have induced any US leadership to immediately call upon the security system to protect society. From a human rights perspective, the inevitable impact of September 11 was soon made unacceptable by the gratuitously abusive treatment of especially Islamic males, detained on the basis of suspicion. This behaviour showed minimum respect for the rights of individuals. In effect, US foreign policy since September 11 has reverted to a cold war strategic outlook in which geopolitical considerations have taken consistent and decisive precedence over nomadic considerations. The supposed promotion of freedom and democracy has become a large part of the rationale for the War on Terrorism. We are, however, now faced with the difficult issue of assessment of the War on Terror and Human Rights.

Are the people of Afghanistan and Iraq beneficiaries of war and occupation from the perspective of Human Rights? To give a definite answer at this stage would be premature. It can be said that a major incidental cost of the Iraq War was to weaken the role of the United Nation’s authority and of international law (Falk, 2003). It seems that the war on terrorism can best be understood as an aspect of US policy for regional and global domination. With some minor exceptions the cause of human rights has been set back by the US response to September 11.

5.1.2 Torture and Human Rights
Torture has been widely used in situations to obtain information (Van Althuis and Van der Wolf, 2001:210-211); in criminal justice as a form of punishment (Stubbs, 1987:375-376); or in political society as a means of suppressing opposition (Lea, 1973). However, times have changed and today torture is widely condemned. It has also been described as 'a cruel assault upon the defenceless' (Shue, 1978) and as 'inherently abhorrent'.
Almost all of the major international instruments for the promotion and protection of human rights condemn torture.\textsuperscript{143} In 1984, the United Nations adopted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Burgers and Danelius, 1988), placing an obligation on states and parties to take effective legislative action. For the purpose of crimes against humanity, the ICC has defined torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused”.\textsuperscript{144} In order for torture to qualify as a crime against humanity, the persons upon whom severe physical or mental pain has been inflicted must be members of the civilian population.\textsuperscript{145}

The International Criminal Tribunal for Rwanda (ICTR) noted that crimes against humanity can be committed in a war situation as well as outside the context of an armed conflict.\textsuperscript{146} In a war situation 'civilian population' includes all persons “not taking any active part in the hostilities”.\textsuperscript{147} International criminal law does not seem to afford members of the armed forces on active duty protection against gross violations of their basic human rights – short of genocide – committed by their own military officials.

Persons protected against torture in international armed conflicts are: the wounded and the sick in the field\textsuperscript{148}, the wounded, sick and shipwrecked members of the armed forces at sea,\textsuperscript{149} prisoners of war\textsuperscript{150} and civilians\textsuperscript{151}. In terms of the Third Geneva Convention, a prisoner of war – when questioned – is required to disclose his name and rank, date of birth, and army, regimental, personal, or serial number, or whatever information would be equivalent.\textsuperscript{152}

\textsuperscript{143} Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, in 6 United States Treaties and other International Agreements 3115, 3116, 3122, 3146 (UST 1955) (citing arts, 3 \((1)\) (a), 12, 50.
\textsuperscript{144} Id. at 1005 (citing art. 7(2) (e).
\textsuperscript{145} Id. (citing art. 7(1).
\textsuperscript{146} Prosecutor v Kayishema, no. ICTR-95-1T 127 (ICTR 1999).
\textsuperscript{147} Prosecutor v Akayesu, No. ICTR-96-4T.
\textsuperscript{148} Geneva Convention No 1, supra note 27, at 3332 (citing art, 17).
\textsuperscript{149} Geneva Convention No 11, supra note 27 at 3320, 3332, 3384 (citing art, 3, 17, 87).
\textsuperscript{150} Geneva Convention No 111, supra note 27 at 3320, 3332, 3384 (citing art, 3, 17, 87).
\textsuperscript{151} Geneva Convention No 1, supra note 27 at 3116, 3136 (citing art 3, 32).
\textsuperscript{152} Geneva Convention No 111, supra note 27, at 3330 (citing art 17).
Prisoners of war who refuse to answer may not be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind.\footnote{153} Prisoner-of-war status is an extremely important right afforded to combatants who have fallen into the hands of the enemy\footnote{154}. The United States failure to afford prisoner-of-war status to Taliban captives detained in Guantanamo Bay following the war on terrorism is a clear example of the violation of the Geneva Convention. This also applies to members of Al-Qaeda held in captivity.

The United States naval and military base in Guantanamo Bay is administered by the United States through a long-term lease with Cuba. Therefore, detaining Afghan captives at Guantanamo Bay deprives them of all legal protection. It is important to note that any torturing of Guantanamo captives would constitute a serious violation of international law.

In the case of Ireland v United Kingdom, the European Court of Human Rights evaluated certain techniques applied by security forces in Northern Ireland as a means of obtaining information from detainees of suspected terrorist activities.\footnote{155} These techniques consisted of wall-standing (forcing detainees to remain standing for long periods of time in a stressed position); hooding (covering the detainees' heads with a black or navy coloured bag and removing it only during actual interrogations); subjection to noise (holding the detainees in a room where there was a continuous loud and hissing noise); deprivation of sleep, and deprivation of food and drink pending interrogation.\footnote{156}

The Court decided – by a thirteen to four vote – that these techniques did not amount to torture. However, in a sixteen to one vote – the Court decided that the methods used to extract information from the detainees constituted inhuman and degrading treatment.\footnote{157} The Israeli Supreme Court also had to consider the legality of methods of interrogation

\footnote{153}Id at 3332 (citing art, 17).
\footnote{154} Protocol 1, supra note 27, at 1410 (citing art 44(1).
\footnote{156} Id.
\footnote{157} Id at 94. The Court deviated in this regard from the Commission on Human Rights binding.
applied to Palestinian captives. Here, the Court cited the Ireland v United Kingdom case where it was decided that these means of interrogation constituted a violation of the detainee’s human rights.158

Inhuman treatment can be seen as a catch-all concept that encapsulates almost every conceivable manifestation of unbecoming conduct. This is a violation of personal rights – the right to bodily integrity, dignity and reputation (corpus, dignitas, et fama) – of another person. The prescription of inhuman treatment is thus founded on the “principle of respect for the human person and the inviolable character of the basic rights of individual men and women”.159

A special instance of inhuman treatment, expressly in the Third and Fourth Geneva Convention, is the subjecting of a protected person to biological,160 medical, or scientific experimentation.161

Terrorism, like torture, is a crime under all circumstances and should never be condoned. Nor does the end justify the means. Following September 11th, the Congress enacted legislation authorising the President to use all necessary and appropriate force against those nations that helped to plan, or committed terrorist attacks.162

There is, however, compelling testimony that the US employs methods of interrogation that might fall short of the torture threshold, but which have been condemned in international law as cruel and inhuman treatment. An article in The Washington Post, for example, referred to intelligence specialists familiar with CIA interrogation methods as authority for allegations that Afghan detainees who refuse to cooperate are sometimes kept standing or kneeling for hours and are deprived of sleep, sometimes known as stress and duress techniques (Priest and Barton, 2002).

158 Id at 1484.
159 Id at 11 524.
160 Geneva Convention No 1, Supra note 27, at 3122.
161 Geneva Convention No 111, supra note 27, at 3328.
Following September 11th, the Committee of Ministers of the Council of Europe explicitly considered the application of torture to the fight against terrorism. It concluded as follows:

The use of torture or of inhuman or degrading treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted. The Committee also stated that persons arrested or detained for terrorist activities must be able to challenge the lawfulness of their arrest or detention in a court of law.

The reasoning of the Israeli Supreme Court is not a reflection of the current state of international law, which does not recognise any grounds of justification for torture, or for cruel or inhuman treatment or punishment. However, there is a distinction in criminal law between (objective) grounds of justification which, in the appropriate circumstances render lawful an act that would otherwise be unlawful, and (subjective) grounds of exculpation that exclude the element of mens rea (fault). Strict liability applies to crimes for which mens rea (fault) is not an element, and torture on the contrary is founded on intent (a manifestation of fault). Balancing the rights of individuals with the laws prohibiting torture should be a goal that the UN strives to attain in law.

It seems vitally important that, as the international community responds to the September 11 attacks and the general war on terrorism, member states in the UN must continue to address this balance. If this does not happen, then those who seek to damage human rights and human dignity through acts of terrorism and counter-terrorism will have far greater success in the long run than the events of September 11.

163 Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the fight against terrorism, supra note 18, at 91V.
164 Id at 9 VII, cl.3.
165 Torture as a crime under international law, p. 427-463.
5.1.3 The death penalty and Human Rights

Today the majority of nations have abolished the death penalty either completely or in principle: Whereas one-hundred-and-seventeen nations have completely abolished the death penalty, seventy-one countries have executed at least one individual over the past ten years. Three nations a year have abolished capital punishment for all crimes from 1990 to 2000.\footnote{Facts and Figures, supra note 2.} The US is a serious advocate of the death penalty (Stafford-Smith, 2003), and the eight nations retaining this form of punishment are China, Nigeria, India, Indonesia, Pakistan, Japan, Russia and the US. At the beginning of the twentieth century the death penalty was routine worldwide. Retentionist countries of the death penalty are generally communist or third-world countries (Simon and Blaskovich, 2002), and are consistently the world’s worst human rights abusers (Steiker, 2003).

The comments that follow focus on evolving international human rights standards and the impact of retaining the death penalty worldwide. The part of international law, theological notions associated with state-imposed killings and finally the future of capital punishment will come under the microscope to be evaluated according to human rights standards.

In this regard, Mary Robinson, UN High Commissioner for Human Rights, comments on the retention of the death penalty by the US:

> The increasing use of the death penalty in the United States and in a number of other states is a matter of serious concern and runs counter to the international community’s expressed desire for the abolition of the death penalty (Dieter, 1999).

The United Nations therefore calls on nations who have retained the death penalty “to progressively restrict the number of offences for which capital punishment might be imposed.”\footnote{Hood, supra note 4, at 75.} Only a minority of countries have failed to abolish the penalty despite the transnational call for abolishing it. It appears that nations defying international agreements position themselves as violators of human rights regarding capital
punishment.\textsuperscript{168} In 1948 the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR). The UDHR established an individual's right of protection from deprivation of life and proclaims that no person shall be made to suffer degrading or cruel punishment. The UNGA finds that capital punishment violates basic rights.\textsuperscript{169}

In 1966, the UNGA adopted the International Covenant on Civil and Political Rights (ICCPR), which imposes two requirements constraining the use of the death penalty (Koh, 2002). Firstly, the treaty places strict conditions constraining the use of the death penalty.\textsuperscript{170} Secondly, the treaty states that the death penalty cannot be inflicted upon offenders less than eighteen years of age at the time the crime was committed. Finally, the ICCPR states no person should be made to suffer torture or be subjected to degrading, inhuman or cruel punishment.\textsuperscript{171} The IZCPR has been ratified by 149 nations and eight have signed the covenant indicating their intent to become a party.\textsuperscript{172} A Second Optional Protocol to the ICCPR (ICCPR-OP2) has been adopted, with the aim to abolish the death penalty entirely, and further supports the spirit of the UDHR.\textsuperscript{173} However, the ICCPR-OP2 permits nations to retain capital punishment in wartime.\textsuperscript{174} It is clear that several international treaties provide for the termination of the death penalty. Forty-one European nations, which include the US and the UK,\textsuperscript{175} have ratified the ECHR\textsuperscript{6}.

No theological stance condones the inflicting of pain on people, or the condemnation of the death penalty.\textsuperscript{176} Many Christians maintain that the death penalty is unethical, sinful and wicked and therefore should be abolished (Simon and Blaskovich, 2002) This

\textsuperscript{168} Supra note 20.
\textsuperscript{172} Ratification of Human Rights Treaties supra note.
\textsuperscript{173} Id art 1.
\textsuperscript{174} Id art 2.
\textsuperscript{175} Ratification, supra note 45.
\textsuperscript{176} Interview with Terrence Luce, Professor of Psychology, the University of Tulsa, in Tulsa, Okio (Jan 16, 2003).
argument is based on the teaching of the New Testament where Christ removed all sin by dying on the cross for man’s sins (Stafford-Smith, 2003). The crucifixion is considered the supreme sacrifice to Christians. Christianity professes that Jesus Christ made the ultimate sacrifice for all by dying on the cross, thereby eliminating any need for vengeance.

Consequently, killing a killer would not restore moral balance when the morality is based on the theological notions of Jesus Christ’s sacrifice. In the New Testament, Jesus rejects the death penalty.\textsuperscript{177} When a woman committed adultery in the New Testament, a sin in the Old Testament punishable by death, Jesus stated, “Let him who is without sin among you be the first to throw a stone at her”.\textsuperscript{178} At the most, Jesus stated no crime should be punishable by death. Therefore in the capital punishment context, Jesus set the precedent that humans deserve mercy and sin should be forgiven. God’s conduct is an example of vengeance versus reality that refuses to retaliate against individuals where they base their argument on an eye for an eye principle.

Death penalty supporters base their argument on this passage in the Bible. But since God did not use that argument to retaliate against individuals, this argument holds no justification for the death penalty. The \textit{Lex talionis} doctrine is a 3000-year-old law to limit revenge. This doctrine is based on an eye for an eye principle; in other words to do to the person what was done to the victim. What this doctrine is saying is the torturing of torturers, the raping of rapists is justified. This doctrine is truly cruel and unusual.

It is evident that the \textit{Lex talionis} doctrine is absurd when viewed from the viewpoint of a theory of specific equality. The avenger believes a serious crime deserves a serious punishment.\textsuperscript{179} However, the moral equivalence theory is a promising retaliation theory because it limits the deserved penalty. This theory relies on the common sense concept that a moral equivalence can be determined between crimes and punishments.

\textsuperscript{177} John. 7:53-8:11.
\textsuperscript{178} John. 8:7.
\textsuperscript{179} Interview with Russell h Christopher, Professor of law, the University of Tulsa College of Law, in Tulsa, Okla (Jan 27, 2003).
For example, the offender deserves to endure pain that equals the pain suffered by the victim; however, the style of suffering need not match. Therefore, the moral equivalence theory proposes that the state should inflict the closest tolerable penalty to the harm caused by the offender. The worldwide trend towards death penalty elimination is one aspect of the civilizing enterprise of modern nations. For example, life without the possibility of parole may be a civilized alternative to the death penalty.

Prisoners condemned to prison for the rest of their natural lives are 'civilly dead' because they suffer the death of freedom. In other words murderers will exchange their civil lives for their victim’s natural lives. Consequently, life without the possibility of parole, a sentence requiring murderers to live the rest of their lives in prison, is severe and represents the significance of harm inflicted on the victim and society.

The death penalty should be forbidden in modern societies. Lowering the tolerance for the pain suffered by humankind characterises an advancing civilisation. Moreover, this civilising gesture is even more powerful when society refuses to inflict gruesome acts on offenders deserving the ultimate sanction. Therefore, civilisations’ advancement requires conscious reductions in the atrocious acts humans tolerate against other humans.

Elected representatives should be able to determine the penal policy, because several countries have abolished the death penalty with the majority of the population supporting it (Steiker, 2003). Examples of this are Germany in the late 1940s, the United Kingdom in the 1960s, Canada in the 1970s and France in the 1980s, which all abolished the death penalty despite a population of roughly two-thirds favouring it (Steiker, 2003).

Historically, the move to abolish capital punishment has been upheld by legislators even though the majority of the population favours it. If the law’s purpose is to deliver moral concepts to the citizens, then the death penalty is counterproductive. When a nation
administers its will by killing, it legitimises a conduct that the law seeks to repress, thereby justifying the use of deadly force to execute humans (Steiker, 2003). Nations retaining the death penalty are adversely affected in areas of international relations (Steiker, 2003). An example is the execution of Mexican nationals by the US which has strained the relationship between Mexican President Vicente Fox and former US President Bush.

Supporting the death penalty in today’s international political climate comes at a price. By doing this, a nation’s allies and adversaries start to question the country’s moral leadership concerning international human rights (Koh, 2002), for example, the US recently lost its seat on the UN Human Rights Commission because it continues to support the death penalty (Koh, 2002).

China has arguably the worst human rights record in the world, yet freely raises the US use of capital punishment when facing protests against its own human rights practices (Koh, 2002). Even the European Union has requested that the US impose a moratorium on federal executions. By refusing to abolish the death penalty, the US damages its reputation as the world’s human rights leader.

International law fails to provide any concrete answers concerning the death penalty. Over half of the world’s nations have abolished capital punishment in law and in practice; because they feel alternative punishments are just as effective (Truskett, 2004).

It is clear that a new paradigm has developed in time, according to which the death penalty, in terms of human rights standards, is discounted.

5.1.4 Immunity and Human Rights
Contemporary international law no longer accepts that a state may treat its nationals as it pleases. Conventions and laws prescribe a wide range of human rights obligations
with which states must comply. **Some human rights laws enjoy such a high status that their violation, even by state officials, constitutes an international crime.**

The conflict between human rights and immunity arises in two situations: Firstly, in criminal proceedings, where a warrant of arrest is issued by a foreign state in respect of an incumbent head of state or government or senior government official, or former head of state or government or senior government official, or where such a person is arrested in a foreign state for the purpose of bringing him/her to trial or extraditing him/her to a third state.

Secondly, in civil proceedings, where a government or government agent is sued in civil proceedings in the courts of a foreign state for compensation resulting from an international crime or serious human rights violation, usually committed outside the foreign state.

A distinction must be drawn between international and national courts for the purpose of immunity. The Nuremberg Charter (Article 7) the Statutes of the ad hoc tribunals for the former Yugoslavia (Article 7(2)) and Rwanda (Article 6(2)), and the Rome Statute of the International Criminal Court (Article 27) make it clear that no immunity shall be attached to heads of state or government or to senior government officials.

The Statute of the Special Court for Sierra Leone similarly denies immunity to heads of state (Article 6(2)), and the Special Court held that because is an international, and not a national court, the head of state of Liberia, Charles Taylor, was not entitled to succeed in a plea of immunity. South Africa is one of the countries, which expressly excluded immunity for heads of state or government in their statutes implementing the Rome Statute of the International Criminal Court.

In the Arrest Warrant case, the International Court of Justice held that Belgium had violated international law by issuing a warrant for the arrest of the Minister of Foreign

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180 Case Concerning the Arrest Warrant of 11 April 2000.
Affairs (Mr. Yerodia) of the Democratic Republic of the Congo (DRC) on charges of crimes against humanity and war crimes committed in the DRC, since it failed to respect the immunity from criminal jurisdiction, which the Minister enjoyed under international law before national courts.

In considering the approach of national courts to the immunity of senior state officials for international crimes, reference must be made to the distinction between immunity \textit{ratione personae} and immunity \textit{ratione materiae}. The former immunity is attached to a person because of his status or office, while the latter form of immunity relates to acts performed in an official capacity. Immunity \textit{ratione personae} is attached to senior state officials, such as heads of state or government or Ministers of Foreign Affairs, while they are in office.

This immunity applies even to international crimes as held by national courts in cases involving Ghaddafi,\textsuperscript{181} Castro,\textsuperscript{182} Sharon,\textsuperscript{183} Mofay\textsuperscript{184} and Mugabe.\textsuperscript{185} According to Akande: Judicial opinion and state practice on this point are unanimous and no case can be found in which it was held that a state official possessing immunity \textit{ratione personae} is subject to the criminal jurisdiction of a foreign state when it is alleged that he or she has committed an international crime.\textsuperscript{186}

In the Pinochet case\textsuperscript{187} relating to extradition proceedings against Pinochet, the former head of state of Chile, the English House of Lords held that he was not entitled to immunity. Several judges held in this case that torture alleged against Pinochet could not constitute acts of officials, but that the majority House of Lords held that a state

\textsuperscript{181} The Ghaddafi Case before the French Cour de Cassation (2001) 12 EJIL 595.
\textsuperscript{182} A Cassese International Criminal Law (2003) 272 (Spain).
\textsuperscript{183} (2003) 42 ILM 596 (Belgium).
\textsuperscript{184} (2004) 53 ICLQ 771 (UK).
\textsuperscript{185} (2004) 53 ICLQ 769 (UK).
\textsuperscript{186} International Law Immunities and the International Criminal Court (2004) 98 AJIL 407.
\textsuperscript{187} Ex Parte Pinochet Ugarte No 2 (1999).
cannot assert immunity *ratione materiae* in relation to a criminal prosecution for torture in as much as torture is a breach of *jus cogens* under international law.\(^{188}\)

International and National Courts have held that there is nothing incongruous in denying immunity to senior state officials in criminal proceedings but allowing immunity in civil proceedings. Several judges in the Pinochet case could successfully have claimed immunity if sued in civil proceedings.\(^{189}\)

A similar approach was adopted by the European Court of Human Rights in *Al Adsani v United Kingdom*,\(^{190}\) which held that an English court did not violate article 6 of the European Convention on Human Rights in granting immunity to the government of Kuwait in respect of a claim alleging torture on the part of that government. The Court stated that:

> Notwithstanding the special character of the prohibition of torture in international law, the court is unable to discern in the international instruments, judicial authorities or other materials before it which forms any firm basis for concluding that, as a matter of international law, a state no longer enjoys immunity from civil suit in the court of another state where acts of torture are alleged.\(^{191}\)

Recently, the European Court of Human Rights has followed the ruling in the *Al-Adsani* case, by upholding a plea of sovereign immunity with regard to civil proceedings for reparation sought by victims of Nazi atrocities in Greece during World War II.\(^{192}\) American courts have also applied for immunity in civil claims arising out of a breach of a norm of *jus cogens*. In *Siderman de Blake v Republic of Argentina* \(^{193}\) and *Saudi Arabia v Nelson*,\(^{194}\) immunity was extended to foreign governments in respect of claims based on torture. In Germany, in *Princz v Federal Republic of Germany*,\(^{195}\) a plea of

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\(^{189}\) [1999] 2 ALL ER 97 (HL) at 157 Lord Hutton.

\(^{190}\) (2001) 34 EHRR 273, 123 ICR 24 E. Voyiakis.

\(^{191}\) Ibid para 61 + para 65-66.

\(^{192}\) Kalogiopoulov v Greece and Germany ECHR App. No. 59021/00, Judgement of 12 Dec 2002.

\(^{193}\) 965 F2d 699 (9th Cir 1992).

\(^{194}\) 100 ILR 544.

\(^{195}\) 26 F3d 1166 (DC Cir 1994).
immunity succeeded in respect of a suit brought by a Holocaust survivor to recover damages for injuries he had suffered in Nazi concentration camps.

It is submitted that immunity is a privilege, with the result that heads of state will only enjoy immunity from criminal and civil jurisdiction in accordance with the rules of customary international law.

5.2 International adjudication

5.2.1 Introduction

A number of points will subsequently be raised, especially with regard to the international judiciary, which have recently been shown to be relevant, particularly in relation to the International Court of Justice (ICJ) and the newly adopted statute (Rome Statute) of the International Criminal Court (ICC).

International Law is a subject which is essentially concerned with relations, relations between states, and in which there was no formal system of adjudication. Traditionally, the textbook of International Law would be divided into two subject matters: the law of peace and the law of war. When one crossed the line from peace into war, a new set of rules began to apply. The first international tribunal was neither a court nor permanent, it was the Court of Arbitration.

The first international court of justice of any note was the 1920 Permanent Court of International Justice. Until 1945 it was the only global international court (Sands, 1998).

The International Court of Justice only has jurisdiction in a case where the parties in the dispute have consented to the court’s jurisdiction. Alternative methods of adjudication such as mediation, conciliation and negotiation are usually more attractive to states. International adjudication (Schwarzenberger, 1996), is however on the increase. A study of the International Court of Justice (ICJ) and its judgements is essential for an understanding of the limitations of international law, and also the prospects for an expanded role for international law in the contemporary world order.
Before the establishment of the international court, arbitration was the only method for judicial settlement of disputes between states. The increased interest in the judicial settlement of disputes between states has led to the establishment of several international courts with specialised jurisdiction. Examples are the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court of Human and People’s Rights, the International Criminal Court, to mention but a few. The International Criminal Court applies principles of international law although they are concerned with the prosecution of individuals and not the resolution of disputes between states.

Contrary to what mainstream political science/international relations theory has been predicting for more than a decade, there appears to be an increased reliance not only on international institutions to help govern international affairs, but also on formal dispute, dispute resolution and law. Recent work in international law and international relations has made the point that we need to go beyond the traditional ways of adjudication to the specific courts, as for example, the International Criminal Court (ICC) and the International Court of Justice (ICJ).

During and at the conclusion of the Second World War, significant steps were taken by the Allies and the United Nations to reform and define international law. This was done to ensure that the experiences such as the Nazi atrocities could never recur. These steps included the execution of international treaties in order to establish the International Criminal Tribunal at Nuremberg (Taylor, 1992).

After the war even greater legal reconstruction was undertaken resulting in the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948. The Declaration was an amalgam of views of nations, lawyers, jurists and philosophers as to what constitutes the core of human rights (Glendon, 1998).
The impact issue which arises from this is that the Declaration amounts to a statement of international human rights principles. The declaration incorporates input from Asian, Islamic and African cultures as well as substantial input from the communist nations, particularly the Soviet Union.\textsuperscript{196} Prior to the formulation of the Declaration, a questionnaire was sent to leading thinkers, lawyers and philosophers throughout the world seeking views relating to the core rights which ought to be encapsulated in what was intended to be an international Bill of Rights.\textsuperscript{197}

The first step taken by the United Nations in achieving this end was the appointment by UNESCO of a committee to investigate the basic feasibility of such a document (Glendon, 1998). In terms of the formal drafting process of the Declaration itself, this was a task undertaken by an individual draftsman. This single draftsman was Renel Cassin.\textsuperscript{198} Cassin was subsequently awarded the Nobel peace prize for his role in bringing about the passage of the Declaration.

Few people are aware of or appreciate the substantial contributions of small states to the construction of the Universal Declaration and the two main human rights covenants. Firstly, delegates from small states were instrumental in removing gender ties from the text. Article 1 of the UDHR begins: “All human beings are born free and equal in dignity and rights”.

A second example extends from Articles 22-27 of the UDHR, which address various social and economic rights. Article 2 presents a third example of the substantial contributions made by small states. Article 2 reads as follows: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

\textsuperscript{196} UNESCO (ed) Human Rights Comments and Interpretations (London: Allan Wingate).
\textsuperscript{197} Ibid, 8.
\textsuperscript{198} Morsink, Universal Declaration of Human Rights, p. 8.
Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitations of sovereignty”.

These three examples of the small state contributions to the UDHR invite speculation about what might have been the shape of the Declaration, and the two covenants that anchor it in international law, had its fate rested in the hands of the USA and its allies.199 Without the insistence of small states the human rights project might never have succeeded in establishing legal obligations (Waltz, 2002:437-448).

Sen does not see development as what a person possesses, but rather what each person is able to acquire, those things that are important for his/her own self-realisation. Sen groups these things together into the idea of ‘freedom’ – the expansion of freedom, according to Sen is to be able to acquire what one needs for the achievement of one’s own concept of development. In line with this, the United Nations in 1990 produced a United Nations Development Programme (UNDP), which ranks countries on the basis of development criteria. This report is based on three variables: Per Capita income or output, life expectancy, educational attainment (McCann and McCloskey, 2009).

The last point Sen makes is how a measure of development may become a form of oppression, and that links directly to a premise of the research, that whenever the identity of an individual is denied, the individual will divert to action, of any kind. At a deeper and fundamental level needs can be systematised into the categories of substance, protection, affection, understanding, participation, idleness, creation, identity and freedom, as stated by Neef and associates (1989). The degree of satisfaction regarding any of these needs indicate both deprivation and human potential. No need is per se more important that another (Botes, 2009). There is therefore largely the same concern about how to deal with poverty and growth, than how to achieve justice and equality (Haines. 2009).

5.2.2 The International Criminal Court

The International Criminal Court (ICC)\textsuperscript{200} was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression. The Court can only prosecute crimes committed on or after 1 July 2002.\textsuperscript{201} As of October 2007, 105 states are members of the Court,\textsuperscript{202} and a further 41 countries have signed but not ratified the Rome Statute.\textsuperscript{203} Furthermore, a number of states, which include China, India and the US are critical of the Court and have not joined as a member state. The ICC is separate from the International Court of Justice, which is the United Nations' organ that settles disputes between nations.\textsuperscript{204}

Many states wanted to add terrorism and drug trafficking to the list of crimes for the court’s jurisdiction to be covered under the Rome Statute, but the member states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking, since this might overload the Court’s limited resources.\textsuperscript{205} India lobbied to have the use of nuclear weapons and other weapons of mass destruction included as war crimes, but this suggestion was also turned down.\textsuperscript{206} Some academics have argued that the Rome Statute defines crimes too broadly or too vaguely. China, for example, argued that the definition of war crimes goes beyond acceptance.\textsuperscript{207}

The absence of effective international law and effective international institutions to bring offenders to justice has been a serious flaw in the system and on the part of the international community. However, ad hoc tribunals have achieved some degree of success; examples are Nuremberg 1946; Tokyo 1947; the International Criminal Tribunal for former Yugoslavia (ICTY) (Milosevic); the International Criminal Tribunal for Rwanda (ICTR); and the Special Court for Sierra Leone, and for East Timor.

\textsuperscript{200} International Criminal Court is abbreviated as ICC to distinguish it from several other organisations abbreviated as ICC.
Now, at long last since 1 July 2002, there is the permanent International Criminal Court (ICC), with the necessary minimum of 60 states. The ICC has jurisdiction over international crimes, namely genocide, crimes against humanity and war crimes. Genocide crimes comprise the intentional killing of a national, ethnic, racial or religious group. Examples include the Jews in the Second World War, tribes in Rwanda, Kurds in Iraq, and Muslims in the Balkans. The essence of crimes against humanity is the widespread and systematic attack directed against the civilian population.

War crimes are committed where there are grave breaches of the Geneva Conventions of 1949 and the Protocols of 1977. War crimes include the denial of rights to armed personnel and prisoners by killing, torture, inflicting of suffering, attacks against civilian personnel by pillaging, poison, rape and similar atrocities. Criminal intent is required for a guilty finding. The defense of superior orders is expressly excluded. An example is: 'Hitler ordered us to do it'. This was rejected at the Nuremberg trial.

The expectation is that states will prosecute alleged international war criminals locally in their own national courts, as for example Saddam Hussein. It is only if the state is unable or unwilling to prosecute that the ICC comes into motion. A case can be brought to the ICC by the United Nations or a Member State or by an ICC prosecution. The ICC prosecution office will act as the prosecutor, an example being the collecting of evidence, questioning of witnesses etc. The Office of the Prosecutor will then issue a warrant for arrest.

A suspect has certain rights, which include: the right to silence, the right to an interpreter if necessary, and the right to representation. There is also no exemption for political crimes. The ICC consists of 18 full-time elected judges, male and female,

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209 Prosecutor v Tadic, case no. IT-94-1-T, Opinion and Judgement, ICTY Trial Chamber, 7 May 1997.
210 International Criminal Court Act 2001, Section 66(1).
211 International Criminal Court Act 2001, Section 65.
212 International Criminal Court Act 2001, Section 23.
213 International Criminal Court Act 2001, Section 73.
qualified for high judicial office and experts in criminal law. The ICC sits in public without a jury and controls its own procedure and evidence. Sanction includes life imprisonment, fine and forfeiture, but no death penalty. There is also a right to an appeal.

Issues have arisen in the UK over the alleged illegality of the War in Iraq. The Attorney-General, Lord Goldsmith, stated that the war in Iraq was not illegal. He stated further that the ICC does not have jurisdiction to determine whether a war is legal or illegal. The death penalty is excluded from the list of penalties of the ICC. There were a few delegations that expressed their view that excluding capital punishment from the list was a mistake because in some cases only the death penalty would be appropriate.

A minority of the delegations objected to the inclusion of life imprisonment with reference to their respective constitutional law. Article 77(2) empowers the Court to order a fine and/or forfeiture in addition to imprisonment. A sentence of imprisonment shall be served in a place designated by the Court from a list of states which have indicated to the Court their willingness to participate (Article 103[1][a]). On the whole the penalties in place, as well as the enforcement and co-operation appear to present a normative framework that can make the necessary contribution to enable the ICC to operate successfully.

Ecuador and Mexico have refused to sign bilateral immunity agreements (BIA) with the US in ratification of the International Criminal Court (ICC) treaty. Ecuador’s president, Alfredo Palacios vocalised emphatic refusal to sign a BIA (also known as an Article 98 agreement) to the Rome Statute of the (ICC) in spite of Washington’s threat to withhold $70 million a year in military aid. Mexico, however, signed the Rome Statute, which formally established the ICC in 2000 to ratify the treaty.

214 Representing in particular Arabic and Caribbean States, both groups of states tabled specific proposals on the inclusion of the death penalty; cf. A/CONF. 183/c. i/w GP/L. 11 and 13, 3 July 1998, the inclusion of the death penalty was also actively supported by Singapore and Rwanda.
As a consequence of ratifying the ICC without a US immunity agreement, Mexico stands to lose millions of dollars in US aid, including millions of dollars to fight drug trafficking. The US State Department reported that it had secured 100 immunity agreements although less than a third had been ratified. The US State Department stated further that the ultimate goal is to conclude Article 98 agreements with every country in the world, regardless of whether they have signed or ratified the ICC, and whether they intend to in the future.

The US effort to undermine the ICC was justified in 2002 when the US Congress adopted the American Service Members Protection Act (ASPA), which contains a provision restricting US cooperation with the ICC by making US support of UN peacekeeping missions largely contingent on achieving immunity for all US personnel.

The ASPA prohibits US military assistance to ICC member states that have not signed a BIA. In spite of severe US pressure fifty-three members of the ICC have refused to sign BIAs. Experts say it is particularly notable that Mexico, which sells 88 per cent of its exports in the US market, is withstanding pressure from Washington. As noted by Amnesty International, the United States is the only nation in the world that is actively opposed to the International Criminal Court (ICC).

A poll done by the University of Maryland’s Programme on International Policy Attitudes found that a bipartisan majority of the US public believes that the US should not be given special exceptions when it becomes a party to human rights treaties. And a majority supported US participation in the ICC. Mexico has stood firm in its refusal to sign a BIA. As a result $3.6 million in military aid has been frozen, and further International Military Exchange Training aid has been cut to zero. The country also stands to lose more than $11 million from the Economic Support Fund (ESF).
5.2.3 The International Court of Justice

The International Court of Justice (ICJ) (Rosenne, 1997) is situated at the Peace Palace in the Hague. It comprises of 15 judges competent in international law, who together represent the main forums of civilisation and the principal legal systems of the world. These judges are elected by the General Assembly and the Security Council and hold office for nine years; nine judges constitute a quorum. All decisions are made by a majority ruling by the judges.

The ICJ exercises two jurisdictions. Firstly, it hears disputes between states and gives binding judgments on such disputes. Secondly, the Court may give advisory opinions at the request of designated organs of the United Nations and specialised agencies of the United Nations.

Only states may be parties to disputes before the ICJ in terms of article 34 of the Statute. The ICJ has jurisdiction only over those states which consent to the Court's jurisdiction and only in respect of those disputes which such states consent to be heard by the Court. The proceedings before the Court, which are governed by the Statute and Rules adopted by the Court, broadly resemble the proceedings before municipal courts. Although evidence is usually documentary, it is possible for parties to call witnesses.

All questions are decided by a majority of judges present. There have been a number of controversial cases that have been heard in the ICJ. France refused to appear in court when its nuclear test programme in the South Pacific was challenged by Australia and New Zealand in 1974. Iran adopted a similar approach in respect of the United States' claim for the release of hostages in Iran in 1980. The United States withdrew

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215 Articles 2 and 3 of the Statute of the International Court of Justice.
216 Article 9 of the Statute.
217 Article 9 of the Statute.
218 Article 13.
219 Article 25(3).
220 Article 55.
from proceedings in the Nicaragua Case. In circumstances like this the Court may decide in favour of the plaintiff state, after it has satisfied itself that it has jurisdiction and that the claim is well-founded, in fact as well as in law.

Although no appeal is allowed, provision is made for the revision of a judgement if decisive new facts later become available. International adjudication is of relatively recent origin, and many states still refuse to accept it as a method for resolving disputes between states. The International Court faces the same challenge as any other court. If it wants to maintain credibility it must on occasion be bold, and on the other hand show courage and wisdom.

The Charter and the statute authorise the Court to give advisory opinions at the request of the General Assembly, the Security Council and other organs of the United Nations. The Court will refuse to give an opinion if answering the question put to it would amount to deciding a dispute between states, as this would undermine the requirement of consent to adjudication. In an opinion the ICJ stated that the Fourth Geneva Convention relative to the Protection of Civilian persons in Time of War of 1949 is applicable to the occupation of Palestine, and that Israeli settlements in the Palestine territory are unlawful, and that Israel is obliged to comply with international human rights conventions to which it is a party, in its treatment of the people of Palestine. Not unexpectedly the opinion has been subjected to serious criticism.

When deciding on cases, the ICJ applies international law as summarised in Article 38 of the Statute. This statute provides that in the formulating of a decision the Court shall

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224 Article 53 of the Court’s Statute.
225 Article 60-61 of the Statute.
226 Article 96.
227 Article 65.
228 At present, 22 international bodies are entitled to request advisory opinions.
230 Ibid, para 120.
231 Ibid.
apply international convention, international custom and the general principles of law recognised by civilised nations. It may also refer to academic writings and previous judicial decisions to help interpret the law, although the Court is not formally bound by its previous decisions under the doctrine of *slave decisis*.

If the parties agree, they may also grant the Court the liberty to decide *ex aequo et bono* (in justice and fairness), granting the ICJ the freedom to make an equitable decision based on what is fair under the circumstances. Despite the 2004 International Court of Justice (ICJ) decision that called for the tearing down of the Israel-Palestine Wall and compensating affected communities, the construction of the wall continued. The route of the barrier thus runs deep into Palestinian territory.

The World Bank has meanwhile outlined the framework for a Palestinian Middle East Free Trade Area (MEFTA) policy in 2005. The Post-Wall MEFTA vision includes complete control over Palestinian movement. The report proposes high-tech military gates and checkpoints along the wall. A transfer system of walled roads and tunnels will allow Palestinian workers to be conveyed to their jobs while simultaneously denying them access to their own land.

### 5.2.4 The United Nations in conflict resolution

The UN is the primary international body for peace and security. It has many different roles in peace processes, which can be seen from its record in conflict resolution since the end of the Cold War.

A fuller understanding of the United Nations also requires a look at its special legal standing and the concept of collective security. Some conflicts have ended through a decision in the Security Council. This, however, is rare, but was the way the Iran-Iraq War was terminated. (The parties abided by a resolution from the Council.) In other situations the UN has been involved in negotiations through Special Representatives. This happened in peace processes in El Salvador, Angola, Mozambique, Liberia, the Central African Republic, Tajikistan and Western Sahara (Higgins, 1963).
Some situations can also be described as failures for the UN. This was the case in Rwanda in 1993-1994, when the UN was not able to achieve a cease-fire or the implementation of a peace agreement. It did not have the will or the resources to prevent the genocide. On the other hand, the UN has been important in the implementation of many agreements. Examples in Mozambique, the Central African Republic and Cambodia, and the building of a civilian administration in Kosovo and East Timor (Lukiyantsev, n.d.). The UN has also in some cases authorised action, but left implementation to others, as in the Gulf War. Security Council Resolution 678 of 1990 gave the United States the right to use all necessary means to end the occupation of Kuwait.

The following are a number of ways in which the United Nations can be useful for peacemaking (conflict resolution): The UN may serve as a framework for action, which is driven by other parties. It may also be an actor in itself, in the handling of a settlement process but without losing sight of what member states may want. It needs to be emphasised that the UN is a membership-directed organisation and that the members are all member states. This has a large impact on its powers.

International collective security is therefore the primary concern of the United Nations. What the UN does is related to this framework, as stated in the previous paragraph. The UN generally works for the peaceful settlement of disputes, as stipulated in Chapter VI of the UN Charter. But it can also, by invoking Chapter VII, command the allegiance of the entire organisation and its full membership. These actions are for the Security Council, to be taken on behalf of the organisation.

The Security Council is extraordinarily powerful, since it is composed of the strongest military states. An important task for this Council is to identify aggression. Article 39 stated three ways of categorising a particular crisis situation under Chapter VII:

- It has to be an act of aggression;
- a breach of the peace; or a
threat to the peace.

The only protection UN member states enjoy within the limits of the Charter is that a permanent member can use its veto, or that a state can muster the support of at least seven non-permanent council members. The veto system is criticised but it is also important for smaller states, because it provides a guarantee that the UN will not be used by one group of major powers against another. This is an important difference between the UN and the League of Nations. There are three organs in the UN that may take action in the event of a serious conflict: the Security Council, the General Assembly and the Secretary General.

The Secretary General, as the chief administrative officer of the Secretariat, has an important position. According to Article 99 the holder of the office can call to the attention of the Security Council any emerging threat to international peace and security (Human Rights Watch, 2005).

The role of the UN in conflict resolution changed during the 1990s. This is evidenced by the number of resolutions passed in the Security Council. The expectation is that when an armed conflict enters the agenda of the Security Council, there will be action. The Security Council has some measures at its disposal to bring about or keep peace. One measure is the use of economic means, while another is sanctions. This is mentioned in the Charter. A second instrument is the use of peacekeeping operations to contribute to and sustain a peace process. A third method is peace enforcement (Broomhall, 2004).

In the cases where sanctions have been initiated there has been an element of success. The criticism against sanctions is that they affect the entire population of a state. The sanctions against Iraq have been strongly debated, due to their humanitarian consequences. The Council has tried to smooth the effects on the general population through an 'oil for food' arrangement, which means that Iraq is entitled to sell oil under UN control, and to use the proceeds to buy food.
In October 1999 sanctions were also introduced against Afghanistan, directed against the internationally unrecognised Taliban regime. This was done because of the Taliban’s unwillingness to take action against terrorism and in particular because of its refusal to turn over Osama bin Laden to the appropriate authorities, a neutral country where he would be arrested and brought to justice (Broomhall, 2004).

The UN peacekeeping record since 1989 is impressive: A total of 54 peacekeeping missions have been mandated during the existence of the United Nations, among which 38 have been initiated since 1989. The concept of peace enforcement is one of the new instruments for international organisations. It means that wars are brought to a halt through direct and overwhelming military intervention. There are two examples of military actions that have been outside direct UN control, but had their bases in UN decisions:

- Korea in 1950; and the

The above underlines the importance of the UN in many peace processes. The UN has an undisputed legal position in the international system and the UN Secretary General has a special role, both in the early phases of conflict, when prevention is still possible, and in the later stages of conflict and conflict resolution (Wallensteen, 2004).

The United Nations Charter contemplates that the United Nations will be assisted by regional arrangements in the quest for international peace. Article 52(2) declares that members of the United Nations should make every effort to settle disputes through regional arrangements before referring them to the Security Council, which may use regional arrangements for enforcement action under its authority. Thus in Bosnia-Herzegovina the United Nations made use of NATO to enforce 'no fly' prohibitions and to protect safe areas.

In March 2003 the United States and the United Kingdom invaded Iraq. The invasion occurred without clear Security Council authorisation and could not seriously be justified
as an exercise in self-defence. This event has been widely construed as a violation of the Charter’s prohibition on the use of force and as a threat to the legal order that has governed the world since 1945.

A sophisticated legal argument in defense of this invasion in Iraq was presented by the British Attorney-General (Harris, 1997), which was later endorsed by the legal advisor of the United States Department of State. According to the British Attorney-General, Lord Goldsmith, the United Kingdom justified its intervention in Iraq on the basis of three Security Council resolutions adopted under Chapter VII–Resolutions 678 (1990), 687 (1991) and 1441 (2002) (Dugard, 2005).

In 2002, following 12 years of failure on the part of Iraq to fully comply with Resolution 687, the Security Council adopted Resolution 1441 in terms of which it found that Iraq was in material breach of its obligations under Resolution 687, by reason of its failure to cooperate with United Nations weapons inspectors.

The resolution gave Iraq a final opportunity to comply with its disarmament obligations and warned it of the serious consequences. Failure to comply with this resolution revived Resolution 678 and allowed states to use force against Iraq in terms of this resolution without further authorisation from the Security Council. This, however, is not in the interest of peace and sound international relations. The United States and the United Kingdom acted unlawfully in invading Iraq in March 2003.

5.2.5 The Nuremberg Trial
After the Second World War the German leaders were charged as war criminals in a trial held at Nuremberg. On 6 October 1945 twenty-four of the most prominent names in the Nazi movement and the German Army learned that they would be the defendants in the Nuremberg trial for human rights abuses during the Second World War. They were brought together and housed in Spartan cells, and were soon come to know the details of the crimes with which they had been charged.
In the meantime the other group, the eight judges, met each other for the first time. The Nuremberg Charter was to deliver spelled-out charges against the twenty-four individual defendants and seven defendant organisations under three counts: crimes against peace, war crimes, and crimes against humanity.\textsuperscript{233}

Each of these three counts had a specialised content. Crimes against peace encompassed the planning, preparation, initiation, and waging of a war of aggression, and participation in a common plan or conspiracy to wage such a war, in violation of treaties and international agreements such as the 1928 Kellogg-Brand Pact. In other words, the Nazi leaders were being charged with waging an illegal war, since the international community had outlawed aggressive war during the interwar era.

The second count, alleging war crimes, referred to violations of the traditional laws of war, such as battlefield atrocities, and mistreatment of prisoners, as codified in international agreements such as the Hague and Geneva Conventions of 1907 and 1929. The Nuremberg Charter defined the third and final count of crimes against humanity as:

\begin{quote}
Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of domestic law of the country where perpetrated.\textsuperscript{234}
\end{quote}

Crimes against humanity were the most innovative and controversial of the three counts. The Nuremberg Charter offered a concrete example of the interaction between politics and ideas and it pushed American diplomacy towards multilateral solutions. The two key issues under the microscope in this trial and according to the Charter were:

\begin{itemize}
\item Could the charges designed to assign individual guilt for the waging of aggressive war as a crime under universally applicable international law, be applied; and
\end{itemize}

\textsuperscript{233} The Nuremberg Charter is appended to the London Agreement of August 8, 1945.
\textsuperscript{234} Charter of the International Military Tribunal, art 6, Aug 8, 1945, 59 Sat. 1544, 1547, 82 U.N.T.S. 279, 286-88.
would it be feasible or indeed desirable to prosecute pre-war anti-Jewish atrocities and harassment?

Many contemporaries of the Nuremberg trial saw it as a first step on the road to a permanent International Criminal Court. The architects of the Nuremberg Trial saw themselves as contributing to a new, integrated idea of security, encompassing all four of President Roosevelt’s so-called Four Freedoms. Together with proposals for comprehensive disarmament, Nuremberg was designed primarily to be about freedom from the fear of aggressive war.

The ideas about international law embodied in the Nuremberg Charter were a new combination of older conceptions regarding just and unjust wars. The Nuremberg trial and its Charter were designed to mark the re-establishment of the principle that there are just and unjust wars and that unjust wars are illegal. The Nuremberg approach was an innovation in the world of legal ideas, but the trial’s design was also an attempt to learn from history of the failure of the World War I-era approaches. To Nuremberg’s critics, the revival of the just war framework suggested another corollary: that victims of such illegal aggression could now be presumed to have virtually unlimited rights, including the right to resort to atomic weapons (Hadbinod, 1953).

To Nuremberg’s proponents, however, the development of the Nuremberg Charter was simply the search for a pragmatic new deal-style middle way that could support a conception of the progressive development of international law, while avoiding the pitfalls of the past. The 1943 Moscow Declaration is the traditional departure point for many accounts of the negotiation of the Nuremberg Charter. In the wake of the Moscow Declaration, officials in the War Department developed several general plans, starting with the handbook on Military Government for Germany, which included an annexure on war criminals.

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235 The Four Freedoms were freedom of speech and of religion and freedom from fear and want. Franklin D. Roosevelt, Annual Message to Congress (Jan 6, 1941).
236 Nuremberg Charter supra note 6, Preamble, 59 stat at 1544 82 U.N.T.S. at 280.
Three main 'legal' controversies originated from the plan for trying the Nazi Leaders, soon to be known as the Nuremberg Charter.\textsuperscript{237} The first question was whether aggressive war was already illegal under a traditional, positivist approach. Critics of the Nuremberg approach often noted that this argument was significantly weakened by the inability of the Charter’s drafters to agree on a definition of aggression.

The second major controversy, which continued throughout the trial, was the scope of application of the conspiracy charge. The Nuremberg court later expressed its continuing discomfort with the concept by ensuring that no defendant was convicted for the crime of conspiracy alone.\textsuperscript{238} The third major legal issue that the Charter needed to address was the rationale and legitimacy of treating murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian populations as an indictable category of criminal activities known as 'crimes against humanity'. Another contentious aspect of the idea of crimes against humanity was the scope of its application: would this charge apply to pre-war atrocities inflicted on Germany’s own domestic population?

The text of the Judgement reflected the Nuremberg court’s decision not to address pre-war atrocities against domestic minorities despite some contradicting language in the Charter.\textsuperscript{239} The prosecution at Nuremberg argued that under the terms of the Charter, the court of crimes against humanity should indeed encompass German atrocities committed within Germany and against German nationals. The tribunal’s decision on pre-war atrocities was a compromise, awkward even by legal standards, based on a very strict reading of Article 6.

The Nuremberg tribunal asserted that its Charter was contributing to a broad historical trend affirming the universal value of international moral and legal sanctions, which had been a growing force in international affairs since at least the end of the First World War. The Nuremberg Charter, in particular appeared to many contemporary

\textsuperscript{237} Jackson Report of Robert H, supra note 91.
\textsuperscript{238} IMT Nuremberg, supra note 2 at 255-78.
\textsuperscript{239} Article 6 of the Nuremberg Charter.
commentators as a concrete realisation of the hitherto unsupported moralistic ideas of the post-World War I era, while also serving as an expression of the positivist strain of legalism from the earlier Hague era as well. Nuremberg was an attempt to express moralistic ideas in a legalistic manner, and in so doing it teemed with internal contradictions. However, the Nuremberg trial passed, the task was done, while generating a minimal level of legitimacy (Borgwardt, 2007).

The Nuremberg trials embodied the first institutionalised multilateral attempt to utilize the ideals of the rule of law to give voice to moral institutions. The bare language of the Nuremberg Charter was not phrased, using modern human rights terminology. The trials’ context of genocide and atrocity transformed the way in which the proceedings came to be understood over time.

The focus thus far has been on the way in which contemporary planners saw the trial and how commentators received their efforts in the short term. Can the important paradox of Nuremberg, as a human rights institution, serve as the gap between what the architects of Nuremberg thought they were doing and how the perceived human rights lessons of the trial have changed over time?

Law Professor, Martha Minow describes as 'devastating' the wide gap between the capacity of the trial form with its rule of law and the nature of mass atrocities (Minow, 1998). One of the main reasons that the trial is often overlooked as a fountainhead of human rights culture is the strange divergence between what the Nuremberg Charter purported to be about – primarily, the outlawing of aggressive war – and what the trial is in fact remembered for today – namely the landmark delineation of crimes against humanity in the context of the Holocaust and genocide.

The Nuremberg trial legacy was the immediate apparent ideal of holding individuals responsible for crimes against international law and fellow human beings. Even the trial’s least successful legacy, its attempt to consolidate the status of aggression as an
international crime, helped to shape the direction of human rights for the future (Margulies, 2007).

Another important aspect of the trial was the rule of law legacy for procedural fairness accorded by giving the defendants the opportunity to defend themselves against the criminal charges, and for natural justice to prevail in such learnings. This included the presenting of evidence and cross-examination. Author and columnist for the Liberal Daily PM, Max Lerner, saw Nuremberg as a kind of public ritual, where the international community could attempt, through an immense and revolutionary effort to give utterance to a collective human conscience, to bring into being a collective standard by which gross violations of that conscience could be punished (Lerner, 1948).

Law Professor, Thomas Franck explains succinctly how the Nuremberg ideas served to reconfigure the individual’s relationships to his or her own national law: The International war crimes trials which followed the demise of Hitler’s Empire gave powerful impetus to the notion that there is a global system-based duty to disobey positive law when it serves demonic ends. This episode briefly succeeded in focusing attention on an international rule system, which is the repository of inalienable rights, rights that may even have the capacity to invalidate the duty to obey national laws (Thomas, 1990).

The Nuremberg judges themselves explained that the very essence of the Charter was that individuals have international duties (Borgwardt, 2007).

5.2.6 Tokyo War Crimes Tribunal

The Tokyo War Crimes Tribunal, formally known as the International Military Tribunal for the Far East (IMTFE), was based on the Nuremberg Trials and it was convened on 3 May 1946. (Van der Vyver, 2003). The aim of this tribunal was to bring prominent figures to book after the defeat of Japan in the Second World War. Many people were of the opinion that the aggressive stance of Japan during the Second World War and its
inhumane treatment of prisoners of war and civilians were comparable and even worse than that of the Nazis during the war.

It is for this reason that the Allies were of the opinion that the Japanese leaders should pay for what they had done, rather than to hold office. The Japanese leaders were charged with a variety of crimes:

- Class A – starting and waging the war;
- Class B – committing war crimes; and
- Class C – committing war crimes against humanity.

These trials were more controversial than those held at Nuremberg. The defense of the Japanese accused was that they had not been signatory to the Geneva Convention, which specified the proper treatment of prisoners of war and civilians, and because of that they were not in breach of any international law. They went on to argue further that the Allies themselves were not on trial for some of the worst episodes of the conflict, such as the bombing of Nagasaki and Hiroshima, which killed millions of civilians in the most horrifying way and caused lasting sickness and disease in the population, as well as untold ecological damage. However, despite heavy criticism the Tokyo trials continued. The Japanese military had the reputation of being extremely cruel to prisoners of war, and this was indeed highlighted during the trials.

Japanese military culture was such that soldiers were expected to be unconditionally loyal to their superiors and to show no mercy on their enemies. Furthermore, the Japanese religion Shinto had further contributed to the ideal of obedience at all times, and unconditionally (Margulies, 2007).

During the 1930s a military dictatorship had taken control of Japan. This meant that Japan's secret police, the Kempeitai, ruled the country by fear, and this spread down the ranks even to the prisoners of war. Just as at Nuremberg the courts were shocked by survivors’ accounts of what had happened in the Japanese prisoner-of-war camps. Besides everyday ill-treatment, such as starvation, there were many instances of
murder, torture and rape by senior officers that went unpunished. Additionally, the Japanese conducted experiments on the prisoners of war, just as the Germans did (Van Krieken, 2007).

In one instance, victims were taken outside in freezing weather, stripped and soaked in water until they had frozen solid. Firstly their arms were amputated, and then their legs. This was done to enable doctors to discover how frostbite affects the human body. Afterwards, the torso was used for other experiments, including researching the effects of diseases such as plague. There were also other stories of prisoners being used in tests for biological and chemical weapons, such as poison gas.

Many tales have also been told of torture by military intelligence on a daily basis. After being tortured victims were often executed. The Japanese also forced thousands of civilian women into prostitution: they set up military brothels and forced local women to become sex slaves. In this way, women from the Philippines, Taiwan, Korea, Thailand, Vietnam, Singapore and China became prostitutes. Some commentators alleged that this system was not an abuse because many of the women agreed to become prostitutes voluntarily (Karatnycky and Puddington, 2002).

Besides this, many civilians and prisoners of war became victims of forced labour camps. They were forced to work so hard that they died from disease and exhaustion. According to reliable sources more than 10 million Chinese civilians were forced to become labourers for the Japanese. Today, it is well known that over 100,000 civilians and prisoners of war, that included British, Australian, Dutch and American servicemen, died while building the Burma Railway from Thailand to Myanmar known as the 'Death Railway'.

After the trials seven officials were hanged at Sugamo Prison and sixteen others were sentenced to life imprisonment. Of those serving life sentences, 13 were paroled and one went on to become Minister of Foreign Affairs in a later government. While the
Japanese Government never fully recognised their legal and moral responsibilities for the crimes committed in World War II, individual prime ministers have offered apologies. Instead, in defense the Japanese government pointed to the monetary compensation it gave to victims of war crimes in compliance with the Potsdam Declaration of 1945. It also pointed to the setting up of the Asian Woman’s Fund in 1995, an organisation that aimed to compensate women forced into prostitution during World War II (Anderson, Williams and Head, 2007).

5.2.7 The Universal Declaration of Human Rights

The Universal Declaration has grown internationally and nationally (Anderson, Williams and Head, 2007), for example, relating to the right to be free from torture, there is now a Torture Convention, a UN Committee against torture, and an individual complaints mechanism. This led to many states adopting legislation criminalising torture. A myriad of political and civil rights in the Universal Declaration of Human Rights, such as the right to life, liberty and security of the person, can be found in the International Covenant on Civil and Political Rights (Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984).

Human Development is about much more than Economics. It is about creating an environment in which people can develop to enable each individual to develop his/her full potential in accordance with their needs and interests. An environment characterised by war will certainly counter this development process of individuals.

The economic, social and cultural rights in the Universal Declaration, for example the right to education, have been strengthened and amplified by the International Covenant on economic, social and cultural rights. There is also a committee to oversee the implementation of this covenant. The Universal Declaration of Human Rights has been an inspiration for national legislation and national constitutions and has become a vital tool when interpreting the Charter.

240 (http://hdlr.undp.org/en/humandev)
Chief Justice Dickson wrote in a case back in 1987, “The content of international human rights obligations is, in my view, an important indication of the meaning of the full benefit of the Charter’s protection”. Human rights organisations use the Declaration to hold governments to account, and to rally support for human rights. The Universal Declaration has given hope, has held out a promise to the people of the world.

On 13 July 1948, the British government issued a secret cable to the Commonwealth requesting that as many as possible of the Nazi war criminal cases which are still pending should be disposed of. Also no fresh trials should be started. The British government stated further that in their view punishment of war criminals was more a matter of discouraging future generations than of meting out retribution to every guilty individual.

Although the Universal Declaration comprises of thirty articles and asserts a myriad of rights, it can be summed up in two words: 'Never again'. Following the Second World War a desire grew to protect human rights and especially to guard against discrimination, which internationally led to the Landmark Universal Declaration of Human Rights in 1948. Of course it would have made no sense, after terminating the Nuremberg prosecutions, to create an international criminal court.

The United Kingdom’s argument was that it is not necessary to set up a permanent tribunal for war crimes since war itself is not permanent. Their opinion was that ad hoc methods of adjudication used in the past were adequate. The UK went on to argue that no government that was guilty of crimes against humanity would surrender its nationals for trial before an international criminal court. If a permanent court of international criminal justice had been established after the Second World War, it would probably have taken up the unfinished business of prosecuting Nazi war criminals.

243 Ibid.
Today it is evident that it was a vital mistake to disband the Nuremberg prosecutions before they were completed, and to rely on the Universal Declaration of Human Rights to prevent future wrongs. It is eminently predicted that, if the perpetrators of the worst crimes go free, the crimes would continue to be perpetrated. The deaths of millions can be laid at the feet of those who decided to dismantle Nuremberg and thwart the establishment of an international criminal court.

It soon became clear that an international criminal court was indeed needed. The Universal Declaration of Human Rights was defenseless against the likes of Idi Amin and Pol Pot. It was consequently decided by the global community in Rome that the establishment of an international criminal court was needed. It was also decided that the court would not come into being until sixty states had ratified it. Before ratification each state had to ensure that its legislation complied with the Rome Treaty (Statute of the International Criminal Court, 17 July 1998).

The rights in the Universal Declaration of Human Rights may not be globally respected, but at least they are widely accepted. Nonetheless, the existence of two rights in the Universal Declaration of Human Rights is contested:

- The right to be free from incitement to discrimination; and
- the right to seek asylum.

However, if one right in the Universal Declaration has to stand out, it would be the right to dignity. Different rights would be regarded as more important to different people. However, it would be churlish to argue with anyone about their favourite right.

If rights have to be ranked, the list would probably come out in favour of the right to life being protected and mentioned in the Universal Declaration of Human Rights, mainly because the greatest crimes of this century are crimes against humanity, which include genocide: the Holocaust, the Armenian massacre; the Bosnian ethnic cleansing; the Cambodian killing fields; and other mass killings. If we ask which other human rights
violations led to these mass killings, the answer must be the violation of the right to be free from incitement and discrimination.

For the Universal Declaration of Human Rights to be successful, it has to be complemented by the effective prosecution of the worst violations of Human Rights standards (Matas, 2000). During the apartheid era both government and non-government organisations frequently judged South Africa by the standards of the Universal Declaration (Robertson, 1991). Today, the Universal Declaration is an instrument to which South African courts may turn in their interpretation of the Bill of Rights (S39 (1) (b) of the 1996 Constitution, Act 108 of 96).

The impact of the Universal Declaration on the development of human rights has been immense. It has been used by the organs of the United Nations as a standard by which to measure the conduct of states, and it is invoked by the 1975 Final Act of the Conference on Security and Co-operation in Europe (the Helsinki Accord). Consequently, it is argued that the Universal Declaration of Human Rights now forms part of customary international law (Dugard, 2005).

**Conclusion**

Only after the Second World War new laws and new institutions were developed in terms of human rights to hold perpetrators accountable. New laws were necessary to adequately indict crimes against humanity, genocide and grave breaches of the Geneva Convention.

New international conventions also followed. Thus it was recognised that the human rights of individuals were of concern to the international community. This was followed in 1948, by the Universal Declaration of Human Rights, which gave birth to the International Human Rights Convention of the 1960s. This ushered in major changes: individual human beings became the subject of international law, and subject to some crimes, where adjudication became important. Crimes committed against humanity

245 The text appears in 1975 14 ILM 1293.
became crimes, committed not only against victims, but rather against all human beings.

Originally it was appropriate that such crimes were to be tried anywhere in the world. Jurisdiction would not depend on the place where the crime was committed but on the nature of the crime. Recently universal jurisdiction has become a feature of a number of international conventions. This includes the grave breach of provisions of the Geneva Convention of 1949, the Torture Convention of 1984, and most of the international conventions combating terrorism.

Another area of substantial advance in recent years relates to the frequency with which some governments and international organisations have been prepared to intervene or become involved when the human rights of citizens of a state have been violated. Until the Second World War this did not happen. It could be argued that the willingness of the global community to become involved was demonstrated when the US and its allies invaded Iraq in 2003. The proliferation of international and multi-national war crime tribunals is also a new feature of modern international law.

A body of humanitarian law that called for the establishment of multi-national courts existed, especially for violations of the genocide convention, crimes against humanity, and grave breaches of the Geneva Convention. It was most probably the Cold War that jeopardised the establishment of such a court. The genocides committed by Saddam Hussein, for example, did not result in any international criminal court being set up, although these developments resulted in many governments joined the call for the establishment of an International Criminal Court (ICC).

The Secretary-General of the United Nations called for a conference that was held in Rome in June and July 1998 to consider such a treaty. The treaty was approved by 120 nations with only seven rejections, one of which was the US (Dugard, 2005).
The Rome Treaty has now been ratified by 94 nations, including every member of the European Union. There is also now mass of support for the ICC, which makes it possible for this institution to contribute meaningfully to international justice. Therefore, since World War II there has been a substantial advance in international humanitarian law and in the international rule of law. The issue today is whether this trend is going to be reversed and set back by the aftermath of the events of September 11, 2001 (Cordesman, 2003).

The leaders of some democratic nations are struggling to find a balance between combating terrorism and protecting civil liberties. The US has failed to respect some of its obligations under the Geneva Convention and members of its army have been proven guilty of torture and of demeaning the dignity of prisoners in Iraq and Afghanistan. The Counter-Terrorism Committee was established by the United Nations Security Council to monitor anti-terrorism legislation called for soon after 9/11 in a peremptory resolution (Goldstone, 2004).

Clearly, terrorism represents a serious threat to security, stability, freedom and democracy worldwide. The events of 11 September 2001, the London bombings and Madrid explosions demonstrate this in the most violent and shocking way possible. There can be no doubt that the World, and more specifically the United States and its allies, need to address these challenges with new wisdom and methods in order to be effective in what needs to be done: starting off with the protection of their citizens from security threats and the honouring of human rights (Ricks, 2007).

A balance must therefore be found, ensuring that there is no backtracking on the establishment of fundamental values, and that the rule of law and human rights do not become victims of current events. All Offices for Democratic institutions and Human Rights (OSLE/ODIHR) states are committed to participate to respect international and human rights law in the fight against terrorism.
Nevertheless, it appears that there is a tendency in several countries across the whole OSCE region not to take human rights and the rule of law commitments seriously in response to the threat of terrorism. Some countries have adopted or are in the process of adopting new legislation or practices that appear to violate fair trial guarantees and other human rights standards.

These human rights abuses include the following: the indefinite detention of large numbers of alleged terrorists of foreign nationality; the setting up of special military courts with limited fair trial guarantees for non-citizens suspected of terrorism; and a lack of respect for international humanitarian law in the determination of the states of certain groups of prisoners.

Some states appear to take advantage of the fact that terrorist acts do not fall accurately into a particular category of law. Some states choose to apply the law which bests suits their own purposes rather than being objective and operating in good faith. This can lead to discrimination as suspects charged with the same offences end up being tried under different legal regimes. This is subsequently used to restrict fundamental freedoms such as: freedom of expression, freedom of religion or freedom of association (Pena, 2006).

Across the entire OSCE region there is frequently a risk of torture or the application of the death penalty (as in the case of Saddam Hussein). Lasting security and stability are not possible without respect for human rights and the rule of law. History has shown that conflict and instability are often caused by the deterioration of human rights in a country. Two examples are, Afghanistan which became a breeding ground for terrorism, and the events that led to the conflict in Kosovo.

The threat of terrorism requires multiple solutions, such as democratic institutions with functioning judiciaries and an active civil society for the prevention of religious or political extremism, which are the root causes of terrorism. It, however, remains a delicate matter to find the right balance between legitimate security concerns on the one
hand and the protection of human rights (including human security) on the other. Even well-developed democracies have been struggling to find appropriate responses to the changed security environment\textsuperscript{246}.

After 11 September more (and not less) respect for human rights and the rule of law is needed globally. It is often also said that the fight against terrorism is not about a clash of cultures but rather a clash of different values (Stoudmann, 2002). It is not easy to make evaluations about Iraq’s particular history under Saddam Hussein, the human rights abuses, and now also the war against terrorism, all against the background of Human Rights. All these issues are complex.

In the light of the War on Terror and of a perceived connection between the ideological and practical aims of Al-Qaeda and Saddam Hussein, the United States declared a new defence strategy in June 2002, ‘pre-empire self-defence’, which declared that the US had the right to attack another state if it deemed that state to be an actual or future threat to US security. Following this declaration, the United States began to pressure the United Nations to enforce its own legal resolutions against Iraq and to take action against Saddam Hussein (Allawi, 2007).

A coalition of states was formed, led by the United States and Great Britain and the war on terrorism commenced in March 2003. This act was technically speaking illegal since it was not authorised by the Security Council of the United Nations. Combating terrorism should be undertaken with the simultaneous preservation of core human rights and democratic principles (Wright, 2006).

The premise of this thesis is that we must all honour our mutual responsibilities for our shared human dignity. In this context it includes the human suffering perpetrated by the terrorists as well as by those who engaged in arbitrary and indiscriminate retaliation. I have emphasised this point from the start by equally strongly condemning both the terrorist attacks and the unilateral military retaliation by the US and its allies.

\textsuperscript{246} Centre for Strategic and International Studies, \textit{Transnational Threats Update} 1:10 (July 2003), 2.
It is also important to note that all of us share in the responsibilities of combating both terrorism and arbitrary retaliation, because we all benefit when these responsibilities are discharged properly, and all suffer when they are not. For the purposes of this thesis we can begin with either side of the present failure to honour our mutual responsibilities since the history and dynamics of both aspects are intertwined.

Terrorist atrocities such as 9/11 were not initial or retaliatory actions and will not be the end, as both aspects influence circumstances. It is also clear that the consequences of these events in the future can either perpetuate the cycle of violence and counter-violence or evolve towards accountability and peaceful mediation of the conflicts. Both sides of the equation must be considered interchangeably, shifting back and forth among different aspects of the aftermath of 9/11, without implying that either side justifies or legitimises the other. The purpose is to highlight some aspects of the risks of our shared responsibilities on both sides with the goal of addressing such failures and safeguarding against future risks, rather than blaming one side or the other.

The grossly disproportionate and aggressive foreign policy of the US after 9/11, especially the attempted colonisation of Iraq since March 2003, is particularly damaging to the human rights paradigm. The Iraq occupation has been a colonial venture because colonialism by definition is the seizure of the sovereignty of a people by military conquest without legal justification, whether in self-defense or when authorised by the Security Council of the United Nations. An example of the violation of human rights can be found in apartheid South Africa before the first democratic elections in 1994.

The invasion of Iraq was so fundamentally illegal and counter-productive that it undermines the foundation of the rule of law in international relations. The question to be answered remains how to develop the necessary institutions and a global culture of the rule of law in international relations and the protection of human rights worldwide.
This question is best answered by a renewed determination to restore the vision of the Charter of the United Nations to prohibit wars of aggression like the war on terrorism, to punish terrorist acts as crimes against humanity and to uphold legality in international relations. On the Islamic side of fundamentalism the failure of Muslims to respond effectively to their responsibilities for peaceful international relations is as damaging to human rights and a sound respect for the rule of law as the invasion of Iraq by the US and its allies.

Muslim features in this regard can be seen in the conduct of countries like Afghanistan under the Taliban, as well as Iraq under the BaÀth regime of Saddam Hussein. The ability of perpetrators to use terrorist acts and the willingness of the wider population to tolerate such acts is an indication of disrespect for the safety of other human beings, and of disrespect for the rule of law.

The War on Terrorism in terms of human rights has been shown to put pressure on human rights as a moral system and on its strengths and its weaknesses. We must start with human rights as the chief set of principles that limit the types of ethically permissible action in a war on terror. To believe in human rights is to say we will not do certain things to fellow citizens or fellow human beings, no matter what the circumstances.

Human rights are the rights we have as human beings, and therefore are the ones we cannot lose. They are not connected to political or civil status, moral worth or conduct. Even if we are bad human beings we still have human rights. The Romans had an adage, salus populi lex – the safety of the people is the ultimate law, and it justified emergency measures for emergency circumstances.

Some academics believe that the rule of law implies that there should be no exceptions at all, no emergencies and no derogations. International human rights law is not committed to absolute non-derogation of rights, but rather to the limitation of derogation
through an obligation to provide justification to accountable public bodies, especially the judiciary and the elected legislation (Galbraith, 2006).

The International Covenant on Civil and Political Rights allows states to derogate or suspend rights of political participation, but not absolute non-derogable rights, such as immunity from torture, etc.

In the wake of September 11, when no one knew how many cells Al-Qaeda had in operation in the United States, it was legitimate to arrest 1200 people who had violated the terms of their immigration visas. In these circumstances the abridgement of the rights of these 1200 people could be justified. But the justification becomes less compelling with each passing day that the authorities had failed to prove that the detainees constituted an actual or possible danger (Burke, 2007).

If we are at war with terror, then an additional question arises: which laws are applicable? Human rights or the laws of war in these circumstances? These two ethical systems are closely related but also contradictory, and the one way to understand the ethical complexity of a war against terror is to understand the difference between them. Sometimes the laws of war and human rights overlap. In neither ethical system – whether the detainee is held as a prisoner of war under the Geneva Conventions or as a criminal suspect awaiting trial – is torture permissible.

For a state party such as the United States to hand a detainee over to another jurisdiction for interrogation where such prohibitions do not apply, would make the United States responsible, as principal agent, for the conduct of its proxy. Sometimes – as in the case of torture – human rights and the laws of war impose the same ethical limitations on counter-terror strategies. In combat operations using the armed forces of a state, you can shoot to kill, but if you are conducting police operations only, you cannot or at least should not (Margulies, 2006).
In the case of Al-Qaeda, which is a full-scale military formation, a military response was legitimate. The bigger picture here is that human rights cannot serve as a complete guide for action, because of the fundamental commitment to the right to life. Moving beyond the limitation imposed by human rights does not mean passing from ethical limitation to barbarism. It simply means passing from one strategy of pre-commitment – human rights – to another: the laws of war.

More complicated is the relation between the laws of war and standard criminal law. The laws of war hold that it is unlawful to kill a disarmed combatant taken prisoner; furthermore prisoners must be released upon conclusion of hostilities. The Bush administration’s handling of terrorist prisoners suggests that it chose its ethical restraints according to convenience. Examples are: it abides by some of the laws of war for detainees at Guantanamo, respecting their religious rights, but it will not grant them formal prisoner of war status, since that would require post-hostilities release (Dugard, 2005).

Those troubled by the above ethical inconsistency might ask whether the handling of terrorism can always be consistent, given the fact that terrorists themselves confound categories seeking civilian guises to escape detection and then using military training and tactics to mount attacks. Furthermore, a consistent application of laws of war doctrine might require the release of individuals who constitute a threat. The US position on accountability requires further debating. It holds prisoners while reserving the right to decide which of its international obligations under the Geneva Convention apply.

This makes the United States judge and jury in a matter affecting the human rights of detainees, and this is precisely what the Geneva Convention prohibits. Since Al-Qaeda has the characteristics of a criminal cell and a military formation, it is inevitable that the moral principles governing the combat against it should conflict. Thus far, we have looked at human rights and the laws of war as pre-commitment strategies designed to restrain our conduct in a war on terror, keeping them within the confines of justice. What
is needed now is to look at it from the opposite side, and that is the point of view of the terrorist.

Human rights do not motivate terror – but they also do not prevent them from serving as an important justification for acts of terror. So if human rights do not feature as a direct motivation, they do figure as justification. An example of this is the Irish who wished to rule themselves, free of British occupation. This is also better understandable since the events of September 11. The attackers of 9/11 did not leave behind demands of justification, but their acts have been interpreted by their supporters to have been in the name of the rights of the Palestinians, the rights of believers to worship in a holy place free of foreign occupation. Therefore suffering the impact of September 11, depends not just on its shattering violence, but also on the degree to which the event was justified by millions of Palestinians and others in the Muslim world as an act of defense (Richardson, 2006).

What are we to make of the use of human rights as a justification for terror? If believing in human rights means anything, it means believing that killing civilians for political purposes can never be justified. Coming back to 9/11, to fight for a right does not necessarily mean to violate the rights of others. Indeed in the quest for answers to our questions, what is then permitted when rising up against oppression and tyranny? The answer is that we need to pass away from the rubric of human rights altogether and consider the codification known as the laws of war. The laws of war seek to protect the essential commitments of human rights.

In other words, the laws of war essentially seek to save what can be saved of the humanitarian impulse of human rights once violence has begun. The First Additional Protocol of the Geneva Convention, signed and accepted by many states in 1977, seeks to regulate the violence used in struggles for self-determination. This protocol insists that the same rules of proportionality and civilian immunity that govern the conduct of regular soldiers should apply to insurgents, militiamen, and other forces taking up an armed struggle.
The very idea of civilian immunity illustrates the difference between the universalistic framework of human rights and the particularistic framework of the laws of war. Therefore, from a human rights perspective, civilian immunity is an incoherent moral principle inconsistent with the equal respect due to all human beings. From a law of war perspective, it is the principle that preserves some measures of ethical discrimination in the midst of combat.

To sum up, there is an ethical way to defend the use of violence. In other words terrorists cannot fight using dirty tactics; they must take on military targets, not civilian ones. Those who honour such rules deserve the name of freedom fighters, those who do not deserve the name of terrorists.

Therefore a struggle for freedom can only be successful if it honours human rights as a moral system. The choice between the laws of war framework and the human rights framework is important, so that we can understand in what moral frame of reference we are, so that we can adapt our behaviour.

The big question is: whether a political system meets the needs of the weak. The test whether violence is justified depends on whether all peaceful courses have been exhausted. The weak often go the fast way. The fast way is to kill as many civilians as possible to get the world to notice. (This is what happened on 11 September 2001.)

Terrorism does not only kill human beings, it also kills international relations (Politics). For this reason terrorism must be avoided at all costs. If there are no further negotiations, relationships will deteriorate, until such time as a full-scale world war breaks out (Ignatief, 2004).

In a full-scale war there are very few winners.

The subsequent chapter will conclude the study by giving an exposition of the findings and conclusions of the research.
CHAPTER 6

CONCLUSION

Introduction
This chapter concludes the research. It draws a number of conclusions based on the findings in the previous chapters.

As indicated in Chapter 1, the study was done within an interpretivist frame of reference. A descriptive and explanatory case study design was used and the data was framed in a critical paradigm. Although this design provided a large amount of information and detail about the research topic and allowed the researcher to deal with a wide variety of raw data, the analysis was tedious and not without difficulty. The data gathered in the interviews was integrated in the discussion on the findings of the literature review, and not as a separate section.

It has become clear that a nation will stand up for its rights and for recognition if its identity is denied, regardless of the cost. To address the issue posed in the title it was necessary to distinguish between human rights as a set of rules and human rights as principles. Adding to the exposition in the previous chapter, this section of the research explores the development of human rights. Human Development is about much more than Economics, it is about creating an Environment in which people can develop so as enable each individual to develop his/her full potential in accord with their needs and interests. An environment characterised by war will most certainly counteract this development process of humanity.247

A new global focus, which arose as a result of September 11, 2001, was the enactment of legislation against terrorism. This study remarks that there is a profound need for the world to deal with the problem of terrorism, especially since it constitutes a violation of human rights. Against this background, this research inter alia explored the effects of anti-terrorism legislation on prisoners of war and civilians. It draws the conclusion that terrorists should be detained in accordance with criminal procedures that respect the safeguards enshrined in relevant international law.

The chapter comes to the conclusion that there is no winner in the war on terrorism. It is clear that Al-Qaeda is currently more dangerous than in the past, and that it has developed into a global operation, which can be ascribed to the War on Terrorism. The events of September 11 did not start this process, it merely accelerated it and the War on Terrorism brought it to a point of no return. If Al-Qaeda can convince the US to change its Middle East policies and if the US can induce Al-Qaeda to cease the attacks, equilibrium will be reached.

The current economic crisis was supposed to increase violence around the world. It appears, however, that we are now living in a relatively ‘peaceful’ period since World War I. In spite of this observation, scientists who study warfare in history and even prehistory believe that war is so deeply rooted in human nature that we can never abolish it, and the world will remain a dangerous place, vulnerable and disruptive, and unpredictable events such as the terrorists attacks highlighted in this study, will perpetuate. Other factors which also cause a threat to peace include climate change, which could produce droughts and endanger food supplies, over-population, and the spread of violent religious extremism, such as Al-Qaeda (Horgan, 2010:30-32).

This research study analysed the War on Terrorism under the auspices of international Human Rights and development. The motivation of the research was three-fold: firstly how Human Rights can be meaningfully conceptualised and coherently understood in this War on Terrorism. Secondly the research established that fundamental human needs such as identity and recognition are the motivational factors for terrorism.
Thirdly, the study highlighted the link between Human Rights abuses and the effect thereof on the development of individuals.

6.1 The War on Terror against the background of Human Rights

The invasion of Iraq in 2003, code-named 'Operation Iraqi Freedom' will always remain a controversial subject. The invasion started on the 20th March, with the mission of disarming Iraq of weapons of mass destruction and ending the so-called association of Saddam Hussein with terrorist organisations such as Al-Qaeda.

All of the above might be valid reasons for declaring war – but the War on Terror has since been deemed a violation of international law, disregarding the UN Charter. It is understandable that the US retaliated by initiating the War on Terror after 9/11. The treatment of Iraqi civilians and soldiers in the war on terrorism is, however, unacceptable. Pictures were broadcast on Australian television showing Iraqi soldiers naked, wounded, and covered with blood, women's underwear draped over their heads. The indicated human rights abuses happened throughout the 2000’s.

This is certainly not how prisoners of war should be treated. Other footage showed how soldiers brutally assaulted a group of youths, dragging them into a compound and beating them with batons and kicking them until they lost consciousness. Subsequently, environmental consequences occurred *inter alia* as a result of malnutrition and other serious health problems. The inhumane treatment of civilians and soldiers, and the fact that no weapons of mass destruction could be found, opened new arguments that the attack on Iraq may be regarded as a war crime, but also a crime against humanity (Margulies, 2007).

The Geneva Convention clearly states that it is a (war) crime to launch indiscriminate attacks affecting the civilian population or their property. The picture becomes grave when adding that the lives of untold numbers of civilians and soldiers were lost when
the US used bombs covered in depleted uranium, causing radiation and poisoning, *inter alia* amongst staff members at the Basra Training Hospital in 2000.248

The use of depleted uranium in bombing attacks is a war crime. The US dropped cluster bombs dropped on a populated area killing civilians, farm animals and wildlife; in addition, thousands of children were killed by dormant bombs, which exploded. According to the Geneva Convention it is a war crime to use weapons, in the knowledge that they would cause excessive loss of life or injury to civilians. It is recorded that the Iraqi war was the deadliest campaign for non-combatants since the Vietnam War.

There have also been reports that the US used white phosphorous as a weapon in the Fallujah attack. This would be consistent with stories of refugees that phosphorous weapons had burnt their bodies and that fires were impossible to extinguish. Local hospitals in Fallujah reported that the majority of victims were women, children and the elderly. After the attack, many of the bodies were buried in the city's football stadium because the US forces had blocked the road leading to the cemetery. One of the first consequences of the war in Iraq was a wave of protests around the Middle East. In Yemen an estimated thirty thousand protestors took to the streets, ten thousand Palestinians marched in Gaza, and in Sudan a police station was set on fire. In the centre of Cairo, a few thousand anti-war protestors hurled stones and debris at police while shouting slogans against the US and Arab leaders who they regard as complicit in the war.

When viewing 9/11 holistically, it is necessary to determine the global position in relation to the war on terrorism. In a world with a long list of problems, terrorism is one of the most urgent. Terrorism is a priority on the international agenda because of the pain and trauma it causes, the fear and despair it engenders, and the social and political distortions it creates and reinforces: The dilemma is that terrorism has been a priority on the agenda for a long time, while the pace at which levels of safety are improving is

248 Law in the age of terror.
slow. As with all the other questions posed in this thesis, the question of terrorism in terms of human rights is without an unambiguous, unqualified answer.

The 11 September 2001 attacks in the United States have refocused global attention on terrorism. In the aftermath of the 9/11 attacks, a number of governments around the world rushed to enact legislation against terrorism. Examples are Australia\(^{249}\), Britain\(^{250}\), Canada\(^{251}\), India\(^{252}\) and the US,\(^{253}\) passing anti-terrorism legislation. A number of countries in Africa\(^{254}\) and other parts of the developing world have either introduced or have been constrained to introduce anti-terrorism legislation such as the US.

Almost invariably, these laws have greatly impinged upon or have had serious implications for human rights,\(^{255}\) particularly those of criminal suspects, political opponents, migrants, refugees and asylum seekers. These laws also have implications for the fundamental principles of humanity as reflected in the Turku Declaration.\(^{256}\)

One should accept that a Truth and Reconciliation Committee (TRC) is a final contribution towards a stable and peaceful society. A TRC can only be a part of the larger process. In the case of Iraq and Afghanistan, reparation will have to follow a TRC. Economic justice must be achieved, back-up counselling for victims of abuse etc. This is a long term process that must be managed. Furthermore the high incidence of crimes


\(^{250}\) Anti-terrorism, Crime and Security Act 2001 (ATCSA), New Legislation, the Prevention of Terrorism Act 2005, has been enacted to replace the part 4 powers in the ATCSA.

\(^{251}\) Anti-Terrorism Act 2001.

\(^{252}\) Prevention of Terrorism Act 2002.


\(^{254}\) African countries that have introduced or are in the process of introducing anti-terrorism legislation include Algeria, Egypt, The Gambia, Kenya, Mauritius, Morocco, Namibia, South Africa, Swaziland, Tanzania and Uganda.

\(^{255}\) In October 2007, Amnesty International raised the concerns that in the name of fighting “international terrorism”, governments have rushed to introduce draconian new measures that threaten the human rights of their own citizens, immigrants and refugees.

\(^{256}\) Declaration of Minimum Humanitarian Standards, adopted by an expert meeting convened by the Institute for Human Rights, Abo AK University, Turku/Abo, Finland, 30 November to 2 December 1990.
and corruption, points to the fact that many issues need to be addressed to achieve peace, stability and democracy in the Middle East and Africa (Bradshaw and Burger, 2007).

What is, however, needed, according to Bradshaw and Burger (2007), is a link between public participation, sustainable development and conflict management in Iraq and Afghanistan. It is therefore clear that a conflict management approach that highlights conflict issues without addressing them substantively, adds little value to the development process to achieve peace and democracy.

This thesis has provided an overview of the range and human rights implications of counter-terrorism legislative measures adopted in selected countries since 11 September 2001. It has also considered the legislative measures in the light of the fundamental principles of humanity set out by relevant legislation that each state should have, in co-operation with dictates of international law. Most importantly, there is the need for the world to deal with the problem of terrorism in a holistic manner that ensures that, in their quest to deal with the terrorist threat, states do not erode the rights of all persons.

Although, as a number of states have since 11 September, either introduced or revived anti-terrorism legislation, this thesis does not provide an exhaustive treatment of their legislative practice in regard to countering terrorism. Rather, it offers an overview of legislative measures adopted in post-11 September in selected countries. The human rights concerns explored in the thesis include the effects of anti-terrorism legislation on prisoners of war, and civilians. It should be noted from the outset that there is no universally accepted definition of terrorism. 257

Since the 1920s, the international community has unsuccessfully attempted to formulate a universally accepted definition of terrorism. Although the use or threat of violence for

the achievement of political ends is common to both states and non-state groups, there is no agreement on when the use of violence may be considered legitimate. The international legal framework for counter-terrorism consists of 19 universal and regional instruments, as well as numerous resolutions of the United Nations General Assembly and Security Council.

There are currently 12 universal conventions on specific aspects of terrorism: hijacking of aircraft,\textsuperscript{258} the sabotage of aircraft,\textsuperscript{259} attacks on internationally protected persons,\textsuperscript{260} the taking of hostages,\textsuperscript{261} terrorist’s bombings\textsuperscript{262} and the financing of terrorist activities. To these may be added the various international conventions on international humanitarian law.\textsuperscript{263}

International humanitarian law prohibits terrorist activities in armed conflict by criminalising (1) attacks against other than military targets; (2) the use of force disproportionate to that needed to attain the military objective; and (3) the use of force that does not discriminate between the target of the attack and persons who are not the object of such an attack. It also prohibits the unnecessary use of force under any circumstances. Since September 2001, the UN Security Council has adopted several binding resolutions aimed at restricting terrorism and minimising the ability of terrorists to mobilise support (Dugard, 2005).

Although there are a number of international and regional treaties that aim to combat terrorism, there is no single universal convention on the entire phenomenon of terrorism. A number of conventions on terrorism have also been adopted at the regional

\textsuperscript{258} Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.
\textsuperscript{259} Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
\textsuperscript{260} Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the UN.
\textsuperscript{261} International Convention against the Taking of Hostages, adopted by the General Assembly of the UN on 17 December 1979.
\textsuperscript{262} International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the UN on 15 December 1997.
\textsuperscript{263} The Four Geneva Conventions of 1949 and their Additional Protocols of 1977.
level. These include the Arab Convention on the Suppression of Terrorism, 1998; the European Convention on the Suppression of Terrorism, 1977; and the OAS Convention to Prevent and Punish Acts of Terrorism. Taking the form of Crimes against Persons and Related Extortion that are of international significance, there are, since 1971, the (AU) African Union Convention on the Prevention and Combating of Terrorism, 1999; and the Protocol to the AU Convention on the Prevention and Combating of Terrorism, 2004 (Holbert and Hansen, n.d.).

In response to 11 September, the European Union has adopted a range of anti-terrorism measures, including the Council Framework Decision on Combating Terrorism and the Council Framework Decision on the European Arrest Warrant and Surrender Procedures between the member states.

Many states around the world have also concluded bilateral agreements to deal with the problem of terrorism. It is noteworthy that the international legal framework for dealing with terrorism has been criticised for the following shortcomings, according to Cassese (2004):

- Inadequate ratifications;
- a lack of effective enforcement mechanisms in the event of violation; and
- a lack of specifications that terrorist crimes are not political offences and as such are not exempt from extradition.

The primacy of international human rights law derives from the UN Charter, together with the Universal Declaration of Human Rights:

In article 1(3) of the Charter human rights are set as the cornerstone for the achievement of the purposes of the UN. Article 55(c) provides that the UN will encourage universal respect for and observance of human rights and fundamental

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265 Declaration of the Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism, 13-14, October.

freedoms for all, without distinction as to race, sex, language or religion. An obligation is further imposed on UN member states (article 56) to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in article 55. It is therefore clear that UN member states are obliged to respect Human Rights.

States further have the primary responsibility of protecting all persons under their jurisdiction. In this regard, states are at liberty to adopt measures to combat terrorism and to protect those subject to their jurisdiction. However, those measures must be consistent with international human rights standards. As the UN Working Group on Terrorism has emphasised, international law requires that states adhere to basic human rights standards in their fight against terrorism. In 2003, the UN Security Council declared that states must ensure that measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law.  

It is widely accepted that terrorism constitutes a violation of human rights, especially the rights to physical integrity, life, freedom and security and also socio-economic rights. September 11, resulted in the loss of life and therefore in a curtailment of the right to life. As stated previously, the pressure on states to respond to the international terrorist threat has resulted in some states adopting legislative and administrative measures, which threaten human rights. The latter include prolonged detention of suspects, curtailing the right to access to legal representation, removing the right of appeal, seizure of property and placing limits on freedom of expression.

In its 2004 report, Amnesty International indicates that countries have continued to ignore international human rights standards in the name of the War on Terror. This has resulted in thousands of woman and men suffering unlawful detention, unfair trials and


269 See also the Berlin Declaration adopted by the International Commission of Ju on 28 August 2004.
torture, often solely because of their ethnic or religious backgrounds (Amnesty International Report, 2004). It appears that one of the most important rights of a criminal suspect is the right to be informed of the reason for detention and the right to seek legal advice.

Anti-terrorism legislation passed in the UK, France, Germany and Italy has introduced severe restrictions on freedoms, including prolonged detention and the refusal to grant the right of asylum and immigration on the mere suspicion that the individual belongs to a terrorist group.

Human rights are part of international law and are legally binding commitments that countries have made among themselves and with their citizens, as well as within the United Nations Framework. States are also obliged to uphold rights and they provide a space in which civil society can demand its rights and resist the arbitrary power of government. Therefore human rights are not among the contradictory and competing interests of nations: they are rather legal commitments taken by all countries in the framework of the 1948 Universal Declaration of Human Rights and taken up in many other treaties. A world where Human Rights are observed and protected is a safer world, which will reflect in a better foreign policy for more security (Kouchner, 2010:34).

In the aftermath of the July 2005 London underground and bus bombings, the British government proposed to increase the period of detention without charging of terrorist suspects, from 14 days to three months. It should also be noted that the prohibition against torture is now firmly established as a rule of customary international law. Some of the anti-terrorism legislation surveyed prima facie poses a threat to the rights of the child. For example, Uganda’s anti-terrorist law imposes the death sentence for the offence of terrorism; it does not expressly stipulate that this does not apply to children who might be involved in terrorism.270

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270 Washington’s ‘War Against Terrorism’ and Human Rights.
While it is recognised that all countries have the responsibility and obligation under the international law to give effect to the relevant UN and regional conventions and resolutions relating to terrorism, individual citizens have the right to be treated in accordance with the fundamental principles of humanity. In their current form, most anti-terrorism laws are likely to erode not only the human rights of individual people but also the fundamental principles of humanity.

It is evident that the legislative responses to terrorism in different countries around the world have the potential to impact negatively on human rights and freedoms, religion, belief, assembly and demonstration, and to offend against the fundamental principles of humanity as defined in the Turka Declaration.

As Amnesty International stated in May 2004:

The ‘war on terror’, far from making the world a safer place has made it more dangerous by curtailing human rights, undermining the rule of international law and shielding governments from scrutiny. It has deepened divisions among people of different faiths and origins...

The UN Charter’s human rights provisions, the Geneva Convention, the Nuremberg Trials, the Torture Convention, and the other foundational documents of the International Bill of Rights, including the Universal Declaration of Human Rights and the ICC PR, all have special status. They are regarded as the constitutive instruments of modern international law, and mark a transition from using public international law, to addressing only inter-state problems, to using this law to protect the dignity and life of the individual. The Nuremberg trials made it clear that the obligations were so essential that the violations of some of them would be criminal. Balancing the rights of individuals with the good of the state is a goal that the UN strives to attain in law. This seems vitally important, as the international community responded to September 11 (Jones and Howard-Hassmann, 2005).

Moreover, the UN plays the principal role in drafting, preparing, and effectively implementing legal instruments aimed at counter-terrorism, and protecting human
rights. Terrorism often thrives in countries where human rights are abrogated, and this situation intensifies the need to strengthen actions to combat violations of human rights. The fight against terror and violence is not merely a matter of national security. It also concerns values – such as justice, respect for the rights of others, respect for human dignity and the fair treatment of individuals before the law. The UN can work to instil these values in its member states. But ultimately, it is the responsibility of national governments to ensure that the laws of the state lives up to the values that the governments purport to protect.

9/11 was a perfect example of international terrorism. In reaction to 9/11, president G.W. Bush announced on October the 11th to the Afghan people that "we will keep bombing you until you hand over people who are suspect of terrorist acts although we refuse to provide any evidence and we refuse to enter into any negotiations for extradition and transfer". This is a classic example of human rights being ignored by terrorists attacking civilians, and in reaction civilians becoming targets of counter-terrorist attacks by governments, also denying human rights.

Much has been said about the ‘wisdom’ of the decisions of George W. Bush and Tony Blair after the attacks of 9/11. Ultimately, as Tony Blair had pointed out, the judgement on their decision-making will rest with the Almighty. In judging any human action, before one condemns what has happened, it is wise to ask what would have happened if the coalition had not taken action against Saddam Hussein.

It is indeed true that the coalition lacked a sufficiently comprehensive plan for all eventualities. Regardless of the absence of such a plan, the ability to follow the appropriate policy had been compromised by the inability to commit the levels of troops required to complete the mission (Cordesman, 2003).

The millions of Iraqis who defied terrorist violence and shamed Western cynics to turn out and vote in Iraq's first election and referendum reaffirmed the universality of human

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271 Noam Chomsky: Talk delivered at Harvard University, February 2002.
rights. Their enthusiasm for democracy and for change, growth and freedom was inspiring. However, the Jihadists in Iraq recognise that if democracy takes root in Iraq it will be a decisive threat to their project. The democracy in Iraq has already had a welcome effect on the wider Middle East. The ultimate importance of the spread of democracy in the Middle East is hard to overstate. Another reason why the spread of democracy is vital in the Middle East is that it is the best antidote yet devised for Islamism. According to Zmeyevsky (2005) democracy is important for the Middle East because the people deserve a better life. They deserve the opportunity to enjoy the same rights and freedoms as the West.

In the wake of 9/11, Osama bin Laden immediately became the US administration's prime suspect. On Sunday 16 September, on Al-Jazeera (Arabian news station), Bin Laden denied his involvement in this attack of 9/11. Washington rejected this denial. President Bush replied "People have declared war on America and they have made a terrible mistake".

Domestically, new laws to combat ‘terrorism’ were quickly put into place. Vice-President Cheney spoke of evidence linking the nineteen suspected hijackers with Bin Laden’s Al-Qaeda network and named Afghanistan as a potential target for retaliation (Dinh, 2003). The Taliban subsequently cited both international and Islamic Law on Al-Jazeera when they would not hand Bin Laden over unless evidence was forthcoming. In 1988 Osama bin Laden televised on Al-Jazeera stated that all Muslims had a duty to wage a religious war targeting all Americans. A year later another threat was made by Bin Laden to attack US forces in the Persian Gulf.

This tape was the evidence that motivated former President Bill Clinton to launch missile attacks on Bin Laden’s hideout and training camps in Afghanistan. At this time, a reward of $5 million had been offered for the life of Bin Laden, having been indicted in the US for allegedly masterminding the August 1998 bombings of the American embassies in Kenya and Tanzania, in which more than two hundred people had been killed.
In a further interview with Bin Laden and Al-Jazeera, Bin Laden explained at length why every Muslim has a duty to participate in the Jihad against the infidel (American and Israeli crusaders). He quoted well-versed readings out of the Koran and drew upon teachings of the prophet Mohammed, as well as classical Arabic poetry in favour of his arguments. World television networks queued up to pay for these pictures.\(^{272}\)

The world crusade has historical connotations in the Middle East and Europe, which it does not have in the US. It conjures up images from the middle ages of bloody Christian military campaigns against Muslims in an effort to capture the Holy land. A week after 9/11, a man called the Opposite Direction, a spokesman for Al-Qaeda, stated that the US policy towards the Middle East was to blame for the attacks. As former President Bush cautioned the American public to prepare themselves for an extended battle, the world’s media were preparing to move into Kabul to cover the imminent US assault on the Taliban (Mohammad-Mahmoud, 2007).

The war on terror is distracting the world’s political elite from the fundamental global causes, which need urgent attention, such as poverty and political injustice. Instead, the US government and its allies have chosen a geopolitical war on terror. Since 9/11 this has cost the US government an estimated $357 billion in military operations, reconstruction, embassy costs and various aid programmes in Iraq and Afghanistan, and also enhanced security at military bases around the world (Belasco, 2005).

However, the human cost has been infinitely higher. In Iraq, now on the brink of civil war, at least 50 000 civilians\(^ {273}\) and thousands of Iraqi military and police have been killed as a result of the war on terrorism. To date the US has suffered nearly 3 000

\(^{272}\) Criminalizing Compassion in the War on Terrorism

military fatalities in Iraq, with over 20,000 troops wounded in action\(^{274}\) and a similar number evacuated because of non-combat injuries and severe physical or mental health problems (CBS News, November 21, 2004). The other members of the Coalition have lost around 250 soldiers in total, with at least half of this number from the UK.\(^{275}\) In Afghanistan, while the Taliban may have been ousted from power, more innocent civilians had been killed as a direct result of military action, than those who died in the 9/11 attacks, and which prompted the US-led invasion (Morbidity and Mortality Weekly Report, September 11, 2002).

Presently, the Taliban is a re-emerging force in many areas of Afghanistan. In the War on Terror and the terrorist attacks of 9/11, the number of civilians seriously injured is likely to be in the region of 100,000, while thousands have been internally displaced. It is evident that the War on Terror has initiated new terror in the region and created a combat training zone for paramilitaries and Jihadists. The elusive weapons of mass destruction are rarely, if ever, mentioned.

9/11 created enormous possibilities for making money. This is especially applicable to the airline industry: following 9/11, Bush signed a new Transportation Security Administration Act (TSA), according to which privately owned screening and security companies screened baggage for airports to keep them safe, resulting in a multi-million dollar contract to NCS Pearson. This included development of testing and screening systems and hiring and training of around 45,000 staff in terms of the TSA.

It appears that the Pearson group of companies has made record profit out of the business of terror. The workers doing the job prior to the creation of TSA have now been completely forgotten. Hundreds of millions of taxpayers’ money have been spent to protect the people who fly (Bowles, 2003).

In addition, ex-vice president Dick Cheney’s former company Haliburton is working

\(^{274}\) On 28 September 2006, Iraq Coalition Causality Count were reporting 2,709 US military fatalities since January 2003. In addition, 20,468 US military personnel had been wounded in action. See http://www.icasualties.org/oif.

\(^{275}\) Iraq Coalition Casualty Count, Ibid.
alongside US troops in Kuwait and Turkey for close to a billion dollars. According to US Army sources they are building tent cities and providing logistical support for the war in Iraq, in addition to other areas in the War on Terror. These contracts of Haliburton are worth hundreds of millions of dollars in profit. Cheny served as chief executive of Haliburton until he stepped down to become George W. Bush’s running partner in the presidential race. Cheny currently still draws compensation of up to a million dollars a year from the company.276

People across the world now overwhelmingly believe that the Iraq war has made the world a dangerous place, and in most countries support for the War on Terror has declined (Pew Global Attitudes Project, 2006). If extended to Iran, the implications of intervention would be disastrous (Rogers, 2005). The planners in Washington and London had hoped that the removal of Saddam Hussein and the spreading of democracy to Iraq would eventually vindicate their policy of pre-emption. However, it has become clear that democracy in this instance actually means the privatisation of state-run industries, and elections (Beetham, 2003).

The US policy of detention without trial of unlawful combatants in Guantanamo Bay, the widespread and deliberate bombing of the civilian infrastructure in Afghanistan and Iraq, the abuse and torture of prisoners at the Abu Graib prison and the destruction of Fallujah, the city of mosques, are just some of the injustices of the War on Terror. The US and its allies are facing a decline in their perceived legitimacy because they are not abiding by the same rules that they seek to impose on others (Mahbubani, 2005). Instead, according to Amnesty International, they seem to be acting on the principle that the only way to protect their security is by eroding the human rights of others.

As the July 2005 attacks in London may have demonstrated, these actions risk increasing support for Al-Qaeda and their associates among Islamic communities. This is made harsher by the anti-terrorism and immigration laws enacted by some countries.

276 Pratap Chattenjee, Special to Corp Watch March 20th 2003.
As the Defence Science Board (an ad hoc Committee to the US Secretary of Defence) concluded in September 2004, “Muslims do not hate our freedom, but rather they hate our policies” (Defence Science Board, September, 2004). Given that the aim of terrorism is to terrorise and to destabilise countries by keeping them in a constant state of fear, it is somewhat ironic that the War on Terror is creating a similar reaction.277

The distinction between the war model and the crime model on how to respond to terrorism can be found at the heart of understanding the War against Terror. The crime model asserts that terrorists’ acts are criminal acts, and that the appropriate reaction is law enforcement. Acts of international terrorism on the other hand can give rise to domestic as well as universal jurisdiction. According to the crime model, a state cannot use military force against terrorist groups. Law enforcement may be part of the agenda, but it is not the first priority in the war against terror, because it is considered insufficient and ineffective (Hudson, 2007).

Law enforcement entails consideration of fair trials, due process, and human rights protection, a framework regarded as a hindrance by those who fight terror. As such, the war against terrorism is about opening up a space outside the established range of police operations and judicial procedures to deal with terrorist threats. The intention is to identify groups of outlaws and engage with them on designated battlefields. When criminal justice is being replaced by military warfare, it is only the lower threshold of international humanitarian law that protects those involved in the conflict.

However, when terrorists declare war, are we not allowed to respond in kind? Does a terrorist attack not give entitlement to self-defence? Is the whole war against terror not an act of self-defence and thus acceptable under modern international law? Indeed, Article 51 of the UN Charter allows for individual or collective self-defence against armed attacks. Therefore a military response to a terrorist attack seems acceptable

under international law if it amounts to an armed attack in the meaning of the UN Charter (Richardson, 2006).

Legal experts have examined the terrorist attacks of 9/11. When individuals or groups of individuals accused of committing terrorist acts are supported or harboured by states, the crime model as described above becomes absolute. Such states not only violate international legal obligations but can also be lawfully attacked in self-defence; provided the respect of international humanitarian law is met. It is worth noting that self-defence ceases when the state that sheltered or supported terrorists changes its mind and accepts its international obligations.

With these two scenarios in mind, self-defence - against terrorist groups as well as against states, which have harboured terrorist groups - is justified. Examples are the use of armed forces against both Al-Qaeda and the Taliban regime in 'Operation Enduring Freedom' by the United States and its allies. Indeed such reaction found the support of the UN Security Council. Did the Security Council authorise the war against terror? Indeed, the Council, in its most recent resolution on the issue, released Res. 1368 on the attacks of 9/11; Res. 1373 on combating terrorism; Res. 1377 on the declaration of the global effort to combat terrorism; and Res. 1456 on the ministerial meeting to combat terrorism. The Council thus considers international terrorism as a threat to international peace and security.

Therefore the War on Terror is a just war. It is a war with the objective of punishing wrongdoers, whose *causa justa* is the protection of the innocents, and whose *intentio recta* is the fight against evil. Just war theories are based on the belief of those fighting that their cause is right, and that their means are reasonable and acceptable. Just war allows for the deployment of deadly force as a last resort to achieve the morally desired outcome (Oberleitner, 2004).
6.2 Assessment of the War on Terrorism

There was no guarantee for success in Iraq and victory to the US and its allies in the War on Terror. Saddam Hussein had been removed from power and the Iraqi people have a democratically elected government. However, this government is not adequately equipped to reconcile the nation, provide the basic security needed for stability or even deliver essential services. The violence levels are still high and growing. The suffering in Iraq is great, and in the daily lives of the people, little or no improvement can be seen, while the lack of security in this country is impeding economic development.

Iraq has now also become a base of operations for international terrorism, including a base for Al-Qaeda activities. Violence in Iraq is on the increase and originates from multiple sources: Al-Qaeda and associated Jihadist groups; Sunni Arab insurgency; and Shiite militias and death squads. The insurgents have different goals in Iraq, although all oppose the presence of US forces in the country. Most of them wish to restore Sunni Arab rule in the country, aiming to win local power and control (Galbraith, 2006).

Al-Qaeda is responsible only for a small number of the attacks in Iraq, which include Al-Qaeda suicide attacks, large truck bombs, and attacks on significant religious or political targets. Al-Qaeda’s goal in Iraq is to instigate wide sectarian war between Iraq’s Sunni and Shia groups, thereby driving out the US. Sectarian violence is the cause of the largest number of Iraqi civilian casualties in the country: Sunni attack Shia and vice versa. Groups of Iraqis are often found bound and executed, or their bodies are dumped in rivers or fields. This has a detrimental effect on the population and causes some Iraqis to flee to places where their sectarian group is in the majority (Allawi, 2007). Criminality has thus made life unbearable for many Iraqis. Acts such as robberies, kidnappings and murder commonly occur, rendering four out of the eighteen provinces in Iraq insecure, namely Baghdad, Anbar, Dryala and Salahad Din. The Mahdi Army, led by Moqtada al-Sadr may number as many as 60 000 fighters, and has directly challenged the US and Iraqi forces (Ricks, 2007).
The Multi-National-Forces-Iraq under US command in association with Iraqi’s security forces, are fighting the violence in Iraq. The Multi-National-Forces-Iraq was authorised by UN Security Council Resolution 1546 in 2004. The US Marine Corps took the lead in Anbar province, while the United Kingdom took responsibility in the Southeast of Basra. Almost every US Army and Marine combat unit has been to Iraq at least once, making rotation a common practice in Iraq. For this reason the efforts of brigades and battalions to get to know the local context and to win the trust of the population and build a working and cooperative relationship, are difficult.

A primary goal for the US military in Iraq is the training of the Iraqi security forces. The trained surety for 2006, by the Multi-National Security Transition Command Iraq, was approximately 326 000. As a result, the Iraqi Army is making good progress towards becoming a reliable and disciplined fighting force. However, the state of the Iraqi police is substantially worse than that of the army. It lacks the training and the legal authority to conduct criminal investigations, and can therefore not control crime, while also becoming involved in sectarian violence. Nevertheless, both the UD and the Iraqi government recognise the importance of reform in the Police Force (Smith, 2006).

In a continued effort to counter violence the US military joined forces with Iraqi forces in an operation called ‘Operation Together Forward II’ in Baghdad. However, the results achieved so far are demoralising. Because none of the operations conducted by the joint US and Iraq forces have had any success, it appears that the US in also unsuccessful in the War on Terror. At the moment however, Iraq is a sovereign state with a democratically elected Council of Representatives, thus a government of national unity was formed, which is broadly representative of the Iraqi people (Henshall, 2007b).

In moving towards a democracy, Iraq has also ratified a constitution, and per agreement with Sunni-Arab leaders, has initiated a process of review to determine if the constitution needs amendment. The composition of the Iraqi government is, however, sectarian, and therefore key players often act in sectarian interests. The Shia, the majority of Iraq’s population, has gained power for the first time in 1300 years. The
Sunni Arabs on the other hand, feel estranged because of the loss of their traditional position of power in Iraq. For this reason the Sunni are unsure whether to achieve their goals through political participation or through violent insurgency (Chomsky, 2007c).

The Sunnis have therefore opposed the presence of the US military and do not like to be governed by a majority Shia Administration, thus rejecting a federal decentralised Iraq. The Kurds have secured an autonomous Kurdish region in the north, leading Kurdish politicians stating that they prefer a democratic federal Iraq. The Prime Minister, Maliki, outlined a commendable programme of national reconciliation.

Some of the key elements of national reconciliation include, revising de-Baathification, which prevents many Sunni Arabs from participating in the governance and society, providing amnesty to those who have fought against the government, sharing the country’s oil revenues, demobilising militias, amending the constitution, and settling the future of Kirkuk - the core issue being federalism. Another key unresolved issue is the future of Kirkuk, the oil-rich city in Northern Iraq.

It is evident that the security situation in Iraq cannot improve unless leaders in Iraq act in support of national reconciliation. Shiite leaders must make the active decision to demobilise militias, while Sunni Arabs must commit to seek their aims through a peaceful political process. However, Sunni insurgents will not lay down their arms unless the Shia militias have been disarmed. Ironically, Shia militias will also not disarm until the Sunni insurgency has been destroyed. Whatever the situation: there are too many armed groups in Iraq, and none of them are prepared to lay down their arms (Pena, 2006).

There are no effective basic services in Iraq such as drinking water, sewage removable, health care and education. There are five basic reasons for these problems: Firstly, the government sometimes provides services on a sectarian basis. One American official stated that Baghdad is run like a ‘Shia dictatorship' because the Sunni boycotted the elections, and are therefore not represented in local government. Secondly, Iraqi's
security is lacking insurgent target key infrastructures. Electricity transmission towers are exposed, and sniper attacks prevent repairs. Thirdly, corruption is rampant. Notable steps have been taken but too many political leaders still pursue their personal, sectarian or party interests. However, no examples exist of senior officials who have been brought before a court (Allawi, 2007). In the fourth instance; capacity is inadequate. Most of Iraq’s technocratic class have been pushed out of government as part of de-Baathification. Many skilled Iraqis have also fled the country as violence has escalated. Iraq thus lacks technical expertise, apart from suffering from corruption and inefficiency. Fifthly, because the judiciary is weak, it has been prone to ruthless intimidation (Ricks, 2006).

As far as economic growth is concerned, Iraq has tremendous potential for growth, but is crippled by insecurity, corruption and lack of investment. As one US official stated: “Iraq’s economy has been badly shocked, Iraq had a police state economy in the 1970s, a war economy in the 1980s and a sanctioned economy in the 1990s. Immediate and long-term growth in the economy depends predominantly on the oil sector” (Ricks, 2006).

There are, however, some encouraging signs: Currency reserves are stable; consumer reports of computers and cell phones have increased; new businesses are opening; construction is moving forward and significant growth is possible due to ample oil reserves and fertile lands. The Iraqi government has also made progress in meeting benchmarks set by the International Monetary Fund. Oil production and sales account for almost 70 per cent of Iraqi’s GNP, and more than 95 per cent of government revenues. However, foreign companies have been reluctant to invest and Iraq’s Ministry of Oil has been unable to spend more than 15 per cent of its capital budget. Nevertheless, the Iraqi Constitution has facilitated opportunities for regions to take the lead in developing new oil resources.

Article 108 of the Iraqi Constitution states: “Oil and gas are under the ownership of all the people of Iraq in all the regions and governorates”, while Article 109 tasks the
federal government with the “management of oil and gas extracted from current fields” (Henshall, 2007a). There are consequently proposals to redistribute a portion of oil revenues directly to the population on a per capita basis. These proposals have the potential to give all Iraqi citizens a stake in the nation’s chief natural resources, but it will take time to develop a fair distribution system. In addition, the United States has appropriated a total of about $34 billion to support the reconstruction of Iraq, of which about $21 billion has been appropriated for the ‘Iraq Relief and Reconstruction Fund’ (Henshall, 2007a).

The US Administration is not in favour of allocating more funds for reconstruction as international support for reconstruction has also been slow. The United States is currently working with the United Nations and other partners to fashion the ‘International Compact’ on Iraq. The aim is to provide Iraqis with greater debt and credits from the Gulf States, as well as to deliver on pledged aid from international donors. In return, the Iraqi government will agree to achieve certain economic reforms, such as building anti-corruption measures into Iraqi institutions, adopting a fair legal framework for foreign investors and reaching economic self-sufficiency by 2012.

The international community, beyond the United Kingdom and other coalition partners, has played a limited role in Iraq. The United Nations – acting under Security Council Resolution 1546 – has a small presence in Iraq. It has assisted in holding elections, drafting the constitution, organising the government, and building institutions.

The World Bank also has a limited number of resources in Iraq, and the European Union has one representative. Both Iraqi and international non-governmental organisations play an important role in reaching across sectarian lines to enhance dialogue and understanding, while several US-based organisations have employed substantial resources to help Iraqis develop their democracy. It is clear that the US has made a commitment to the future of Iraq. As of December 2006, almost 2900 Americans have lost their lives serving in Iraq, while approximately 21 000 Americans have been wounded, many severely.
To date, the United States has spent approximately $40 billion on the Iraq War and costs are running at about $8 billion per month. Caring for veterans and replacing lost equipment will run into hundreds of billions of dollars. Estimates run as high as $2 trillion for the final costs of the US involvement in Iraq. However, despite a continued effort, stability in Iraq remains elusive.

It is clear that the Iraqi government cannot govern the country without US support. The Iraqi population has not been convinced that they must take responsibility for their own future, while the neighbours of Iraq and the international community have not been able to play a persuasive role in this country.

Can the US change the situation? Although much has been done, much more remains to be achieved (Baker and Hamilton, 2006). At the same time, one must not lose sight of the importance of the situation inside Afghanistan and the renewed threat posed by the Taliban. If the Taliban were to control Afghanistan again, it could provide Al-Qaeda with the political space needed to conduct terrorist operations. This could destabilise the region and have security implications, nationally and internationally for the US and other countries. Also, the significant increase in poppy production in Afghanistan fuels the illegal drug trade and narco-terrorism. While the United States also develops its approach towards Iraq and the Middle East, it must give priority to the situation in Afghanistan. This may require increased political, security and military measures (Smith, 2006).

6.3 Detainees at Guantanamo Bay against the background of Human Rights

The prison established at Guantanamo Bay Naval Base detains people accused by the US government of being Al-Qaeda and Taliban operatives. The detainees had been classified as ‘enemy combatants’ instead of ‘prisoners of war’ after former President Bush signed a memorandum stating that no Al-Qaeda or Taliban detainee will qualify as a prisoner of war, therefore not qualifying for Article 3 common to the four Geneva Conventions.
Article 3 requires fair trial standards and prohibits torture, cruelty and outrages upon personal dignity, in particular humiliating and degrading treatment (Amnesty International, February 7, 2002). The status of this prison is not clear. US courts have accepted the status as existing outside many of the US laws. The former Bush Administration cited Article 4 of the Geneva Convention as authority for their position that the detained enemy combatants are not POWs. Article 4 of the Geneva Convention defines POWs as members of other militias and members of other volunteer corps, including those of organised resistance movements.278

Detainees in the prison are kept in isolation most of the day. They are blindfolded when moving within the camp and forbidden to talk in groups of more than three.279 The use of Guantanamo Bay as a military prison has drawn disapproval from human rights organisations, due to reports that detainees are being tortured.280 It is evident that human rights values have drastically changed as a result of the September 11 attacks. Following these attacks, numerous pieces of legislation were enacted and brought into force in the US and in the UK.

The detention of people in US custody in Guantanamo Bay can be cited as an example of a possible abuse of international human rights law. A military order on the Detention, Treatment and Trial of certain non-citizens in the war against terrorism was formulated by former President Bush to create a new system to deal with terrorists. However, the detention of detainees connected with Al-Qaeda and the Taliban has become the subject of international controversy. Amnesty International for example, has raised the concern that international law and standards have been violated or are under threat of violation.281

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278 Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949.
279 FBI FOIA document.
280 Folter in Guantanamo.
Prisoners of war are combatants in an international armed conflict who have been captured by the enemy. They are neither criminals nor hostages, but individuals who have been detained after capture, solely for the purpose of preventing them from rejoining the enemy’s ranks (Evans, 2002). These detainees may be interviewed under humane treatment as provided by the Geneva Convention of 1949, but they may not be punished unless convicted of a crime.

If a POW is to be punished for a crime, he must first be convicted and sentenced by a court according to the same procedure as in the case of members of the armed forces. A POW may be confined awaiting trial for no longer than three months and no trial can begin until three weeks after the detaining power has notified the prisoner’s representative and the charge is known, also where the prisoner is to be held and where the trial will take place (Elsea, 2003).

Article four of the Geneva Convention of 1949 stipulates who can be entitled to prisoner of war status: it can either be a member of an armed force, or inhabitants who take up arms to resist the invading forces (Roberts and Guelff, 2000). In line with this, Taliban soldiers should qualify as POWs since they were the de facto government of Afghanistan. According to Donald Rumsfeld the US Secretary of Defence, the Taliban do not qualify, because they do not wear distinct signs. This is a poor excuse because the Taliban and the Northern Alliance have never worn uniforms.

It seems that Al-Qaeda fighters do not fall within the definition of POWs. A White House statement asserted that Al-Qaeda is not a state party to the Geneva Convention; it is a foreign terrorist group, therefore not qualifying them as POWs (Murphy, 2001a). If this finding were accepted, it would mean that all resistance movements of the Second World War would have been branded as illegal.

It is, however, clear that there is sufficient evidence to categorise Al-Qaeda as a legitimate fighting force. They are subject to internal discipline, and carry weapons

\[^{282}\text{Geneva Convention of 1949.}\]
openly in public (Meltzer, 2003). Logically, not everyone is entitled to POW status, but when in doubt a competent tribunal should determine their status, according to Article 5 of The Geneva Convention (Roberts and Guelff, 2000; Geneva Convention III). The reality is, if the US government regarded the Taliban and Al-Qaeda as POWs, numerous breaches of the Geneva Convention of 1949 would already have occurred.

These include:

*Article 13*: As soon as the prisoners arrived they were displayed, kneeling on the ground, hands tied behind their backs, wearing blacked-out goggles and earphones. This amounts to a breach of the protection from public curiosity (these pictures were broadcast globally), and offends the dignity of the individual and calculated to humiliate.

*Article 18*: Detainees were stripped and deprived of their own clothes and of their possessions.

*Article 22*: They were interned in a penitentiary where they were denied proper mess facilities (*Article 26*); canteens (*Article 28*); religion (*Article 34*); opportunities for physical exercise (*Article 38*); access to the text of the Geneva Convention (*Article 41*); freedom to write to their families (*Articles 70 and 71*); and parcels of food and books (*Article 72*). They were not released and repatriated after the cessation of active hostilities (*Article 118*) (Monbiot, 2003).

Against this background it is not difficult to see why the US Government is unwilling to give the detainees POW status, since this will interfere with the attempts to interrogate them. In February 2004 the Bush Administration announced the first charges against two detainees at Guantanamo Bay. These two men were charged for conspiring, attacking civilians and destroying property, as well as committing acts of terrorism (BBC News, February 24, 2004). They were to be tried by a military tribunal. The questions that now arise are, are these military commissions/tribunals fair; and are they independent and impartial?

The provisions of the ICCPR (International Covenant on Civil and Political Rights) are relevant in this situation: *Article 14* calls for a fair and public hearing before a competent
independent and impartial tribunal established by law (Roger, 2002. The concepts of independence and impartiality remain the most difficult to meet in these military commissions. In Morris v United Kingdom the European Court of Human Rights has reaffirmed its reservations about the possibility of command influence in court martial cases.

Similar doubts to those of the European Court of Human Rights have been expressed by Amnesty International and the International Red Cross. An example is that the military commission is not independent because the US President will choose the members of the commission; also the commission allows a lower standard of evidence than is admissible in ordinary courts. There is no right to appeal, the defendants have only a limited right to an effective defence, they will not see all the evidence against them and will not be able to prepare themselves adequately, and the military order is discriminatory as it only applies to foreign nationals.

In summary, the military will act as interrogators, prosecutors, defence counsel, and judges and when death sentences are imposed, as executioners, trials will be held in secret, and thus the military will control the entire proceedings. The UK has followed similar procedures to the US, by implementing the Anti-Terrorism Crime and Security Act of 2001. Suspected terrorists may be detained in the UK as well, without a specific time limit, and they will be kept in prison until they no longer pose a threat to the UK. There can also only be one appeal and that is to the Special Immigration Appeals Commission (SIAC). (Doherty. 2002). In November 2002 it was held by the High Court that English Courts have no jurisdiction to determine whether a foreign state (the US) was in breach of its treaty obligations.

In October 2003, 10 terrorist suspects in the UK lost their appeal against detention without charge or trial. The case was dismissed by the SIAC. The Government only had to prove reasonable grounds to suspect. (Guardian, October 20, 2003).

284 R. v Secretary of State for Foreign and Commonwealth Affairs and Secretary of State for the Home Department unreported, 6 November 2002.
After nearly two days of questioning, five men were released after being kept at Guantanamo Bay for two years without charges or access to legal aid. Lawyers in the UK demanded that the US be made to answer for the injustices that these men had suffered. The freed men described their treatment at Guantanamo as cruel, inhumane and degrading. They were forced to go naked as punishment for minor offences, even when female guards were present, they were forced to squat with their hands chained between their legs for hours during questioning, and dogs were used to frighten them.

The men stated that physical interrogations were bearable after a while, but that the psychological torture was immense. Furthermore, they stated that the FBI had tried to persuade them to sign documents admitting links to terrorism. It is clear that the five released Britons were faced with uncertainty, but that they were focusing on the possibility of claiming compensation for their two-year detention. However, finding a court to overhear these complaints seemed to be a problem. The European Court of Human Rights could not take on the case because the US falls outside their jurisdiction (Dugard, 2005).

The International Criminal Court could also not proceed since the US is not signed up to the court. The International Court of Justice will only hear disputes between states (The Economist, March 13-19, 2004). Case Law, however, suggests that Britain is no better than the US with regard to the treatment of detainees in Guantanamo Bay. From the above facts, it is clear that the future of detainees remains unclear, and that the US could have dealt with 9/11 in a different way. The Bush Administration could have stood in solidarity with the UN by supporting the International Criminal Court.

Furthermore, the US could have treated the detainees at Guantanamo Bay in accordance with the Geneva Convention. The severe human rights abuses at this prison reaffirm the illegality of the US actions against detainees. The events which occurred in Guantanamo Bay might lead to serious repercussions for international relations. It is a recurring theme in history, that in times of war liberal democracies adopt
measures infringing human rights in ways that are unacceptable to human rights standards and principles. The lack of any impartial investigation into allegations of torture and ill-treatment amounts to a violation of Articles 12 and 13 of the Convention against Torture.

Terrorist suspects should be detained in accordance with criminal procedures that respect the safeguards enshrined in relevant international law. The US Government should ensure compensation to all alleged victims of torture with compensation, as prescribed according to Article 14 of the Convention against Torture, and a full rehabilitation programme. All five mandate holders should be granted full and unrestricted access to Guantanamo Bay, including private interviews with detainees (Margulies, 2007).

6.4 Al-Qaeda into the future

Al-Qaeda is currently more dangerous than ever before. It has suffered setbacks since September 11, 2001, inter alia, losing its position within a state in Afghanistan, having several top operatives killed, and failing in its attempts to overthrow the governments of Egypt, Jordan and Saudi Arabia. However, due to the actions of the US and its allies, Al-Qaeda now has a solid base of operations in the badlands of Pakistan and Western Iraq (Atwan, 2007:255).

The influence of Al-Qaeda has now spread throughout the Muslim World, including Muslims in Europe. As such, Osama bin Laden has mounted a successful propaganda campaign to make himself and his organisation the symbol of Islamic resistance worldwide. His goals remain the same, and that is to bankrupt the US, as he claims he bankrupted the Soviet Union in Afghanistan. The aim is then to destroy his closest enemies such as Israel, Egypt, Jordan, Pakistan and Saudi Arabia. It appears that the US occupation of Iraq is assisting him with his plan. He may now be extending his strategy by exploiting or even initiating a war between the US and Iran. This means that defeating Al-Qaeda will be more difficult now than it would have been a few years ago. It can nevertheless still be done if the US focuses on attacking the leaders of Al-Qaeda.
Al Qaeda however, did not anticipate the quick fall of the Taliban regime in Afghanistan in 2001, which had been a fertile breeding ground for Al-Qaeda Jihadists (Williams, 2005).

The 9/11 Commission found no credible evidence of any operational connection between Al-Qaeda and Iraq prior to the 9/11 attacks. On February 11, 2003 Bin Laden sent a letter to the Iraqi people via the satellite network Al Jazeera, warning them to prepare for a long struggle against the invading forces, and the importance of the martyrdom operations which have inflicted harm on the US and Israel. With the US invasion of Iraq the pressure was taken off Al-Qaeda in the Pakistan badlands, opening doors for the organisation in the Middle East (Burke, 2007).

In Iraq, Zarqawi sought to drive out all foreign forces with systematic terrorist attacks such as, for example, the bombings of the United Nations headquarters and the Jordanian embassy in Baghdad in the summer of 2003. More importantly, he focused on the fault line in Iraqi Society, the divide between Sunnis and Shiites with the goal of precipitating a civil war. He therefore launched several attacks on the Shiite Leadership, Shiite men and women on the street; he organised the assassination of the senior leader of the Supreme Council for Islamic Revolution in Iraq; and the bombings of Shiite Shrines in Najaf and Baghdad and in Karbala. By late 2004 Zarqawi proclaimed his allegiance to Bin Laden, and Bin Laden on the other hand anointed him ‘the prince of Al-Qaeda in Iraq’ (Atwan, 2007:255).

Al-Qaeda also developed closer ties with Kasmiri terrorist groups, such as Lashkar-e-Taiba and Jaish-e-Muhammad. On the fifth anniversary of 9/11, Al-Qaeda released a major statement entitled ‘The Manhattan Raid’ featuring previously unseen videos of two of the 9/11 pilots.

Al-Qaeda today is a global operation with military bases in Pakistan, Iraq and in Europe. The Taliban allies of Al-Qaeda are returning to Afghanistan. Today, Al-Qaeda is well-placed to threaten global security in future. It thrives on failed states, and if the
Lebanese state is further weakened or a civil war breaks out, Al-Qaeda may seek a foothold there. Gaza is another prime candidate: it is already divided between Hamas and Fatah, and there is evidence that a small Al-Qaeda apparatus is forming there.

The first step towards defeating Al-Qaeda is for the US Administration to enhance its commitment in Afghanistan. This will require an increase in NATO forces, which should encourage its partners in the Mediterranean Dialogue, for example Algeria, Egypt, Jordan, Morocco and Tunisia – to contribute to the stabilisation of Afghanistan (Foreign Affairs. May/June 2008:24-40).

On the 11th of March 2005, Al-Quds Al-Arabi published extracts from a document titled ‘Al-Qaeda’s strategy to the year 2020’. The document shows that Al-Qaeda has already started on its master plan to pursue a long-term campaign of Jihad to rid the umma of all forms of oppression, and that this has five distinct stages: The first stage is aimed to provoke what Makkawi describes as the ‘ponderous American elephant’ into invading Muslim countries (The 9/11 attacks, which had been planned since at least 1998, resulted in the full scale attack of the US and its allies on Afghanistan and Iraq).

The Second stage in the military plan is to reawaken another ‘giant elephant’ – the umma itself. According to Makkawi the most effective way to do this is to bring large numbers of US soldiers onto Muslim soil enraging the umma and provoking a full-scale confrontation. The escalating bloody insurgency with its seemingly endless reservoir of foreign fighters in Afghanistan and Iraq testifies to Al-Qaeda’s success in this area.

The third stage, according to Makkawi, is to expand the conflict throughout the region and to engage the US in a long war of attrition. The aim is to create a Jihad Triangle of Horror, which would start in Afghanistan, run through currently neutral Iran and Southern Iraq, via southern Turkey and south Lebanon to Syria. The fourth stage is to become a global network through effecting organisational changes that will further take

285 Al-Qaeda’s main military strategist.
Al-Qaeda outside the scope and experience of international security forces (Cushman, 2005).

The fifth stage sees the US stretched beyond even its megalithic capabilities of fighting wars on many fronts as it attempts to secure all the oilfields in the Gulf area and maintain the security of Israel. At this point, Makkawi says, the American military budget will crash into bankruptcy. If this sounds far-fetched it is sobering to consider that this virtually describes the downfall of the Soviet Union. Waging war on the economic front is a concept that appeals to Al-Qaeda and its multimillionaire leader Osama bin Laden.

In a speech addressed to the American people on 29 October 2004, Osama noted that Al-Qaeda spent $500,000 on the 11 September 2001 events, while the US lost more than $500 billion dollars; that is to say that each of the Al-Qaeda dollars cost 1 million US dollars, ‘thanks to Allah’s grace’, according to Bin Laden (Zmeyevsky, 2005).

On the other hand, the attacks had other economic repercussions. Arab investors worried that their assets might be frozen, and consequently withdrew billions of dollars from Western financial institutions, and invested in Muslim institutions. The Jihad fighters forced former President Bush to resort to an emergency budget in order to continue the fighting in Afghanistan and in Iraq, which proves the success of the plan of ‘bleeding’ the US to the point of bankruptcy (Atwan, 2007:251-267).

How will the war between Al-Qaeda and America end? It is important to note that Al-Qaeda is not an organisation as such: it is more an ideology about freeing the land of Muslims and cleansing a corrupt world through religious violence (Burke, 2007b). Furthermore, far from sleeper cells in every country, it is more realistic to think of Al-Qaeda as a consortium, a kind of network of networks, sharing a radical world view.

The broad political aims of the movement can, however, be identified as: the expulsion of foreign troops from the Middle East, the termination of the House of Sand and other elitist and pro-Western regimes across the region, the elimination of Israel and the
creation of a Palestinian state, and support for insurgents in other regions of the Muslim world (Rogers, 2005). These aims are measured in terms of decades, not years, and so today’s successes and failures are very much seen as only the opening stages of a long-term battle.

Increasingly, the Internet is being used to communicate; proving to be a powerful anonymous and dangerous propaganda and radicalisation avenue for violent Islamic attacks, increasing the likelihood of surprise attacks by previously unknown self-generating cells (National Intelligence Board, April 2006). Terrorist organisations and rogue states are not isolated phenomena that can be defeated militarily on a case-by-case basis, thereby regaining control and maintaining the existing world order.

It follows that policies to control such developments will need to go beyond the traditional methods of counter-terrorism to incorporate a wide range of conflict prevention and conflict resolution methods, proceeding to include efforts to address the underlying socio-economic divisions that are leading to the deep global divisions that the world is currently experiencing. Violent groups often grow out of local conditions to address grievances, which they feel cannot be dealt with through the political system available to them. Principal among these grievances is the occupation of territory, especially territory which terrorists view as their homeland. Terrorist groups offer radical philosophies – political and/or religious (Elworthy and Rifjkind, 2005).

So, how will this war on terrorism end? Only by genuinely addressing the root causes of the political violence and bringing groups into dialogue can violence be stopped (Elworthy and Rifjkind, 2005). It is only by truly understanding terrorism and the causes of terrorism that there will be any hope of avoiding future attacks.

Who will be the winner in this war on terrorism? No one. Both parties are responsible for loss of innocent lives, and this must be avoided at all costs. Osama bin Laden is of the opinion that the US will fail in Iraq just as the Soviet Union did in Afghanistan. Experts debate whether Al-Qaeda is as dangerous as it was in 2001. America’s latest National
Intelligence estimates that Al-Qaeda has lost its ability to attack the US. British intelligence agencies are also of the opinion that Al-Qaeda has been so broken up that little but its brand name is still left. Much of Al-Qaeda’s propaganda as well as its military training manuals are spread through a large network of Jihadist websites.

Muslims anywhere can become members and join the fight with little or no involvement from Al-Qaeda’s leaders. Al-Qaeda in general has experienced some serious setbacks, notably in Saudi Arabia and Indonesia, where Jihadist campaigns have largely been eliminated. Osama bin Laden ended his latest video appearance stating that Bush was repeating the errors that the Soviet Union made in Afghanistan. Because of this, the Western world fears that Iraq too will start exporting real Jihadist Muslim soldiers, as Afghanistan did after defeating the Soviets (Economist May 9, 2007b).

Osama bin Laden claims that he must kill four million Americans – two million must be children – in order to achieve parity for a litany of ‘wrongs’ committed against the Muslim people by the Americans. The ‘wrongs’ committed against the Muslim people, according to Bin Laden, include:

- Invasions of Somalia, Afghanistan and Iraq;
- the establishment and occupation of military bases between the holy cities of Mecca and Medina in Saudi Arabia;
- the support of Israel and the suppression of the Palestinian people;
- the Persian Gulf War; and
- economic sanctions.

Few military and intelligence officials question Bin Laden’s ability to carry out his threats. British Intelligence sources have confirmed that Al-Qaeda possesses a small arsenal of nuclear weapons – which are being prepared for the ‘American Hiroshima’ (Carroll, 2004).
What will happen? For Bin Laden, who believes in parity, the model is Hiroshima. The very weapon that the United States unleashed against the civilian population of Japan, he believes, should be used to kill millions of Americans. Bin Laden believes that such an event is necessary to proclaim the Day of Islam – the day when all of creation bows in fear and trembling before the throne of Allah.

When will it happen? Al-Qaeda, according to US military analysts, places a great deal of significance on dates. The bombing of the World Trade Centre on February 26, 1993, was planned to coincide with the Second anniversary of the launching of the ground war in Operation Desert Storm on February 23, 1991.

The September 11, 2001 attack was significant since it represented the fifth anniversary of the conviction in a New York court of World Trade Centre bomber Ramzi Yousef. The bombing of the US embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania occurred on August 7, 1998, the eighth anniversary of President George W. Bush’s 1990 commitment to deploy troops for the protection of Saudi Arabia against Saddam Hussein.

The ill-fated attack on the warship USS The Sullivans occurred on January 3, 2000, in celebration of the holiest day of Ramadan. Some analysts believe that the favoured month for the next attack is October. October 2 looms ominously, since it is the anniversary of the federal court conviction of blind Sheikh Omar Abel Rahman, the spiritual mentor of Bin Laden and Ayman al-Zawahiri.

Another troublesome date is October 7, the day of the Launching of Operation Enduring Freedom. A Further potential date is August 6, commemorating the day in 1945, when the US dropped a twenty-thousand pound atomic bomb called ‘Little Boy’ on Hiroshima.

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286 Allison, Nuclear Terrorism, p. 52.
287 Washington’s “War Against Terrorism” and Human Rights.
In this thesis we have tried to explain the nature of modern Islamic terrorism and examined some of its root causes. It has been concluded that long-term success in the War on Terror will depend on successfully countering Islamic militants, and addressing the root of terrorism. At the basis of the problem is the denial of identity and the oppression and recognition of a nation.

6.5 Ending the deadlock and what needs to be done

The extent to which Al-Qaeda can achieve its goal of convincing the United States, regardless under which Administration, to alter the nature of its policies in the Middle East and towards Muslims in general, and the degree to which the United States can manage to convince Al-Qaeda to cease its attacks on the United States and its allies, constitute the core difficulties of the War on Terrorism. This is a perfect example of the balancing of the rights which constitute the Human Rights Act.

One can admit that the issues discussed in this thesis may seem too large for a single person to change. On the one hand this is true – so many of these issues require action from above, from the Almighty, governments and transnational bodies such as the United Nations. However, on the other hand they also require action from ordinary people. As Anita Roddick, founder of the Body Shop, has said: “if you think you are too small to have an impact, try going to bed with a mosquito in the room”.

On a personal level, anyone can make a difference, because all individuals can begin by respecting basic human rights: the right to life, freedom and non-discrimination. So many of the problems faced in the War on Terror are directly linked to basic human rights and the respect for life (Richardson, 2006).

Sustainable approaches to future threats need development into fully workable security policies and they need to be implemented. This is unlikely to happen without pressure and support from ordinary people. These issues are sometimes seen as distant concerns by politicians – whereas terrorism is immediate and alarming. The question
that arises now is how governments are going to move beyond this current situation in order to promote sustainable global peace and security for all.

The level of awareness of human rights in the United States is extremely low. According to Amnesty International, 94 per cent of US adults and 96 per cent of US youth have no awareness of the Universal Declaration of Human Rights.\(^\text{288}\) Without a human rights culture, US citizens cannot be expected to evaluate and criticise US foreign policy fairly and accurately in human rights terms.

Wars end traditionally with victory for the side which manages to impose its will on the other. Let us examine the *casus belli* of Al-Qaeda and why they are engaged in war. In an ABC interview with John Miller, Osama bin Laden asked the American people to force their government to give up anti-Muslim policies.

One of the main reasons for the war from the side of Al-Qaeda is their perspective that there is a cosmic battle between good and evil. The September 11 attacks were consistent with the overall mission of Al-Qaeda as set out in the 1998 fatwa and issued by Osama bin Laden.\(^\text{289}\) In this fatwa, Bin Laden directed his followers ‘to kill Americans anywhere.’\(^\text{290}\) The fatwa specifically condemns the US for ‘plundering’ the resources of the region, oppressing the people by supporting abusive regimes in the region, and dictating policy to legitimate leaders. The fatwa also opposes the presence of US military bases and installations in the Middle East, especially on Muslim holy land.

Many of the eventual findings of the 9/11 Commission with respect to motives why the 9/11 attacks were made, supported the evidence. Some of the evidence includes confronting Moscow in Afghanistan, inserting the US military in the Persian Gulf, and strengthening Israel as a base for a southern flank against the Soviets.\(^\text{291}\)


Other opinions why the attacks were made, indicate that it was part of a plan of Bin Laden to increase US military and culture in the Middle East, thereby forcing Muslims to confront the ‘evils’ of a non-Muslim government and establishing a conservative Islamic government (Bergen, 2006). Since the 9/11 attacks the Bush Administration presented terrorism to the public as a matter of vital national and international security.

However, last year’s disclosures of the mistreatment of prisoners at Abu Ghraib and Guantanamo Bay demonstrated the extent to which the policy pendulum within a democracy can be misleading. In recent months serious and persistent concern has been expressed about the contracts awarded to Halliburton in Iraq, about the 5000 individuals arrested in the United States, who have neither been charged nor convicted, and about the war in Iraq and its implications for the war on terrorism. The US terrorism policy, and the support given to the employment of torturing and interrogation techniques has, however, changed opinions (Margulies, 2007).

However, the lack of support for government policy has currently diminished and the government faces a far more comprehensive and persistent examination and critique of its actions and policies than ever before. Efforts by the Bush Administration to ignore or challenge increasing levels of public criticism have been met by divisions within the Republican Party in both houses of Congress and a growing number of congressional challenges to the executive branch’s policy proposals regarding both foreign issues, such as the war in Iraq, and domestic issues such as social security (Henshall, 2007a).

The US Administration, however, has not yet responded to these concerns by changing its behaviour or policy positions. On the contrary, the creation of the new National Counter-Terrorism Centre designed to fight the global war on terrorism through a well-funded mix of force, diplomacy, and development aid – suggests that the commitment to keep the focus on the national and international levels stays strong. This is not a partisan issue, since the Democrats in the US have yet to articulate an alternative policy for the protection of US citizens against terrorism.
At the same time, it is apparent that the public is suspicious of the strategies being used to fight the global war on terrorism, and is concerned about the lack of attention given to other equally important issues, such as health care, social security, economic growth, human rights and human dignity.

Furthermore, matters have been complicated by citizen militias in the US developing their own aggressive plans to protect them when they feel the state is unable to, or fails to do so. Are the cold war and the war against terrorism really analogous in the way Bush suggests? Wasn’t the lesson of the Cold War that it is containment rather than military engagement that works? (Cordesman, 2003).

As the US casualties in Iraq increase and the prospect of a relatively short, smooth transition to a democracy becomes smaller, the President is confronted with contradictions to his policies. Having convinced the US that he was justified, he is now forced to explain why no WMDs have been found. His answer up to now was to recast the reasons for war. President Bush’s famous reason for war was that he wanted to transform Iraq and the rest of the Middle East into a democracy and that war would be the best way to fight terrorism.

Yet the occupation of Iraq is in disarray, the US has never been as unpopular as now; the Bush Administration is criticised for not telling the truth about the real cost of the war, financially, as well as in terms of human life. Governments are invariably placed under enormous pressure to react forcibly and quickly at the suspicion of any terrorist attack, especially when innocent lives are at stake. In the short term this might seem to be the correct decision, but not necessarily in the long term. Terrorism is a complicated and multifaceted phenomenon, but also a phenomenon that can be rationally understood. As pointed out in Chapter One in this thesis, if a nation’s identity and recognition are denied they will stand up for their rights and recognition (Allawi, 2007).

Important about 9/11, was that for the first time in history, terrorists succeeded in killing a large number of civilians. While the scale of the attacks of 9/11 was unprecedented,
the nature of the violence differed from previous experiences. Franz Fanon, in ‘The Wretched of the Earth’ wrote of violence as liberating, as behaviour that is necessary to the perpetrators as a means of freeing themselves from oppression. This is not the ordinary violence of the robber or gangster, but is expressive violence to cleanse the soul (Fanon, 1963). This is the kind of violence that targeted the US on 9/11.

The ability of Al-Qaeda to carry out such a sophisticated attack as 9/11 within the US was a surprise. In the words of former Vice-President Dick Cheney, 9/11 changed everything: “It changed the way we think about threats to the United States, it changed our recognition of our vulnerabilities and it changed the national security strategy” (NBS News, September 14, 2003).

In a poll conducted by CBS News a month after the attacks, 88 per cent of the respondents said that they considered it likely that there would be another terrorist attack in the US within a few months (CBS News, October 25-28, 2001). The American public was confronted with a group of radical Islamists, by an attack out of nowhere by ‘crazy’ radical people. They felt it was an unconscionable and unprovoked assault on innocent civilians. However, for the perpetrators of 9/11 this was a victorious attack. In Bin Laden’s own words: “They carried out the raid by means of enemy plans in a courageous and splendid operation the like of which mankind has never before witnessed”.

The work of the 9/11 commissions and of many academics has confirmed the growth of radical Islamic movements, also their antipathy towards the US; the impact of the successful outcome of the mujahideen campaign against the Soviet Union; and the terrorist activities in training camps in Afghanistan and elsewhere. With the attacks of 9/11 and the support from around the world for the families of the victims, the US reaction was to respond with immediate action.292

There were two aspects of Al-Qaeda violence that left Americans thinking that the world had indeed changed. Firstly, Al-Qaeda would not hesitate to use weapons of mass destruction and secondly, Al-Qaeda is an organisation driven by religious fanatics. Terrorist leaders have used religion to legitimise their actions and in winning recruits for their cause. Bin Laden understands how terrorism works, with his regular video and audio appearances; he succeeds in his role to intimidate the enemy and to motivate his followers. He has caused chaos by declaring that Al-Qaeda will use WMDs for their religious duty.

In an interview in 1999 with Time magazine Bin Laden stated that acquiring weapons such as chemical, biological and nuclear weapons is a religious obligation. He continued to state that it would be a sin for Muslims not to try to possess the weapons that would prevent the infidels from inflicting harm on Muslims. In making these claims Al-Qaeda is attempting to advance the essential psychological aspect of their terrorist campaign. It seems as if Bin Laden is skilfully engaged in a game of manipulation.

Saddam Hussein was notorious for having deployed chemical weapons against Iran and against Iraqi Kurds in the course of the Iran-Iraq war. This was sufficient evidence to believe that Saddam had in his possession weapons of Mass Destruction. Part of the impact of 9/11 was therefore the fear that terrorists might use chemical, biological or even worse, nuclear weapons in future attacks.

The September 11 attacks proved that terrorists could strike a powerful blow at the US. In a poll conducted by the Pew Research Centre as many as 72 per cent of Americans indicated that they believed there was a chance that terrorists could use weapons of mass destruction to attack the US. As a result of the attacks of 9/11, WMDs became a casus belli. This added to the widespread belief that Al-Qaeda was linked to Saddam

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293 Osama bin Laden made this assertion in an interview with Rahilullah Yusufzai, who reports for both Time Magazine and ABC News. See Time, January 11, 1999.
Hussein and the fear that he would give these weapons to Al-Qaeda, and this became the crucial factor in the mobilisation for the war on terrorism.

The first attempt to establish international standards for all wars was launched by the Swiss businessman Henri Dunant, who founded the International Red Cross in 1863. In 1864 Dunant invited thirteen countries to attend a conference on the humane conduct of war. The outcome of the conference was the first Geneva Convention, which provided for the neutrality of military hospitals and medical transports, the treatment of wounded soldiers and medical staff as non-belligerents; the return of prisoners to their home country if they were unable to fight and the adoption of the white flag with a red cross as a symbol of neutrality (Dugard, 2005).

In 1899, treaties on the use of asphyxiating gases and expanding bullets supplemented the first Geneva Convention. In 1906 the Second Geneva Convention, which extended the principles to war at sea, was signed. In 1929 after the First World War two more Geneva Conventions were brought into being. These dealt with the treatment of the wounded and of prisoners of war. After the Second World War further efforts were made to regulate the conduct of war. The result was the 1949 Geneva Convention.

In 1977 two further protocols were agreed upon, extending the protections to other forms of war-like civil wars and wars of self-determination. The Geneva Convention is not the only agreement governing the conduct of war – there are a number of international laws and agreements. The International Community expected the US to be bound by the rules of warfare and in particular by the international conventions on the treatment of civilians, the wounded and prisoners in the war on terrorism.

The White House adopted the term ‘enemy combatant’ and used it as a blanket category to cover Afghan fighters and foreign mujahedeen fighters, as well as foreigners arrested in the US. The prisoner abuse in Abu Graib and Guantanamo Bay caused incalculable damage to US moral standing in the world and jeopardised efforts to win support for its campaign against terrorism.
By declaring the war on terrorism and yet refusing to be bound by the agreed constraints on warfare, and refusing to conduct its war through existing international institutions, the US caused an enormous amount of damage to its image as the leader in the world on Human Rights issues.

The US government believed that the atrocity committed against the US was so great that it could not afford to have any constraints on the exercise of its power in response. The war in Afghanistan taught the lesson once more that winning battles does not necessarily mean winning wars, especially when it comes to fighting terrorists. It has been learnt in the past that military force alone cannot win against terrorism.

Examples are the Russians who had not been able to translate overwhelming military force into victory in Chechnya, the Israelis who had not been able to translate their overwhelming military force into success in Lebanon, and the Peruvian government that failed to achieve success against the Shining Path through military force.

On the other hand, there are a few Latin American cases in which the military were successfully deployed against terrorism domestically, but never in a democracy. No country has as much experience in fighting terrorism as Israel. Yet, in spite of superbly trained men and sophisticated equipment, Israel was unable to defeat Hezbollah in Lebanon (Henshall, 2007b).

The 9/11 Commission investigated the allegations of connections between Al-Qaeda and Saddam Hussein’s regime. However, the Commission could find no evidence; neither could evidence be found to indicate that Iraq had cooperated with Al-Qaeda in developing or carrying out any attacks against the United States. The war on Iraq has spawned a whole new generation of terrorists in Iraq, as did the Soviet invasion of Afghanistan for the earlier generation of terrorists. Just as the Soviet War in Afghanistan

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proved to be a powerful mobilising force for the mujahedeen, so did the US invasion of Iraq prove to be a beacon for a new generation of Islamic radicals.

A significant percentage of people in France (57%), and in Germany (49%), have come to agree with the view of the Muslim world that the US was exaggerating the threat of terrorism. Seven out of nine countries surveyed in 2004 believed that America’s real motive to invade Iraq was to control Middle Eastern oil reserves (Pew Global Opinion, 2005). In all Bin Laden’s statements he claims to be the defender of Muslims against American aggression. He further states that his actions are in reaction to those of the US and that he seeks only to stop Americans from inflicting suffering on others. In the same way the US claims that they are the defenders and that they wish only to stop those who inflict terror on others.

Just as Bin Laden is confident that Allah is on their side, the US leaders have expressed equal conviction that God is on their side. In a speech by former President Bush to military families he said that the US believes in human rights, and the human dignity of every man, woman and child on this earth. The terrorists believe that all human life is expendable. They share an ideology that rejects tolerance, and envisages a world where women are beaten, children are indoctrinated and all who reject their ideology of violence and extremism are murdered (Bush, August 24, 2005).

It has been argued in this thesis (Chapter 1) that Al-Qaeda seeks two objectives: identity and recognition. According to John Burton, needs such as identity and recognition seem to be even more fundamental than basic needs such as food and shelter in the hierarchy of Maslow. Burton continues: denial of these needs can lead to alternative behaviour in order to satisfy them (Burton, 1998).

Bin Laden has made it clear that he wants revenge on the US for their actions in the Muslim world, denying them their identity and not recognising them as a nation. Therefore the successes of Al-Qaeda after the 9/11 attacks have given them exactly
what John Burton (1998) has stated. By offering a ransom of millions of dollars for the life of Bin Laden, has elevated him more than he could ever have expected.

If the US succeeds in killing Bin Laden it will turn him into a martyr and his renown will be consolidated for generations to come. If the US captures Bin Laden alive will it demonstrate to the world the commitment of the US to the rule of law? We are likely to encounter terrorism in the future just as we have in the past. The attacks of London, Madrid and New York all suggest that the same ideology that motivated Michael Barrett in the 1860s motivated Osama bin Laden in the 2000s. Nationalism has never ceased to attract those prepared to fight for the identity and recognition of their group.

Burton (1998), states that if conflict resolution is to be taken seriously, it has to be assumed that societies must adjust to the needs of people, and not the other way around (Carroll, Rosati and Coate, 1998). To complicate the human needs approach, Burton states that a Muslim-Christian conflict would require an extensive facilitated analysis that would include the tracing back of colonial origins, class aspects, leadership, motivations and a host of circumstances that trigger behavioural frustrations. Human needs theorists agree that although needs cannot be compromised, they can be addressed in a generally win-win or positive way (Rothman, 1997).

On the other hand, conflict resolution cannot just come about by meeting human needs. The answer to conflict resolution is that only when needs and interests are dealt with can conflict resolution come about

Now is the time to move towards a new paradigm based upon respect for human rights, an internationally coordinated anti-terror justice strategy and a long-term political vision, thereby reducing the global intolerance, which is the breeding ground for terrorism.

The question was asked in Chapter 1, what is the cure for terrorism? The answer? Justice; political justice; the rule of law; social justice; economic justice and the recognition of identity and security.
SUMMARY OF MAIN FINDINGS AND RECOMMENDATIONS

Main findings

The war on terrorism has seen serious violations of human rights and humanitarian law which amount to international crimes. The factual and legal analysis of the major incidents (the three incidents of terror) reveals that crimes against humanity, war crimes and crimes of aggression and terror have been perpetrated by Al-Qaeda on international civilians, affecting hundreds of thousands of people. In the three incidents discussed, human rights violations have been perpetrated in a clear and premeditated way.

However, there is a reliable body of evidence, which indicates that the crimes of persecution and torture on the basis of political or religious views have been perpetrated by both parties, namely Al-Qaeda, and the US and its allies. It has been shown that the explored acts of terrorism and counter-attacks represent crimes against humanity, as defined by the relevant provisions of international law.

The continued instability that prevails in the Middle East (Afghanistan and Iraq – as has been shown in this study), can be seen as a crisis that constitutes a threat to international peace and security, and does not allow any degree of development.

This study broadly evaluated the War on Terrorism in terms of the Human Rights Convention. It also analysed the War on Terrorism under the following sub-headings (1) Terrorism; (2) The Taliban; (3) Al-Qaeda; (4) Jihadi; (5) Suicide Bombers; and (6) Islam and Christianity. It investigated the three major terrorists attacks, namely (7) September 11, 2001; (8) March 2004, Madrid Train Bombings; and (9) July 2005, London Bombings. It focused on the War on Terrorism initiated by the US and its allies. (10) It subsequently evaluated counter-terrorism in terms of International Human Rights and humanitarian law, and established that human rights are a necessity for the respect of
life and the promotion of democracy or development of sovereignty, to the extent that it is now universally recognised that certain crimes against humanity are so reprehensible by their nature that they warrant prosecution, regardless of where and by whom they have been committed (Saddam Hussein against the Kurds).

It has further been established that international human rights and justice did not evolve overnight but were addressed in the Nuremberg trials as well as the Tokyo war crimes tribunal.

The study has provided a perspective on the Afghanistan and Iraq attacks and demonstrated the impact of the Nuremberg and Tokyo trials, significantly showing individual accountability as opposed to only state accountability. The later developments led to the development of human rights and humanitarian law, especially in war-like times, as from World War II, to the development of international law, to demonstrate that it is interwoven with international criminal law.

The investigation subsequently proceeded to record and demonstrate the impact on human rights (generally and international criminal law in particular), of the establishment of the International Criminal Court and the International Court of Justice. It has demonstrated that the establishment of these two ad hoc tribunals provided impetus to renewed calls for the establishment of human rights globally.

This study also indicated that the detention system established by the Bush Administration at Guantanamo Bay is unique where prisoners are held without charge in a super-maximum security prison.

The issues of 9/11 in terms of human rights law were also examined, and it has been argued that only by understanding Islamic extremism can we hope to contain it.

The research concluded that the need for a consistent human rights order globally is required for peace and democracy so that identity and recognition may be accorded as a cure for terrorism. The key issue seems to be that development does not take place in
situations where fundamental human rights are violated. The study proved that real ‘freedom’ is not that of a so called ‘freedom fighter’ in search of martyrdom, but rather the quest for recognition and identity, within a democracy. It was further highlighted that respect for human rights promotes the development and growth of an individual. However, further research is needed in the field of development studies, relating to human needs.

The situation in Afghanistan and Iraq merits intervention by the international community and it is recommended that the United Nations become involved. Interim measures should, however, be adopted by, the international community to alleviate the suffering in Afghanistan and Iraq. The latter two countries represent a grave picture of failed states in the making, and the role of the international community is indispensable to act on behalf of the innocent people who are losing their lives as a result of terrorist attacks.

Although damage has been done in the Middle East, it is not too late to reverse the negative effects of the war. This is only possible if all parties involved in the war on terrorism would make themselves available to a peaceful negotiated political process administered by the United Nations, which should comply with international standards and practices for conflict resolution.

**Recommendations**

This study makes the following recommendations for combating terrorism and ensuring accountability and enhancing a peaceful political transition to democracy in the Middle East (Iraq). With the emphasis on Human Rights, as the central tenet of the research, it has become clear that in the establishment of a democracy, an essential feature is that recognition and respect for the rights of all the role-players should take precedence over ideologically driven passions. The implication here is that development and empowerment of the individual and the nation cannot be separated from a total commitment to a Rights-driven paradigm, within which there is no room for terrorism.
Recommendations with regard to the Iraqi and Afghan governments

Against the background of the main findings of the study, it is essential that the Iraqi government commits itself to a peaceful political transition to democracy in the country. Respect for the fundamental rights and freedom of all Iraqis must be restored as soon as possible. To achieve this, one of the first steps would be that all detained (alleged) terrorists be brought before an impartial and independent court of law where will be allowed to challenge any accusations against them, and plea for appropriate remedies. In order to avoid future violations, the independence and impartiality of the judiciary in Iraq must also be strengthened, and courts should be endowed with adequate powers to adjudicate on human rights violations.

Assistance in this regard must be sought from the international community, which can be achieved through the training of judges, prosecutors and lawyers with particular emphasis on human rights law, humanitarian law and international criminal law. However, academic institutions in the Middle East must be reinstated and empowered to take 'ownership' of the development of their 'own' qualified professionals with requisite legal education and other disciplines required for the transitional justice. International human rights monitoring groups such as QI, HRW, UN, EU and AU treaty bodies and others must be given unimpeded access to monitor the situation of human rights in the Middle East. The governments mentioned must ensure the protection of all victims and possible witnesses of human rights violations. Any initiative for the establishment of a TRC should comply with international standards and best practices developed by the OHCHR and other renowned international law publicists. Amnesty offered to the leaders should not serve to indemnify the perpetrators.

Recommendations with regard to the international community
All the crimes against humanity documented in this and other studies meet the threshold of international crimes as established by the ICC statute. In the light of the gravity of terrorism, the international community is duty bound to intervene. All other
democratic countries of the world should also cooperate in prosecuting incumbent
government officials who are not protected by the doctrine of sovereign immunity. The
recommendations designed to break the cycle of impunity would hardly be attainable
without the effective exercise of universal jurisdiction by the democratic countries of the
world. Meanwhile, the international community should also be expected to implement
measures such as asset freezes against terrorist individuals deemed responsible for the
perpetration of international crimes and the destabilisation of international peace and
order. In the event that the international community proposes to encourage long-term
plans of domestic prosecution by Iraqi courts, it must be noted that in its current state
the Iraqi judiciary is less than likely to meet minimal international standards of fair trial
and justice. As a result, greater financial and institutional support should be extended
form the international community. However, with the international dimension of some of
the crimes perpetrated by terrorist suspects, it is recommended that prosecutorial
initiatives have an international character. If need be, an acceptable formula should be
found to allow foreign judges and prosecutors to participate in all the stages of
proceedings. The involvement of the international community in the national
prosecutions can be implemented, if need be, by the establishment of mixed or special
tribunals. Alternatively, crimes perpetrated against Iraqi prosecuted against nationals of
other countries may also be prosecuted by an international or mixed tribunal. A most
important consideration is that any prosecutorial proposal, whether domestic or
international, must be compliant with internationally fair trial principles.

With regard to the ‘stalemate’ situation currently experienced in Iraq, it is imperative that
the international community impose punitive measures on the party who is frustrating
the implementation of the peace plan, including the resumption of political dialogue
between the leaders of the political parties in Iraqi.

The rejection of political dialogue and any unwillingness or refusal to cooperate with
peacekeeping forces stunts any possibility of attaining a democracy where all groups
will be able flourish, spiritually and economically. Because the factions are not able to
settle their own differences within their ideologically-driven agendas, the international
community must pressure and encourage the parties to engage in a comprehensive peace plan, which will seek solutions to the causes of the internal conflict and not only to its consequences.

The international community via the UN Security Council, may also utilize its Chapter VII powers against any party which fails to abide by international law. Only then can there be lasting peace in the region.

With the exceedingly vast number of low- and middle-level perpetrators in Iraq, a comprehensive prosecutorial plan to punish each and every perpetrator regardless of the degree of guilt, is practically impossible. Therefore, a TRC, via a democratic and participatory process, is highly recommendable. The international community should strongly encourage this. Recognising the unacceptability of blanket amnesty for any crime, this study recommends that conditional amnesty administered by a TRC should be considered as a major component of transitional justice. This should be encouraged especially if the current leaders commit themselves to a peaceful political transition to democracy without compromising the requirements of an all-inclusive national reconciliation and the demands of accountability.

It is less likely for Iraq to transit into a new democratic era without consideration of the above factors.

**Recommendations with regard to other actors**

It is highly recommended that a consortium of legal academics, politicians and political party leaders engage in negotiations to assess transitional justice options for Iraq.

This conclusion must use acceptable standards such as those developed by the Darfur/Sudan Commission to identify suspects of perpetrators of international crimes in Iraq and to access the feasibility of prosecution of such suspects.
It must bring together all Iraqi’s in the Diaspora, which constitute a great proportion of the total Iraqi population, not only in terms of absolute numbers, but most importantly in terms of their contribution to the national economy and government expenditure. The consortium must also be mandated to propose other national strategies relevant for a peaceful political transition to democracy.
BIBLIOGRAPHY


Independent on Sunday (London).


Bush, GW. 2001b. *United States ultimatum*. Available at:


Camerer, S. 2007. Interview conducted concerning Terrorism and the protection of Constitutional issues such as human rights on June 04.
Chomsky, N. 2007c. The War in Afghanistan. Excert from Lakdawla Lecture, New Delhi, 6F.

CNN. 2000, March 09. *Iraq accuses US, Turkey of ‘illegally’ meeting with the Kurds.*


*Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984. December 10.


Kingdom, 1922-2000.
Human Rights. 15(5/6).
of Human Rights, 6(2):93.
research proposals. In Terre Blanche, M. & Durrheim, K. (Eds.). Research in
practice: Applied methods for the social sciences. Cape Town: University of
Cape Town Press, 54-71.
Elsea, J. 2003. Terrorism and the Law of War Trying Terrorists as law Criminals before
University Press.


Guardian. 2002, November 01. *Al-Qaeda leaders say nuclear power stations were original targets*. Available at: http://www.guardian.co.uk/afghanistan/story/0,1284,788431,00.html.

Guardian. 2003, October 30. No Right to Trial for 10 Terror Suspects.


Hug, A. 2006, January 19. The Real Osama. Available at:
http://www.prospect.org/web/page.ww? Section=root&name=view Web &
articleid=10855. America Prospect.

Human Rights Watch. 2005, October. Attacks on Civilians Applying for the Iraqi
Security Forces. Retrieved on 2007-01-17:
http://www.hrw.org/reports/2005/iraq1005/7.htm?

Forces. Retrieved on 2007-01-17:
http://www.hrw.org/reports/2005/iraq1005/7.htm?

Human Rights Watch. 2006, November. Judging Dujail: The first Trial before the Iraqi
Special Tribunal. 18(9) (E):88.

Ignatief, M. 2002. Human Rights, the laws of War, and Terrorism. Social

Ignatief, M. 2004. The lesser Evil: Political Ethics in an Age of Terror. Princeton:
Princeton University Press.

International Covenant on Civil and Political Rights Act 9, 1976, March 23, para. 4, G.A.
UNTS 171.


Jackson, R. & Sorenson, G. 2003. Introduction to International Relations. Second

Jackson, R. & Sorenson, G. 2003. Introduction to International Relations. Second

Jackson, SW. and Reiter, D. 2007. Does Democracy Matter? Regime Type and Suicide

Francisco: Viking.

Jamail Dahr. 2005. Tom Dispatch, com, March. Title: Tracing the Trail of Torture:
Embedding Torture as Policy from Guantanamo to Iraq.


Kolhatar, SP. 2007. By any standard this is a war against the Afghans.


Koran, 2:190-193.

Koran, 22:40. Available at; http://www.usc.edu/dept/MSA/Koran/022.qmt.html#22.040.


Lerner, M. 1948. Actions and Passions: Notes on the Multiple Revolutions of our times. 263.


Link to www.qal3ati.com on The Internet Archive.


*National Strategy for Combating Terrorism* (27). Available at:


*Peace Watch* 6, no. 5. 2000, August. Kosovo Leaders Agree to Pact Against Violence.


San Diego Union Tribune. 2005, October 19. Available at:
at the San Diego Union – Tribune.


Steele, J. 2001, December 11. *Guardian*. This was pointed out by, Fighting the Wrong War.


The Resurgence of the Taliban in Afghanistan. Available at: http://www.pinr.com/report.php?


Three held over 7 July bombings. Available at: http://www.news.bbc.co.uk/2/hi/uk-news/6481495.stm.


(http://www.washingtonpost.com/wpdyn/content/article/2006/09/10AR2006091001204.html).


Whitehouse News. 2007, January 20. Speech President’s Address to the Nation.

Whitehouse News. 2001-09. The Global War on Terrorism


International Affairs: A Russian Journal of World Politics, Diplomacy & International Relations, 51(5):80-84.
ADDENDA

Appendix A

Profile of Osama bin Laden

Osama bin Laden was born on 10 March 1957; he is a militant Islamist, and founder of the terrorist organisation Al-Qaeda. Bin Laden issued two fatwas – in 1996 and in 1998, that Muslims should kill civilians and military personnel of the United States and their allies.

He has not been indicted for the September 11, 2001 attacks on the US, but has taken responsibility for them. Osama bin Laden’s father was a wealthy businessman with close ties to the Saudi Royal Family.

Bin Laden may have studied economics and business administration; some reports suggest that Bin Laden earned a degree in civil engineering in 1979, or a degree in public administration in 1981. Other sources describe him as never having graduated from college; though he was ‘hard working’ Others stated he left university during his third year.

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301 Messages to the World, the statements of Osama bin Laden, Verso, 2005, p. xii.
At university Bin Laden was influenced by Muhammad Qutb Abdallah Azzam, a professor with strong ties to the Muslim Brotherhood. In 1974, at the age of 17, he married his first wife. It is further reported that he has four other wives. The three later wives of Bin Laden were all university lecturers; they were ‘spinsters’, so Bin Laden married them to fulfil the Word of God. I is further reported that he fathered between 12 to 24 children.

He is particularly tall, between 6’4” and 6’6” (193-198cm). It is believed that he is charming, polite and respectful. Bin Laden has used several nicknames, the Prince, the Sheikh, Al-Amir, Abu Abdallah, Sheikh Al-Mujahid, the Director, Imam Mehdi and Samaritan.

After college Bin Laden joined Azzam to fight the Soviet Invasion. Azzam subsequently incited Bin Laden to use his money to train recruits. It is believed that he was involved in several terrorist attacks on the US and several countries globally. Reports alleging Osama bin Laden’s death have also appeared from time to time.

He is an icon for Muslims around the world. A recent survey showed that as much as 60 per cent of the population in some Arab countries support him. Bin Laden’s reputation as a warrior amongst those alongside whom he has fought is marked with deep admiration for his courage, and the fact that he shows no sign of fear of death.

306 (http://www.gemsofislamism.tripod.com/qutb-milestinfluence_obl.html).
308 (http://www.transcripts.cnn.com/TRANSCRIPTS/0203/12/Itm.10.html).
He has frequently expressed regret that he has not yet been ‘martyred’ like many of his comrades in Afghanistan. During the Afghan war Jihad witnesses say that he came under heavy bombardment more than forty times, where at least on three occasions body parts were flying around, but Bin Laden showed no trace of fear.

Bin Laden was the twenty-first of twenty-nine brothers, and always had immense authority and influence in the family, especially in the Afghan war (Atwan, 2007:31-32). It is said he harbours a hatred of the US, he regards the US as the root of all evil – theologically, politically and morally – and the source of all Muslim problems. He has said that he hates the US for supporting corrupt and oppressive Arab regimes such as Saudi Arabia, and also for backing Israel. Bin Laden has sixteen personal bodyguards who are Yemenis, because Yemenis are renowned in the Arab world for gallantry, bravery, sincerity and loyalty. In the Northern Nigeria region 70 per cent of baby boys born after 11 September were named after Bin Laden (BBC News, January 3, 2002).

Although Bin Laden is from one of the wealthiest families in the world he still conducts himself with humility. He was once given a choice to move to Jalabad or Kandahar for safety reasons. In Jalabad he had the choice of being accommodated in an electric company compound, while in Kandahar the choice was a disused Soviet airbase. He chose the latter, where the family lived without running water, electricity or even a toilet (Interview with Saod al Fagih, April 18, 2005). Bin Laden indicated that he wanted to live the way the Prophet’s companions and the early Muslims had lived. Sources close to Al-Qaeda reported that Bin Laden travels alone with only one bodyguard now that he is constantly on the run. He enjoys rural life, and has a passion for horse riding and also enjoys sport, especially volleyball. He also has coached his wives and children on how to use firearms effectively. Bin Laden often says his only aspiration is to be in Paradise, and the quickest way to that destination is martyrdom, fighting for the cause of Allah (Atwan, 2007:31-56). It is safe to say that Osama bin Laden is the most famous Muslim warrior of all times.
Appendix B

The Last Night before 9/11 of a Suicide Bomber

This is part of the instructions for the hijack teams of September 11 and it was compiled by Abdul Aziz al-Omari.

1. Vow to accept death, renew admonition, shave the extra hair on the body, perfume yourself, and ritually wash yourself.

2. Know the plan well. Anticipate the reaction or resistance of the enemy.

3. Read the surahs of Repentance and The Spoils. Contemplate their meaning and the bounties God has prepared and established for the martyrs.

4. Obey God and His Messenger, do not quarrel and then lose heart, and you lose your power, be patient, surely God is with the patient.

5. Staying up at night in prayer for victory, strength and triumph also the easing of our task and concealment.

6. Much recitation of sacred phrases. The best of ‘dhikr’ is reciting the noble Koran. It is the words of the Creator of the heavens and the earth toward whom you are advancing.

7. Purify your heart and cleanse it of stains. The time has arrived for the rendezvous with eternal truth. To sacrifice time and to be obedient.

8. Fill your breast with gladness, for your wedding is seconds away. Where your life will begin with the prophets, and true ones.

9. “We are, verily, from God and to him we shall return”.

10. Then recite the words of God, “You were wishing for death before you encountered it, then you saw it, and are looking for it”.

11. Spend time in prayer with your whole being.

12. The jet: suitcase, clothing, knife, tools, identity papers, passport, and all your papers.

13. Inspect your weapon, before leaving.

14. Pull your clothes tightly, your shoelaces too and wear tight socks. This is what we have adopted.

15. Pray morning prayers. Do not leave the apartment without performing ablutions (McDermott, 2006:249-251).
Appendix C

Example of Last Will and Testament of a Suicide Bomber

This is the Last Will and Testament of Mohamed el-Amir aka Mohamed Atta: September 11 pilot, leader with Ramzi bin al-Shibh, of the Hamburg group.

In the name of God Almighty
Death Certificate

My wish is as follows after my death. I am Mohammed, the son of Mohamed Elamir awad Elsayed: I believe that prophet Mohamed is God’s messenger, and that God will reconnect people who are now in their graves. I want my family and everyone who reads this to fear the Almighty God, and not to be deceived by what is in life, to fear God and to follow God and his prophets. In my memory, I want them to do what Ibrahim (a prophet) told his son and that is how to die as a good Muslim. When I die, I want the people who will inherit my possessions to do the following:

1. People who prepare my body should be good Muslims; this will remind me of God and his forgiveness.

2. People who are preparing my body should close my eyes and pray that I will go to heaven and also dress me with new clothes, not the clothes in which I died.

3. I don’t want anyone to weep and cry or to tear their clothes or slap their faces because this is not a wise thing to do.

4. I don’t want anyone to visit me who did not get along with me while I was living, either to kiss me or to come and say goodbye when I die.
5. I don't want a pregnant woman or a person who is not clean to come and say goodbye.

6. I don’t want women to come to my house to apologise for my death. I am not responsible for people who will sacrifice animals as this is against Islam.

7. Those who sit beside my body must remember Allah, God, and pray for me to be with the angels.

8. People who will wash my body near my genitals must wear gloves, and must not touch my genitals.

9. My clothes that I will wear must be three white pieces of cloth, not silk and not expensive.

10. No women must go to my grave or any time thereafter.

11. Everyone must be quiet at my funeral when they recite the Koran. My funeral should also be quick and many people must pray for me.

12. I must be buried with good Muslims, my face EAST towards Mecca.

13. I must be placed on my right side. People must throw dust on my body three times, saying from dust you were created, to dust you will return. From the dust a new person will be created. After that everyone should mention God’s name and that I died as a Muslim which is God’s religion. Everyone at my funeral should ask that I would be forgiven of my sins (not this action).

14. The people who attend my funeral should sit at my grave for an hour.
The custom is to memorialise the dead every forty days. I don’t want this because it is not Islamic.

15. I don’t want people to write things on paper and keep it in their pockets. Time should rather be spent praying to God.

16. All money that is in my estate should be divided according to the Muslim religion.

17. Whoever neglects this will or does not follow the Islamic religion, that person will be held responsible in the end.

This was written on April 11, 1996, the Islamic calendar of Zoelqada in 1416.
Written by Mohamed Mohammed Elmir Awad Elsayed

Witness: Abdelghani Mouzdi
Appendix D

Profile of Saddam Hussein

Saddam Hussein was the President of Iraq from 16 July 1979 until 9 April 2003. 316 After secondary school Saddam studied at an Iraqi law school for three years, prior to dropping out in 1957 at the age of 20 to join the revolutionary pan-Arab Ba’ath Party. During this time he supported himself as a secondary school teacher (Batatu, 1979).

In 1958 army officers led by General Abdul Karim Qassim overthrew Faisal II of Iraq. In the next year, Saddam was involved in a plot to assassinate Qassim. 317 He was imprisoned in 1968, but escaped prison quickly to become one of the leading members of his party, 318 and soon built a reputation as a progressive and effective politician. 319 Saddam focused on attaining stability in a nation riddled with tension. Iraq was known to be divided along social, ethnic, religious and economics lines: Sunni versus Shiite, Arab versus Kurd, and tribal chief versus urban merchant, nomad versus peasant. In 1976 he became a general in the Iraqi army and in 1979 he formally came to power. 320

During an assembly Hussein claimed to have found spies and conspirators within the Ba’ath Party and read out the names of 68 members arrested who were subsequently put on trial, and 22 were sentenced to be executed for treason. 321 He created a Western-style legal system, making Iraq the only country in the Persian Gulf not ruled according to traditional Islamic Law (Sharia). 322

322  http://www.lcweb2.loc.gov/cgi-bin/query.
The major instruments Hussein used to maintain control were the paramilitary and police organisations. As a sign of his consolidation of power he erected portraits, posters and statues of himself all over Iraq and his face could literally be seen at office buildings, schools, airports and shops, and also on the Iraqi currency. He initiated Iraq’s nuclear project in the 1980s, with French assistance. The First Iraqi nuclear reactor was named by the French ‘Osirak’, but was destroyed on 7 June 1981 by an Israeli air strike. 323

Saddam married his cousin Sajida Talfah in 1963; and has also been reported to have married two other women: Samira and Shahbandar. 324 Both Saddam’s daughters Raghad and Rana testified that Saddam was a loving father and treated them all tenderly. 325

Appendix E

Saddam Hussein’s last letter to the nation

“To the great nation, to the people of the country, and humanity,

Many of you have known the writer of this letter to be faithful, honest, caring for others, wise, of sound judgment, just, decisive, careful with the wealth of the people and the state… and that his heart is big enough to embrace all without discrimination.

You have known your brother and leader very well and he never bowed to the despots and, in accordance with the wishes of those who loved him, remained a sword and a banner.

This is how you want your brother, son or leader to be… and those who will lead you (in the future) should have the same qualifications.

Here, I offer my soul to God as a sacrifice, and if He wants, He will send it to heaven with the martyrs, or, He will postpone that… so let us be patient and depend on Him against the unjust nations.

Remember that God has enabled you to become an example of love, forgiveness and brotherly coexistence… I call on you not to hate because hate does not leave a space for a person to be fair and it makes you blind and closes all doors of thinking and keeps one away from balanced thinking and making the right choice.

I also call on you not to hate the peoples of the other countries that attacked us and differentiate between the decision-makers and peoples. Anyone who repents – whether in Iraq or abroad – you must forgive him.

You should know that among the aggressors, there are people who support your struggle against the invaders, and some of them volunteered for the legal defence of
prisoners, including Saddam Hussein… some of these people wept profusely when they said goodbye to me.

Dear faithful people, I say goodbye to you, but I will be with the merciful God who helps those who take refuge in him and who will never disappoint any faithful, honest believer… God is Great… Long live our nation… Long live our great struggling people… Long live Iraq, long live Iraq… Long live Palestine… Long live jihad and the mujahedeen (the insurgency).

Saddam Hussein President and Commander in Chief of the Iraqi Mujahed Armed Forces

*Additional clarification note:*

I have written this letter because the lawyers told me that the so-called criminal court – established and named by the invaders – will allow the so-called defendants the chance for a last word. But that court and its chief judge did not give us the chance to say a word, and issued its verdict without explanation and read out the sentence – dictated by the invaders – without presenting the evidence. I wanted the people to know this*".*  

Letter by Saddam Hussein

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326 A transcript of the dialogue between Saddam and his executioners was published by the BBC and Al Jazeera: http://www.9sbs.com.au/theworldnews/region.php?
Appendix F

Letter from a troop in Iraq

‘I don’t want to be a prop’

From: Captain X
Sent: Saturday, January 24, 2004 4:00 PM
To: mike@michaelmoore.com
Subject: The war

Dear Mike

I’ve just finished reading some of the soldiers’ letters to you, and I was deeply moved by what they had to say. Because of my rank and position I cannot be as outspoken as some of them, but please know you have my support.

Having led a platoon of soldiers, I know how young and naïve many of them are. They come from all walks of life; many of them joining in order to escape an impoverished past and perhaps get skills and training to bring themselves and their families to a better place. It is amazing to see the hardest gangster thug in the world put on a uniform and proudly salute the flag, full of pride and patriotism. The army has been very good to me, by educating me and giving me the opportunity to see the world and meet America’s youth.

That is why I feel sick every time I see our leaders on the television, parading around in a flight suit, dragging out our wounded for their own political gain. They even have the gall to use them as political props during the State of the Union, when in fact the leaders are the reason that the wounded have been separated from their families and subjected to violent attacks.
We are soldiers. We train for war, but a war such as this one, made under false political pretences, shames us all. I don’t want to be a prop for someone who is giving me and my soldiers tasks that are beyond our means while claiming that the military is still the proper size. I don’t want to be a poster boy for a man who is willing to show the smiling faces of those reunited with their families yet refuses to allow television cameras to film the return of caskets to Dover Air Force Base. I have a duty to uphold, and I am sworn to follow the orders of those who will serve as our voice and say that this is wrong, and cannot be allowed to continue (Moore, 2004:101-102).
Appendix G

Letter from a war veteran

“People need to know”

From: Sally Drumm
Sent: Tuesday, July 6, 2004 9:15 PM
To: mike@michaelmoore.com
Subject: Thank you

Dear Mike

I spent 20 years of my life in the Marine Corps. You nailed it when you said the volunteer force would do their jobs and do them well as long as they are not sent into harm’s way unnecessarily. I had wondered if any of the troops in Iraq know what they are fighting for. After seeing your film, I know they will know the truth. Thank you. I am glad the people seeing your film will have to face their defence by the poorest of the poor, who are kept that way so the ranks can be filled generation after generation.

I appreciate you showing the footage of Iraqi citizens suffering and dying because this is the reality of war that has been missing from American media coverage. People need to know.

Thank you for reaching without fear or hesitation into the American soul. You have told the truth that so badly needed to be told about the dysfunctional Bush administration.

You have done justice, and your doing it makes me feel good about being part of this country for the first time since the 2000 election. I hope you never give up or give in (Moore, 2004:129).
Appendix H

Letter from a loving wife

“I check my email all day, every day”

From: Anonymous
Sent: Tuesday, July 6, 2004 3:12 PM
To: mike@michaelmoore.com
Subject: When is my husband coming home?

Dear Michael

My friends and I just saw Fahrenheit 9/11, and I want to say thank you. I applaud you for showing people the proof of what our country is doing.

My husband is serving in the army and has been gone since January of this year. They told him he would be gone 12 months. I received his first letter in February, when they actually started counting their 12 months, to tell me that he will be gone 18 months. They also cancelled their leave for this year, so we don’t know when we will see him at all. We email each other, and he tries to call when he is able to. We have two toddlers, and I reassure them all the time that their dad loves them and that his job is very hard, so we may not see him for a long time.

I cry all the time because I receive emails from all the other wives who are losing their husbands. My kids rely on pictures and postcards to hear from their father, and I check my email all day, every day, to see if he has written. I miss my husband. Thank you for the truth and for showing the pain that comes with war. Thank you so much for pissing a lot of people off with the truth (Moore, 2004:173).
Appendix I

Message by Osama bin Laden to the American people

Note:
Between September 2001 and August 2006, the leaders of Al-Qaeda Osama bin Laden and Ayman al Dhawahiri, released 44 messages either by audiotape or videotape. They have been aired on the Doha-based, Arabic-language satellite news channel Al Jazeera or posted on short-lived Islamic websites.

These messages either had:

- A claim of a recent attack;
- commentary on international political affairs (in Iraq, Afghanistan, Pakistan, Palestine, Chechnya, the Sudan, Somalia and elsewhere); and
- responses to American or British allegations and so forth.

The messages will also include Bin Laden's reaffirmation of the purpose of the Al-Qaeda campaign, or speak to their combatants, address their enemies. These messages were quoted directly from the literature work of understanding Al-Qaeda by the author Mohammad Mahmoud. He made a great effort to ensure that these messages were translated correctly from Arabic to English. Therefore further summaries will not be done so as to ensure authenticity of the messages (Moore, 2004:95-96).
“People of America, this talk of mine is for you and concerns the ideal way to prevent another Manhattan, and deals with the war and its causes and results.

Before I begin, I say to you that security is an indispensable pillar of human life and that free men do not forfeit their security, contrary to [George W] Bush’s claim that we hate freedom. If so, then let him explain to us why we do not strike Sweden for example? And we know that freedom-haters do not possess defiant spirits like those of the ‘nineteen’ [11 September hijackers] – may God have mercy on them.

No, we fight because we are free men who do not sleep under oppression. We want to restore freedom to our nation. Just as you lay waste to our nation, so we shall lay waste to yours.

No one except a dumb thief plays with the security of others and then makes himself believe he will be secure. Whereas, when disaster strikes, thinking people make it their priority to look for its causes in order to prevent it from happening again.

But I am amazed at you. Even though we are in the fourth year after the events of 11 September, [George W] Bush is still engaged in distortion, deception and hiding from you the real causes. And thus, the reasons are still there for a repeat of what occurred.

So I shall talk to you about the story behind those events and shall tell you truthfully about the moments in which the decision was taken, for you to consider.

I say to you, God knows that it had never occurred to us to strike the towers. But after it became unbearable and we witnessed the oppression and tyranny of the American/Israeli coalition against our people in Palestine and Lebanon, the idea came to my mind.
The events that affected my soul in a direct way started in 1982 when America permitted the Israelis to invade Lebanon and the American Sixth Fleet helped them in that. This bombardment began and many were killed and injured and other were terrorised and displaced.

I could not forget those moving scenes, blood and severed limbs, women and children sprawled everywhere. Houses destroyed along with their occupants and high rises demolished over their residents, rockets raining down on our home without mercy.

The situation was like a crocodile meeting a helpless child, powerless except for his screams. Does the crocodile understand a conversation that does not include a weapon? And the whole world saw and heard but did not respond.

In those difficult moments many hard-to-describe ideas bubbled in my soul, but in the end they produced an intense feeling of rejection of tyranny, and gave birth to a strong resolve to punish the oppressors. And as I looked at those demolished towers in Lebanon, it entered my mind that we should punish the oppressor in kind and that we should destroy towers in America in order that they taste some of what we tasted and so that they be deterred from killing our women and children.

And that day, it was confirmed to me that oppression and the intentional killing of innocent women and children is a deliberate American policy. Destruction is depicted as freedom and democracy, while resistance is presented as terrorism and intolerance.

This means the oppressing and embargoing to death of millions as [George H] Bush Senior did in Iraq in the greatest mass slaughter of children humankind has ever known, and it means the throwing of millions of pounds of bombs and explosives at millions of children – also in Iraq – as [George W] Bush Junior did, in order to remove
an old agent and replace him with a new puppet to assist in the pilfering of Iraq’s oil and other outrages.

So with these images and their like as their background, the events of 11 September came as a reply to those great wrongs. Should a man be blamed for defending his sanctuary? Is defending oneself and punishing the aggressor in kind objectionable terrorism? If it is such, then it is unavoidable for us.

This is the message which I sought to communicate to you in word and deed, repeatedly, for years before 11 September. And you can read this, if you wish, in my interview with Scott [MacLeod] in Time Magazine in 1996, or with Peter Arnett on CNN in 1997, or my meeting with John Weiner in 1998. You can observe it practically, if you wish, in Kenya and Tanzania and in Aden. You can read it in my interview with Abdul Bari Atwan, as well as my interviews with Robert Fisk.

The latter is one of your compatriots and co-religionists and I consider him to be neutral. So are the pretenders of freedom at the White House and the channels controlled by them able to run an interview with him? So that he may relay to the American people what he has understood from us to be the reasons for our fight against you?

If you were to avoid these reasons, you will have taken the correct path that will lead America to the security that it was in before 11 September. This concerned the causes of the war.

As for its results, they have been, by the grace of God, positive and enormous, and have, by all standards, exceeded all expectations. This is due to many factors, chief amongst them that we have found it difficult to deal with the Bush administration in light of the resemblance it bears to the regimes in our countries, half of which are ruled by the military and the other half of which are ruled by the sons of kings and presidents.
Our experience with them is lengthy, and both types are replete with those who are characterised by pride, arrogance, greed and misappropriation of wealth. This resemblance began after the visits of [George H] Bush Senior to the region.

At a time when some of our compatriots were dazzled by America and hoping that these visits would have an effect on our countries, all of a sudden he was affected by those monarchies and military regimes, and became envious of their remaining decades in their positions, to embezzle the public wealth of a nation without supervision or accounting.

So he took dictatorship and suppression of freedoms to his son and they named it the Patriot Act, under the pretence of fighting terrorism. In addition, [George H] Bush sanctioned the installing of sons as state governors, and did not forget to import expertise in election fraud from the region's presidents to Florida to be made use of in moments of difficulty.

All that we have mentioned has made it easy for us to provoke and bait this administration. All that we have to do is to send two mujahideen to the furthest point East to raise a piece of cloth on which is written Al-Qaeda, in order to make the generals race there to cause America to suffer human, economic and political losses without their achieving for it anything of note other than some benefits for their private companies.

This is in addition to our having experience in using guerilla warfare and the war of attrition to fight tyrannical superpowers, as we, alongside the mujahideen, bled Russia for ten years, until it went bankrupt and was forced to withdraw in defeat. All praise is due to God. So we are continuing this policy in bleeding America to the point of bankruptcy. God willing and nothing is too great for God.
That being said, those who say that Al-Qaeda has won against the administration in the White House or that the administration has lost in this war have not been precise, because when one scrutinises the results, one cannot say that Al-Qaeda is the sole factor in achieving those spectacular gains. Rather, the policy of the White House that demands the opening of war fronts to keep their various corporations busy – whether they are working in the field of arms or oil or reconstruction – has helped Al-Qaeda to achieve these enormous results. And so it has appeared to some analysts and diplomats that the White House and we are playing as one team towards the economic goals of the United States, even if the intentions differ.

And it was these sorts of notions and their like that the British diplomat and others were referring to in their lectures at the Royal Institute of International Affairs when they pointed out that, for example, Al-Qaeda spent 500,000 on the [11 September] event, while America, in the incident and its aftermath, lost – according to the lowest estimate – more than 500 billion dollars.

This means that every dollar of Al Qaeda defeated a million dollars of the US, besides the losses of a huge number of jobs. As for the size of the economic deficit, it has reached record astronomical numbers estimated to total more than a trillion dollars.

And even more dangerous and bitter for America is that the mujahideen recently forced [George W] Bush to resort to emergency funds to continue the fight in Afghanistan and Iraq, which is evidence of the success of the bleed-until-bankruptcy plan - with God’s permission.

It is true that this shows that Al-Qaeda has gained, but on the other hand, it shows that the Bush administration has also gained, something of which anyone who looks at the size of the contracts acquired by the shady Bush administration-linked mega-corporations, like Halliburton and its kind will be convinced. And it all shows that the real loser is you.
It is the American people and their economy. For the record, we had agreed with the Commander-General Mohammad Atta, God have mercy on him, that all the operations should be carried out within 20 minutes, before Bush and his administration noticed. It never occurred to us that the Commander-in-chief of the American armed forces would abandon 50,000 of his citizens in the twin towers to face those great horrors alone, the time when they most needed him.

But because it seemed to him that occupying himself by talking to the little girl about the goat and its butting ['My Pet Goat children’s story] was more important than occupying himself with the planes and their butting of the skyscrapers. We are given three times the period required to execute the operations – all praise is due to God.

And it is no secret to you that the thinkers and perceptive ones from among the Americans warned Bush before the war and told him, ‘All that you want for securing America and removing the weapons of mass destruction – assuming they exist – is available to you, and the nations of the world are with you in the inspections, and it is in the interest of America that it not be thrust into an unjustified war with an unknown outcome’. But the darkness of the black gold blurred his vision and insight, and he gave priority to private interests over the public interests of America.

So the war went ahead, the death toll rose, the American economy bled, and Bush became embroiled in the swamps of Iraq that threaten his future. He fits the saying, ‘like the naughty she-goat who used her hoof to dig up a knife from under the earth’.

So I say to you, over 15,000 of our people have been killed and tens of thousands injured, while more than a thousand of you have been killed and more than 10,000 injured. And Bush’s hands are stained with the blood of all those killed from both sides, all for the sake of oil and keeping their private companies in business.
Know that you are a nation who punishes the weak when he causes the killing of one of its citizens for money, while letting the powerful one get off when he causes the killing of more than one thousand of its sons, also for money.

And the same goes for your allies in Palestine. They terrorise the women and children, and kill and capture the men as they lie sleeping with their families on the mattresses. You may recall that for every action, there is a reaction.

Finally, it behoves you to reflect on the last wills and testaments of the thousands who left you on 11 September as they gestured in despair. They are important testaments, which should be studied and researched. Most significantly, I read some prose in their gestures before the collapse, where they say, ‘How mistaken we were to have allowed the White House to implement its aggressive foreign policies against the weak without supervision’. It is as if they were telling you, the people of America, ‘Hold to account those who have caused us to be killed, and happy is he who learns from others’ mistakes’. And among that which I read in their gestures is a verse of poetry, ‘Injustice chases its people, and how unhealthy the bed of tyranny’.

As has been said, ‘An ounce of prevention is better than a pound of cure’. And know that it is better to return to the truth than persist in error, and that the wise man does not squander his security, wealth and children for the sake of the liar in the White House.

In conclusion, I tell you in truth that your security is not in the hands of [John] Kerry, nor [George W] Bush, nor Al Qaeda. No. Your security is in your own hands. And every state that does not play with our security has automatically guaranteed its own security. And God is our Guardian and Helper, while you have no guardian or helper. All peace is upon him who follows the guidance” (Mohammad- Mahmoud, 2007:101-107).
Appendix J

Letter from family and friends

‘HE WAS SO EXCITED TO GET OUT AND START HIS LIFE’

From: Michelle
Sent: Friday, July 8 2004, 10:05 AM
To: mike@michaelmoore.com
Subject: My soldier story

Hi Michael Moore

My boyfriend was scheduled to get out of the Marines in early September – that's when his four years were finally up. He was sent to Afghanistan after 9/11, served six months in Iraq in 2003, and in May they decided to send him back. Tomorrow, he was scheduled to start the process of finally getting out.

Last week I got a call from his dad saying that he had been injured, but that he only had a broken arm. We waited four days until he was flown to Germany, and then we found out that there was nothing wrong with his arm but he had a skull fracture and part of his brain was bruised, and he is unconscious.

Yesterday he was flown to D.C., and they let us know about the piece of shrapnel that went into the left side of his head and out underneath his right eye. Now on top of possible brain damage (we won't know for sure until they stop sedating him and he is conscious) he will probably lose the sight in his right eye.

It just sucks. He’s 21 and not even a fucking citizen of the United States. He was so excited to get out and start his life and move on from all of the crap he’s been through in the last four years, and now we don’t know if he’ll be able to talk, go to school, walk, etc.
When I watched Fahrenheit 9/11 a couple weeks ago, I was really pissed at first when the soldiers were portrayed as these crazy kids who think they are in a video game. While it may be somewhat true, you hit it dead-on later in the film when you said, “How can we expect these kids to handle war when those in charge are corrupt”? I really appreciated you spending so much time talking about the soldiers and letting the American public know the hidden story behind those who enter the military today.

I don’t know how many arguments I have gotten in with people when they tell me that it is my boyfriend’s fault because he chose to join the military and he knew what he was getting into. True, he had a choice, but when you fool around in high school and don’t have the grades or discipline for college right away, and you turn 18 and are left to fend for yourself, what other choices are there?

Plus, he has said many times that he signed up to fight and protect American lives and has no problem doing that, but the war in Iraq has gone too far. He always said when he gets out he wants to be a teacher so he can let those kids like him know that school is important so they don’t end up dead at 21 in the military.

Thanks for letting me vent. I’m so glad and he’s so lucky to be alive, but I don’t want to be in the hospital room when he finally gains consciousness. He is going to be so pissed because he was so close to getting out of the military and finally starting a new chapter in his life.

What can I do? I feel so helpless and have been against the Bush administration and the war in Iraq since day one, but now I need to turn my sadness and anger into something productive and help prevent someone else from having to go through this pain (Moore, 2004:152-153).
Appendix K

Letters from troops

‘HE DOESN’T KNOW WHAT WE WENT THROUGH’

From: Harry H.
Sent: Wednesday, July 21 2004, 4:57 PM
To: mike@michaelmoore.com
Subject: Bush

I am a soldier, and I fought with my friends in Afghanistan. When Bush was elected in 2000, I was 17, and I thought he would be the best for America, as he was a Republican. By now, I am disillusioned with Republicans in general. To hear the president speak about “liberation” is to declare to his soldiers that he doesn’t know what we went through, and are still going through.

The war is not over, and is not likely to end soon – as long as we have this president in office. When I cast my vote for anyone but Bush come November, I will think of my fallen friends (Moore, 2004:124).
Appendix L

Letters from troops

‘THE AXIS OF BUSH’

From: Michael Neeley
Sent: Sunday, August 1 2004, 1:47 PM
To: mike@michaelmoore.com
Subject: Taking back our country

Mr. Moore

I want to thank you for sticking up for the common man and not bending to the media. I am stationed in Afghanistan currently and have not had the opportunity to watch your new movie, but have heard a lot about this.

I do find it appealing that our own government can spend tons of money rebuilding other countries and not rebuild our own. I also find it disturbing that we have Americans who cannot get needed medical care, but we are paying for the care of the Afghans and the Iraqis. Thanks again for defending the rights and freedoms of those who our own government want to forget because their CEO buddies couldn’t make a buck off of it. I have to wonder what this country will be like if the axis of Bush gets another four years.

PS. I, FFC Neeley, approve of this message! (Moore, 2004:87).

Note:
Between September 2001 and August 2006, the leaders of Al-Qaeda Osama bin Laden and Ayman al Dhawahir, released 44 messages either by audiotape or videotape.
They have been aired on the Doha-based, Arabic-language satellite news channel *Al Jazeera* or posted on short-lived Islamic websites.

These messages either had:
1. A claim of a recent attack;
2. commentary on international political affairs (in Iraq, Afghanistan, Pakistan, Palestine, Chechnya, The Sudan, Somalia and elsewhere);
3. response to American or British allegations and so forth.

The messages will also include Bin Laden’s reaffirmation of the purpose of Al-Qaeda’s campaign, or speak to their combatants, address their enemies.

These messages were quoted directly from the literature work of understanding Al-Qaeda; the author Mohammed Mahmoud made a great effort to ensure that these messages were translated correctly from Arabic to English, therefore further summaries will not be done so as to ensure genuineness of the message (Mohammad-Mahmoud, 2007).
Appendix M

Message from Bin Laden to the Allies of the United States, November 12 2002

MESSAGE OF OSAMA BIN LADEN TO THE ALLIES OF THE UNITED STATES
‘JUST AS YOU WILL BE KILLED’
November 12 2002

“In the name of God, the merciful, the compassionate, from the slave of God, Osama bin Laden, to the peoples of the countries allied with the tyrannical United States government: May God’s peace be upon those who follow the right path. The road to safety begins by ending the aggression. Reciprocal treatment is part of justice.

The incidents that have taken place since the raids on New York and Washington up until now – like the killing of Germans in Tunisia and the French in Karachi, the bombing of the giant French tanker in Yemen, the killing of marines in Failaka (in Kuwait) and the British and Australians in the Bali explosions, the recent operation in Moscow and some operations here and there – are only reactions and reciprocal actions. These actions were carried out by the sons of Islam in defence of their religion and in response to the order of their God and prophet, may God’s peace and blessings be upon him.

What [US President George W. Bush] the pharaoh of this age, was doing in terms of killing our sons in Iraq, and what Israel, the United States’ ally, was doing in terms of bombing houses that shelter old people, women and children with US-made aircraft in Palestine were sufficient to prompt the sane among your rulers to distance themselves from this criminal gang. Our kinsfolk in Palestine have been slain and severely tortured for nearly a century. If we defend our people in Palestine, the world becomes agitated and allies itself against Muslims, unjustly and falsely, under the pretence of fighting terrorism.
What do your governments want by allying themselves with the criminal gang in the White House against Muslims? Do your governments not know that the White House gangsters are the biggest butchers of this age? [US Defence Secretary Donald Rumsfeld], the butcher of Vietnam, killed more than 2 million people, not to mention those he wounded. [US Vice-President Dick] Cheney and [US Secretary of State] Colin Powell killed and destroyed in Baghdad more than Hulegu of the Mongols.

What do your governments want from their alliance with America in attacking us in Afghanistan? I mention in particular Britain, France, Italy, Canada, Germany and Australia. We warned Australia before not to join in [the war] in Afghanistan, and [against] its despicable effort to separate East Timor. It ignored the warning until it woke up to the sounds of explosions in Bali. Its government falsely claimed that they [the Australians] were not targeted.

If you were distressed by the deaths of your men and the men of your allies in Tunisia, Karachi, Failaka, Bali and Amman, remember our children who are killed in Palestine and Iraq every day, remember our deaths in Khost mosques and remember the premeditated killing of our people in weddings in Afghanistan. If the killing of your nationals in Moscow distressed you, remember ours in Chechnya.

Why should fear, killing, destruction, displacement, orphaning and widowing continuing to be our lot, while security, stability and happiness be your lot? This is injustice. The time has come to settle accounts. Just as you kill, you will be killed. Just as you bomb, you will be bombed. And expect more that will further distress you.

The Islamic nation, thanks to God, has started to attack you at the hands of its beloved sons, who pledged to God to continue jihad, as long as they are alive, through words and weapons to establish right and expose falsehood.

In conclusion, I ask God to help us champion His religion and continue jihad for His
sake until we meet Him while He is satisfied with us. And He can do so. Praise be to Almighty God" (Mohammad-Mahmoud, 2007:96-98).
Appendix N

Examples of incidents of terrorism

- The 1972 Bloody Friday carried out by the Provincial Irish Republican Army in the aftermath of Bloody Sunday.
- The 1972 Munich massacre during the 1972 Summer Olympics in Munich, West Germany.
- The December 1975 hostage taking at the OPEC headquarters in Vienna, Austria.
- The June 1985 bombing of Air India Flight 182 originating from Canada.
- The destruction of Pan Am Flight 103 over Lockerbie, Scotland on December 21, 1988.
- The killing of Nicaraguan civilians during the 1980s by US-sponsored contras that had been trained by the United States in the use of terror.
- The 1993 World Trade Center bombing.
- The 1993 Mumbai bombings.
- The 1994 AIMA Bombing of the Jewish centre in Buenos Aires, where Argentina charged Hezbollah and Iran.327 328
- The 1995 sarin gas attacks in Tokyo, Japan.
- The Oklahoma City bombing by Timothy McVeigh on 19 April 1995.
- The Centennial Olympic Park bombing in 1996.
- The suicide bombing of Sri Lanka’s Central Bank.
- The Omagh bombing in Northern Ireland (15 August 1998).
- The August 31 – September 22 Russian Apartment Bombings, leading Russia into the Second Chechen War.
- The September 11, 2001 attacks in New York, and Washington DC.

327 [http://www.jewishvirtuallibrary.org/jsourse/Terrorism.argentina.html](http://www.jewishvirtuallibrary.org/jsourse/Terrorism.argentina.html)
328 [http://www.emergency.com/buenobom.htm](http://www.emergency.com/buenobom.htm)
- The Passover Massacre on 27 March 2002 in Netanya, Israel.
- The Moscow Theatre siege and the Beslan school siege in Russia.
- The Bali bombing in October 2002.
- The 11 March 2004 attacks in Madrid.
- The 7 July 2005 bombings in London.
- The second Bali bombing on 1 October 2005.
- The Mumbai train bombings on 11 July 2006.
- Hyderabat bombings in India on 25 August 2007.
- Attacks in Cairo on 22 February 2009.
- Detroit attack on 29 December 2009.

Some of these plots of terrorism failed or fell short, examples of which include the 1993 World Trade Centre bombing, Operation *Bojinka*, and the 2006 Transatlantic Aircraft Plot.