

# In the Name of Global War on Terror

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**Abstract:** The Geneva Convention that stipulates that all enemies when captured as prisoners should be treated with dignity doesn't seem to hold water in the case of the global war of terror battles by the United States since September 11, 2001. The growing rifts between the United Nations mandates and that of the United States continue to be debated by expert in International human rights law. The practical violations of international law in the name of global war on terror are what the piece aim to draw attention to. [Report and Opinion. 2010;2(3):67-70]. (ISSN: 1553-9873).

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## Introduction

The international laws that govern "terrorism" and other related criminal activities have been in existence since the beginning of the 70s. These laws have always been an effective instrument in unraveling the challenges the world continues to face. However, the magnitude of the September 11<sup>th</sup> 2001 attack on the United States has prompted the United States to implement its own policies that suit their needs. The guiding principles enacted by the United States to fight terrorism sometimes are in absolute conflict with the policies drafted by the international communities. For instance, The United Nations mandate "No nation has the right to invade another nation without the approval of the security council of the United Nations". The government of the United States had invaded countries without having the mandate of the United Nations. Though the attack on Afghanistan to a certain extent was justifiable, but in principle, the invasion of Iraq was a complete violation of international law.

The United States violated the Geneva Convention that stipulates that all enemies when captured as prisoners should be treated with dignity. They should not be forced to make confessions under duress or tortured. This International law has been completely violated by the United States administration. The current existing International Laws, whenever utilized or implemented have shown to be effective especially when all countries or member states of the United Nations agree to work together to end conflict, or prevent the spread of a conflict. The effectiveness of those can be traced from Burma to Congo as well as other nations. Going back to history, a practical example was the effective appeal made by Emperor Haile Salassie to the League of Nations currently known as the United Nations when his country was invaded by Italy. The role of the United Nations during the Second

World War also prevented the spread of the war into Europe that was divided between capitalist and communist. The international laws mandated by the United Nations have all the powers to fight terrorism as a global threat. But, some nations especially the western nations want to do things their own way, without following treaties that they themselves have voted for and are signatories to.

## Analysis of the Literature

The concept of terrorism has always been an ambiguous one to define in my view. The basic problem with trying to create an international cooperation against 'terrorism' is that there is no agreed definition to this concept. The practical problem with the concept of terrorism as Shirley V. Scott put it in International Law in World politics "A similar endeavor has been going for a number of years in relation to the legal document of "terrorism", the truism bears out that one person's terrorist is another's freedom fighter"(P.108). For the most part states are themselves inconsistent on what they regard as terrorism. The War on Terror in the history of the United States, unlike any other war is been pursued with gross violation to human rights. Ironically, though it has not been possible to obtain international consensus on a specific concept of 'terrorism', this however has not prevented countries from co-operating extensively in adopting measures against specific acts of terror especially when the proper channel has been followed by member states. This was clearly seen in the events of 9/11 when almost the entire world rallied together and spoke with one voice.

What makes it more challenging is the fact that terrorists do not wear uniforms, carry weapons openly, fight as organized force, or obey the most fundamental principles of the Law of Armed Conflict. This new war combines the elements of an international armed conflict, a global rebel war, and an international criminal investigation. Fortunately for the U.S.

government, the international community has always been dancing to the tune of the United States music creating favorable legal frameworks for each of these levels of hostilities.

There exist legal grounds for self-defense as well as preemptive actions to counteract international terror, which threatens international peace and security. What this means is that the use of force can be imposed against terrorist groups threatening international peace and security before such groups carry out the attack. But the legal basis for this is not pre-emptive self-defense as the United States claimed. Rather it is the enforcement of international peace and security within the framework established and authorized by the Security Council.

The international legal framework that applies to the events of the aftermath of the attack of 9/11 made several unanswered questions linger on people's mind. Should the attack on the United States be considered as a crime or an act of war? What law, if any, governs the so-called 'war on terror'? What is the legal significance of labeling someone a 'terrorist'? The claim that 'humanitarian intervention' can provide a legitimate basis for unilateral state intervention where the UN fails to act, notably in the context of Iraq remains a political discourse within the international arena. The events of 9/11 projected terrorism into the dominion of international peace and security, and electrified international action on a subject on which there had been no previous consensus in international law. The United Nations, because of some legal questions raised, hasn't called it "terrorism" but rather an act of war. Accordingly, international law concerning terrorism has moved incrementally, with international treaties from the sixties to the nineties aimed at targeting specific acts. For instance, aircraft, airports, shipping and oil platforms are all under real scrutiny today than ever before. The international community has prohibited hostage taking, the use of nuclear material and explosives, terrorist bombings and the financing of terrorism since the events of September 11 took place.

The UN convention against torture among many was an important legal instrument put in place in protecting prisoners of war. Article 1 of this convention states "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or

incidental to lawful sanctions" (Convention against torture article 1:1). In the case of Abu-Ghraib prison in Iraq, the United States did not follow this guideline in prosecuting judgment.

Humanitarian actions and the "global war on terror" state that the unanimity of support expressed in resolutions 1368 and 1373 were collectively manifested. The United States, Britain and other allied states began military operations in Afghanistan against the Taliban government and al-Qaeda after the Taliban refused to hand over the leadership of the movement. The regime was removed from power and its leaders and those of al-Qaeda flee to the mountains of Torabora for safe-haven. Several considerations gave the indication that the right of self-defense by the US was justifiably and proportionately directed against Afghanistan. The United States made the case that Afghan territory had been unlawfully used as a base for terrorist acts to the detriment of other states which they believe is contrary to Security Council Resolution 1189 which states "that every member State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts"(United Nations Security Council Resolution 1189 of August 13, 1998). As president Bush always said "when you harbor a terrorist, you are equally a terrorist". This same resolution also went further to state "Calls upon all States to adopt, in accordance with international law and as a matter of priority, effective and practical measures for security cooperation, for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators"(United Nations Security Council Resolution 1189 of August 13, 1998).

Also, Resolution 1368 expressed the readiness of the Council to take all necessary steps to respond to the terrorist attacks of September 11, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter. The Resolution further reaffirmed the readiness of the Council to take all necessary steps to respond to the terrorist attacks of September 11, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter. Since the attack of 9/11 on the United States, the UN Security Council has passed a number of resolutions, which aim to combat the realm of terrorism. The fundamental progress since the September 11 attacks has been the elevation of terrorism to the status of a threat to international peace and security and a crime against humanity. The council had agreed on more resolutions and binding obligations to eliminate and prevent terrorism now than any other time in the history of the United Nations.

Clear lines distinguishing between civilians and combatants do not always exist in the war on terror

and this has always been seen as a challenge for the legality of its cause. Because of this reason, the International Court of Justices cannot prosecute those accused. Also challenging for the United States is the fact that the International Criminal court most probably can but the United States did not sign the treaty of the International Criminal Court. In the case of Afghanistan, the United Nations Security Council unanimously rallied behind each other and approved the use of force. This is different in the case of Iraq and was seen as the main difference between the two wars. Iraq did not fit the guidelines for the war on terror set by the council. The basis of the argument presented by the United States was the existence of weapons of mass destruction in Iraq.

For instance, lot of the air strike carried out by the United States military and other multilateral force violated the Geneva Convention. This convention, which the United States is a signatory to, was clear on some or all of the following positions as we discussed in class; 1) civilians must be protected and treated humanely. 2) No killing of enemies that have surrendered. 3) Combatants have the right to be protected and to communicate with family. 4) No one shall suffer cruel and degrading treatment. 5) attack should only be aimed at military targets and not on civilians. If not all, most of these rules set by the Geneva Convention were violated in the prosecution of the Iraq war. The International laws that govern terrorism seem to be only geared towards state actors, which is pretty much like a realist theorist point of view. This from my standpoint needs to be reformed since non-states actors also violate international laws. As Karns Mingst put forward "For purposes of global governance, one major limitation of public international law is that it applies only to states, except for war crimes and crimes against humanity. At present, except within the European Union, multilateral agreements cannot be used directly to bind individuals, multinational cooperations, nongovernmental organizations (NGOs), paramilitary forces, terrorists, or international criminals. They can, however, establish norms that states are expected to observe and, where possible, enforce against these nonstate actors"(Karns Mingst, International Organizations, P.6). This clearly demonstrate how the current international laws not being sufficient in dealing with this global ideological threat. There should be some form of laws put together for non-states actors as well to hold non-state actors accountable. The people committing those acts of terror are not necessarily the states but non-states actors for the most part.

Furthermore, the main purpose of the independent assault on Iraq as mentioned above was for weapons of mass destruction. This was viewed as the central objective and key basis for the use of force in

Iraq. The absence of weapons of mass destruction casts doubt on the legal validity of the invasion argument. This to a larger extent damages the credibility of the evidence used to determine that Iraq posed a threat to international peace and security.

The Guantanamo Bay detention center in Cuba has always been seen as a cruel place for detainees. For the most part, people had been held there in the name of the war on terror without charge. Both national and international lawmakers have been calling for the demise of this outrageous camp. The importance of the Guantanamo was clearly seen when it became a focal point of the last United States presidential election. President-elect Obama and his former opponent John McCain both agreed that the closure of the prison in Guantanamo will send a message to the rest of the world that the United States is once again ready to respect international human right laws as especially stated under the Geneva Convention. People are being held there for years without charge, and at this point have not been indicted in a civilian federal court but rather have had charges brought against them before military tribunals.

The charges brought thus far do not allege direct involvement with attacks against the United States, terrorist or otherwise.

### Conclusion

All in all, the one-sided decision by western power to go their own way in pursuing the war on terror has weakened the practicalities of International laws. The valued endeavor by the international community to have majority of nations to combine forces on many of the signed conventions and treaties worth preserving in my view. For this so-called war on terror to be effectively won, there should always be some form of a multilateral cooperation among nations. Together, nations can easily accomplish their individual objectives. More importantly, the overall objective of the United Nations Security Council in terms of conflict in ensuring international peace and security will be with no doubt achievable. Moreover, until this war is truly being on familiar terms with western power as an ideological struggle, the challenges driven by it are always going to surface. The use of force by every indication shouldn't be the only answer in solving world's conflict. Like any other conflict, there should always be a "gives and take" understanding. A fighter who in some ways shows remorse and ready to consider laying down arms and negotiate their wrong must be immediately engaged and included into the social order. Sadly, this prospect doesn't appear to be a realistic standard ready to be preferred by the United States.

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