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Fighting Terrorism without terrorizing: A Discussion of Non-military Options for Confronting International Terrorism

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Declaration

I declare that this thesis is my own unaided work. It is submitted for the degree of MA International Relations in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

Dedication

For all those who fear this ‘war’

Abstract

This paper discusses non-military options for confronting international terrorism. It investigates the non-military discourse contained in United Nations and United States policy documents. It then compares the principles in the discourse to the reality of the counter-terrorism policies of the last five years. Finally it looks at what alternative options are being presented in the academic and think-tank literature, to current counter-terrorism practices.

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Chapter 1 - Introduction

For the last five years, discussions on international terrorism have been at the forefront of international law and policy debates. This dissertation will look at what non-military proposals have arisen as a result of these discussions and look to find agreement in the policy papers of main international actors. It will then discuss how these principles are being promoted and implemented through policy. Then it will conclude by looking at what options are being presented as alternatives to the most controversial policies of the 'war on terror'.

It is beyond the scope of this dissertation to analyze and argue as to whether or not non-military actions will 'win the war'. The goal is simply to explore the options being presented. As Martha Crenshaw points out, in her article "A Welcome Antidote", "A rarely discussed response option is just to do nothing" (Crenshaw 2005a, p519). This somewhat humorous statement points to one of the very few truly international consensuses; Something must be done. In light of this, this dissertation will ask, for those of us for whom military intervention is not a palatable option; What have we done?; What are we doing?; and Ultimately what are we proposing be done?

1.1 Context and Rationale

There are many important reasons to discuss what non-military options are being proposed to confront international terrorism. The military actions of the United Sates of America (US) and its' allies have been heavily criticized by politicians, activists and civilians worldwide. There is a great deal of literature discussing the military actions and whether they are legal, effective or even moral. There is also an increasing amount being written about the apparent failures of the interventions in Afghanistan and Iraq, growing support for terrorist organizations, and the continuing or worsening conflicts in other parts of the Middle East. Many groups have argued that military actions are simply ineffective in stopping international terrorist threats, or worse, that in many ways they are exasperating the problem.

Since the terrorist attacks on the United States in 2001, and the US administration's declaration of a 'war on terror', the US's counterterrorism strategy has focused heavily on the use of military threats and intervention. As of the writing of this dissertation the United States has bombed five countries in its borderless and ever expanding 'war on terror'. The estimates of the civilian casualties of this war are truly horrifying. It is possible that well over half a million people have died in Iraq alone as a result of the military campaign, and ensuing instability, in the last three years (Burnham, Lafta, Doocy, & Roberts 2006). As the recent air strikes in Somalia make increasingly clear, there are few citizens in the Middle East and the Horn of Africa who can realistically assume they will be safe from US attack. Whether it be as a result of a direct attack or as so-called 'acceptable losses', the US military campaign has exerted a heavy toll on some areas of the world.

What has become increasingly clear in the last five years is that many of these policies are failing to seriously confront the terrorist threat. Five years into the 'war on terror' there is an emerging body of literature analyzing the successes and failures of these policies. Public support, always at disturbingly low levels, has consistently fallen with each subsequent year. Human rights and legal advocates have attacked the methods used in fighting this war. Finally the military wars are apparently failing and there is great doubt that, even if they succeed with the war, they would reduce the terrorist threat. There is even concern they may be counterproductive by inflaming underlying causes

The US's own National Intelligence Estimate 2006 (of which only excerpts have been declassified) actually points to this fact. It states that:

> "The global jihadist movement…which includes al-Qaeda, affiliated and independent terrorist groups, and emerging networks and cells…is spreading and adapting to counterterrorism efforts…Although we cannot measure the extent of the spread with precision, a large body of all-source reporting indicates that activists identifying themselves as jihadists, although a small percentage of Muslims, are increasing in both number and geographic dispersion". (Office of the Director of National Intelligence 2006, p1)

The report directly points at the US actions in Iraq saying "The Iraq conflict has become the "cause celebre" for jihadists, breeding a deep resentment of US involvement in the Muslim world and cultivating supporters for the global jihadist movement."(ibid).

Considering these concerns, it is essential to explore what non-military solutions are being proposed as alternatives. By recognizing the argument against these interventions, and focusing on analyzing the alternative paths being presented, this dissertation seeks to take a more proactive stance than most of the existing literature. This dissertation will focus specifically on what non-military proposals are most prevalent in the discourse of the dominant players. It will then address where current counter-terrorism policies diverge from these policy statements and the subsequent effects of this incongruence. Finally, it will examine alternative options that are being presented.

1.2 The Objectives

1. Describe and briefly analyze the non-military discourse of the 'war on terror'.
2. Investigate the counter-terrorism discourse emanating from the United Nations (UN) and US.
3. Critically review the non-military actions taken since 2001.
4. Discuss the alternative options being presented to current counter-terrorism strategies.

1.3 The study

In order to accomplish the above objectives, this dissertation will begin by pointing to rhetorical agreement in the UN and US discourse concerning the best methods of confronting terrorism. Based on these, it will critically review the non-military actions

taken since 2001. It will then return to the academic and think-tank literature to discuss the alternative options being presented. By bringing these three together, the dissertation presents a way of framing the proposed solutions within the context of the specific points of agreement in UN and US policy documents.

Toward this end, Chapter two will present a general introduction to the discourse on terrorism. It will specifically look at the non-military discourse being presented by the UN and the current American administration. It will begin by discussing the principles of the 'war on terror' as outlined by the United States national security and anti-terrorism policies focusing on the administration's 4D plan to 'defeat terrorism'. It will also briefly discuss the UN counter-terrorism discourse. Then it will directly compare Kofi Annan's 2006 report "Uniting against terrorism: recommendations for a global counter-terrorism strategy" (Annan 2006) and the US department of Defence's 2003 "National Strategy for Combating Terrorism" (US DoD 2003). It will draw attention to obvious points of agreement on how best to conceptualize and respond to international terrorist activity. These points will then be used in chapter three to evaluate the successes and failures of current counter-terrorism policies.

Chapter three will begin by describing the institutional changes that have been implemented in the UN and US systems. It will discuss to what degree these changes are designed to address issues of cooperation and strengthen the legal regime. It will then turn to the concerns over the way in which the non-military 'war' is being conducted. It will outline the discussions in the human rights community concerning the counter-terrorism policies being implemented in the name of the 'war on terror'. Using the UN and US discourse, it will measure the effectiveness of these policies.

The fourth Chapter will discuss what options are being proposed as alternatives to the most common practices of the 'war on terror'. The chapter will be divided into three main sections. The first will look at ways of addressing the underlying conditions that fuel support for terrorist organizations or lead people to commit terrorist acts. The second will look at proposals on international legal options for bringing those responsible for these acts to justice. The Chapter will then close with a discussion of the meaning of winning the 'war of ideas' and several proposals on how this might be better accomplished.

Finally, the fifth Chapter will summarize the findings of Chapters 2, 3, and 4 and make recommendations for future research.

1.4 Theoretical Framework and Methodology

In order to shed light on the similarities in the overall terrorism discourse in the last five years, this dissertation will conduct a brief document analysis of important policy papers. In order to consider what documents provide the best overall understanding of the international discourse on terrorism since 2001, this dissertation will use a general framework for propaganda analysis. Alexander George's framework outlines the need to consider "Who is speaking to whom, for what purpose and under what circumstance". It also important to consider "What purpose the document was designed to serve" and

'How it fits into the policy making process' and 'What is its relation to the stream of other communications and activities; past, present and future" (George & Bennett 2005, p52).

The 'war on terror' is global in scope and impact; it is, therefore, impossible to analyze every aspect. This dissertation will focus on the UN and US as the main actors controlling the current international discourse. There are, of course, countless other actors who have contributed to the overall direction of policies in the last five years, but these two are the principle influences.

The US administration announced and designed the 'war on terror' following the terrorist attacks on September 11th, 2001. President George Bush's often quoted statement that "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists" (quoted in Roberts 2002, p10), points to the fact that, overall, the principles of this 'new kind of war' are to be defined by the American administration. The main principles of the war on terror can therefore be seen in the US administration's anti-terrorism discourse and national security policy.

The main tenets of this 'war' are laid out in the US's 2002 National Security Strategy (White House 2002) and the US Department of Defence's 2003 "National Strategy for Combating Terrorism" (DoD 2003). These documents were developed and released by the US government. They lay out the government's 'war on terror' manifesto for both the domestic and international arena. A wide range of other statements and documents released by the US administration further outline their counter-terrorism policies and analyze perceived successes and failures. These will be used to present the US administration's justifications for their policies.

The second main player is the UN. They, however, are a more complicated analysis since the organization is so diverse. The UN's many separate bodies do not always speak with a unified voice. To provide an overview, this dissertation will therefore focus on three main policy documents, Security Council resolutions, and actual changes within the UN system.

In order to provide an overview of the UN discourse, this dissertation will focus heavily on three main counter-terrorism publications. The first is the Report of the UN High-level Panel on Threats, Challenges and Change "A more secure world: Our shared responsibility" (United Nations 2004). This report was written in the wake of the Iraq war and calls for the need to develop a comprehensive framework for addressing terrorism. It also calls on the Secretary General to work on laying out specific actions toward this end. Kofi Annan responded to this call in his 2005 report "In larger freedom: towards development, security and human rights for all" (Annan 2005). He further elaborates on possible specific policies in "Uniting against terrorism: recommendations for a global counter-terrorism strategy" (Annan 2006). These three documents by the High-Panel and the Secretary General describe the UN's official conception of the threat of international terrorism. They are presented to the international community and are designed to layout the foundations for a comprehensive UN framework on the issue. Together these

documents present a solid overview of the official UN counter-terrorism discourse and proposed future policy directions.

In order to directly compare the general discourse on counter-terrorism in the UN and US systems, this dissertation will undertake a brief comparison of the Kofi Annan's 2006 report "Uniting against terrorism: recommendations for a global counter-terrorism strategy" (Annan 2006) and the US department of Defence's 2003 "National Strategy for Combating Terrorism" (DoD 2003). This document analysis will draw attention to the similarities in the UN and US arguments and their general perceptions of the threat.

These apparent points of agreement will then be used as general standards in discussing non-military counter-terrorism policies of the last five years. Through the lens of a general policy analysis, the UN and US rhetoric will be used to measure the success and/or failures of their own policies.

Pressure from the US and changes in the UN system have arguably led to changes in every country in the world. To narrow the scope of this dissertation, it will again focus on mainly on changes in the UN and US systems. It will, however, also include references to changes in domestic legislation and practices around the world in order to demonstrate the widespread impact of these policies.

In order to evaluate US policies the dissertation will focus on changes to domestic and international practices and how they have affected other countries around the world. In order to present some view of the changes to the UN as a whole the dissertation will focus on elements within Security Council resolutions. These are binding on all member states and have lead to many changes in domestic legislation around the world. It will also look at real institutional changes within the UN. Together these should give a strong picture of what is being promoted in the UN discourse and what is being done. It will then evaluate the shortcomings of these policies and the incongruence between the political rhetoric and the reality of the policies being implemented.

This dissertation will then attempt to provide some idea of what policies might look like if they matched the principles promoted in the discourse. To do this in the fourth chapter the dissertation will return to the academic and think–tank literature to look at proposals. The goal of this section is not to evaluate whether or not the alternative options will work to confront international terrorism. Instead it is simply to present a general view of some of the possible options; options that would live up to the criteria promoted in both the UN and US discourse. Finally, the dissertation presents ideas for future research.

Limitations

This dissertation is focusing on specific policy documents by the UN and US. Though, this will enable a thorough analysis of these documents, it does leave out other important actors. It cannot be denied that a myriad of other NGOs, countries and regional organizations have all had a significant influence on the overall discourse but they will not be specifically addressed due to space constraints.

This dissertation is also dependent on published documents and it is obvious that access to internal documents may present a different perspective. Finally despite the effort made here to present alternative options to current practices, the dissertation makes no attempt to prove these practices would be successful.

1.5 Literature Review

Almost every aspect of the debate surrounding international terrorist activity and the response of the international community is an issue of contention. The ability or willingness of the international community to do something meaningful is questioned along with every action it could possibly take. However, there are several main streams of thought that emerge, from a general survey of the literature, on how best to confront terrorism. The first is a focus on institutional changes and international law. The second is a focus on alleviating underlying causes. The majority of the literature approaches the 'war' from one or both of these standpoints.

Institutional and legal

Those on all sides argue, that the events of the last five years undermine the international system, either by not stopping the terrorist attacks in the first place, not stopping the interventions that followed, or by not presenting clear alternatives. Those who argue that these drastic policies are necessary in confronting the threat of international terrorism are able to do so because they argue that the international legal system does not address terrorism adequately and that therefore, their retaliatory actions are justified. Though it is argued by many that this is a flawed assumption and that there are many laws that not only address the acts of terrorism but also the actions of the 'allied states', it is nonetheless that case that the 'allied states' have used apparent loopholes in the international system in order to justify their actions (Brooks 2004). As a result there is a general consensus that the international community must develop better ways to cooperate to confront terrorist activity (United Nations 2004; Annan 2006; DoD 2003; for analysis see Dhanapala 2005). The need for cooperation among states in exchanging information and bringing the perpetrators of terrorist acts to justice is heavily stressed. In order to bring this 'war' into a more legal context there are debates over the legality and human rights aspects of counter-terrorism policies.

The UN's main focus is on building international consensus around the subject of terrorism. In the 2004 UN report "A more secure world: Our shared responsibility" they point out that though terrorist activity is illegal under various international laws and agreements there lacks the overarching agreement on key issues that are needed to confront these crimes effectively. The report says:

> "This is not so much a legal question as a political one. Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this, but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties, and a

> compelling normative framework, understood by all, that should surround the question of terrorism…Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative." (United Nations 2004, p51).

In the last five years there has been a great deal of work toward this end.

There is also a serious and ongoing debate over the legality of many principles of the 'war on terror'. Legal and human rights concerns have been vigorously debated. The legality of the military campaigns, military conduct and detainee treatment have been analysed and re-analysed. There is a wide range of approaches to this subject. Some argue that all previous laws and norms apply while others argue that only certain aspects can be applied to terrorism. Concerns about bringing the 'war' into a more legal context has also lead to calls for an international tribunal or expanding the International Criminal Court or turning to general human rights law and norms in order to find a starting point for new legislation.

It is argued to varying degrees, which parts of this 'war' are or are not 'legal'. Internationally it is argued that the wars in Afghanistan and Iraq were illegal invasions because they did not go through the proper legal channels at the UN (BBC 2004), a fact that those who launched the wars vigorously deny (ibid). There are concerns that the behaviour of the military in the conflict zone breeches human rights law (Human Rights Watch 2003). Domestic legislation has also been challenged as a breech of human rights (Kroenig and Stowsky 2006). Roberts points to the effects of this uncertainty. He argues that moving away from the legal regime in this manner is dangerous. If the US says these rules do not apply then he asks "what rules do apply?" (Roberts 2002, p5).

Many in the human rights sector obviously argue that all previous norms should be protected (HRW 2003; Amnesty 2003; Amnesty 2004). Others however argue that this view is short-sighted and that there must be new norms developed. Brooks for example argues against what she sees as rigid interpretations of international law. She says, "many in the human rights, civil rights, and international law communities have struggled to insist on the continuing viability of the law of armed conflict's traditional boundaries" (Brooks 2004, p679). She argues instead that the changes in the international system should be accepted. She calls on general human rights legislation to be the basis of new norms (ibid).

There has been an ongoing debate, since the attacks, as to how those involved in the attacks might be prosecuted. There are many who outline the possible options of international tribunals, third party courts or a possible expansion of the ICC (Hoye 2001) to deal with terrorist crimes. There are a series of problems with all of the above. Some argue that the US would be unwilling to share intelligence with foreign courts (Scheffer 2001). That tribunals set up by the Security Council would be seen as biased and tribunals set up by the General Assembly would lack enforcement capabilities (ibid). It is seen by many as imperative to find a way past these problems. As Dower argues the present strategy "marginalizes the role of international law to that of an adjunct to the military solution. A real commitment to the due process of international law would see

that as the primary objective. That we have failed to take that route is itself one of the moral failures of the current operation" (Dower 2002, p31)

Still others attack virtually every aspect of the policies of the 'war on terror'. In "(Re)Imagining the Governance of Globalization" Richard Falk presents a direct attack of the US's foreign anti-terrorism policies pointing to the dangerous precedent they have set damage they have done by:

> "Seriously eroding the sovereignty of foreign countries by potentially converting the world as a whole into a battlefield for the conduct of its war against al Qaeda; discarding the restraints associated with international law and collective procedures of the organized world community in the name of anti-terrorism; re-establishing the centrality of the role of war and force in world politics, while dimming the lights that had been illuminating the rise of markets, the primacy of corporate globalization, and the displacement of statist geopolitics". (Falk 2004, p5)

Overall there is great deal of agreement that something must be done, but little concerning exactly what should be done. There lacks consensus on whether the 'war on terror' is, or should be a war. There is little agreement on which legislation and norms apply in either case. Some argue virtually all of the US actions are justified and/or necessary while others argue that all the policies are illegal, counterproductive and dangerous.

Underlying causes

The US administrations stated goal is to build a world "free from fear" (DoD 2003, p12) for future generations. Many argue it is being created through unbearable costs to present generations, not only through the dangerous precedent it has set but also the devastatingly high numbers of civilian casualties it has caused. This method of combating criminal segments in foreign states challenges international norms and past practices, has discredited international law in the eyes of many, and has a truly terrorizing effect on any population that may be targeted either purposely or by mistake. The shockwaves from these policies, many argue, have lead to a renewed arms race leading to fears of larger wars to come (Conetta 2006).

In order to analyze the effectiveness of counter-terrorism policies many point to underlying causes that fuel support for terrorism and terrorist groups. To this end there is a great deal of literature dealing with specific issues of terrorism. Some analyze what the underlying social and political conditions are that lead to wider social support for terrorist tactics. Others discuss more specifically the attributes of specific terrorist actors.

There is an impression that discussing the underlying causes of terrorism is controversial (IPA 2002; Newman 2006; Andréani 2004). This was especially true in the wake of the 2001 attacks when as Andréani argues "the dominant American view was that one should

not ponder the causes of the attacks and the motives of their perpetrators. To seek to understand was to play into their hands, almost to excuse them". (Andréani 2004, p46).

Despite this fact there has been a great deal of discussion, in some circles, as to the possible causes of the 2001 attacks and terrorism in general. Some like Eland and Rogers point directly to US intervention as a reason the US is targeted. In his 1998 study "Does U.S. Intervention Overseas Breed Terrorism? A historical record" Ivan Eland, of the CATO Institute, does a detailed analysis of the connection between US interventions overseas and terrorist attacks on US targets. He concludes that there is a strong correlation (Eland 1998). This is combined with more recent studies since 2001 like that of Paul Rogers who analyses levels of terrorist activity since the Afghanistan and Iraq interventions, concluding that "far from US policies succeeding, the level of paramilitary activity was substantially higher than in a similar period before the 9/11 attacks" (Rogers 2006, p5). Hurrell goes even further saying, "The attacks of September 11 the US response reflected a critique of the international order that had been developing in many parts of the Islamic world since the 1970s" he goes on to clarify, however, that "To speak in this way is not to condone or to excuse, but simply to explain". (Hurrell 2002, p198)

It is argued that real social and political grievances underlie the motivations for these attacks. Many argue that the best way to confront international terrorism is by addressing these underlying conditions (Crenshaw 2005b; Andréani 2004; Dower 2002). Different articles present different solutions to these problems. Some call for more of a focus on 'human security' (Falk 2002) or principles of conflict resolution (Bredel 2003). Many point to the need for widespread social and political reform (Andréani 2004) in an attempt to address the 'legitimate grievances' of most groups (Sinai 2005). Others turn the tables on the entire international system. As Dower argues:

> "We have plenty of other good reasons to tackle global poverty and inequality, but this factor adds another powerful argument. Let us be frank: responding to this challenge requires real changes in priorities. It may even mean that we have to consider collectively a lower standard of living (which in turn should mean less inequality in the name of social justice within rich countries as well)." (Dower 2002, p33)

Specific studies point to the fact that social and political factors can be seen to affect an individual's choice to support terrorist tactics (Pittel and Rübbelke 2006) and the choice of their target (Newman 2006). It is mainly pointed out that there are a variety of factors that, in certain combinations, can result in violent outbreaks. The exact conditions, however, vary from group to group (Newman 2006).

The argument that emerges is that many of the current policies actually exasperate underlying cause. Many point to the use of the 'war' concept as one of the main culprits (Andréani 2004). They argue that conceptualizing the fight as a war instead of a law enforcement action has meant a blurring of the line between military and non-military activities in this 'war' (Brooks 2004). Many analyse these effects by using the language of the Copenhagen School to argue against the 'securitization' of an increasing number of perceived threats (Emmers 2003; Volpi 2006; Benantar 2006). There are fears that

military (Isacson 2005; Chillier & Freeman 2005) and political (Tellis 2004) crackdowns with this mentality will mean social and political oppression and lead to setbacks for developing democracies.

Overall the literature demonstrates a vigorous debate on virtually every subject connected to international terrorism. There is debate on whether or not the 'war on terror' is a war. There is disagreement over which humans should or should not be guaranteed their human rights. The legal regime does appear to be losing their standing in favour of military force, but there is also serious resistance to this fact. The majority of the literature either criticizes or defends current policies and there is very clearly a lack of any broad based consensus. There is far less literature that presents real alternative options. Those that do discuss alternatives, often focus on re-framing the debate in order to better understand underlying causes or call for a return to the security of legal norms.

From this review a few questions are raised. Where are the areas of agreement amidst all this disagreement? How has the international community acted on issues on which there is agreement? What alternatives exist to the current controversial practices? This dissertation seeks to investigate these questions.

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Chapter 2 – Discourse on 'terrorism'

"I know a terrorist when I see one." (Special US envoy to the Balkans, Robert Gelbard, 1998 – referring to the KLA).

In order to discuss the options for confronting international terrorism, it is important to provide some background on terrorism, the war on terror and how the world currently views this subject. This chapter will therefore briefly address the question "What is terrorism?". It will then look at how the international community has dealt with terrorism through the United Nations (UN) before the September 11, 2001(9/11) attacks on the United States of America (US). Finally it will review the non-military discourse being presented by the UN and briefly compare it to the US strategy.

2.1 Defining 'Terrorism'

There is no internationally accepted definition of 'terrorism'. Despite decades of debate, the international community has failed to come to a consensus. Part of the problem is that terrorism is a tactic that has long been used by both the state and non-state players. Some argue, that in some cases it has been used justifiably. Debate over how best to deal with this reality is ongoing.

The New Oxford American Dictionary defines terrorism as "the use of violence and intimidation in the pursuit of political aims" and a terrorist as "a person who uses terrorism in the pursuit of political aims."(New Oxford American Dictionary, 2nd Edition). The term itself originated in post-revolutionary France as a description of the state violence perpetrated by the Jacobins in their suppression of counter-revolutionary forces. (New Oxford American Dictionary, 2nd Edition). At one time or another the "terrorist" label has been attributed to both the state and non-state participants of virtually every religion, ethnicity and political ideology.

The term has been applied to the 'state terrorism' perpetrated by Pinochet in Chile, the Indonesian state in East Timor, Stalin's rule in the USSR, and Saddam Hussein's rule in Iraq to name just a few (Blackstock 1964; Suter 2006; Levine & Sutton 2006). In terms of non-state participants this tactic has been used by those fighting for issues ranging from pro-segregation, as during the American civil rights movement (Levine & Sutton 2006), to freedom from colonialism and foreign occupation, to animal rights, and to religious and political rights. It has been applied to participants on both sides simmering conflicts for example the actions of both the Israeli state and the Palestinian resistance; as well as describing the actions of participants on both sides of active war as in the Nazi advance on Europe and the Allied bombing of German cities (Blackstock 1964; Primoratz 2003).

Though, arguably, acts of terrorism are difficult to justify, states and organizations that have used terrorist tactics have not always been condemned by future generations; if not

necessarily through direct support for all their actions, then at least in support for the principles of their fight. In the past some organizations fighting for political rights (whose practices have included acts of terrorism) are regarded as the heroes of our common past. The South African ANC and South American revolutionaries are well known examples, but around the world different groups will point to a wide range of individuals and groups as 'freedom fighters' that others would condemn as 'terrorists'. If one was to define 'a terrorist' by focusing on the effects of policies by both state and non-state actors, both domestically and internationally; this broad definition would include countless individuals and groups. As Bobrow points out:

> "Actions by official organs of a state (that is, a nation) or coalition of states can be terroristic, as can those by non-state groups and individuals. Governments can engage in terrorism against their own or other populations. State terrorism can be physical or psychological, as in Stalin's or Saddam Hussein's reign of terror. Moralistic crusaders, even those with a grand, humanity-encompassing vision, can be terrorists, as can venal thugs. Use of military means, which by their nature cannot limit their victims to combatants (most obviously weapons of mass destruction, or WMD), inherently involves committing substantial terrorism. Indeed, it is hard to find an instance of war or armed violence in the past century free of terrorism by all sides." (Bobrow, 2004, p346).

The apparent stalemate in the international community over an acceptable definition of terrorism is essentially over which of these groups the label is going to apply. In discussing the problems with coming to an agreed upon definition the Ad Hoc committee trying to develop a comprehensive convention on international terrorism explains:

> "Delegates did not reach a consensus on whether the activities of "armed forces" proper—being governed by international humanitarian law—should be exempted from the scope of application of the convention, and whether the exemption should extend to armed resistance groups involved in struggles against colonial domination and foreign occupation. Further disagreement concerned activities of a state's military forces and the possibility of circumstances in which official actions could be considered acts of terrorism" (INO 2006, p2)

As of the writing of this dissertation these debates are ongoing.

2.2 'Terrorism' and the international community

As discussed 'terrorism' in the broadest sense is far from a new phenomenon. Both before and after 2001 the UN focused on building an international legal framework to criminalize 'terrorist acts' and on building cooperation between countries in order to prevent and punish terrorist attacks. The United States has also had extensive experience in dealing with terrorism. However, 9/11 marked a departure from their past counter-terrorism practices. The 'war on terror' declared by the US administration led to dramatic changes in the US's domestic and foreign policy.

Due to lack of consensus over an acceptable definition, leading up to 2001 the UN had focused on criminalizing terrorist attacks and building international cooperation in order to limit terrorist activity. Between 1963 and 1999, the UN developed twelve international protocols and conventions dealing with international terrorist activity[1]. Beyond these there is a myriad of resolutions and statements that frame past conceptions of how best to deal with terrorist activity.

A 1987 UN General Assembly resolution (United Nations 1987) specifically addresses underlying causes of terrorism. They say the roots of terrorism and violent acts "lie in misery, frustration, grievance and despair" (ibid). Though it condemns the acts themselves it acknowledges peoples right to resist oppressive governments and foreign occupation. They also acknowledge the rights of these peoples to "seek and receive support" (ibid) toward this end. It calls on states and the UN departments to

> "contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and occupation, that may give rise to international terrorism and may endanger international peace and security" (ibid).

During this time period the UN General Assembly also adopted the "Declaration on Measures to Eliminate International Terrorism" (United Nations 1994) and a supplement to it in 1996, both of these condemn all acts of terrorism and call on member states not to support terrorist activities in anyway and to work to assure that their territories are not used as a base for such activities. It also calls for more cooperation between states and called on all states to sign the twelve conventions and protocols (ibid).

The United States has also long confronted acts of terrorism on both domestic and international targets (for full a full review see Eland 1998; Harvard Law Review 2002). In the past these acts were mainly treated as crimes. Domestically they were handled through the criminal justice system and internationally through extradition treaties and international courts (ibid). This, however, is not to say that the US has never taken military action against so-called 'terrorist' targets. Following the attacks on the US embassies in Kenya and Tanzania in 1998 for example, President Bill Clinton launched strikes on 'suspected' al-Qaeda training camps in Afghanistan and the Sudan. The US

[1] Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988), Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991), International Convention for the Suppression of Terrorist Bombings (1997), International Convention for the Suppression of the Financing of Terrorism (1999).

had also previously attacked states accused of conspiring to commit terrorist attacks against the US. For example in 1986 when a terrorist bombing in Berlin killed Americans the US military attacked sites in Libya, and in 1993 after an assassination attempt on George Bush senior, the US bombed the headquarters of the Iraqi Secret Service. In all these instances the US claimed its right to self-defense. These military strikes, however, were not declarations of war by the US against the states involved, nor were they the US's main policy for confronting terrorism. Many states also reportedly expressed concern over the threat to sovereignty of the countries involved which explains why the US received little support for their actions (ICLQ 2002).

Following the attacks on the United States on September 11th 2001, there was an obvious change in the US discourse on how best to confront international terrorist threats. President Bush made the now infamous statements that "everything has changed" and "there are no rules" (quoted in Hurrell 2002, p185). He declared a "war on terror", vowing to find and bring to justice all those the US deemed necessary for assuring the security of the American people and their allies. Proponents of this 'new kind of war' argue that past practices can no longer be seen as sufficient and that new norms and standards are needed to confront this threat.

Unlike the international community, the US does have a definition of terrorism. The US Code of Federal Regulations defines terrorism as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." (US C.F.R. Section 0.85).

As a result of the September 2001 attacks the US government now defines "the principal terrorist enemy confronting the United States" as "a transnational movement of extremist organizations, networks and individuals – and their state and non-state supporters – which have in common that they exploit Islam and use terrorism for ideological ends"(White House 2006, p6). This 'enemy', it is argued presents a unique problem for international security. They argue that conventional terms and past practices are too restrictive and there is a need for new, more forceful tactics in order to confront this threat. Based on this contention, the US declared a 'war on terror' which lead to dramatic changes in US domestic and foreign policy.

At first glance the 'war on terror' appears to be a logical if not slightly exaggerated reaction to the horrors of the attacks of 9/11 and pursuit of the perpetrators. The language seems to imply a 'war on terrorism' and as the names are often alternated they are often seen as one in the same. The 'war on terror' however is not confined to strictly combating 'terrorist' attacks like those which occurred on September 2001. Upon closer inspection it is a much broader concept and carries a much broader mandate. With reference to epic battles for civilization and defeating the 'terrorist enemy', US security documents present a global view of attacking suspects in any country in the world and spreading western style politics and economies through military might.

As is often pointed out, the name "the war on terror" is a misnomer and therefore for the most part fails to describe its own meaning. The use of the 'war' concept in this context is similar to metaphorical uses of the term in the past such as 'the war on drugs' and the 'war on poverty', and it is the vagueness of this statement that makes this 'war's' goals somewhat difficult to discern. As Katie Rose Guest points out in her paper "The Ideology of Terror: Why we will never win the "war"", "Bush declared war on an emotion- "intense fear" –that has always and will always exist (terror). Bush could have named a martial act (i.e., Terrorism) as the theatre of his war, but he did not" (Guest 2005, p368). The broadness of this target is further expressed in the US security strategies.

The 2003 US National Strategy for Defeating Terrorism begins by calling the 2001 attacks "acts of war against the United States of America and its allies, and against the very idea of civilized society."(US DoD 2003, p1). It then goes on to say "Freedom and fear are at war" (ibid) and the war on terror should be seen as "a clash between civilization and those who would destroy it." (ibid p29). The 'war' is also framed as an ideological fight, a "war of ideas" (ibid p23). President Bush often points out his assertion that "the war against this enemy is more than a military conflict. It is the decisive ideological struggle of the 21st century, and the calling of our generation" (Bush 2006).

Though the 2003 US National Strategy for Defeating Terrorism fails to specifically define 'freedom' or 'civilization' they do conclude by describing their intention of building an

> "international order where more countries and peoples are integrated into a world consistent with the interests and values we share with our partners —values such as human dignity, rule of law, respect for individual liberties, open and free economies, and religious tolerance" (US DoD 2003, p30).

It is their assertion that in a world where these 'values' are generally accepted the 'war' will have been won, and presumably the world will be 'free from terror'.

In order to bring about this international order, the US security strategy promotes active international involvement and a lower threshold for military action. It lays out their "4D strategy (Defeat, Deny, Diminish and Defend)" (US DoD 2003). This multi-pronged strategy calls firstly on the government to use economic, diplomatic, legal and military means to "defeat" terrorist organizations (ibid). Secondly in order to "deny sponsorship, support and sanctuary" (ibid p17) for these organizations they have policies designed to make sure other states in no way support them. This section makes clear that the US will use the means at its disposal to assure compliancy. The report says:

> "when states prove reluctant or unwilling to meet their international obligations to deny support and sanctuary to terrorists, the United States, in cooperation with friends and allies, or if necessary, acting independently, will take appropriate steps to convince them to change their policies"(ibid).

The third tenet of The US security strategy is to "diminish underlying conditions" that may help foster support for terrorist organizations and their more ideological goal to "win

the war of ideas". They plan on focusing on "efforts to resolve regional disputes, foster economic, social, and political development, market-based economies, good governance, and the rule of law" (ibid p23). The final tenet of their strategy is focused on defending "the United States' sovereignty, territory, and its national interests, at home and abroad". They go on to explain that "This tenet includes the physical and cyber protection of the United States, its populace, property, and interests, as well as the protection of its democratic principles" (ibid p24).

In presenting its argument for pre-emptive military action, the 2002 US "National Security Strategy" points to the fact that international law does recognize the right of nations to pre-emptively attack if there is an 'imminent threat'. It goes on to argue that in the light of international terrorism "we must adapt the concept of imminent threat" (White House 2002) and expand the use of pre-emptive military action. It explains their contention that

> "The greater the threat, the greater is the risk of inaction- and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack… the United States cannot remain idle while dangers gather" (White House 2002, p15).

On November 13th 2001 Bush released a Presidential decree stating that those captured in the process of this war are to be held as 'enemy combatants'. It is argued that, since 'terrorists' do not conform to the definition of an 'enemy soldier', then the protections that the Geneva Conventions afford prisoners of war do not apply. It is argued that though they are participating in the 'war on terror' and they are enemies in this 'war' since they are not foreign soldiers, they are not afforded prisoner of war status when captured. One clause points directly to the fact that those captured are to have no rights to due process. It says:

> "the individual [subject to detention] shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal."(White House 2001 sec.7b (2)).

The effects of this contention become apparent when we recognize that the US has not identified any "lawful combatants" in the 'war on terror' (Brooks 2004, p757). The US has held Taliban fighters, American citizens and foreign children as young as thirteen as 'enemy combatants' at the Guantanamo Bay prison (Brooks 2004). They are held in a sort of legal limbo many have been held without charges, some for years. They are not given access to lawyers or their families and often are not be allowed to hear all the charges against them due to US national security concerns.

Based on these tenets, the US administration designed and implemented what government documents proudly admit was a "historic transformation of the Government" (White House 2006, p4); one that radically altered US domestic and foreign policy. In the past five years the world has seen these policies in practice. Domestically this has meant an historic overhaul of the security services and widespread changes in domestic

legislation. Internationally it has led to two countries being invaded as well as a series of military strikes on targets in other countries.

2.3 Comparing non-military discourse

In the UN (since 2001) there has been a great deal of discussion at the official level on developing comprehensive a UN counter-terrorism strategy. The UN has focused a lot of its' of resources and effort in trying to find their voice in this 'new war' and has produced a myriad of documents that address non-military options for fighting non-state terrorism. This section will briefly compare the UN Secretary General's April 2006 report "Uniting against terrorism: recommendations for a global counter-terrorism strategy" and the February 2003 US National Security Strategy. The first document lays out Kofi Annan's recommendations for a comprehensive UN counter-terrorism strategy. The second document (discussed briefly above) outlines the US's 4D counter-terrorism strategy to 'Defeat, Deny, Diminish and Defend'. The goal is to look for agreement by briefly comparing their approaches.

In 2004 the UN High-Panel on Threats and Challenges recommended that the Secretary General take on the task of laying out a possible framework to be used to develop a comprehensive UN strategy. The Panel stated that this strategy should look at ways of dissuading people from resorting to terrorism or supporting terrorist organizations. They suggest that the strategy focus on ways

> "to reverse the causes or facilitators of terrorism, including through promoting social and political rights, the rule of law and democratic reform; working to end occupations and address major political grievances; combating organized crime; reducing poverty and unemployment; and stopping State collapse". (United Nations 2004, p48)

In addition to these measures they recommend many of the actions that are addressed in previous UN resolutions such as: building stronger international cooperation in law-enforcement and intelligence sharing, addressing ways of limiting terrorist avenues for money laundering and acquiring weapons, they call on all states to sign existing protocols and conventions and implement stricter domestic legislation. Finally, they recommend that the strategy should lay out ways to try to "counter extremism and intolerance" (ibid p49), possibly "through education and fostering public debate". (ibid)

In his 2005 report "In Larger Freedom", Kofi Annan lays out his plan. He recommends that member countries and civil society should work toward a strategy that is similar in language to the US's 4D approach. His 'five pillar' (or 5D strategy) says:

> "Our strategy against terrorism must be comprehensive and should be based on five pillars: it must aim at dissuading people from resorting to terrorism or supporting it; it must deny terrorists access to funds and materials; it must deter States from sponsoring terrorism; it must develop State capacity to defeat terrorism; and it must defend human rights". (Annan 2005a, p13)

In Annan's 2006 report to the General Assembly "Uniting against terrorism:

recommendations for a global counter-terrorism strategy" he makes his recommendations for a global counter-terrorism strategy" he elaborates on his five pillars. Below is a general comparison of the principles outlined in Annan's report and how they compare to the US security policy.

In order to 'dissuade' potential terrorism and support for terrorist organizations both argue that the international community must present a united front in declaring terrorism to be "unacceptable" (Annan 2006, p3) and "illegitimate "(US DoD 2003, p6). Both Annan and the US national security policy argue that there is a need to address underlying causes that can be exploited by terrorists or used to justify their cause (Annan 2006, US DoD 2003). They both call for a long-term component designed at countering these underlying causes. Both call on the media and civil society to help work toward this goal (UN 2006, US DoD 2003). There also clear agreement on the need to address long-standing conflicts, specifically the Israeli Palestinian conflict (Annan 2006, US DoD 2003).

Both Annan and the US argue that political and economic reforms are needed. They argue that underdevelopment and social and political oppression are key factors that drive people to terrorist acts and fuel public support for these actions. Annan argues that terrorism flourishes where there is poor governance and where peoples' political, civil and human rights are limited. He warns that:

> "Terrorism often thrives in environments in which human rights are violated and where political and civil rights are curtailed. Indeed, terrorists may exploit human rights violations to gain support for their cause. Persecution and violent government crackdowns often radicalize opposition movements. The absence of non-violent channels to express discontent and pursue alternate policies may lead some groups to resort to violent means and terrorism" (Annan 2006, p7).

Annan goes on to address the problem of discrimination and socio-economic marginalization. He calls on states to "pursue our development and social inclusion agendas" (ibid) to counter feelings of alienation and un-equal opportunity among minority groups. He specifically points to concerns over high numbers if un-employed youth who are considered a potential recruitment pool for terrorist organizations (ibid).

The US, in turn, points to the plight of those living with "poverty, deprivation, social disenfranchisement, and unresolved political and regional disputes" (US DoD 2003, p22). They explain their understanding that these conditions can be exploited by terrorist organizations (ibid). As a result they say the US will address these underlying causes through efforts "to resolve regional disputes, foster economic, social, and political development, market-based economies, good governance, and the rule of law" (ibid p23)

In order to 'deny terrorists the means to carry out an attack', both Annan and the US security documents point to Security Council resolutions that call on countries to implement domestic legislation criminalizing terrorist activity. They both call on countries to close financial loopholes that allow terrorists to fund their attacks. They both

directly point to charities and private business as possibly willing and unwilling accomplices (Annan 2006; US DoD 2003). Both call for more international cooperation and call on states to build up their law enforcement capacity and implement stricter border and weapons controls (Annan 2006; US DoD 2003). Annan also calls on states to assure the security of their infrastructure and the protection 'soft-targets' where terrorists might choose to attack. He also calls on states and international organizations to build up their emergency response in case of an attack (Annan 2006). To 'deter States from supporting terrorist groups' Annan pushes for sanctions and state guarantees under the conventions (Annan 2006) as do the US security documents (US DoD 2003). Both call on countries around the world to aid countries that do not have the capacity to fight 'terrorist organizations'(Annan 2006, US DoD 2003). The US's position on military action has been made clear but even Annan argues that military action may be required[2] all be it sanctioned by the UN (Annan 2006).

In order to 'develop state capacity to prevent terrorism', both Annan and the US call for actions like those outlined in UNSC resolutions and protocols and conventions (Annan 2006, US DoD 2003) of building their capacity to ensure the physical security of weapons and potential targets and countering financial 'loopholes' and improving information sharing. Annan also points to the importance of promoting religious and cultural tolerance and respect for human rights and the rule of law. He argues there is a need to promote these principles through and inter-faith dialogue and education systems (Annan 2006). Similarly, the US argues that there is a continuing need to work with "moderate and modern governments to reverse the spread of extremist ideology and those who seek to impose totalitarian ideologies on our Muslim allies and friends"(US DoD 2003, p24)

Annan's final tenet "Defending human rights in the context of terrorism and counter-terrorism" specifically argues the need for all counter-terrorism action to be in line with human rights and legal norms. He argues:

> "Only by placing counter-terrorism within a rule-of-law framework can we safeguard the internationally valued standard that outlaws terrorism, reduce the conditions that may generate cycles of terrorist violence, and address grievances and resentment that may be conducive to terrorist recruitment. To compromise on the protection of human rights would hand terrorists a victory they cannot achieve on their own". (Annan 2006, p22)

The US security documents agree saying:

> "The choice is really about what kind of world we want to live in. In waging this war, therefore, we will be equally resolute in maintaining our commit- a world consistent with the interests and values we share with our partners—values such as human dignity, rule of law, respect for individual liberties, open and free economies, and religious tolerance". (US DoD 2003, p30)

[2] "The Security Council should act promptly to take the necessary decisions, including — on a case-by-case basis — under Chapter VII of the Charter, against those States or their nationals who incite or help to commit terrorist acts" (Annan 2006)

From this brief overview of the UN and US non-military discourse, it would appear there is a great deal of consensus on how best to confront this threat. They both argue that the most important thing is to strengthen international law and cooperate internationally on issues of security, presenting a united front condemning terrorist attacks. It is also clear that, to be successful, both the UN and US argue it is important not to lower human and civil rights standards as this in itself hands the terrorists a victory and fuels support for their actions.

Both the High Panel and the Secretary General argue consistently that the main problem in confronting international terrorist activity is the lack of a comprehensive convention on terrorism, complete with a internationally accepted definition (United Nations 2004, Annan 2006). To overcome the stalemate concerning this definition, both the High-Panel and Secretary General argue that state-terrorism need not be included and that the 'right to resistance' should not be used to justify targeting civilians. Pointing to the UN Charter, the Geneva conventions and other human rights norms, both argue that state terrorism is sufficiently addressed.

The Panel says of the argument that 'state terrorism' should be included in a definition of terrorism, "We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling" (United Nations 2004, p51). On the second area of contention ('the right of resistance'), the report argues that, "The right to resistance is contested by some" and besides they say that this is "not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians" (ibid).

Kofi Annan reiterates this exact same contention in a 2005 interview he says:

> "Yes, there is argument about States and the States' use of force. That is already taken care of under international law. International law prescribes how States can and should use force. If they break the law, they can also be held to account. So that side has been taken care of. What we need to do is to come up with a definition that is generally acceptable. I hope we can all agree that deliberate targeting of innocent civilians and non-combatants is simply not acceptable". (Annan 2005b, p1)

Conclusion

Terrorism is a difficult subject to discuss due to the problems with finding an agreed upon definition. Though this debate is ongoing, even before 2001 the international system had built up an extensive set of international conventions and protocols designed to criminalize terrorist activity. The US had also had extensive experience in dealing with terrorist attacks. Since 9/11 there has been a great deal of interest in finding new ways to confront this very old threat. The policies of the US and UN as described above are remarkably similar. They focus on the need for more cooperation among states and the

need for all legislation to be in line with human rights norms. They argue for economic, social and political reform in order to address underlying causes.

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Chapter 3 – Effects of 'war'

"He who fights with monsters might take care lest he thereby become a monster"
Friedrich Nietzsche, Beyond Good and Evil, Aphorism 146

Kofi Annan points out the UN's contention that: "Terrorism is a threat to all that the United Nations stands for: respect for human rights, the rule of law, the protection of civilians, tolerance among peoples and nations, and the peaceful resolution of conflict" (Annan 2006). This chapter will examine to what degree the non-military counter-terrorism policies implemented during the last five years have countered this threat. It will begin by describing what has been done in the way of institutional changes in the UN. Then will then look at the reality of how these ideas have been put into practice. It will look at how they have affected the international legal and rights regimes and domestic legislation around the world. The chapter will therefore provide an overview of many of the main non-military actions taken to confront terrorism in the last five years and their effects.

As discussed in the previous chapter in the last five years both the UN and US have presented a wide range of non-military options for confronting terrorist activity. The official UN and US discourse on these options is not drastically different. As these policies have been applied internationally, however, it has meant a campaign that challenges the principles of the 'laws of war' and has dealt a blow to human rights norms internationally. Domestically, both in the US and around the world, this 'war' has blurred the lines between law enforcement and military actions. Led by the US, and directed against a loosely defined enemy, this 'war' has given governments around the world a newfound freedom to oppress opposition groups within their borders. By breaking down what were considered relatively secure human rights and legal norms, the US administration and the principles of its 'war on terror' have opened the door to widespread abuse and possibly terror on a scale that non-state actors could never hope to achieve.

3.1 Institutional Changes

In the days after September 11th 2001, the United Nations acted quickly in condemning the attacks. The United Nations Security Council (UNSC) passed resolution 1368 (UNSC 2001a) on September 12th and the UN General Assembly passed a similar resolution (UNGA, 2001) on September 18th. Both express solidarity with the people and government of the United States and they both call for international cooperation in bringing the perpetrators of the attacks to justice and in preventing future terrorist attacks. The Security Council resolution also makes it clear that they consider the acts "like any act of international terrorism, as a threat to international peace and security" (UNSC 2001a). It goes on to say that the Security Council "Expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations" (ibid).

Less then three weeks after the attacks, the UNSC unanimously passed resolution 1373. Invoking Chapter VII of the UN Charter, the September 28th resolution obligates all member states to take specific measures to counter the threat of international terrorism. It specifically lays out measures for denying safe haven, weapons and financial support to "terrorist persons", "terrorist groups", and "persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts" (UNSC 2001b). Member states are also expected to institute stricter border security and share information with other states about the activities of "terrorist persons or networks" (ibid). It requires all states to work toward signing the twelve existing protocols and conventions on terrorism and calls on them to cooperate through bilateral and multilateral agreements to prevent terrorist attacks and in bringing the perpetrators of such acts to justice. It also called for the creation of a Committee (later called the Counter-terrorism Committee (CTC)) to oversee the implementation of the resolution.

Adding to the CTC's mandate the, UN Security Council passed resolution 1624 (2005). Adopted almost exactly four years after the 2001 attacks, this resolution makes specific reference to terrorists' use of communications technology and also calls on states to "prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters" (UNSC 2005). Whereas resolution 1373 (2001) refers to human rights law only once, 1624 focuses heavily on the need for all counter-terrorism efforts to be in line with humanitarian and international law.

Member states are required to report to the CTC on their progress on implementing the provisions of these resolutions and their work toward signing of the twelve conventions. In turn, the committee reports back to the Security Council. The committee also gathers and distributes a set of counter-terrorism 'best practices' and uses its webpage as a hub for exchanging information between member states. The committee says its goal is to "foster dialogue and cooperation with Member States to help them meet the counter-terrorism requirements" (CTC 2006, p23).

In 2002 the UN also expanded the mandate of its Terrorism Prevention Branch (TPB) calling on it to work more extensively with member countries. The Branch, within the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC), provides training and assistance to countries in their counter-terrorism efforts. Working with countries to establish domestic legislation inline with the above resolutions, conventions and protocols (UNODC 2005). In the Department's own words "UNODC's operational activities focus on strengthening the legal regime against terrorism. This involves providing legislative assistance to countries, which enables them to become parties to, and implement, the universal anti-terrorism conventions and protocols and Security Council resolution 1373 (2001)" (UNODC 2006, p5).

These two entities, the CTC and UNODC, also work extensively with a myriad of other UN departments and international and regional organizations. As of 2006, there were 23 UN entities involved in counter-terrorism activities. Besides the CTC and TPB the Secretary-Generals 2006 report points to a wide range of offices and departments, from

the Department of Safety and Security and Department of Political Affairs, to the Office of the High Commissioner for Human Rights, Department of Public Information and the United Nations Educational, Scientific and Cultural Organization (UNSG 2006), among others. These groups all work on issues of terrorism from their own perspectives. In 2005 the Secretary-General created the Counter-Terrorism Implementation Task Force to coordinate these diverse parts of the UN system to ensure "coherence in the United Nations system's counter-terrorism efforts" (Annan 2006, p22).

Following the 2001 attacks, through a series of resolutions, the Security Council has made many aspects of these past conventions binding. It has repeatedly called for countries to sign the twelve conventions and protocols as soon as possible and has set up a system to provide them with assistance and to oversee their progress. The UN's focus has been on the wider application of existing legislation and norms for dealing with international terrorist threats. Beyond this there has been a significant shift toward more coordination throughout the UN system and cooperation with other international and regional organizations around the issue of terrorism, in order to build a more broad based understanding of the many facets of terrorism and produce consensus on how to deal with it on an international level.

Domestically the Bush administration acted quickly after the 9/11 attacks in enacting widespread domestic legislation. A month and a half after the attacks on October 26th 2001 the Bush administration signed into law the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act". Better known as the 'Patriot Act' this legislation greatly expanded the state's domestic powers (Kroenig and Stowsky 2006). The act contains a wide range of provisions covering administrative changes to create more secure borders and infrastructure to anti-money laundering controls. It also allows law enforcement access to citizens' medical, financial and academic records as well as giving them the ability to subpoena citizens' library records. It drastically lowers the threshold for investigation and allows for 'delayed notification of warrants' (so called 'sneak and peeks') (Freeman 2006). It also allows federal law enforcement to secretly monitor Americans' email and Internet activity not only for probable cause but also for "intelligence purposes" (Kroenig and Stowsky 2006, p235). This sweeping legislation is not restricted to any defined group. As Kroenig and Stowsky point out: "Government officials are granted virtually complete discretion over the designation of domestic political and religious groups as terrorist organizations" (ibid p236).

The administration followed up this legislation with the largest overhaul of the federal government in almost fifty years. Consolidating twenty-two separate agencies, they created the Department of Homeland Security (Kroenig & Stowsky 2006). This department is responsible for the 'security of the United States homeland', it has a focus on terrorism but also addresses preparation and relief efforts for natural disasters and 'other homeland threats' (Homeland Security Act, p25). The department coordinates with different levels of the government on issues from threat assessment to prevention to relief efforts (ibid). The FBI (traditionally more focused on law enforcement) was also

refocused to do more domestic intelligence gathering and counter-terrorism functions (Kroenig & Stowsky 2006).

Bush explains the importance of these changes for combating domestic 'terrorist threats' "We've created the Department of Homeland Security. We have torn down the wall that kept law enforcement and intelligence from sharing information. We've tightened security at our airports and seaports and borders, and we've created new programs to monitor enemy bank records and phone calls. Thanks to the hard work of our law enforcement and intelligence professionals, we have broken up terrorist cells in our midst and saved American lives" (Bush 2006).

Based on the principles of the 'war on terror' the US has also launched a widespread military campaign. It has invaded two countries using different justifications but under the overall banner of this new type of 'war'. They have also targeted individuals in countries with whom they are not officially 'at war'.

Almost immediately after the 9/11 attacks the US administration accused Al-Qaeda of conducting the attacks and demanded that Afghanistan's government turn some Al-Qaeda members over for trial. The Taliban offered to try the Al-Qaeda leader Osama bin Laden in Afghanistan if the US provided proof of his connection to the attacks. After a bombing campaign they offered to turn bin Laden over to a third country if the US would stop bombing and present proof of his guilt. The US refused with Bush reportedly saying; "There's no need to discuss innocence or guilt. We know he's guilty" (Guardian Unlimited 2001). As of the writing of this dissertation the US has provided no proof of such a connection and, according to the FBI website's ten most wanted, bin Laden is reported as being wanted in connection with the 1998 US embassy bombings and is listed as a "suspect in other terrorist attacks throughout the world" (FBI 2007)[3].

Proponents of the invasion of Afghanistan argue that past UNSC resolutions including 1373 imply authorization for this use of force by saying the Security Council "expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations" (UNSC 2001a). The US did not return to the Security Council for further authorization for the invasion of Afghanistan, which leads many to question the legality of the attack (ICLQ 2002). Afghanistan however was largely seen as a 'failed state'. The Taliban government was not widely viewed as legitimate and sanctions had been imposed on it by the UN in 1999 over their support for terrorism and refusal to hand over bin Laden for the 1998 African embassy bombings (UNPIU 2006). This combined with the shock of the 2001 attacks, meant the intervention enjoyed some degree of legitimacy, was supported by NATO and it can be argued it was supported by a relatively broad international alliance.

The invasion of Iraq, however, went far beyond Afghanistan and was the full realization of the 'war on terror' doctrine. It demonstrated that even those not at all connected to the

[3] No one listed on the top ten most wanted is wanted in connection with the September 11th, 2001 attacks.

criminal acts/ acts of war of 9/11, and not posing an imminent threat to the US are still subject to the 'war on terror' policies. In order to justify the invasion, the US and the UK argued that Iraq was in breech of its obligations under a Security Council resolution from 1990. This resolution authorized the use of force against Iraq if they were not complying with its calls to allow in weapons inspectors and decommission weapons. They also claimed the right to self-defence as well as arguing that they were liberating the Iraqi people from Hussein's tyrannical regime (Drumbl 2003). In his September 11th 2006 address to the nation, Bush reiterated his position that the attack on Iraq was also part of this larger policy stemming from the attacks in 2001:

> "On September the 11th, we learned that America must confront threats before they reach our shores, whether those threats come from terrorist networks or terrorist states. I'm often asked why we're in Iraq when Saddam Hussein was not responsible for the 9/11 attacks. The answer is that the regime of Saddam Hussein was a clear threat. My administration, the Congress, and the United Nations saw the threat -- and after 9/11, Saddam's regime posed a risk that the world could not afford to take." (Bush 2006)

These claims deeply divided the international community. Not only was the majority of the Security Council (China, France and Russia) prepared to veto a UN resolution calling for the invasion, but the majority of NATO states also refused to participate. Despite the fact that even the Secretary General called the war in Iraq "illegal"(BBC 2004), in the three years since the attack, the US and allies have suffered no legal repercussions as a result of the invasion.

The US has also demonstrated the global nature of this war with its military attacks on individuals in Yemen, Pakistan and Somalia. In 2002 the US military dropped a missile from an unmanned airplane (a "predator drone") on a car in Yemen thought to be carrying al-Qaeda members. The attack killed six people including a US citizen (Brooks, 2004). This was not to be considered a declaration of war against Yemen, but instead an attack against a perceived enemy of the US within its borders.

> " The U.S. justification for the attack was again straightforward: al-Qaeda operates in numerous countries, and to effectively defend US interests against future--and perhaps imminent--attacks, the US may need at times to make pre-emptive strikes in self-defence. …Alternatively, argued the US, the doctrine of pre-emptive self-defence is unnecessary, because the mere presence of the enemy--al-Qaeda--in Yemen automatically rendered Yemen part of the conflict zone, in which the U.S. could legitimately take military action against enemy combatants"(Brooks, 2004, p721).

In the attacks on a house in Pakistan (that killed 18 people including five children) the US pointed to intelligence that said an al-Qaeda leader was expected to be there, and despite the fact that he turned out not to have been there, this qualified the attack as legitimate in the larger 'war on terror' (CNN 2006). The US administration makes a similar argument in its attack on 'suspected al-Qaeda targets' in Somalia in 2007 (Guardian Unlimited 2007).

Overall the United States has made sweeping changes to its domestic legislation and radically altered its foreign policy arguments in reaction to the 2001 attacks. The plan for the 'war on terror' presents a far-reaching view of what the world should look like legally, politically, economically and ideologically. In the past five years, the US administration has proven its willingness to use its military power to enforce this view around the world and its political power to enforce it at home.

As a reaction to the September, 11th 2001 attacks on the US, the United Nations and the United States government have both made significant changes. Both have made organizational changes and refocused resources in order to more specifically address issues of international terrorism. Information sharing on the issue has been advanced through organizational changes in both the UN and US systems, and information sharing between countries is now required by UNSC resolutions. Other issues being addressed are ways of limiting criminal activity, like money laundering, and weapons trafficking, as well as stricter border security, and air safety concerns. As a result of these changes, concerns over the holes in these systems are currently being widely addressed around the world.

3.2 Effects of the 'war' on the international system

As discussed in the previous chapter, the 'war on terror' is far more then a straightforward military campaign. It is directed at both domestic and international enemies of the state. It has in many ways re-conceptualized the 'rules war' and directed it against ill-defined enemy (enemy-combatant) who is not allowed to participate in the war itself. Due to this criminal combatant's status, they are not given any of the protections afforded enemy soldiers in a traditional war. This has repercussions far beyond the military campaign. As these policies have played out over the last five years, they have fundamentally challenged human rights norms and the stability of the international system.

First of all the legality of the international military campaign throughout this 'war' calls on the ability of the international legal regime to control its members' use of force into serious doubt. The US administration's arguments for the military campaigns in Afghanistan and Iraq are long and complex debates over definitions of war and the legislation that flows from this definition (Kirgis 2001, Brooks 2004). Similarly the military strikes on Yemen, Pakistan and Somalia raise questions concerning the 'rules of war' and extrajudicial killing, all of which the US administration justifies by saying they are in a 'new kind of war' (Brooks 2004). Beyond the technicalities of the legal arguments, what is easily apparent is the degree to which this 'war' challenges the very principles of the UN Charter and legal and humanitarian norms.

The US administration and its supporters argue a complex series of loopholes and national security requirements to justify these actions and policies. As Rosa Brooks points out in "War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror", where 'previously there seemed to be relatively clear definitions of war and peace these have been eroded and have created a space for some to

argue that 'there are no rules''. It is in this space that the United States has been able to justify its policy claims that it is permitted to wage war against countries of its choosing, "may kill any suspected terrorist in any state in the world at any time" (Brooks 2004, p677) and can hold its enemies outside of the law (ibid). As Brooks points out "U.S. courts are currently struggling to determine how to assess many of these claims, all of which are based on loose, but not implausible, readings of the law of armed conflict" (ibid p678).

This legal debate is far beyond the scope of this dissertation. It can be said, however, that by calling into question fundamental pillars of the international system and international law, the debate challenges long excepted norms concerning a state's use of force. Though there are some who still forcefully argue that the military actions were 'legal', no one denies that they represent a drastic change in US policy and at the very least a new interpretation of international law.

While the debate waged, the policies of the 'war on terror' and the 'Bush pre-emption doctrine' were being enforced around the world, and the effects of these precedents should not be taken lightly. As Mark Drumbl points out in "Self-Defence and the Use of Force: Breaking the Rules, Making the Rules, or Both?", the Bush Pre-emption Doctrine; is more then just a political doctrine it "is global in reach and is deliberately constructed as a legal doctrine" (Drumbl 2003, p422). He goes on to point out that, due to the evolving nature of international law, the application of this doctrine could be seen as having actually altered the international norms that restrict states use of force. He argues:

> "The military response to the September 11, 2001, attacks altered the jus ad bellum, the international law regarding the use of force. Principally, some elasticity… in time, space, and place… was imported into the legal understanding of self-defence. In this regard, our collective response to those terrorist attacks can be constructed as a jurisgenerative event- creating law, often times as a reaction, as we go along". (ibid p426)

In terms of the Geneva conventions and other human rights legislation, the concept of the 'enemy combatant' has thrown their very principles into question. Because the US administration has launched a war against a non-state enemy who was not previously widely categorized as an actor in war, they have been able to loosely justify their own actions under the rules of war while shedding the restraints on their behaviour contained within the same legislation.

Working with this definition of the 'enemy', the behaviour of the US intelligence sector most especially the CIA has also dealt a blow to international norms. Besides holding prisoners at Guantanimo Bay, there are reports that the US along with European allies have been involved in "unlawful inter-state transfers" (so called 'extraordinary renditions') of 'terrorist suspects'. They have been accused of holding these suspects in secret detention facilities with no access by the Red Cross, and possibly moving them to third party countries where they have few if any rights. There is very little information available on the circumstances surrounding the prisoners' capture and detention, but from

what is known their supposed status leaves them with virtually no legal protection. As Amnesty International points out;

> "In the "war on terror", the USA has resorted to secret detentions, in some cases amounting to "disappearance". Such people have been placed outside the protection of the law. The USA is alleged to have engaged in numerous "renditions", transfers of prisoners between itself and other countries which bypass fundamental human rights safeguards". (Amnesty 2004, p1)

The UN is far from innocent in these setbacks in international norms. The legality of the UNSC's Al Qaeda sanction list has been repeatedly called into question. Marty (2006) directly attacks the UNSC's so-called "black lists" in his report to the " EU Committee on Legal Affairs and Human Rights. He says:

> " It is frankly alarming to see the UN Security Council sacrificing essential principles pertaining to fundamental rights in the name of the fight against terrorism. The compilation of so-called "black lists" of individuals and companies suspected of maintaining connections with organizations considered terrorist and the application of the associated sanctions clearly breach every principle of the fundamental right to a fair trial: no specific charges, no right to be heard, no right of appeal, no established procedure for removing one's name from the list" (Marty 2006, sec1.1)

As the 'war on terror' policies have been applied internationally, they have challenged, broken and (through precedent) possibly changed international law. These principles have divided the world, further stressing the already strained relations within the international community. The legal framework the UN High Panel and the Secretary General point to as the world's defence from the 'terrors of armed conflict' are most obviously not as secure as some would argue. This fact makes today and future generations far more susceptible to the "scourge of war" and as a result far less safe from all kinds of terror.

3.3 Effects on domestic policies

The political implications of this 'war' go far beyond UN and US. Around the world governments have implemented widespread legislation that challenges long-fought-for-rights. Taking their cue from US behaviour, or at least some measure of what the US could no longer reasonably argue is wrong, countries have developed systems that are flexible enough to deal with whomever they perceive as a threat to their state security. Despite calls for legislation to be in line with human rights norms, new legal and procedural norms being promoted at the same time have presented a blurry and easily abused line.

As Levine and Newman point out, far from fighting these new norms "Governments all around the world have hastened to join in the US-instigated 'War on Terror', realizing its enormous ideological payoffs" (Levine & Newman 2006, p365). The 'war on terror' principles offer governments new freedoms in implementing unpopular domestic legislation. In countries that have active conflicts, the 'war on terror'

helps justify military counterterrorism policies. In authoritarian regimes it has been used to suppress political opposition. Even in western nations (the so called champions of human rights) these new norms have been used to justify policies that are in serious breech of their human rights obligations.

Countries that have had longstanding conflicts with sub-national groups have used the 'war on terror' to justify controversial counter-terrorism policies. Israel now uses the 'war on terror' to justify policies toward the Palestinians. Russia now uses the language to discuss their long simmering conflict in Chechnya (Levine & Newman 2006). China has used the justification for policies toward the Uighurs and Tibetans and the Spanish government for policies toward the Basque separatists (Human Rights Watch 2003), to name only a few.

These policies can be military action, but what is more widespread is a general retreat of what were in many countries previously considered well-established rights. In Australia, France, the US and UK they have been called violations of civil liberties, rights of asylum and human rights. The Spanish government's 'war' enabled it to target (among others) Basque Separatists sympathizers. In criticizing the Spanish government's apparent disregard for their rights of freedom of association and expression, Human Rights Watch points out:

> "Casualties of the government's hard-line approach, … have included *Gestoras pro Amnistía*, an organization that provided support to families of ETA detainees, which was banned in December 2001. In August 2002, the Batasuna Party, widely regarded as the political arm of ETA, was banned for three years. In February 2003, *Euskaldunon Egunkaria*—the sole remaining newspaper written entirely in the Basque language— was closed down, and ten people associated with the paper were arrested and held incommunicado". (Human Rights Watch 2003, p20)

This should not be seen as exceptions to the rule, on the contrary it seems to be fully accepted by many that these are new rules. It is also not difficult to see a degree of acceptance of these policies in the UN discourse. Many (it can be argued) are laid out in Security Council resolutions and other UN documents. In resolution 1624 for example, UNSC calls on states to "prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters" (UNSC 2005). Kofi Annan in his 2006 report refers to a passage in the same resolution concerning the role of media in "promoting tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism" (ibid). He recommends that perhaps media groups could look at "voluntary codes of conduct for journalists covering terrorism, including, for example, bans on interviewing terrorists" (Annan 2006, p5).

As similar language proliferates through regional declarations on terrorism and domestic counter-terrorism legislation, the risk for abuse should be clear. As Amnesty International points out, when commenting on the vague language concerning media in the Organization of the Islamic Conference's convention on terrorism:

> "In the absence of a clear definition of these measures there is a serious risk

> that they could be interpreted to allow for censorship and interference with freedom of expression, imposed or required by the respective authorities in the region, on the pretext of "security"" (Amnesty 2002, p1).

There are serious concerns about the developing nation's ability to cope with an expanded definition of security threats and a more open role for the military in civilian control. In developing democracies there are fears of setbacks. In authoritarian regimes there are concerns that these new norms are being used to oppress ethnic minorities and domestic political opposition.

As Issacson points out "the U.S. government's message for the next few years appears to be: The world changed after September 11; we all face borderless, stateless threats, and militaries must play an active role in helping governments administer their own territory" (Issacson 2005, p13)

In the developing world where many countries have had recent experience with state based terrorism, many groups have expressed concerns about loosing long-fought-for-rights. As Chillier and Freeman point out, the OAS's Declaration on Security promotes the 'securitization' of a wide range of perceived threats. They point out that this is of particular concern in the region because of "The historic tendency of the region's armed forces to intervene politically under authoritarian regimes or during periods of armed conflict or social instability". They argue that

> "By encompassing such a broad range of security threats, the OAS *Declaration on Security in the Americas* justifies, like never before, the use of Latin American armed forces in new and non-traditional missions" and that "The convergence of the new OAS and U.S. visions of security in Latin America will likely obstruct the long and difficult path towards consolidating democracy and strengthening civilian institutions in the region". (Chillier & Freeman 2005, p2).

Similar concerns have arisen over the behaviour of governments especially in authoritarian regimes. The National Bureau of Asian studies points out: "Authoritarian regimes seek to exploit their new-found solidarity with the United States in the war against terrorism to destroy legitimate opposition groups within their own countries, thus sowing the seeds for future terrorism"(Tellis 2004, p18). Even the US has warned China and others to not use counter-terrorism measures to oppress religious and ethnic minorities (Human Rights Watch 2003). At the same time however US actions in the last five years tend to undermine their authority on this point. As discussed previously their domestic legislation gives law enforcement many freedoms in deciding who constitutes a risk to security. The US has also argued that it is justified in racially profiling groups within its borders and around the world (Heymann & Kayyem 2004) and in practice the US has been able to hold many of these people completely outside the law. Though the differences in these policies may be clear to some it cannot be denied that they open the door to potential abuse.

Here again 'the war on terror' has challenged the norms and laws designed to protect

citizens from state abuse. Again this has happened despite calls for counter-terrorism policies to be in line with human rights norms and the Secretary General and the High-Panel's assurances that existing laws and norms are sufficient. In fact there is clear evidence that the 'war', as it is currently conceptualized, stands in direct conflict with UN human rights assurances. It has been reported for example that, in questioning before the UN Human Rights Commission, the UK "invoked Article 103[4] of the UN Charter to argue that its obligations to the Counter Terrorism Committee under Resolution 1373 took precedence over its obligations to the Human Rights Committee" (Human Rights Watch 2003, p6). This shows that, even at the highest levels and among the most 'moderate' governments, these contradictions present real and increasing confusion in the legal discourse on the balance between rights and security.

Conclusion

The behaviour of world governments in implementing new counter-terrorism strategies both military and non-military directly contradicts the non-military discourse emanating from both the UN and US systems. Both the UN and US argue that promoting human rights and political liberties are important weapons in confronting threats of terrorism. Both argue that there is a need to counter feelings of alienation and injustice among disaffected groups around the world. They both call for opening up a dialogue between cultures and addressing underlying causes that can fuel support for terrorist organizations.

In practice, however, these policies have directly challenged human rights norms and international law. They have lead to setbacks in political rights and social rights worldwide. According to the UN and US, these policies are not only unlikely to work but they are actually counter-productive. If as Annan argues " that in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism."(IPA 2002, p15), then it is clear that currently the world remains frightfully unprotected.

[4] Article 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail" (UN Charter).

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Chapter 4 – Alternative Options

"You must be the change you want to see in the world" Mahatma Gandhi

The main non-military discourse on terrorism revolves around addressing the underlying causes, strengthening the international legal structure, and 'winning the war of ideas'. The preceding chapters have looked at how the policies implemented to date have failed to accomplish these goals. This chapter will look at alternative proposals for addressing the terrorist threat and how they could be implemented.

Many alternative options are already in UN and US documents and include long-term economic, political, and societal changes. This is in contrast to the current focus, which is emphasizing the short-term punishment of a few terrorist groups at the expense of losing the larger battle for the hearts and minds of their possible supporters. There are, however, persistent calls for long-term strategies that address underlying grievances. Instead of oppressive or violent government tactics that are likely to fuel terrorist activity, there is a call for more of a focus on legal instruments to break the cycle of violence. Finally there is an awareness of the need to 'win the war of ideas'. If the main goal of the 'war' is to lower the levels of fear (terror) around the world, steps need to be taken that clearly work toward this end. The point is that it is better not to confront extremism with extremism but instead with moderation, and it is better to counter intolerance with tolerance and criminals with law.

4.1 Addressing underlying causes

Addressing the underlying causes means looking at a multitude of social and political factors that drive people to support terrorist acts as a means of furthering their cause. It means recognizing and respecting the grievances that lead a small minority to commit terrorist crimes and, more importantly, the causes that lead to broader social support for organizations tied to these crimes. There is such a range of motives both within and definitely between the organizations that use terrorist tactics, it is obvious that no one overarching solution can be proposed that would stop all potential terrorist attacks.

There are a myriad of social factors that put stress on different groups and can lead to terrorist activity if not addressed by social institutional processes. Some overarching economic issues that are important, and could be directly addressed, are the relative economic inequalities and resource scarcity (Drakos& Gofas 2006). The large numbers of unemployed youth are also a risk factor for violent conflict in general, as well as terrorism. These are not new ideas, all of them are seen as underlying causes of most violent conflict. In this sense, the UN's many departments have extensive experience in working to resolve problems in all these areas. There is therefore a good argument that the UN should return to its pre-2001 focus on conflict prevention and development as a base for its long-term counter-terrorism strategy (Bredel 2003). Bredel argues that many of the policies outlined in past UN documents on the issue of conflict prevention could be directly applied as counter-terrorism strategies. Since many internal conflicts have much

in common with terrorism, the UN conflict management practices can help limit their spread.

This is an important position and one that holds great hope for addressing the terrorist issue. The problem of course is getting the political and financial support to seriously address these problems. Funding has always plagued these types of programs at the UN. There is hope that the shift in political interest and the high financial costs of the current ongoing counter-terrorism policies will lead to increased support for these policies.

Policies designed to directly confront these risk factors include international aid "programs that invest in training and job creation, promote entrepreneurship, support family planning services and female education, and increase access to economic opportunity for both male and female populations so that the youth population bulge can become an asset in countries where there is high un-employment" (CSIS 2004, p20). Developing a strong middle class is also important as they have strong incentives to support non-violent politics (Gurr 2005), and are the basis of strong democracies.

As discussed in the previous chapter, oppressive government policies directed at political, racial, and religious minorities could lead to rebellion and possibly more terrorist activity (Drakos & Gofas 2006). The main argument is that the military is not well trained to establish law and order in civil society. There must be more of a focus on law enforcement and nation building; the military is seen as ill suited for this approach. Police and intelligence work, it is argued, would be much more effective in bringing law and order to the communities providing a stable base for economic and social development. Domestically this would mean a move away from the ever increasing use of the military. As a replacement for international military action, it is argued there should be international policing operations under the auspices of the UN (Dower 2002). These would be far less disruptive to the wider society and therefore also be less likely to lead to increased social support for the target organization.

It is also important to strengthen civil society organizations so they can play an oversight role. These organizations and media should be encouraged to debate and scrutinize governments' counter-terrorism strategies. As Rambke points out "To strengthen transparency and promote public confidence, the media must be encouraged to actively analyze policy and performance of security services without fear of constraint. Public investment in security is greatly enhanced if people can believe that security sector actors are publicly accountable" (Rambke 2005, p14). However, these policies would have to promote more media freedom, not less.

As countries claim to understand the need to open a dialogue, they must recognize that such a dialogue cannot be a one-way conversation. Addressing underlying grievances requires that authorities take an active role in listening. Although grouped by the 'war on terror' principles, different 'terrorist' organizations gain support for different reasons. To address 'terrorism' it is important to distinguish between these groups (Post 2005). Treating them all as one large problem oversimplifies the roots of these diverse conflicts and can obscure individual paths to redress.

The 'war on terror', as it currently stands, dictates its terms to the world. To be successful, it is necessary to listen in order to find common ground and common understanding. This means taking a hard look at western priorities and the way western countries interact with the world. Dower says "We in the West could be, and should be, less arrogant about our dominant role in the world or about our values… A willingness to learn from and listen to other countries and traditions is essential, and might just defuse much of the resentment that festers in the minds of extremist minorities". (Dower 2002, p33)

There are some signs of a move toward a more open dialogue at high levels of the US government. The Iraq study group report (Baker & Hamilton 2006) called on the US administration to try to open a dialogue with all insurgent and militia groups in Iraq with the exception of Al Qaeda operatives[5]. They also called for more attempts to involve countries in the region including Iran and Syria. Calls such as these represent an acknowledgment of the need to build real coalitions if the goal is to bring more stability.

Despite resistance from many governments, there is a strong argument for encouraging the legal political participation of 'terrorist organizations'. Since many 'terrorist groups' are connected to political parties[6] this is seen as a realistic goal. Crenshaw recommends that:

> "Governments should encourage the transformation of those radicalized groups that are linked to broader social and political movements or political parties. They should be encouraged to join the political game and enter into dialogue. Indeed, the government should offer a democratic pact: oppositions that accept dialogue and renounce violence by making a commitment to respect human rights, the rule of law, and democratic norms will be included in the political process". (Crenshaw 2005b, p16).

The idea is that once groups are given an outlet for legitimate grievances this will undermine that larger social support for groups that argue violence is the only way to effect change.

This of course is not a simple feat. There are inherent difficulties in finding a balance between enforcing western values and respecting others' cultures. In pointing to the roots of terrorism in the Middle East, a common synopsis is: "Gross social and economic inequalities prevail in the states from which the terrorist leadership is drawn, and these are becoming starker as populations rapidly grow. Terrorist action is thus the product of frustrations with no alternative outlet"(Osborn 2005, p399).

The solution to this is seen as political and economic reform. According to the international system, as it now stands, this means democracy and liberal economic policy. This policy is even outlined in the US Security Strategy and has been their emphasis in Afghanistan and Iraq. Here however it is argued that the West should tread lightly. As O'Neil points out "To succeed in all these efforts, the UN must face the reality of

[5] The report even recommends trying to open discussions with Al Sadr (recommendation 34)
[6] "124 out of 399 terrorist groups are affiliates of, or splits from, political parties" (Crenshaw, 2005 p20)

prevailing perceptions, especially in the Middle East, that the "secular" West dominates the world. And there is anger and resentment… at this "cultural invasion". (O'Neil 2002, p25)

The two wars, in Afghanistan and Iraq, have further fuelled this anger. This, combined with the miserable examples of 'freedom' represented by present day Afghanistan and Iraq, leads to inevitable resistance to western style reforms. Therefore it is said that it is best to work with countries to develop more open systems from the bottom up each in their own image through cooperation and negotiation. It is important to advance with the central view that 'cultures are suppose to be different' and 'that modernization does not necessarily have to mean westernization'. (Cordesman 2005, p19)

What is essential to all this, however, is the recognition that there are no quick solutions. This necessarily must take time. Building institutions on paper and holding elections will not bring stability if underlying issues are not addressed. Indeed many point out that rapid democratization can be destabilizing and therefore must be dealt with carefully (Crenshaw 2005b). Others point out that implementing liberal policies also might mean an increase in terrorist activity at least in the short-term. Increased freedoms of movement and association would facilitate such activity (Drakos & Gofas 2006). Drakos and Gofas warn that "semi-democracies" are at the highest risk because "the level of repression has decreased so as to lose its policing efficacy while the level of institutional development, by being in its infancy, cannot provide to societal groups an effective way to channel their grievances" (Drakos & Gofas 2006, p78). These are huge and complex transitions so they need to happen over time and need to be discussed and debated on a country-by-country basis. Implementing them by force or from the outside or both is sure to meet with strong opposition.

Finally it is important that the western governments also respect the political freedoms being promoted by the international system. Despite the current rhetoric about democracy, the US has been far from the securer of these rights in the past. As a result, they should not necessarily expect unconditional trust that they are now prepared to secure true democracy for any country. As top Al Qaeda operative Ayman al- Zawahiri has been quoted as saying: "America claims to be the champion and protector of human rights, democracy, and liberties, while at the same time forcing on Muslims oppressive and corrupt political regimes." (quoted in Mantho 2004, p27). Today when western governments refuse to respect the outcome of some elections that they pushed for this undermines their own argument for democratic reforms[7].

Addressing underlying causes and working to solve political and social strife will not stop all terrorist attacks, but it can remove the public support for organizations, which may use terrorist tactics. A large number of active terrorist organizations in the world today also have a political arm. Working with these sections of the organizations is seen as an important first step. Once political objectives are met through representation in government, the idea is that those who are fighting for legitimate causes will have a non-

[7] For example, western countries object to the elections of Hezbollah and Hamas members to government in Lebanon and Palestine respectfully.

violent outlet for their concerns. This in turn will undermine a large part of the terrorist support base. Finally, in order to be addressed, underlying causes must be understood. This requires listening and negotiation, not simply dictating will.

4.2 The Legal options

There are many possible proposals on how to handle terrorist activity through criminal law. There are proposals for different types of International tribunals or ways to assure the fairness of domestic prosecution. There are also calls for possibly adding issues of terrorism to the International Criminal Court. Bringing this 'war' into a more legal context is about more than simply punishing those responsible. It is also about promoting the justice that the West argues sets it apart from 'terrorists' they seek to defeat. Legal and humanitarian norms have been established to break the cycle of violence and injustice. By assuring all human beings rights, not only are the innocent more protected but the state also proves to others that justice has been done. Advancing with policies that respect these norms, it is argued, is therefore also important to 'winning the war of ideas'.

There is little doubt that the international community needs to cooperate and build up legal systems to prevent attacks and bring perpetrators to justice. As previously discussed, there has been a focus on international treaties that increase cooperation among states and criminalize terrorist activity. Many of these contain controversial extradition agreements (Lagos & Rudy 2003) in order for suspects to be tried in the country where they are accused of a crime. International tribunals and courts provide an alternative. By bringing the charges into the international system, it is possible to overcome concerns about disparities between domestic legal systems and laws and assure due process.

In the days and months after the September 2001 attacks, there were official calls for an international ad hoc tribunal to prosecute those responsible (ODIHR 2001; Youngs, Bowers, & Oakes 2001). It was proposed that such a tribunal could be designed in a way similar to the tribunals for Rwanda and the former Yugoslavia (Youngs, Bowers, & Oakes 2001) or even possibly similar to the Hariri tribunal being set up in Lebanon. These tribunals could also possibly be given jurisdiction over future acts of international terrorism (ODIHR, 2001). An international tribunal, it is argued, "would command greater confidence abroad, and Muslim states, such as Pakistan, would find it easier to extradite suspects to such a tribunal" and "It would also send a signal of international solidarity against terrorism". (Youngs, Bowers, & Oakes 2001, p54)

Beyond tribunals it is argued that the International Criminal Court (ICC) could handle the crimes. Although today the ICC is set up to addresses only a limited number of crimes, seven years after its entry into force it can be amended to add other crimes. Many have recommended that at this point terrorism should be added (ODIHR 2001;Koechler 2002; Hoye 2001).

Legal actions like those proposed above have the potential to reveal further information on these organizations. It presents an international front and can make countries more

willing to extradite suspects. It would also mean that more people are likely to believe that those charged are really guilty of these crimes. Even if a great deal of the information is never released to the public, the system would be able to assure the accused their rights and due process and show them to be guilty.

There are, of course, some difficulties in setting up international tribunals and courts. Countries are wary of sharing their intelligence. There are, however, security options for keeping information secret in the case of tribunals. Although these may not be perfectly airtight, they do provide some protection for sensitive information that otherwise might not be shared (Scheffer 2001). There are also concerns about the length of time it would take to set up, the cost involved, and questions over the perceived impartiality of the court. (Scheffer 2001; Youngs, Bowers, & Oakes 2001). It is also argued that, in the absence of an acceptable definition of terrorism, it would be difficult to design legislation (ibid). These are important considerations but, given the perspective of the past five years, they do not seem as insurmountable.

Some issues, like the definition of 'terrorism' will undoubtedly take time. The UN has, however, dedicated a lot of effort to finding an internationally accepted definition in order to complete their 'comprehensive terrorism convention'. Admittedly, as the writing of this dissertation, the debate continues and the lack of a definition of terrorism possibly remain an obstacle to setting up such a tribunal or adding the crime of terrorism to the ICC. The time to establish the tribunal and the financial concerns, however, seem minimal today considering George Bush continues to say that this 'war' is only in its infancy (Bush 2006) and the war in Iraq may ultimately end up costing close to two-trillion dollars US (Baker, Hamilton 2006).

The perceived impartiality of the tribunals must also be looked at in the context of the alternative, the current 'war'. Today the US military act as judge, jury and executioner of 'suspected terrorists'. This is done by both direct military action as well as through the US military tribunals. Surely any international tribunal, even one set up by the Security Council, would be considered to have 'more legitimacy' than these policies. Including the crime of 'terrorism' under the mandate of the ICC could remove this concern from the prosecutions of future attacks (Youngs, Bowers, & Oakes 2001).

Taking these options seriously is important for countless reasons. First and foremost, of course, the options show a respect for the 'rule of law' which the 'war on terror is suppose to be promoting . It should go without saying, but unfortunately cannot, that the protections guaranteed in the courts are as essential in protecting the innocent in this 'war' as they are at protecting western civilians at home. Beyond this, however, they should be looked at as strategic measures that could help build the legitimacy of the overall 'war on terror'.

A June 2006 Pew survey found that the majority of Muslims in nine of the ten countries[8] surveyed 'did not think that Arabs carried out the 9/11 attacks'. In fact the study points

[8] England, Germany, Spain, Indonesia, Egypt, Turkey, Jordan, Pakistan and Nigeria, France (only in France did a majority believe Arabs were responsible)

out that compared to a 2002 Gallup survey "The percentage of Turks expressing disbelief that Arabs carried out the 9/11 attacks has increased from 43% … to 59%" (Pew, 2006). This is perhaps not surprising considering the misinformation surrounding the invasion of Iraq. The United States may be able to greatly help their cause of getting the world to stand united against the 'terrorism of Al Qaeda' if they were to prove that Al Qaeda was directly responsible for the terrorist attacks. Considering the devastating toll that this 'war', in both its military and non-military actions, has taken on some people and countries, presenting proof as to the targets' guilt is essential.

Finally, beyond definitions of enemy combatants, there must be an intuitive understanding of the spirit of the Geneva conventions and humanitarian law more generally. Whether or not it can be argued that these laws are 'legally' applicable, the fact remains that they are developed with the goal of protecting the rights and dignity of all human beings. To discount 'suspected terrorists' as not deserving of these protections is to lower western human rights standards down to a level indistinguishable from the ideology they claim to oppose.

Using such systems of laws are the only way to promote the 'rule of law' and, as has been demonstrated, there are many possible legal avenues for bringing the perpetrators of terrorist acts to justice. It is true that there are also limitations and concerns but, as has been argued, here, these issues are not insurmountable. Finally this needs to be seen as a moral issue. Western governments argue that respect for the 'rule of law' and the value of all human life is one of the main tenets that, distinguishes them from the terrorism they seek to destroy. Promoting these 'values' must go hand in hand with living by them even in times of perceived emergency

4.3 Winning the war of ideas

'Winning the war of ideas' means convincing people to support your cause. They must believe in its principles and they must believe in a country's or organization's ability and dedication to put these principles into practice. If human rights, political freedoms and 'freedom from fear' are being promoted as goals, then they must be the practice. Brutal crackdowns by the government will prove the terrorists claim that the government should be challenged. As discussed, these government actions often increase the support base of the organizations and lead to more attacks. If this is to be a 'war of ideas' then the West must present a clear alternative to the enemy they seek to destroy.

The 'war of ideas' requires that western powers take an honest look at the policies being promoted. This does not only mean looking at the recent policies and the way they have limited rights and law, but it also means recognizing the pain and anger these policies have caused. UN and US authorities continuously act surprised at rising levels of support for groups they argue should be simply condemned. This is despite their recognition that many of the policies being implemented around the world fuel support for these organizations.

A possible option is to show visible compassion for the victims of western actions. Recognizing the victims of western counter-terrorism strategies is essential to understanding rising resistance to the 'war'. As the American's outrage at the senseless death of 3,000 of their citizens led them to anger and attack, so to must it be expected in reaction to innocent victims of counter-terrorism strategies. Especially in Iraq, where the US and its' allies have essentially created a failed state, chaos reigns. Estimates of civilian casualties are as high as 654,965 (2.5% of the population) (Burnham, Lafta, Doocy, & Roberts 2006). In discussing the disproportionate number of civilian casualties that have resulted from western counter-terrorism strategies compared to non-state terrorism attacks, Barkawi pointedly asks: "Can such actions do anything other than generate even more destructive responses? Can the West expect its humanitarian and universalist rhetoric to be taken seriously in such circumstances?" (Barkawi 2006, p59).

Though Annan's 2006 report argues it is important to focus on the innocent victims of non-state terrorism there must be equal emphasis on the innocent victims of the 'war on terror'. To do anything less shows a lack of respect for the victims and those who grieve for them. Though this may seem like an obvious statement, it is one that is obviously missing from much of the 'war on terror' discourse. It is, however, not a fact lost on those radicalized by these policies. As Barkawi points out in a 2002 tape, Bin Laden is quoted as asking "Under what grace are your victims innocent and ours dust, and under which doctrine is your blood blood and our blood water?' (quoted in Barkawi 2006, p58)

Besides the loss of life, these policies have affected billions of other individuals around the world who have felt rising prejudice and harassment by the authorities and the public. Some argue that the propaganda that surrounds this 'war' is specifically designed to heighten prejudices and divide societies (Levine & Newman 2006). Not only are these policies morally questionable, they also have far reaching long-term consequences that should be seen as counter-productive. The build up of fear and mistrust, which has been created by these policies, will last far longer than the any military conflict. Lingering effects will make future reconciliation difficult and may lead to renewed conflict in the future (Morrow 2001; Errante 2003). Errante explains,

> "These pitfalls have to do with the kinds of solidarity groups we tend to form whenever this solidarity is based upon imagining an enemy, an enemy being not simply an other, but a demonised de-humanised other, These are conflict-based solidarities and they not only protract bloody conflicts; they also leave cultural, social and psychological residues that can ignite violence within societies long after they have appeased, conquered, eliminated, or even reconciled with the so-called enemy". (Errante 2003, p133)

It is therefore argued that it is essential for government to try to heal wounds, not create more. If the goal is a united front, governments around the world must work to counter these divisions, not promote them. As Crenshaw argues "Democratic governments have a responsibility to educate their publics and to encourage heightened democratic solidarity, not fear, in the face of terrorism" (Crenshaw 2005b, p17) though "Terrorism can create permissive majorities that will allow harsh repression of all opposition in the immediate

… the government… must look to the future". (ibid p14)

For these reasons governments must take special care to design policies that that do not unfairly target minority groups. It is recommended that governments encourage an open dialogue and exchange of cultural values by encouraging exchange programs (Cordesman 2005; Gurr 2005). It is also recommended that the movement of people not proven to be associated with terrorist organizations must be facilitated so as not to objectify one particular group (Cordesman 2005). Since many charities and NGOs are being accused of being affiliated with terrorist organizations, there is a concern that cutting off their funding creates real hardships for the people they help. It is therefore argued that there must be a system of checks and balances to assure innocent organizations are not being cut off (Gurr 2005).

Conclusion

Overall the non-military discourse consists mainly of using international law, political, social, and economic empowerment to build environments not conducive to terrorism. Long-term strategies to address these endemic problems are based in longstanding development and conflict management strategies. As these are longtime specialties of the UN and other international organizations, many argue the solutions can be seen in these same long-term strategies of development, reconciliation and peace building.

Besides these development issues, there are many calls to limit military involvement both internationally and domestically. These revolve around the argument that 'terrorism' must be addressed as a crime and handled through the criminal justice system. Counter-terrorism strategies should be seen as police enforcement exercises, which would remove the military from law enforcement, a task for which they are not well trained. It also means proving the guilt of 'suspected terrorists' in the court of law and not just expecting foreign citizens to have faith in western benevolence.

Finally this chapter has looked at the argument that 'winning the war of ideas' must mean more than terrifying populations into submission. It must focus instead on an honest promotion of the 'values' that western nations espouse. A respect for the lives lost, and harassment carried out, at the hands of the allies would go a long way toward healing the wounds caused by their actions over the last five years.

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Chapter 5 - Conclusion

The world has indeed changed. Perhaps this happened for some on September 11th 2001 but it has happened for many more in the years since. As we have advanced in time from that, now iconic, Tuesday morning the world has been drawn into a vigorous debate over the nature of terrorism and the proper responses. In the academic and think-tank literature there is little agreement concerning how this battle should be conceptualized or fought. This dissertation has therefore, sought to find agreement in the policy documents of main actors as a starting point for judging the effectiveness of current strategies.

In summary, this dissertation has compared the official UN and US counter-terrorism strategies. It has pointed to the incongruence between the rhetoric on how best to confront the threat of terrorism and the reality of how the policies are being implemented. It has argued that these policies are counter-productive according to the UN and US's own discourse and finally it has presented proposed alternative options that would live up to the principles promoted.

As has been discussed there is no universally accepted definition of terrorism. Despite this fact the international community has long dealt with the issue and had developed an extensive set of agreements, conventions, and protocols long before 9/11. These were mainly designed to criminalize terrorist activity and promote more cooperation among states.

The United States has also had extensive previous experience in dealing with terrorism (even specifically with Al Qaeda). With several notable exceptions in the past, the US has dealt with terrorism through law-enforcement and the legal system. The 'war on terror' was declared as a reaction to the 9/11 attacks and represented a dramatic change from previous practices. Internationally it has meant more international involvement and a lower threshold for military action. Domestically it has lead to a massive overhaul of the government and security services and the implementation of widespread and sweeping changes to domestic legislation.

The 2003 the US security documents outlined the country's '4D strategy' (Defeat, Deny, Diminish and Defend) (US DoD 2003) for confronting terrorism. Two years later the UN Secretary General laid out a 'five pillar strategy' (Annan 2005a) as the basis for a comprehensive strategy for the UN. As was discussed in the second chapter, these two strategies are not only similar in language but also in substance. They both focus on the need for more cooperation among states and building international consensus against terrorism, both argue for the need to promote the 'rule of law' and human rights in general, and both point to underlying causes that may lead to broad social support for terrorist organizations. They argue in concert for economic, social and political reform in order to address these causes.

In the last five years there has been a significant push toward more cooperation within the UN and US systems. Internally the US has changed the government and the intelligence sector's structure. The UN too has focused on setting up ways to coordinate between its

diverse departments. Internationally Security Council resolutions have meant that member countries are forced to cooperate and focus resources on developing security programs to deal with possible terrorist activity.

It has been argued here that despite the repeated calls for counter-terrorism policies to be inline with human rights and legal norms, this has not been the reality. Led by the US, and not significantly challenged by the UN system, this 'war' has reinterpreted, broken or even perhaps changed international norms that restrict countries use of force. It has challenged a myriad of other legal and human rights norms and opened the door to possible widespread abuse by governments worldwide.

Far from effectively confronting terrorism, many of the current policies inflame underlying tensions. There are serious concerns that expanded use of the military domestically, combined with only a loose definition of the threat, could lead to abuse and possible setbacks in developing democracies. Human rights abuses and political oppression are also pointed to as causes that fuel terrorism and broader social support for terrorist acts. Here too the counter-terrorism policies of the last five years fail to measure up to the principles laid out in the rhetoric. Indeed based on the main documents analyzed in chapter two, according to the UN and US, these policies are not only unlikely to work, but they are actually counter-productive.

The main principles needed to confront terrorist activity, as outlined in the UN and US documents, are not being realized through current policies. As it has been argued here, that quite the opposite can be seen to be happening. It should therefore, not be a surprise that 'terrorist organizations' seem to be gaining support.

Those who recognize this fact have laid out many specific options on how this 'war' could be fought within the boundaries of the principles laid out in UN and US documents. They argue that not only should governments refrain from policies that aggravate underlying conditions but they should also make a concerted effort to address these conditions. Policies designed around the concepts of inclusion, politically and socially, are pointed to as being essential. Bringing marginalized groups into the debate by encouraging political participation and the exchange of cultural ideas. It is argued that long-term development strategies, if implemented honestly, would go a long way to contributing to overall stability. Seriously addressing inequalities and domestic and regional conflict would also help build an environment that is not conducive to terrorism.

Returning to previous practices that conceptualized terrorism as a criminal activity is seen as an important option. The 'war' framework, it is argued, is not helpful. Law enforcement and legal alternatives are seen as having fewer negative effects on the wider civilian population. As such they are seen as less likely to ignite tensions between groups. Using the international legal system, in the form of an international tribunal or in the future expanding the ICC, would not only mean more legitimacy for the war, but it would mean living up to the values that are being promoted in the discourse.

It has been argued that considering this fight a 'war of good against evil' and denying the humanity of the enemy is not helpful. Instead there is a need for more compassion for the other side and those who would support them. Divisive policies are not only hard on target communities but they lead to fear and mistrust on all sides that can last long after the military conflict. Governments should work to heal the divisions and bring communities together.

Overall this dissertation has argued that it is important to look for alternative options for confronting the threat of both terrorism and the current practices of the 'war on terror'. Both have had terrorizing effects on the citizens of the world and both are contrary to the principles of international law and the UN Charter. This dissertation has used the UN and US's own policies to show that the realities of the government and military conduct in this 'war' are counter-productive, may lead more terrorism, and possibly larger military conflicts in the future. Finally it has argued that a main alternative to the current practices of the 'war on terror' would be to live up to the rhetoric presented in the policy documents.

Recommendations

In terms of a future direction this dissertation would recommend that there is a need for more research that advances new and specific alternatives to the 'war' as it is currently being conducted. The proponents of the 'war' believe that the world has changed. Though it is without a doubt important to stress the need to return to past practices so as not to make the current situation worse, new suggestions might go a long way toward getting the attention of those who argue that past practices are no longer sufficient.

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