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<td>La Presente tesis explora las políticas de la guerra de terror, centrándose únicamente en el periodo de la primera administración de Bush. Se argumentará que estas políticas dieron lugar a la violación real y potencial de los derechos humanos dentro de Estados Unidos y en el extranjero, tratándose de encontrar una justificación válida. En esta tesis se argumentará las justificaciones más probables para combatir la amenaza que representan los terroristas y los enemigos de la Administración de Bush, el objetivo de estas políticas en la defensa de los Estados Unidos fue derrotar a esas amenazas, pero la falta de políticas estuvieron plagadas de incertidumbres e inexactitudes. Esta tesis intentará argumentar que, en su mayor parte, las políticas adoptadas en esta Guerra del Terror, de hecho, fueron injustas.</td>
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DECLARACIÓN Y AUTORIZACIÓN

Yo, Danilo Mauricio Amores Ordoñez, CI1802823854 autor/a del trabajo de graduación: War on Terror previo a la obtención del título de Master en Relaciones Internacionales en la Universidad de Flinders.

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Quito, 20 de Octubre del 2015

Nombre: Danilo Mauricio Amores Ordoñez
CI° 1802823854
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Synopsis

This thesis will explore the policies of the War on Terror, focussing solely on the period of the first Bush Administration. It will argue that these policies resulted in the both real and potential violation of human rights within and United States and abroad, and so require a valid justification, but find possible justifications lacking. This thesis will argue that the most likely and powerful of potential justifications, namely the severity of the threat posed by terrorists and the state-centric enemies of the Bush Administration, the usefulness and success of those policies in defending America and defeating those threats, and the lack of alternatives policies and objectives, are rife with uncertainties or inaccuracies. In exploring these potential justifications for the means of the War on Terror and revealing these doubts, problems and contradictions, this thesis will attempt to argue that, for the most part, the policies explored were indeed unjust ones.
Acknowledgements

Michael Sullivan - for providing cautious optimism in the face of difficult deadlines, and enough criticism to force me to write this thesis as best I could.
Introduction

In the panic stricken, bewildering hours, days and weeks following the collapse of the New York's Twin Towers on September the 11th 2001 (9-11), it was essentially a political necessity for the President, G. W. Bush to declare that America was under attack, and a political reality that America was at war. The conflict in the years following quickly came to be known as the 'War on Terror'. Many criticisms emerged as the first Presidency of Bush dragged on, and the metaphorical body bags of rights and liberties, and the very real body bags of the dead piled ever higher. Many questioned the entire exercise from without, criticising its scale, its nature, or its focus. A great deal of this criticism stemmed from arguments over the violations of domestic and international rights and liberties that became the perhaps most easily recognisable feature of America’s new century. Unlike a great many of these criticisms, this thesis will explore the War on Terror from within. Somewhat inspired by Ignatieff’s explorations in The Lesser Evil¹, this thesis will not attempt to prove the entire venture was defunct solely because of alleged violations of rights, nor will it assume that the rights of individuals are absolute. Instead, it will accept that in one form or another, the ‘war’, for unfortunate lack of a better term, was a necessary policy objective. Unlike Ignatieff’s work however, which explored the question of what can be justified in defence against terror in a more historic and philosophical light, this thesis will look back upon the policies of the first Bush presidency in relation to the violations of rights. It will explore these policies and events in order to investigate the question of whether these specific

choices were just. The argument of this thesis is that while it may have been possible for any rights violations inherent to the War on Terror to have been justified, the most important criteria one might attach to such a proposal don’t hold up to significant scrutiny. Therefore, it is the premise of this thesis is that these policies were not just ones.

While as stated, this thesis is not written under the assumption of the absolute sanctity of rights, it is written from the understanding, which will be discussed only briefly so as to avoid being sidetracked unnecessarily, that violations of rights should not be entered into lightly and should be avoided whenever possible, and thus require justification. The alleged violations that collectively fit under the banner of the War on Terror at this time were extensive in scale and in severity. Exploring the policies of the time, and their inherent shadowy consequences for rights in order to ‘reveal this scale and severity is the subject of the first chapter of this thesis. This chapter will conclude that the rights violations under the Bush administration at this time were indeed both numerous and severe. It will also conclude that while it is conceivable that these policies were just, several fundamental questions arise that could go a considerable way toward proving, or disproving, claims of even-handedness.

The threat posed by terrorism, and their alleged state supporters, infamously dubbed ‘Rogue States’ and ‘The Axis of Evil’\(^2\), could provide substantial support to any argument about the justness of the explored means of the War on Terror.

\(^2\) President G.W. Bush, State of the Union Address, 2002
Working from Ignatieff’s argument that in the face of an apparent and heinous danger, a democracy could justify a degree of the curtailing of rights, it is important to thoroughly explore that threat, in order to gauge whether that state has exceeded its moral mandate in doing more harm than was necessary\(^3\). This is the concern of Chapter 2, which will do exactly that, explore the threat that presented itself to the United States so vividly on September the 11\(^{th}\). This chapter will explore the threat posed by terrorism, with a focus on the proliferation and use of WMD, and also investigate the threat posed by the state centric enemies of the US at this time. In doing so, it will argue and conclude that there are considerable enough doubts relating to the threat so as to be overshadowed by the violations inherent to the means used to combat it. In the context of the thesis as a whole, this goes some way to casting doubt on the notion of justice in the waging of the War on Terror.

However, considering the reality of the threat should not be unduly dismissed completely, the pragmatic question of whether the War on Terror of the day provided a better, safer future for America provides another powerful possible justification for the inherent restrictions on freedom. If the War on Terror succeeded in creating that safer world for the US, it is conceivable that it is possible to justify the deaths and losses of liberties that occurred, whereas if it failed to provide that security, it would again seem to have been unnecessary and thus unjustifiable. Chapter 3 explores criticisms of the success War on Terror at this time. The chapter will argue that many of the policies resulting in the violations

\(^3\) M. Ignatieff, “Democracy and the Lesser Evil”, *The Lesser Evil*, 2004, p.2
of rights were either ineffectual, created a worse, rather than better position for the United States abroad, or both. It will conclude that the effectiveness alone of the waging of this struggle does not provide justification for the means, and that in terms of the argument of this thesis; this detracts considerable more weight from any claims of justice.

While this thesis considers some form of the War on Terror to have been inevitable and necessary, and thus not an important area of discussion, the fundamentally important question of whether the form of the War on Terror the world became accustomed to was the only option available to US policy makers at the time remains. It might be possible to adhere to what remains of the possible justification for the War on Terror if the fact remains that the US was bereft of less aggressive or potentially successful alternatives. This notion is the subject of the fourth and final chapter. This chapter will explore this notion, and find substantial evidence of both less aggressive and potentially more successful alternative goals and policies that could be been pursued at this time yet weren't due to political choices. This chapter will conclude that these alternatives were so numerous, and (potentially) useful, at the same time as reducing the violations of rights and freedoms, that they detract significantly from what justification remains this stage of the thesis for the policies of the day.
Chapter 1

Rights in The War on Terror

In war, truth is the first casualty
-Aeschylus

America’s War on Terror during the first Bush presidency was a complex and multifaceted behemoth which encompassed many policies, and had many far reaching consequences. Therefore, it is important to explore those policies, and in the context of this thesis, gauge whether abuses of human rights took place, and their magnitude and severity. The purpose of this chapter is to do just that, to explore some of the many means employed in America’s War on Terror during the first Bush government in order to expose violations of rights. First it will explore criticisms of one of the more important domestic policy solutions of the first Bush administration to the threat of contemporary transnational terror, namely the powers of the PATRIOT act and its arguable lack off effective accountability measures, and find real potential for the violations of the rights and liberties of Americans. Also in regard to domestic policy, it will investigate claims of racial and ethnic discrimination relating to real or potential abuses of rights in US policy at the time. Secondly it will explore the consequences for human rights internationally of this overall domestic policy shift and find further rights violations that could be attributed at least in part to US policy. Finally it will explore criticisms of the foreign policy of the first Bush administration in relation to the War on Terror, the invasions and occupations of Afghanistan and Iraq and the administration’s treatment of international prisoners relating to the War on Terror at large. In doing so, it will find yet further and perhaps more serious abuses.
The events of 9-11 cast transnational terrorism into the spotlight of international affairs. There emerged a cliché that “nothing would ever be the same again” and it was obvious that the relatively uneventful post-cold war era (as opposed to majority of the 20th Century) for the US had come to a screeching halt. It was the general consensus in the United States in the days and weeks after the attack on the World Trade Centre and the Pentagon that America was at war. Just what form this war would take was uncertain, but the term “The War on Terror” quickly emerged, and this new concept spread its proverbial tentacles into many facets of American intelligence, policing and legal policy. This first part of this chapter will explore criticisms of some of these emergent policies, their powers and their loopholes in order to provide a guide to the severity inherent in the means of this first front of War on Terror.

Perhaps the best known are the plethora of surveillance and investigative powers gained and changed in the PATRIOT act, passed by Congress just 45 days after September 11 with arguably very little debate. According to the US Department of Justice, Congress “provided for only modest, incremental changes in the law” and “simply took existing legal principles and retrofitted them to preserve the lives and liberty of the American people from the challenges posed by a global terrorist network”. The 342 page document granted many new and altered or enhanced

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4 American Civil Liberties Union “USA PATRIOT Act”, URL: http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12126&c=207
Consulted 10/7

5 Department of Justice, “Highlights of the USA PATRIOT Act”, URL: http://www.lifeandliberty.gov/highlights.htm
Consulted 12/7
powers to the FBI and most other sectors of law enforcement under the US government. These changes included, but were not limited to the following:

Expanding laws to include “domestic terrorism”, which according to the American Civil Liberties Union (ACLU) subjected potentially any political organisation to surveillance, persecution and criminal action for political advocacy by altering the legal definition of supporting or condoning “terror”\(^6\). New phone and internet surveillance powers\(^7\) which increased the amount of data that could be retrieved from people’s communiqués either over the phone, or via email, forums, chat rooms or other online means of communication. Access to student files\(^8\), as well as medical files, financial, mental health, library, bookstore and travel records\(^9\).

This granted much greater penetration into the personal affairs of anyone deemed a suspect, down to their grades at school, where they choose to holiday and what books they read from the library\(^10\). Together these policy changes expanded greatly what can easily be justified (by law enforcement, in the context of the law) in the way of conducting surveillance.

\(^6\) American Civil Liberties Union “Surveillance Under the USA PATRIOT Act”, URL: http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12263&c=206, Consulted 10/7

\(^7\) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, SEC. 201
URL: http://thomas.loc.gov/cgi-bin/query/F?q=c107:4:/temp/~c107jond6c:e24683:
Consulted 11/7

\(^8\) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, SEC. 507
URL: http://thomas.loc.gov/cgi-bin/query/F?q=c107:4:/temp/~c107hjo9f6:e310630:
Consulted 11/7

\(^9\) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, SEC. 215
URL: http://thomas.loc.gov/cgi-bin/query/F?q=c107:4:/temp/~c107jond6c:e52851:
Consulted 11/7

\(^10\) American Civil Liberties Union “Surveillance Under the USA PATRIOT Act”, URL: http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12263&c=206, Consulted 11/7
Additionally, according to the ACLU, this legislation did not include sufficient checks, balances and safeguards that would normally accompany such legislation. Even if only partially true this is of absolute importance because of the scale of the potential for exploitation and abuse of rights and liberties inherent in intelligence legislation\textsuperscript{11}. In favour of more effective legislation for combating terrorism, many accountability measures involving already standing surveillance and intelligence gathering policies were apparently weakened. This included judicial oversight, accountability to public scrutiny, and the ability to challenge searches of property and information in courts\textsuperscript{12}. For example, under the new laws the FBI no longer needed to show evidence that the subjects of search orders were an "agent of a foreign power", a requirement of the previous Foreign Intelligence Surveillance Act. This must have reduced accountability by curtailing legislation that required evidence before rights damaging surveillance or intrusive search orders can be carried out. Similarly the government no longer needed to show evidence implying a reasonable notion that records or private information are related to criminal activity\textsuperscript{13}, despite the requirement for "probable cause" in the Fourth Amendment to the US Constitution\textsuperscript{14}. This could also have allowed significant lapse in accountability, allowing many likely useless and intrusive searches of innocent citizens. Even government employees at the time were forced to admit mistakes.

\textsuperscript{11} Electronic Privacy Information Centre, "The US PATRIOT Act", URL: http://www.epic.org/privacy/terrorism/usapatriot/
Consulted 10/7

\textsuperscript{12} American Civil Liberties Union, "Surveillance Under the USA PATRIOT Act", URL: http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12263&c=206
Consulted 10/7

\textsuperscript{13} American Civil Liberties Union, "Surveillance Under the USA PATRIOT Act", URL: http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12263&c=206
Consulted 10/7

\textsuperscript{14} Amendments to the Constitution
URL: http://www.house.gov/Constitution/Amend.html
because of the lack of accountability. For example, a Justice Department inspector
general’s report in late 2005 on the FBI’s backlog of wiretaps revealed many errors
in FBI wiretaps that were conducted on the wrong people, but didn’t reveal how
many were the result of “roving wiretaps” that are authorised in the PATRIOT act.
The FBI also failed to tell the media whether the incorrect phone numbers were
deleted from FBI files, or whether Americans were notified that their conversations
were mistakenly tapped and listened to by government agents.\textsuperscript{15}

Cross-referencing with the US constitution, it is easy to see potential for the
violation of a multitude of rights, at least those protected in that particular
document. Surveillance, including new intelligence powers, could be justified
under law based on one’s First Amendment related activities, which include
freedom of speech. Also, as mentioned, it is quite possible that the rights intrinsic
to the Fourth Amendment to the Constitution were violated because the necessity
to act quickly that provides the justification for much of the new legislation curtails
the old notion of probable cause, which demands evidence, which takes time.

Apart from surveillance and investigation related legislation, America’s counter-
terror efforts under the first Bush government also spilled into the treatment of
minorities and immigrants. A significant feature of the Bush Administration’s anti-
terror measures was the registration, monitoring and even deportation of refugees

\textsuperscript{15} American Civil Liberties Union, “Justice Department Report Reveals FBI Wiretap Mistakes,
ACLU Says Disclosure Shows Further Need for Patriot Act Reforms”
URL: http://www.acl.org/SafeandFree/SafeandFree.cfm?ID=19193&c=206
Consulted 10/7

\textsuperscript{16} Amendments to the Constitution
and immigrants regardless of connections to terrorism. Many have likened the 9-11 attacks to the attack by the Japanese on Pearl Harbour, where the immediate domestic reaction was to round up Americans of Japanese decent, and the similarities are indeed noteworthy. Perhaps the most striking attack on specific ethnic and religious groups aimed at protecting America from terrorism were programs such as the “Special Registration Program” requiring males over 16 years of age hailing from 25 primarily Islamic countries to present themselves to be photographed, fingerprinted and interviewed under oath. Those who failed to comply with the many requirements were then deported, despite many allegedly having applications for further visas or permanent residency in INS (now part of the Department of Homeland Security) backlogs. Similarly deported were most people detained (primarily based on ethnicity or religion) in the immediate aftermath of September 11, despite being cleared of any links to terrorism. Importantly, many of these people were sent back to states in which arbitrary detention and torture were common place, an especially worrying prospect for asylum seeking deportees, of which there were many.
The consequences of these domestic policy changes have also had serious implications for other states in the international system, and for the people living therein. The example set by the United States led to a belief, or at least an excuse, in many states that such policies were an acceptable tool for fighting local criminals or ‘terrorist’ groups, which led to significant increases in the violations of the rights of the people living under those governments and regimes. This is not to say that the PATRIOT act or any other piece of US legislation is directly responsible, just that together US polices caused a shift in notion of what were acceptable anti-terror measures for the new century. Three of the world’s largest nations, India, China and Russia were examples of culprits here. In India, legislation regarding long-term detention without trial was resurrected and used in July 2002 to imprison more than 1000 ethnic Tamils. Russia used lessoning international scrutiny in order to augment its military subjugation, and henceforth, rights violations in Chechnya. Similarly, China took the opportunity to crack down on the Islamic ethnic Uighurs of its westernmost Xinjiang province, against resulting in rights violations on a large scale. These are the larger scale examples, but there are other striking and noteworthy ones. In 2002 Liberian President Charles Taylor began to apply the term “unlawful combatants”, which is detailed later, to journalists and human rights activists who were critical of his regime. As "unlawful combatants", journalists have been arrested and held incommunicado, without access to a lawyer, even tortured. As stated by the Liberian Minister for Information in an interview:

“It was you guys [The US Government] who coined the phrase. We are using the phrase you coined”\textsuperscript{23}

Additionally, President Taylor has emphasised that Hassan Bility, a prominent arrested journalist was being treated “in the same manner in which the US treats terrorists”\textsuperscript{24}. The implications of this are fundamentally important, as it shows that the US has significantly altered its ability to legitimately put pressure on regimes for policies such as these. Similar policies can be found in Uganda, which has expanded anti-terror legislation to allow for the arrest of journalists and raids on news publications that “promote terrorism” (which may be as innocuous as simply reporting the news) which can culminate in the death penalty\textsuperscript{25}. Eritrea too has increased legal pressure on the independent media, holding journalists incommunicado, as well as arresting officials and former high ranking politicians who were known pro-democracy dissidents. Eritrea’s ambassador to the US insisted in an interview that such policies were perfectly consistent with democratic practices as the people in question were in fact detained for “breaching national security” He also cited the round-up of suspects in the US in the aftermath of 9-11\textsuperscript{26}. Again this is significant as it highlights the fact that the example set by the US has allowed the violations of rights in other countries that might not have occurred otherwise for fear of international scrutiny. This of course is not a claim

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that human rights violations are something new, only one that some blame for the violations of the years in question rests with a shifting climate given life by the policies of the US at the time.

The most damaging and numerous rights violations, and indeed a great many deaths stemming from the War on Terror were the results of foreign policy. This international aspect of the War on terror that would become increasingly important began primarily when the US started its campaign against the Taliban government in Afghanistan on the 7th of October 2001, less than a month after the fall of the twin towers\(^{27}\). These foreign policies included this invasion, as well as the invasion of Iraq, though motives here will remain ever questionable, and the ‘wheelings and dealings’ of the Bush government with foreign governments in the lead up to these conflicts. It also included the treatment of prisoners caught therein, and those caught elsewhere in the global search for terrorists. These policies are the subject of this last part of this chapter.

As stated, the US began its attacks on Taliban ruled Afghanistan on the 7th of October 2002. Keeping in mind this chapter does not require an exploration of the arguments for and against this conflict, only an exploration of possible rights violations therein, two important realities stand out. One if the number of civilian casualties, the other is the Bush administration’s choice of local allies, namely the Northern Alliance and Uzbekistan. By the time the air strikes stopped over

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\(^{27}\) I. Daalder & J. Lindsay, "Nasty, Brutish and Long: America’s War on Terrorism", *Current History*, December 2001, p. 404
Afghanistan, it is estimated that upwards of 3,800 Afghani civilians were dead.\textsuperscript{28} According to BBC, this estimate only includes those killed by the impact of weapons bombardment, and excludes the many who died later as a result of their injuries, or those dead because of damage to infrastructure, as well as those deaths likely unreported in more rural areas. Professor Marc Herold from the University of New Hampshire estimates a more accurate number might be as high as 5000.\textsuperscript{29} This greatly exceeds the estimate of the dead from the September 11 attacks, and can be attributed to the willingness of US strategists to fire explosive and varied ordinance into the highly populated areas of Afghanistan in order to quickly defeat the Taliban.\textsuperscript{30} Civilians do die in wars, but this does not detract from any individual’s right to life. As already stated, this chapter is not attempting to utterly condemn this military action, only to point out that rights violations took place.

America’s chosen allies in this conflict are also important due to their well deserved reputation for the violations of human rights, and that by their alliances with the US, were arguably given capacity and legitimacy to continue to do so. For example, throughout the civil wars in Afghanistan, all sides, including those that would become the Northern Alliance, committed serious human rights abuses including attacks on civilians, executions, rape, persecution on the basis of religion.

\textsuperscript{28} BBC - Afghanistan’s civilian deaths mount
URL: http://news.bbc.co.uk/1/hi/world/south_asia/1740538.stm
Consulted 5/10

\textsuperscript{29} BBC - Afghanistan’s civilian deaths mount
URL: http://news.bbc.co.uk/1/hi/world/south_asia/1740538.stm
Consulted 5/10

\textsuperscript{30} M. W. Herold, “A Dossier of on Civilian Victims of United States’ Aerial Bombing of Afghanistan”
URL: http://www.cursor.org/stories/civilian_deaths.htm
Consulted 5/10
or ethnicity, the use of children as soldiers, and the use of antipersonnel
landmines\textsuperscript{31}. Another ally of the US in this conflict, Uzbekistan, which had its aid
from the US tripled in return for its support, has a similarly dark record\textsuperscript{32}. Even
according to reports by the US State Department, Uzbek police and security forces
have a long history of grossly mistreating prisoners, often after planting evidence,
as well as the use of electric shock, suffocation, rape and other sexual abuse\textsuperscript{33}.
The situation was well summed up by a member of the Human Rights Society of
Uzbekistan, Talib Yakubov, who told a journalist:

\begin{quote}
“The attitude of the whole US administration shows that they have
traded human rights in Uzbekistan for airfields”\textsuperscript{34}
\end{quote}

The implications here are also of importance. These choices of allies further
entrenched the concept that human rights violations such as these were
acceptable aspect of fighting terror, and thus allowed their continuation.

Later in his first term, Bush and his government oversaw the invasion of Iraq,
which began on March 20, 2003\textsuperscript{35}. In this case, the same two points are

\textsuperscript{31} Human Rights Watch, “Human Rights Watch Backgrounder of United Front/Northern Alliance
Poor Rights Record of Opposition Commanders”, Oct.6, 2001
URL: http://www.zmrg.org/hrwma.htm
Consulted 3/9

\textsuperscript{32} Lawyers Committee for Human Rights, “Imbalance of Powers”,
Consulted 15/8

\textsuperscript{33} Lawyers Committee for Human Rights, “Imbalance of Powers”,
Consulted 15/8

\textsuperscript{34} Lawyers Committee for Human Rights, “Imbalance of Powers”,
Consulted 15/8

\textsuperscript{35} Special Report – Iraq Timeline
URL: http://www.guardian.co.uk/iraq/page/0,12438,793802,00.html
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particularly clear, and important, namely the death of so many civilians, and the means that were employed to garner support for the operation internationally. The initial invasion was quick and brutal, and estimates of civilian deaths are numerous and varied. When taking into account the long occupation and insurgency, the number of civilian deaths rises dramatically. One independent estimate concluded that at least 100,000 Iraqi civilians may have died because of the US invasion.\footnote{R. Stein, “100,000 Civilian Deaths Estimated in Iraq”, Washington Post, October 29, 2004, p. A16} However, according to Marc E. Garlasco, a senior military analyst for Human Rights Watch “I certainly think that 100,000 is a reach.”\footnote{R. Stein, “100,000 Civilian Deaths Estimated in Iraq”, Washington Post, October 29, 2004, p. A16} While the US military does not count the civilian dead, General Tommy Franks of US Central Command having stated “We don’t do body counts”, another independent estimate ranges from 26568 to 29922 dead civilians.\footnote{Iraq Body Count URL: http://www.iraqbodycount.net/} While these deaths aren’t specifically the result of misconduct by US military personnel, they share with the numbers in Afghanistan the revelation of a willingness to use high explosives on areas which house countless civilians in order to quickly end a war without risk to US ground forces.

The international conduct of the US in the lead up to its war on Iraq also had implications for the rights and freedoms of individuals outside Iraq. Just as the US allied itself with entities known for their gross violations of rights in the lead up to its invasion of Afghanistan, the US resorted to many unsavoury deals with other states in order to garner support in the UN to provide its impending war with
legitimacy. As was already mentioned Russia and China used the opportunity presented by the War on Terror in order to invigorate their subjugation and rights violations in Chechnya and Xinjiang respectively. This was given even more momentum in the lead up to the war in Iraq, as the Bush administration, after talks with these powers, effectively agreeing to consider numerous Chechnya and Uighur separatist groups as ‘terrorist groups’ in exchange for support on the Iraq issue. For example, the US government added the East Turkistan Islamic Movement (ETIM) to its official list of terrorist organisations after a meeting with Chinese officials in August, 2002. This provided the impetus and legitimacy for further rights violations by these governments against the populations of these independence seeking regions.

Also of special interest, given the huge scale of the debates it has given rise to, is the treatment by the US, of those captured in the various theatres of the War on Terror, either at home or in wars abroad. It might also be important to reiterate the fact that this chapter is not a ‘for and against’ discussion, and it focussed solely in investigating whether violations of rights took place. Of the thousands of detainees held in Cuba or in US bases elsewhere, the majority are made up of what are being called “enemy combatants” or “unlawful combatants”. They are called this, rather than “prisoners of war”, with the deliberate intent of denying those individuals the legal rights that would normally befit a soldier. Article 5 of the

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URL: http://www.fff.org/freedom/fd0312c.asp
Geneva Convention states that should any doubt arise as to whether a captured person belongs to any of the categories detailed in article 4, essentially whether or not they are a combatant, that they "shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal". This right is vital as it protects individuals who may not meet the criteria or were armed with a political or ethnic motivation unrelated to the war being fought by the US. A very slim few however, if any were given such a trial. By calling these captives "combatants", however, the administration was able to arguably misuse international law by carefully wording its statements in opposition to the general spirit of the international legislation. Article 118 of that same treaty states that a captured enemy may be held until the "cessation of active hostilities", which in this case is considered by the US administration to be the "War on Terror" itself. Such disregard for or exploitation of the wording of international law was damaging in its own right in that the rights meant to be protected by those documents were abused as a result.

These however are not the most serious violations relating to the treatment of prisoners. The apparent widespread use of torture was perhaps the most troubling phenomena associated with the means of the War on Terror. Examples of treatment that was in stark contrast to the norms or international law could be

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41 Geneva Convention Relative to the Treatment of Prisoners of War, Article 5
Consulted 18/8

42 Lawyers Committee for Human Rights, "Imbalance of Powers",
Consulted 18/8

43 Geneva Convention Relative to the Treatment of Prisoners of War, Article 118
found in Guantanamo, in prisons such as Bagram in Afghanistan and infamously, the Abu Ghraib prison near Baghdad in occupied Iraq. In Guantanamo, the harsh treatment of detainees included their constant interrogations but also their everyday treatment. According to Rose, whose book *Guantanamo* is a vivid account of the lives of prisoners in that facility, inmates were often beaten by soldiers in riot gear, chained, punched and kicked and forcibly had their eyebrows, face and hair shaved as the result of minor infringements of the many rules of the prison.\(^{44}\) During interrogations prisoners were allegedly subject to much worse, with treatment ranging from being chained in various painful positions for hours on end and forced to soil themselves, to being blasted with freezing or hot air to being deprived of food and sleep.\(^{46}\) In the prisons in Afghanistan, such as Bagram, the situation was perhaps even worse. At least five detainees died in custody, three of them in suspicious circumstances.\(^{46}\) One of the dead, known only as Dilawar, had been chained by the wrists to the top of his cell for much of the previous four days before his last interrogation. He was then denied water, promised medical attention then chained to the ceiling of his cell. Hours later a doctor found him dead.\(^{47}\) Survivors have also reported the use of beatings, stripings, ‘hoodings’ and sleep deprivation\(^{48}\). Perhaps the most famous theatre as far as torture is concerned, thanks largely to a well known collection of striking photographs, was Abu Ghraib. This prison was home to several thousand people, including women.

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\(^{45}\) D. Rose, "Enormously Valuable Intelligence", *Guantanamo*, , 2004, pp. 104-06


and teenagers, many of whom had been arrested during military sweeps and at checkpoints. The totality of the violations of rights here is perhaps best summed up by a report by the US army’s own Major General Antonio M. Taguba, which reads:

Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick, and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.

This report was never meant for public release. In regard to the prisons in Afghanistan, Senator Patrick Leahy, the Democratic member of the Senate subcommittee on foreign operations at the time said in an interview:

"These abuses were part of a wider pattern stemming from a White House attitude that 'anything goes' in the war against terrorism, even if it crosses the line of illegality."  

This sums up what is most troubling about these many cases of torture. It seems apparent to an observer that a new precedent was set in regard to what was acceptable. The consequences of this for the rights of those unfortunate enough to

49 S. M. Hersh, “American soldiers brutalized Iraqis. How far up does the responsibility go?”, The New Yorker, May 10, 2004
50 S. M. Hersh, “American soldiers brutalized Iraqis. How far up does the responsibility go?”, The New Yorker, May 10, 2004
be captured and considered the enemies of the US in the War on Terror were that they could expect harsher treatment and the violations of rights that entails.

It should be noted that this chapter has not attempted to detail the extensive arguments both for and against any of the discussed policies, since they largely revolve around justifications, not the issue of simply whether violations of rights have taken place, which is the focus here. It should also be noted, since it is the primary theme of this thesis, that this thesis considers the violations of rights to require justification. Due to significant evidence pertaining to the universality and validity of rights, our universal psycho-biological nature that we all as humans share, and our collective will to be free from torture and death, it is largely apparent that the violations of rights should be avoided wherever possible. This is not to say that they are inherently impossible to justify, only that morally, a justification is required\textsuperscript{52}. Therefore, all of these policies, because of their inherent violations, both tangible and potential (it may be some time before we can be certain of the all events of this period) should require a justification. As has been reiterated through this chapter, it has not been the purpose here to tackle these issues in their entirety, only to reveal that the issue exists, and therefore warrants further discussion.

In conclusion, the means of the first Bush administration’s War on Terror were both numerous and damaging to the ideals of freedom and human rights. From the domestic war on privacy and non-discrimination as a defence against terror to the

invasion of Afghanistan and Iraq, to the means employed to extract information and break prisoners, the real or potential violations of rights were noticeable to behold. Innumerable individuals had a variety of rights which are protected in a number of international and US legal documents stripped away, and many more lay dead as a direct result of some of the policies mentioned. Regardless, this is not to say that is it impossible to think of a case in which some, even all of these measures might have been justified. The argument that the US faced such a tangible and deadly threat that any such policies would be just in the defence against it could provide a significant degree of just legitimacy, as might the argument that these policies provided a safer future for the American public. A lack of alternative policies options might also provide something of a justification, for the great many real and potential violations detailed here.
Chapter 2

Terror and the Notion of Just Defense

The arguably most important objective of the War on Terror was the defence of the American homeland, people and assets (and as required, those of America's allies) from the spectre of both 'conventional' and weapons of mass destruction (WMD) based terrorist attacks. Although the defence of ideas, such as 'freedom' and the defeat of 'evil' played important roles, the resulting policies of all were essentially the same. With the memory of that fateful September day in 2001 forever etched into the so many memories, it seems obvious and fair that ensuring no state, society or individual need experience such an attack again should be an objective high on the priority list of the American government. However, questions must be asked, such as how much doubt arises in regard to the risk under exploration? More importantly, does the risk justify the loss of rights and liberties inherent in the Bush administration's policy solutions? This chapter will explore the risk posed by terrorism (in particular, the dreaded hypothetical scenario of WMD based attacks) in the contemporary world. In doing so, it will argue that the scale of the threat posed by terrorism is easily exaggerated, and therefore cannot alone easily justify the ill effects discussed in Chapter 1. Naturally, coupled with this objective is the defence of the United States and its allies from the ill intentions and unpredictable violence of the so called 'rogue states' of the international system. This chapter will also briefly explore the validity of the threat posed by Iraq. In doing so, it will reveal that, like the threat posed by international terrorism; there are sufficient doubts about scale of the threat that the threat alone is an insufficient justification for the violations of rights inherent to the war.
Almost everyone is aware of the sheer apocalyptic potential that is inherent in many WMD, be they chemical, radiological, nuclear or biological weapons or agents. Even chemical agents, which lack some of the strengths which make nuclear and biological weapons so attractive, are more than capable of incapacitating or killing the human body in very small doses and in a minimal timeframe. Radiological weapons, often coined ‘Dirty Bombs’ or radiological dispersal device (RDD), are capable of spreading dangerous radioactive materials over urbanised areas. Many damage estimates have been made on the potential damage to US cities of a nuclear device, and none of them leave any room for optimism. A one megaton nuclear weapon could utterly decimate the Empire State Building, incinerating the 20,000 people who work there and causing a shockwave, heat and fallout that when taken together could deliver a death toll of upwards of 200,000 on the people of New York and surrounding regions. A ten megaton weapon detonated in Times Square could kill half a million working New Yorkers in the initial blast alone, and many more with a nuclear weapons other well known effects, blast wave, secondary fires and fallout. Biological agents possess the ability, and potential, to spread amongst a population by going unnoticed thanks to incubation periods, and once easily recognisable symptoms begin to show, many have mortality rates upwards of 90%.

56 Biological Warfare Agents, Federation of American Scientists URL: http://www.fas.org/nuke/intro/bw/agent.htm
Consulted 27/10
However, any attempt to gauge the severity of the threat posed by WMD based transnational terrorism poses many questions that must be answered. For example, what difficulties are inherent in obtaining materials that could be used for building or designing a functional weapon? How significant are the technical hurdles intrinsic to weaponising any such materials? How serious are complications that arise in actually mounting a successful attack of note with a working weapon? Is the question of sufficient terrorist motivation to overcome these obstacles as clear cut as many believe? This part of this chapter will explore these important questions in relation to the different families of WMD in order not to dismiss the threat entirely, but to cast doubt on its severity and its likelihood of becoming a reality.

Chemical weapons have received their share of discussion and attention, largely because there are well documented occasions of these weapons being used in the contemporary world, by states, and importantly, by the fanatical Japanese organisation Aum Shinrikiyo. Obtaining materials and equipment related to chemical weapon production is one area of particular concern, and admittedly, this is with good reason. Many of the base chemicals used in the production of viable weapon agents, and the technology used to do so, are similarly used in innocent industrial applications in any number of states. For example, the primarily chemical component of mustard gas, thiodiglycol, is used in the production of pens, and

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57 A. O'Neil, "Terrorist use of weapons of mass destruction: how serious is the threat?", *Australian Journal of International Affairs*, Volume 57, Number 1, 2003, p.103
requires only a common acid to be ‘weaponised’\textsuperscript{58}. This ‘dual-use’ aspect of the materials and technology means that the effective prohibition or effective tracking of their sale is nigh on impossible\textsuperscript{59}. The expertise required to turn these chemicals into relatively viable weapons is also unfortunately widely available\textsuperscript{60}. Such expertise could be acquired from almost anyone with chemistry training, or from disgruntled or impoverished scientists from defunct weapons programs in the former Soviet Union or elsewhere, it might even be obtained via the internet, with many how-to guides available for the would-be terrorist or criminal\textsuperscript{61}. It might also be possible to purchase or steal weapon agents or acquire them from scientists like those mentioned above. For example, chemical weapons were stolen from four separate army depots in Albania in 1997\textsuperscript{62}. All of the above is further compounded by the fact that acquiring and weaponising such materials has been done before by terrorist groups. The Aum Shinrikiyo cult mentioned acquired and used a chemical weapons capability on the Tokyo subway in 1995, killing 12 and injuring upwards of five thousand\textsuperscript{63}. However, even this well funded operation was botched\textsuperscript{64}, which logically raises the question of the difficulties of mounting a large scale attack despite the relative ease of procurement.

\textsuperscript{58} J. Stern, “Getting and Using the Weapons”, The Ultimate Terrorists, 1999, p. 50

\textsuperscript{59} Thakur, R., Keeping Proliferation At Bay, Centre for Strategic and International Studies, Jakarta, p.47

\textsuperscript{60} for example see - Terrorism 101 URL: http://www.thesmokinggun.com/archievejihadmanul.html

\textsuperscript{61} J. Stern, “Getting and Using the Weapons”, The Ultimate Terrorists, 1999, p. 49-52

\textsuperscript{62} J. Stern, “Getting and Using the Weapons”, The Ultimate Terrorists, 1999, p. 49

\textsuperscript{63} A. O’Neill, “Terrorist use of weapons of mass destruction: how serious is the threat?”, Australian Journal of International Affairs, Volume 57, Number 1, 2003, p.103

\textsuperscript{64} A. O’Neill, “Terrorist use of weapons of mass destruction: how serious is the threat?”, Australian Journal of International Affairs, Volume 57, Number 1, 2003, p.103
While it is true that procuring a viable chemical weapon agent is less difficult than one might hope, there are significant hurdles in actually mounting a successful large scale attack. On a small scale, such as within the confines of a building, disseminating a chemical agent is relatively easy, but over larger areas, as would be required in a large scale attack on an urban centre, several problems present themselves. Simply getting the agent into the air presents one set of problems. First of all, the weather can present an obstacle, as wind conditions can make or break a dissemination effort. Second, according the Stern, special equipment mounted on a vehicle would likely be required to spread the agent amongst streets. Using explosives is not particularly effective in that a good deal of the agent is lost by incineration in the initial blast. Particle size would also vary, limiting lethality in many cases. The usefulness of pyrotechnics for dissemination is additionally limited by the flammable nature of some agents. Since piloting an airplane or helicopter unhindered over a bustling American city would be tremendously difficult, this only leaves static dissemination, or the use of a ground vehicle that would have to travel unimpeded and ensure the safety of the driver (considering the driver would have to survive long enough to disseminate the agent). Additionally, and perhaps more importantly, the sheer volume of chemical agents required for lethality over a significant tract of land is prohibitive. Even using Sarin, an incredibly deadly nerve agent an attack over a square kilometre would require approximately one metric ton of the agent. This provides further problems in all stages. Procuring vast amounts might present problems that aren't

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66 Chemical Weapons Delivery, Global Security.org
URL: http://www.globalsecurity.org/wmd/intro/cw-deliver.htm
Consulted 3/8
associated with procurement of smaller amounts. Storage for vast amounts would be difficult and dangerous, as would transporting the material from one location to another. This is of course not an attempt to dismiss this threat entirely; on the contrary, the threat is a real one. However the difficulties mentioned do cast doubt on whether the severity inherent to the War on Terror in this context was justified.

Radiological weapons join chemical weapons in being the easier weapons to procure and produce. Radiological weapons, or ‘dirty bombs,’ are essentially conventional explosives mixed with radiological of nuclear materials, their proliferation and availability depends directly on the availability of radioactive materials. This is a subject more at home in a discussion of nuclear weapons themselves, but it is worth mentioning that a dirty bomb need not be made from materials that are the subject of international scrutiny like the materials that are capable of fuelling a full scale nuclear weapon. They could, without difficulty, be made from easier to procure material such as that used in medical equipment\textsuperscript{67}. Viable material could come from such innocuous sources as a dentist’s office or smoke detectors\textsuperscript{68}. This material could then simply be combined with an explosive device, or could be disseminated alone in a solely radiological attack. These materials would be so easy to procure, and such an attack so easy to perform, that the general consensus is that such an attack is inevitable, even overdue.

However, in contrast to the ease of producing such a weapon as a dirty bomb or RDD, its possible effects, looked at in the context of this chapter, are much less

\textsuperscript{67} A. O’Neil, “Terroris: use of weapons of mass destruction: how serious is the threat?”, \textit{Australian Journal of International Affairs}, Volume 57, Number 1, 2003, p.102
terrifying. If radioactive material was disseminated alone it could poison, or give
cancer to the occupants of a small building or other enclosed space such as a
floor of a skyscraper. Granted, they are capable of causing fear and anxiety, but
they are simply incapable of causing significantly more damage than explosives
alone could cause. The weather plays a role here as well, as the terrain of an
urban centre, usually considered a weakness, is something of a defence as such
concentrations of buildings are capable of absorbing large portions of a weapons
radiological potential. This is not to dismiss the potential of these weapons to
take life, but in the context of a grand a venture as the War on Terror, the threat
posed by such weapons seems insufficient to warrant the policies discussed in
Chapter 1.

Biological weapons in the hands of fanatical terrorists are fast becoming a widely
feared threat. There is good reason to be concerned as, with any of the weapons
discussed, relative availability of materials is a troubling phenomenon. Biological
agents share with their chemical based cousins an inherent dual use nature. The
technology and materials needed for the production of many biological warfare
agents are widely available in any state which has an active medical sector. Many
of these technologies, used for developing and manufacturing vaccines and cures,
can just as easily be used to cultivate bio-weapons. In the same vein as
ordinarily benign substances that can be used in chemical weapons production,
these substances and equipment are all but impossible or impractical to effectively

68 G. Allison, "Introduction", Nuclear Terrorism, 2004, p.8
69 G. Allison, "Introduction", Nuclear Terrorism, 2004, p.8
70 J. Stern, "Getting and Using the Weapons", The Ultimate Terrorists, 1999, p. 55
71 Thakur, R., Keeping Proliferation At Bay, 1998, p. 47
track or prohibit. The hurdles in producing an agent from those materials and equipment are not overwhelming either. A group might be able to secure the services of scientists from defunct weapons programs mentioned earlier, or might be able to effectively produce agent with a group of biologists who aren’t necessarily familiar with advanced weapons technology\textsuperscript{72}. They might also be able to access sufficient information from books or from sources on the internet, which offers many of the how-to guides already mentioned, to produce an agent.

After a biological weapon agent is produced however, there are significant scientific and technical hurdles (compared to conventional weapons) that need to be overcome in order to launch a successful attack. Like a chemical agent, small scale exposure would be relatively simple (assuming successes at every state proceeding), such as exposing the occupants of a small space like a plane or small building. However, such a situation would be much easier to control than a larger scale attack, and the threat of a less serious attack obviously justifies a less severe response. It should also be noted that even the Aum Shinrikiyo cult, despite having significant financial backing\textsuperscript{73} and front companies, as well as members and employees with substantial scientific training and weapons research experience\textsuperscript{74}, eventually gave up on the development of biological agents. The organisation poured substantial effort into developing weapons agents and met with some success, but was unable to overcome these hurdles, even after ten

\textsuperscript{72} J. Stern, “Getting and Using the Weapons”, \textit{The Ultimate Terrorists}, 1999, p. 50

\textsuperscript{73} W. C. Wohlfarth, “New Security Challenge or Old? Russia’s Catch-22” URL: \url{http://www.isn.ethz.ch/3isf/Online_Publications/WS4/Wohlfarth.htm} Consulted 27/10

\textsuperscript{74} J. Parachini, “Putting WMD Terrorism into Perspective”, \textit{The Washington Quarterly}, Autumn 2003, p.45
attempted biological weapon attacks of various kinds\textsuperscript{75}. The first of these hurdles is a significant one that presents itself between creating a base weapon agent and a viable weapon. This is the technically difficulty inherent in making sure an agent can successfully infiltrate the human body. To be respirable, particles of a weapon agent must be between one and five microns in diameter. According to Stern, even states such as Iraq have had serious trouble overcoming this technical obstacle\textsuperscript{76}. It is quite conceivable then that the capacity to overcome this problem would be prohibitive for terrorist groups, despite the availability of other materials and expertise\textsuperscript{77}. The difficulties inherent to staging an actual attack are also significant. The weather conditions and terrain play a large role here. Most biological weapon agents are vulnerable to humidity, dehydration, oxidation, pollution and heat\textsuperscript{78}. This means that without perfect conditions for the agent in question, large scale infections amongst a population are unlikely. As bio warfare agents are living cells, many are prone to die and therefore become inactive in all but the most specific temperature or weather conditions. As such, dissemination poses the same, if not more hurdles than large scale distribution of a chemical agent. Explosives are simply not an option here, even less so than with chemical agents, as biological agents are significantly more vulnerable to both heat and shock. These poses the same problems associated with wide scale chemical agent dissemination, such as the need for specialised equipment which would likely require a vehicle to spread an agent more than a short distance. Additionally, biological agents are not volatile like their chemical cousins in that when released,

\textsuperscript{75} J. Parachini, “Putting WMD Terrorism into Perspective”, \textit{The Washington Quarterly}, Autumn 2003, p.45
\textsuperscript{76} J. Stern, "Getting and Using the Weapons", \textit{The Ultimate Terrorists}, 1999, p. 53
\textsuperscript{77} J. Stern, "Getting and Using the Weapons", \textit{The Ultimate Terrorists}, 1999, p. 53
they won’t spontaneously form a gas. Again, the purpose here is not to unduly dismiss the threat, but cast doubt on its severity and the likelihood of its realisation.

Perhaps the scariest and most widely discussed possibility for the future of terrorism is a successful attack with a nuclear weapon on an urban target. As already noted, there is ample reason to fear such a turn of events, and there are, undeniably, disturbing trends regarding nuclear proliferation. First is the availability of materials, namely highly enriched uranium (HEU) and plutonium. Allison in *Nuclear Terrorism* makes this observation, citing the weakness in security in many facilities which house such materials and pointing the finger at the states of the former Soviet Union. There are countless sites in these states that house such materials, and many do indeed have security systems that are lacking. For example, there were apparently at least four occasions between 1992 and 1999 when weapons–usable materials were stolen from several Russian institutes, though they were all later recovered. This problem is, of course, not limited to the states of the former Soviet Union. Even the security of facilities storing HEU and plutonium in the continental US has, in the past been questionable. In 1997 security personnel at the Rocky Flats nuclear facility outside Denver informed federal investigators that terrorists would be able to infiltrate the facility following the resignation of the plants director of security who left “in disgust” because of the safety concerns. There are also related concerns about possible theft or

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81 J. Stern, “Getting and Using the Weapons”, *The Ultimate Terrorists*, 1999, p. 57
underhanded sale of complete weapons. These concerns range from the lack of security at sites housing complete or near complete weapons, to tales of the theft or sale of ‘suitcase’ to groups like Al’Qaeda. Many observers have cited that it would be simple to obtain such a weapon, while others firmly believe that such devices are already in the hands of terrorist organisations. Further concerns arise from claims on the ease with which a functioning weapon can be assembled, once the process of producing or procuring adequate HEU or plutonium is concluded. The South African experience (The South African regime having built a bomb in secret) shows that with a relatively small budget running in the millions rather than billions, and with only hundreds of staff a simple but effective weapon can be constructed\(^2\).

There are, however, significant obstacles, and to say that procuring or manufacturing a weapon would be easy is an overstatement. An attack with a functioning nuclear weapon appears by far to be the least likely of the possible terrorist WMD attacks. Manufacturing weapons grade uranium and/or plutonium from scratch is quite likely beyond the capacity of a non state group. Manufacturing either requires extensive and expensive infrastructure that is beyond even a large non-state group to control or fund. Proliferation of material can also be somewhat exaggerated. It is troubling, this much is true, and security measures are indeed insufficient for guaranteed safety, but the state of affairs has not yet degraded to the point where one can readily assume that stealing a sufficient amount to construct a weapon, and doing so undetected, would be a

\(^2\) J. Stern, “Getting and Using the Weapons”, *The Ultimate Terrorists*, 1999, p. 58
simplistic task. Producing an actual weapon, while perhaps being within the grasp of many states, would still provide an impressive barrier to any non-state group, even one that was relatively well funded. Producing the parts of a workable weapon requires precise machinery and industrial infrastructure, as well as expertise from a variety of fields, ranging from the physical, to the chemical, to the metallurgical properties and processes of the necessary materials. It would be quite difficult and expensive to recruit sufficiently well trained scientists and engineers, and unlikely that any non-state group could garner the necessary know-how from within its own ranks. The nature of nuclear materials also means that safe storage and transportation throughout all stages of development would pose further prohibitive problems for terror organisations. As a result, while the potential of nuclear weapons means we must remain ever vigilant, these difficulties and limitations imposed by their technical specifications cast some doubt on whether this threat alone can justify the policies of the War on Terror.

Regarding Al’Qaeda specifically, seeing as though this group or one of its many similar affiliates are the most likely source of WMD attack against the US or US allies, there are points of special interest. First of all, since the US led invasion of Afghanistan in the immediate aftermath of 9-11, Al’Qaeda has been bereft of a stable and safe base of operations, having called Afghanistan home since 1988.

84 A. O’Neil, “Terrorist use of weapons of mass destruction: how serious is the threat?”, Australian Journal of International Affairs, Volume 57, Number 1, 2003, p.102
85 Al’Qaeda – Timeline
URL: [http://news.bbc.co.uk/2/hi/3618762.stm](http://news.bbc.co.uk/2/hi/3618762.stm)
Consulted 29/9
While it is true as this chapter has noted that the manufacture of WMD in some cases is not beyond the capability of a small albeit well funded group, this process does require expertise, equipment and infrastructure localised at a particular base of operations. Al’Queda however, for all its resources, has been scattered into cells\(^{86}\), or in some cases drawn to the conflict in Iraq, reducing its overall capability to pool capabilities and resources for a WMD procurement effort. Secondly, even with their safe haven in Afghanistan for so many years, it is apparent from searches of Al'Queda bases and training camps that there is little physical evidence to suggest that the organisation had more than an embryonic WMD manufacturing capability\(^{87}\). Although this presupposes a justification for the invasion of Afghanistan, it casts a degree (albeit a small one) of doubt on other means of the War on Terror.

It is also important to explore the question of motive when it comes to WMD style, mass casualty terrorism. Thus far Islamist ideology (the driving force behind Al'Queda and affiliated groups) has put significant emphasis on the nobility of self-sacrifice. The struggle between ‘Islam' and the ‘West' is, for Jihadis, a very symbolic one in which nobility mixed with violence is the paramount asymmetrical path for regaining the honour of the Islamic global ‘nation'\(^{88}\). This has led to suicide attacks being favoured above all other methods\(^{89}\), and these are attacks which

\(^{87}\) J. Parachini, “Putting WMD Terrorism into Perspective”, The Washington Quarterly, Autumn 2003, p.39
lend themselves to the use of relatively conventional explosives carried by
individuals, or in the extreme case of 9-11, the suicidal piloting of airliners. While
the damages to human life and economic strength inflicted during the 9-11 attacks
are bewildering, it is possible to draw a small degree of optimism. The planes used
as piloted suicidal missiles in these attacks hit extremely symbolic targets rather
than the most densely populated of all possible targets. These planes could have
chosen more damaging targets, both to innocent lives and to the American
economy, and could have caused casualties synonymous with a WMD attack, but
didn’t. The plane that hit the North Tower of the World Trade Centre could have
instead collided with the Indian Point nuclear power plant. Others could have
crashed into Three Mile Island or the North Anna power plant\textsuperscript{90}. If an airplane
breached the containment dome of such a plant, it could release the radiation
unleashed in the Hiroshima and Nagasaki bombings hundreds of times over\textsuperscript{91}.
This would be reminiscent of the meltdown in Chernobyl which caused
approximately $300 billion\textsuperscript{92} in economic damage and led to tens of thousands of
deaths from cancer\textsuperscript{93}. An even worse turn of events would be if a plane was
piloted into a building containing pools and spent fuel rods. These pools are often
open to the air or stored in light-duty buildings. If they drained and backup systems
were destroyed, which is entirely feasible given the damage a fully laden airliner
can do, the fuel would ignite and the fires and fallout would be the equivalent to

\textsuperscript{93} Chernobyl – Overview of Health Consequences
Consulted 29/9
three or four Chernobyls added together. However, if the operatives were aware of these options, they chose to overlook them in favour of the infamous attack we all know. This reveals at least a small degree of doubt about the relationship between fundamentalist Islamist terrorists and WMD or nuclear related attacks.

It is important to note that terrorists are not bound by the norms which to a significant degree dictate the actions and reactions of states. They do not therefore adhere to the taboo surrounding the deliberate slaying of civilians or that surrounding the use of WMD. It is also important to note that so called ‘new’ breeds of terrorist seem to be more inclined to commit mass casualty attacks than more traditional separatist or politically inclined terrorists in that many are driven by hatred and/or fanaticism to attack their enemies. Osama Bin Laden himself has declared in an interview:

We don’t consider it a crime if we tried to have nuclear, chemical, biological weapons. Our Holy Land is occupied by American and Israel forces. We have the right to defend ourselves and to liberate our Holy Land.

Nevertheless, Dr. Reuven Paz has analysed the communication amongst Islamic fundamentalist organisations, including Al’Qaeda and related groups and found surprisingly little confirmation of a desire to use WMD amongst Jihadis. He conducted this research on many internet sites and forums frequented or run by

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94 G. Allison, "Introduction", Nuclear Terrorism, 2004, p.8  
95 Tucker, J. B, Toxic Terror – Assessing Terrorist use of Chemical and Biological Weapons, MIT Press, 2001, p.11  
96 Tucker, J. B, Toxic Terror – Assessing Terrorist use of Chemical and Biological Weapons, MIT Press, 2001, p.11
Jihadis, which are one of the fundamental locales for such groups discussing their ideas now. Therefore, these findings are significant in that they cast a degree of further doubt on the relationship between rank and file terrorists, their supporters, and WMD.

Diffusing the threat of WMD based terror however is only one part of an exploration of the threat of terrorism, albeit a fundamentally important one. The events of September 11 proved strikingly that WMD was not a necessary component of mass casualty terrorism in the contemporary world, so it is important to also explore terrorism in a more traditional sense. However, the case of the threat of conventional terrorism to the US is somewhat weakened the fact that after 9-11, Americans saw very little in the way of terrorist attacks at home. In spite of continued threats from the leadership circle of Al'Qaeda in released videos and statements, the continental United States emerged unscathed during the period in question. Disregarding the multitude of attacks in occupied Iraq and Afghanistan, which cannot be attributed to terrorists alone (though their roles shouldn't be understates either), the United States faced very little in the way of attacks. Its allies have admittedly been subject to some serious attacks however. The attacks in central London in July 2005 claimed 52 and injured 70098. The bombings in the capital of Spain, Madrid, caused the death of 190 innocents99. The most violent

99 MSNBC - Madrid bomb Death Toll Lowered to 190 URL: http://www.msnbc.msn.com/id/4502350/ Consulted 2/8
and deadly attack since 9-11 was the Bali bombings in 2002. This series of blasts killed another 202 innocent Balinese and tourists\(^\text{100}\). Comparatively, the attacks on the US in 2001 claimed 2752 at the World Trade Centre, and another 147 on the other two flights\(^\text{101}\). While the lives lost in all of these attacks are all in the own right both heinous and dreadful they simply don’t paint a picture of a society who’s existence is threatened in a way that would justify everything that was ‘the War on Terror’ at this time. Yet again this is not to discount the threat completely, simply to show one might have trouble balancing justly the defence against this threat with the means of the War on Terror discussed. It is also important to note that terrorism is not a new phenomenon, and so it seems unlikely that the policies discussed are the cause of this relative calm on the US mainland.

Finally it is important to explore the apparent threat posed by Iraq, because cf the lost rights inherent to the US invasion. The question of the threat posed by so called ‘rogue states’, in this case, Iraq, can be dissected into two fundamental questions. First of all, what threat do such states pose to the United States, and second, how likely are these states to ally with terrorist organisations, such as Al’Qaeda and to supply them with WMD or materials. These two questions are the focus of this last part of this chapter.

\(^{100}\) Bali death toll set at 202
URL: http://news.bbc.co.uk/1/hi/in_depth/asia_pacific/2002/bali/default.stm
Consulted 2/8

\(^{101}\) CNN.com - New York reduces 9/11 death toll by 40
Consulted 2/8
First, in the case of Iraq, the gift of hindsight allows us to effectively gauge the threat that the regime posed to the US. While we know that in the aftermath of the first Gulf War Iraq possessed significant stockpiles of chemical and biological agents, in the aftermath of the most recent war, the Iraq Survey Group (ISG), which was charged with finding the old regimes stockpiles of WMD, found so such stockpiles, as evidenced in its final report\textsuperscript{102}. It could be argued that Saddam would never have attacked the United States in his own right, regardless of any weapons capabilities he might have procured. His love of his own power would have likely been much more powerful than his disdain of the United States, and even of Israel. Unlike Islamic Fundamentalists (Saddam himself being secular\textsuperscript{103}), he valued his life and the life of his regime above all else. If left alone, it would simply not have been in the interest of Iraq to ever push the US to the point of war, as the regimes would not survived, as the striking US victory clearly shows. Even with a WMD capability, attacking the US would mean regime suicide. A much more useful and logical role for a WMD capability in Iraq would have been deterrence.

Secondly, it is unlikely that Iraq would have been willing to transfer WMD capabilities or technologies to terrorist organisations with the intention of using them against the United States. Even if Iraq were in a position to do so, the risk of being discovered would overshadow any possible gain. If discovered Iraq would

\textsuperscript{102} ISG Final Report
Consulted: 3/8
\textsuperscript{103} Profile: Saddam H.\textquoteright{}sein
URL: http://english.aljazeera.net/NR/exeres/A4B113BA-8CCA-4538-B10E-7FDFA773EDF1.htm
have faced almost inevitable destruction at the hands of the US, who, having been attacked with WMD, might be inclined to respond in kind\textsuperscript{104}. In the world prior to the invasion of Iraq, regime survival was the paramount objective of the government in Baghdad\textsuperscript{105}. However, it must be conceded that under threat by the US regardless of intentions, such restrictions might not have applied, and only hindsight has provided enough evidence to be sure of Iraq's WMD potential. Regardless, if the invasion of Iraq had never been planned, it seems apparent that Iraq posed little threat. This is not a certainty, but it casts significant doubt on justifications of the war based solely on defence.

In closing, neither WMD terrorism, nor conventional terrorism, nor Iraq provided enough of a discernibly severe threat to easily justify the entirety of the War on Terror. This chapter has not tried to argue in favour of any particular policies, or any particular balance between security and liberties that might be justified, nor has it asserted that it would be impossible to justify the War on Terror by arguments of defence alone. It has simply aimed to cast doubts on the commonly perceived threats of transnational terrorism. The many hurdles inherent in procuring and using WMD, from the technical difficulties of disseminating large enough amounts of chemical agents, to the collection of enough weapons grade nuclear material, to the industrial hurdles of manufacturing a workable nuclear device, pose many doubts about the threat of WMD based terror. Similarly, the scale of the threat posed by conventional terrorism did not prove to be as severe as justifications for the War on Terror might have indicated. Finally, the US was

\textsuperscript{104} J. Record, "The Bush doctrine and war with Iraq", \textit{Parameters}, Spring 2003, p.11
not under threat from the intentions of Iraq. Ultimately, the means of combating terror employed by the Bush administration cannot be easily justified by the threat they are meant to thwart alone. However, it would be folly to dismiss the threat completely, and therefore folly to assume that simply casting doubt on the severity of the threat proves that the policies of the War on Terror were unjust. It casts some doubt, but given that the threat is a real one, there are other questions, and other possible justifications, that need to be explored. Importantly, having conceded that the threat cannot be completely dismissed, the pragmatic question of whether the policies of the first Bush government were effective provides a strong possible justification.

105 A. O’Neil, “Terrorist use of weapons of mass destruction: how serious is the threat?”, *Australian Journal of International Affairs*, Volume 57, Number 1, 2003, p.105
Chapter 3

Justice and American Security

"I dread our own power and our own ambition. I dread being too much dreaded"
- Edmund Burke, on the British Empire

The War on Terror conducted by the first Bush administration resulted in the curtailing of numerous rights and freedoms, both at home and abroad, and led to the invasion of more than one other country, this much this thesis has already explored. It has also explored the severity of the threat these means were induced to combat and found significant uncertainties. However, it has also conceded that it would be folly to dismiss the threats completely, and so, one is faced with other questions that might justify the means of the War on Terror. Perhaps the most important of these is the question of whether these means worked effectively in their allegedly intended role, to ensure the safety of the American people from terrorism. This chapter will explore this question and argue that the policies of the first Bush Presidency in this field cannot be easily justified by their effectiveness, because they were often ineffective. This chapter will first argue that many the policies of the War on Terror were ineffectual and therefore unjustifiable. Second it will argue that the US, through many of its policies, weakened its own position internationally, and therefore, hindered its own ability to fight the War on Terror. Finally, it will argue that many of the policies of the War on Terror during this time had other counterproductive effects in strengthening the position of terrorists and states or groups that might have supported them.
Starting with anti-terror legislation at home in the US, there is one important argument reveals to a degree the folly of violating rights and sacrificing accountability (as explored in Chapter 1) in a search for security. That is that it is the very nature of Western society that makes terrorism such a practical political tool, not the absence of anti-terror laws like the PATRIOT act. Terrorism is a viable tool because of the way we as Westerners live, and no policy could alter that. Most Americans, like most Westerners, live in cities, which are structured for economic efficiency and waste reduction, leaving them vulnerable because of their closely packed utilities, transportation and energy networks. Thousands of strangers move in and out of cities every day. This is one thing that makes them viable targets for terrorism; their very nature and the privacy enjoyed by individuals make it possible to move and act unnoticed. The policies employed by the first Bush administration attempted to alleviate this vulnerability, but they could never do so effectively as this problem is in one way so deep rooted so as to be beyond policy (in that city planning and architecture is literally set in stone) and in another so deep rooted socially that only totalitarianism could effectively combat it. As such, the policies of the first Bush government could be seen as ineffective and thus unnecessary and therefore unjustifiable. However, it must be said this could be seen as a need and justification for more, rather than less intrusive surveillance. The problem here though is that, as stated, barely any conceivable policy could ever alleviate this vulnerability without being too draconian to justify, regardless of degrees of success.

106 M. Dudley, “Inflexible, 'Brittle' Cities Vulnerable to Terrorism”
URL: http://www.planetizen.com/node/16897
In regards to the invasion of Afghanistan, the effectiveness of the means employed by the first Bush administration was also somewhat lacking. Although there was a substantial argument in favour of the invasion of Afghanistan, an argument that this thesis does not necessarily refute, the way in which the invasion and occupation was handled by the Administration means that the long term positive effect that may have come out of the invasion was, to a degree, lost in its infancy. This detracts significantly from what could have been a justification for the invasion and occupation in the first place. According to the anonymous author of *Imperial Hubris*, by failing the learn from the mistakes other states and Empires have made in the history of war in Afghanistan, and by abstaining from dedicated military action on the ground against Islamist insurgents, the US allowed the Taliban and Al’Qaeda to regroup and rearms themselves. After the initial invasion, the US went about propping up a Western style democratic, power sharing central government, despite the fact that Afghanistan is rife with ethnic and tribal conflicts and the fact that none of the values being forcibly imported have any more than small, unarmed constituencies. As a result, the US created a system that would have crashed the moment they stopped supporting it with their presence, and one to which a great many Afghans are opposed. The state of affairs created by the ignorance on the part of the US meant that eventually, the US will have to retreat, having achieved next to nothing, or invade again, with all that that entails. While Afghanistan was a necessary exercise due to its nature

Consulted 28/10

as a powerbase for Al'Qaeda, and thus could conceivably have been justified by
effectiveness, the particular conflict was less effective in the long term than it could
have been. This detracts from what might have been a solid justification for the
violations of rights therein.

In Iraq, the Bush administration took away the lives and liberties of many Iraqis
(and it should be noted, the lives of US military personnel as well) for significantly
less of a positive effect on the long term War on Terror than was achieved in
Afghanistan. The primary reason for this (the lack of a serious conceivable threat
from Saddam's regime) has been explored in this thesis already, but it is important
to reiterate. The invasion of Iraq and all the inherent lives and liberties lost can not
be justified in terms of successfully advancing the War on Terror because Iraq did
not pose a significant threat the US in the first place. Saddam's Iraq was in no
position to threaten the US, either with conventional forces, or with WMD based
attacks. According to many inspectors, efforts to disarm Iraq were already largely
successful, and post-war inspectors found no 'smoking gun'\textsuperscript{111}. Neither was it at all
likely to support terrorists, given that Saddam's regime was secular and therefore
the natural enemy of Islamist terrorists and an anathema to their aims\textsuperscript{112}. The only
Islamist group inside Iraq prior to the invasion, Ansar al-Islam, only survived as
long as it did because they were hiding from Saddam's military under the
American enforced no-fly zone\textsuperscript{113}. In short, the invasion of Iraq provided the US

\textsuperscript{111} G. Carter, "The President's Wars", \textit{What We've Lost}, Farrar, Straus and Giroux, New York,
2004, p. 29
\textsuperscript{112} G. Carter, "The President's Wars", \textit{What We've Lost}, 2004, p. 29
\textsuperscript{113} D. Wiggins, "Losing the War on Terror"
URL: \texttt{http://lewrockwell.com/orig4/wiggins2.html}
Consulted 28/9
with little in the way of gains in the War on Terror, and so its inherent ill effects (discussed in Chapter 1) cannot be justified by the concept that they succeeded in provided any long term security to the American people.

Finally, the many instances of torture revealed in Chapter 1 in connection to the War on Terror at this time yielded little that would have been of use to the war at large, and so they cannot be justified by effectiveness either. Many of the people captured in the many theatres of the war on terror were civilians who were in the wrong place at the wrong time; people rounded up at checkpoints or guerrilla fighters with little or nothing to do with the War on Terror at large. For example, the Afghani prisoner mentioned earlier, known only as Dilawar, was, by most accounts, even by the account of most of the bases interrogators, simply a taxi driver who drove past the American base at the wrong time\textsuperscript{114}. Consequently, the majority of these instances, and the apparent precedent that such actions are acceptable in the context of the War on Terror, are unjustifiable, even working from the assumption that being effective in their role of defending the US and defeating terrorists could make them so.

There is a substantial argument that can be made revealing that US could not expect to find success in the War on Terror alone. There is no questioning whether the US is the most powerful of all the states in the contemporary world, but even they could not expect to be able to fund and fight the international ventures of the War on Terror for long. Despite its size and funding, alone, the capabilities of the

US military were insufficient to implement the global war President Bush committed to US to after 911\textsuperscript{115}. Similarly, even the US intelligence network cannot be everywhere, gathering and analysing a world of information at once. In terms of the economic cost, the many ventures of the War on Terror cost the US untold billions (estimates range from $65 (excluding Iraq)\textsuperscript{116} to $290 billion in 2003 alone\textsuperscript{117}), playing a large role in an estimated $520 billion budget deficit in 2004 fiscal year alone\textsuperscript{118}. Attempting this substantial feat (fighting the War on Terror) would not have been quite so significant if the US was able to use what resources it had prudently. Unfortunately, military spending in Washington at the time was focused on military hardware to fight an enemy that didn’t exist at the expense of funds needed to fight the enemy that did. While the military facet of the war on terror required weapons, funding and training for fighting close quarters, usually in urban areas surrounded by civilians, the US budget in the last year of Bush’s first presidency contained $2.6 Billion on a submarine designed to hunt Soviet Subs, $10 Billion for missile defence and $12.4 Billion on the JSF (Joint Strike Fighter) project, despite the inability inherent to short range fighters to effectively launch precise battlefield attacks\textsuperscript{119}. Meanwhile, with the military overextended, 40,000 troops in Iraq were without Interceptor vests (designed to stop AK-47 rounds) up to

\textsuperscript{116} J. Dunnigan, “The Costs of the War on Terror”
URL: http://www.stratpagem.com/dis/articles/20030121.asp
Consulted 28/10
\textsuperscript{117} W. S. Bailey, “Deficit Watch Tracks Cost of War on Terror: S.A. Group Warns of Danger Posed to Economy”
URL: http://www.intlhorizons.com/article-jan3.htm
Consulted 28/10
\textsuperscript{118} “Under Bush, Federal Spending Increases at Fastest Rate in 30 Years”
URL: http://www.independent.org/newsroom/news_detail.asp?newsID=31
Consulted 28/9
\textsuperscript{119} G. Carter, “The Military”, \textit{What We’ve Lost}, 2004, pp. 50-51
7 months into the war effort\textsuperscript{120}. In short, the US can’t have been expected to mount such a project as the War on Terror and succeed alone. However, over the course of the first Bush government, the US managed to distance itself from those states which were perhaps in the best position to render long term aid in the fight against terrorism. This effective loss of ‘soft power’\textsuperscript{121} around the globe had notable long term ramifications for the War on Terror, which was, at its heart, a long term exercise. As a result, the means which have driven such a void between the US and other powers lose a further degree of their justification. This is because they played a role in placing the US in a worse position than it would otherwise have been. This part of this chapter will explore this substantial loss of soft power.

The loss of soft power that was a result of the means of the War on Terror was apparent within the US itself during the first Bush administration. For example, international students, who had for many years became educated in the US and took ideas, values and open-mindedness home with them, stopped travelling to America. During the 2003 academic year 214,331 student visas were issued by the State Department, down from 234,322 in 2002 and 293,357 in 2001, a 27\% drop\textsuperscript{122}. Applications in 2004 were down another 32\% compared to 2003\textsuperscript{123}. This was in part both cause and a result of the war, stemming from increased difficulty in obtaining visas and decreased willingness amongst international students, particularly Muslims, to travel to and study in the US. This reduction of

\textsuperscript{120} G. Carter, “The Military”, \textit{What We’ve Lost}, 2004, pp. 55
\textsuperscript{121} The ability of a government to achieve goals by attracting and persuading others to adopt their goals via. good will or friendship, as opposed to the hard power of economic and military might used to force others follow their lead or meet demands.
\textsuperscript{123} J. Pope, “International students not applying to US”, \textit{The Daily Texan}, April 28, 2004
international talent entering and learning in the US had some adverse effects on the War on Terror. In particular, the lack of Muslims in American tertiary institutions aided in a gradual loss of understanding for the US in the Muslim world by reducing the number of social and economic elites in the Islamic world with exposure and open-mindedness for Western culture. Additionally, fewer tourists were exploring the US, charities were having increasing difficulties in helping with problems such as poverty abroad, and countless billions in Arab money and business were withdrawn from the US. All of these phenomena were largely the result of US policy in the War on Terror, particularly those policies which led to the violations of rights at home and abroad, as many were so fervently opposed.

These indications of a loss of soft power further detracts from the possible justification for those violations of rights because it shows that they had long term and negative effects for America's image internationally. Given that the US was not in a position to fight or fund the entirety of a global War on Terror, this loss of influence is important.

It is internationally however that this loss of soft power is particularly evident. The states of Europe provide perhaps the best example of this, as they were in a position to lend substantial economic and military weight, but for a number of reasons (notably heated disagreements over the death penalty, rights violations and the Iraq war), had souring relationships with the US over the course of Bush's

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124 A. McLaughlin, “Foreign Visits to US drop sharply”
URL: http://www.csmonitor.com/2003/0730/p01s01-usgn.html
Consulted 28/10

125 J. B. Utley, “36 Ways the US is Losing the War on Terror”
URL: http://www.antiwar.com/utley/?articleid=3234
Consulted 28/9
first presidency, and so had a significantly reduced role in the course of events they could have positively influenced. Before the events of 9-11, popular opinion in Europe of the world’s sole superpower, the United States, was hardly what could be considered warm. In France in 2000, of people asked for their broad impressions of the United States, only 12 percent surveyed said they felt "admiration" for the US, and only another 14 percent held a generally "positive" view, whilst 34 percent said their view of the United States was "critical". While the populations elsewhere in Europe were less critical, the sentiment was similar. However, the immediate aftermath of the 911 attacks on the US saw a significant shrinking of the gap between the powerhouses on both sides of the Atlantic. The solidarity demonstrated by the states of Europe toward the United States after 9-11 was both swift and heartfelt. There is little doubt over this fact, as responses from the many states of Europe, as well as from the united European community were indeed swift, and laden with emotional sentiments of brotherhood. For example, within 35 hours of the attacks, Britain, and the other 18 NATO allies bar the Dutch, proclaimed that they were prepared to invoke article 5 of the NATO treaty, which states that an attack on one member be treated as an attack on all. Then, for the first time, the defence of American airspace was entrusted to European NATO air crews, when their radar aircraft took over the patrols of the US eastern seaboard in the aftermath of the terrorist attacks. Even France’s Le Monde, a near celebrity of the European anti-American left, declared

shortly after the attacks "Nous sommes tous Américains", "We are all Americans". This strengthened feeling of solidarity could have lead to cooperation beyond the battlefield of Afghanistan, from multilateral military operations to other shared resources and diplomatic pressure. As already discussed, in the long term, this support should have been viewed as vital.

However, later in the term of the first Bush government the relationship soured. A perfect example of this trend in opinion is the public opinion in Germany. A survey by the US State Department in 1998 found that 78 percent of the German people polled had a " favourable" view of the United States. In 2002, a similar survey found that numbed had fallen to 61. In 2004, after the initial invasion of Saddam’s Iraq only 38 percent responded with a positive disposition toward the US, once their strong ally and military protector. It is US policy more than anything else that led to this cooling of relations. While unilateralism existed in US foreign policy long before Bush and 911, it seemed to many observers, including the European Union’s commissioner for external affairs, Chris Patten, that the US shifted into a "unilateralist overdrive". The invasion of Iraq is the best example here, as it was strongly opposed by both the Germans and the French, the two most significant states of the European Union. The actions of the US showed the extent of its willingness to act unilaterally even the largest and most important of issues, which lost the US considerably credibility in European policy circles that might have supported a more international approach and by extension, aided the US in there War on Terror in this and other realms. The rights violations inherent in the US

treatment of prisoners during interrogations and the like was also a source of friction, further widening the gap between these would-be allies in the war against terrorism. The stance taken by the majority of Europeans was summed up well by the then German Foreign Minister Joschka Fischer in a statement that read:

"In the fight against international terrorism we are also defending our fundamental values. They apply without distinction to all persons and protect life and the dignity of the individual. These principles must be upheld in the battle against terrorism"\(^{133}\)

The apparent disregard of these principles in the War on Terror as explored in Chapter 1 provided the Europeans with little motivation to back the US any more than was necessary. Therefore, the effectiveness of the means in terms of the long term War on Terror is somewhat diminished by the isolation of the US which hampered its ability to fight that war.

Perhaps even more serious than this loss of ‘soft power’ internationally were the direct results of many of the policies discussed on the struggle within the Islamic world between moderates and varying liberals on one hand, and ultra-conservatives and parties (those more likely to condone, aid, or conduct, acts of terror) on the other. This last part of this chapter will discuss this counter-productive result of the means of the first Bush government’s War on Terror.

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\(^{133}\) Federal Foreign Minister Joschka Fischer Statement, 22\(^{nd}\) January, 2002


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All across the Islamic world, anti-Western sentiment during the first Bush administration was on the rise in a backlash against US foreign policy in Afghanistan, in Iraq, and in places such as Guantanamo bay. The multitude of violations against Muslims further established the notion amongst Islamic societies that the United States was indeed an imperial aggressive power and a threat to Islam\textsuperscript{134}. The policies undertaken by the Bush government during its first term had the unfortunate side effect of strengthening the groups they were intended to combat, as well as conservatives in the world of Islam more likely to support fundamentalism and terror than their moderate counterparts. This effect is was significant, and it was noted by the anonymous CIA agent and author of Imperial Hubris and Through our Enemies Eyes, that the Bush government was Bin Laden’s only truly indispensable ally in rallying the hearts of Muslims to his cause\textsuperscript{135}. Conversely, the unawareness of the Bush administration to the power struggle within the Islamic world while planning and carrying through with the many policies of the War on Terror weakened the long term war effort by weakening those individuals and groups within the Islamic bloc that could have, in the long term, increased the security of the US by condemning and reducing fundamentalism and anti-Americanism in their respective societies.

The significance of this should not be underestimated. As ultraconservatives were able to gain victories over the Islamic moderates in their struggle for the souls of the citizens of their states because of changing public opinion resulting from the War on Terror, then the US became somewhat less safe than if it had done

\textsuperscript{134} H. Haqqani, “Islam’s Weakened Moderates”, Foreign Policy, July/August 2003
nothing. Conservative rulers and social and religious elites are much more likely to act with hostility toward the US. Conservatives more often support militant policies and policies of military build-up, such as in Iran where the conservative bloc, then re-elected after several defeats, was attempting to push forward that states nuclear program. On the other hand, if the Bush administration supported Islamic moderates and didn’t weaken their arguments for reform and dialogue through their policies and increasingly negative reputation, they would be much more likely to support dialogue and foster better relations with the US, as well as oppose fundamentalist terrorist organisations. As a result of the policies discussed, the US altered the balance within the Islamic world, and in doing so created a somewhat worse situation than had existed before the 9-11 attacks. Therefore, the effectiveness of the means discussed was again significantly reduced when one considers that they played a vital role in making the situation worse, with little to show to the contrary.

Finally, the unintentional yet significant negative effects of the War on Terror discussed earlier in this thesis, namely the reduced scrutiny on violations of human rights around the globe, also had adverse consequences for the effectiveness of the War on Terror at large. The position the US government placed itself in meant it was unable to speak out about a rise in human rights violations in countless states worldwide without counterclaims of hypocrisy and illegitimacy. Ignoring the human rights consequences momentarily, this would be less relevant if it wasn’t for the fact that violations such as these are more often the cause of fundamentalism than the cure. Two important individual examples of this
trend are Osama Bin Laden's right hand man, Ayman al-Zawahiri and one of the apparent leaders of the Iraq insurgency, Abu Musab al-Zarqawi. Both of these individuals, whilst long time militants of one variety or another, were both, to a large degree, products of torture and ill treatment from largely secular governments. Al-Zawahiri was arrested in Egypt for weapons charges and spent three years in prison. During this time he was beaten and tortured, which undoubtedly further radicalized him\textsuperscript{136}. Similarly, al-Zarqawi spent time in a Jordanian prison, also known for violations of human rights and torture, an experience that by all accounts changed him into a man who sat for hours bent over a Koran in an attempt to memorize all 6,236 verses whilst becoming increasingly violent\textsuperscript{137}. This experience was shared by countless other conservative and violent young men turned radicals. However, instead of solving this problem, the War on Terror likely worsened it because of the decreasing scrutiny on the regimes which create such individuals. Even if success could justify the War on Terror, this important and negative side-effect, together with all those already discussed, detracts significantly from that justification.

In closing, it is apparent that to a large extent, the policies of the first Bush Administration's War on Terror that resulted in the violations of the rights of so many did not successfully serve their intended purpose of defending the US and defeating terrorism, and in some cases, made the situation worse for the long term.

\textsuperscript{136} Dr. Ayman al-Zawahiri Profile and Biography
URL: http://atheism.about.com/library/FAQs/islam/bfaq_islam_zawahiri.htm
Consulted: 29/9

\textsuperscript{137} Zarqawi's Journey: From Dropout to Prisoner to Insurgent Leader
security of US civilians. The US lost significant degree of its good will, or 'soft power' internationally, alienating would be allies in Europe and elsewhere. At the same time, thanks to many of its policies, it has driven a greater wedge between itself and the Islamic world, strengthening the groups and parties within it most likely to support terrorism. Therefore, it is apparent that these means cannot be justified solely in the sense that they are effective in protecting America or in defeating terror. However, one last question presents itself that could render this argument somewhat defunct. This is the question of whether the Bush administration had alternatives that it could have pursued to much greater effect. If it was the case that the Bush government did everything in the power in the face of limited options, then it would be much easier to justify the way in which they chose to fight their War on Terror.

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Consulted: 29/9
Chapter 4

Rights, Choice and the American Position

You can always count on Americans to do the right thing - after they've tried everything else.
- Winston Churchill

The War on Terror, as waged by the Bush administration, had serious implications for the rights and freedoms of American and global citizens. These means might be considered to overshadow even the threats they are meant to secure against, as already discussed. Additionally, the first Bush government did not convincingly succeed in the War on Terror, and its policies instead played rules perpetuating the threat of transnational terrorism against the people of the US. Given the circumstances, however, did the Bush government really have a choice? This chapter will explore this question, and will reveal that there were many alternatives that could have been used in stead of the policies the Bush government chose to pursue. It will also allude that many of these alternatives could have better suited the threat of terrorism and so called 'rogue states', and therefore might have provided much better or more successful outcomes for the safety of the US. These alternative policies and goals, which will be explored in this chapter, include domestic means of protecting citizens and society from transnational terrorism and means of dealing with ‘rogue states’ (including Afghanistan). Perhaps most importantly, they also include alternate measures to alleviate the threat of WMD based terror, strengthening long term alliances with opponents of terrorism, and using resources, time and energy to tackle of the root causes of international terrorism that were largely ignored, even inflamed by the first Bush government.
One thing that is largely apparent, looking back on this period, are the choices of the Bush administration in their short term goals in the overarching War on Terror. It is evident that these goals comprised largely of increasing the immediate, short term defence of the continental United States, and the destruction of terrorists and of regimes with the potential to aid them. Although when simplified as such it appears that such goals would be valid ones, there are alternative goals that could have been given higher policy priority by the Bush government at the time. This first part of this chapter will explore two vital goals or ambitions that could have been pursued in stead of, or combined with less aggressive versions of, the chosen pursuits, which have already been discussed.

First, the Bush administration could have seriously pursued a goal pertaining to alleviating the root causes of terrorism, otherwise known as ‘draining the swamp’. Many scholars disagree about the root causes of terrorism\textsuperscript{138}, some citing such confusing developments as the relatively well off, educated Saudis who committed the 911 attacks\textsuperscript{139}, but poverty, vengeance and the Middle East peace process all appear to play roles of varying significance. The US could have focussed attention of any combination of these problems internationally in an effort to decrease the long term threat posed by the radicalisation and recruitment of Muslims into terrorist groups. For example it could have built policies for the availability of education. Although the Bush government cited poverty as a fundamental cause of

\textsuperscript{138} J. Maleckova, "Im\textcopyright overished Terrorists", in T. Bjorgo (Ed.), \textit{Root Causes of Terrorism}, 2005, p. 41
terror, it only provided $30 million to the State Department for outreach programs to the Islamic world in 2003\textsuperscript{140}. Because in many places the only education many can afford for their children is extremist religious schooling, taking the availability of public schooling as seriously as terrorist networks do could have profound effects\textsuperscript{141}. The US could also have placed more emphasis on the goal of slowing, rather than perpetuating, the cycle of vengeance between itself and the self anointed proponents of the Islamic world. Since human beings have such an inherent sense of justice, and therefore vengeance, revenge for real or perceived humiliations or injustices will always be a vital factor in the recruitment of terrorists\textsuperscript{142}. This thesis has already discussed the souring relations between the Islamic world and the US over the period in question, so it is apparent that an objective of changing the negative image of the US in these populous regions of the globe might have been more emphasised. This goal could have been pursued in a myriad of ways, some of which are some of the more specific policy alternatives discussed later in this chapter. However unlikely a change of policy in this issue was, the Bush government could also have focused energy on a solution to the Israel/Palestinian problem. This could have taken several forms, each with potential to alleviate a degree of hostility within the Islamic world towards the US. The US could have pressured Israel into further concessions, or it could have loudly and publicly denounced Israeli state-terrorism and obvious abuses of

\textsuperscript{140} Sen. R. G. Lugar, "Strengthen Diplomacy for the War on Terror", American Diplomacy, Volume VIII, Number 3, 2003
\textsuperscript{141} J. Stern, "Conclusion/Policy Recommendations", Terror in the Name of God, Ecco, New York, 2003, p. 293
\textsuperscript{142} A. Silke, "Fire of Iclaus" in T. Bjorgo (Ed.), Root Causes of Terrorism, Routledge, London and New York, 2005, p. 245
Palestinian rights, which is the perhaps the largest of the quarrels the Arabic world has with America\textsuperscript{143}.

Second, the Bush administration could have focused generally on multilateralism as opposed to unilateralism, and on the image of the United States abroad, not just in Islamic society as discussed above, but in the eyes of potential friends and allies in the long term struggle against terrorism. Contrary to the apparent disregard of international opinion that was part of the War on Terror at this time, and that led to substantial losses of ‘soft power’ for the US, the Bush administration might have instead taken advantage of the immediate post-911 good will for the US. It could have used this outpouring of solidarity to construct a much grander alliance against the use of terror than the short term ‘coalitions’ it managed to construct for its somewhat ill-fated overseas ventures in Afghanistan and Iraq. Placing emphasis on this goal over others could have been achieved in a number of ways. For example, opening more dialogues; both bilaterally and through institutions such as the UN, and accepted international criticism in order to reach international, well founded decisions on how the civilised world could together face the spectre of terrorism. This might have given the Bush administration ample opportunity to avoid many of the mistakes that have been discussed in the previous chapter of this thesis. It would also have provided greater legitimacy for any policies deemed necessary by the international community at large. This is not to say that the US should have allowed criticism from all corners of the globe, but that the criticism, much of it well meaning, was

\textsuperscript{143} J. Bovard, “A Few Steps to protect America”, \textit{Terrorism and Tyranny}, Palgrave Macmillan, New York 2003, p. 341
there, and that the Bush administration could have taken into account a degree of the views, ideas and intelligence information from elsewhere, and perhaps waged a more successful battle with terrorism as a result.

Some of the most fundamentally different approaches that could have been adopted in Bush’s War on Terror include specific alternate policies that could have been pursued domestically to defend against terrorism. One option here would have been to strengthen, rather than diminish, American freedoms and liberties. This includes government accountability. As many observers have noted, secrecy in government is something of an anathema to a successful and vibrant democracy.\textsuperscript{144} Not only would strengthening freedoms as opposed to curtailing them in efforts to fight terror have denied the 911 attackers the satisfaction of getting the response they desperately wanted, but could have provided a better foundation from which to launch a more successful War on Terror both at home and abroad.\textsuperscript{145} Increased accountability in law enforcement, intelligence and importantly freedom of information acts would have meant increased scrutiny, and by extension, opportunity to avoid mistakes and mismanagement. It also would have meant that individuals going beyond government mandates, such as those involved in torture not sanctioned by the government, could have been caught, and brought publicly before courts, even if only domestic courts.


\textsuperscript{145} H. H. Koh, "Preserving American Values: The Challenge at Home and Abroad" in S. Talbott and N. Chanda (Eds.), The Age of Terror, 2001, p. 145
On the subject of openness and accountability at home, the intelligence community in the US at the time could have been supported, reformed and expanded to face the problem of the new global terrorism. This reform wouldn’t necessarily have simply entailed larger budgets and powers, in the aftermath of 911, increasing budgets to intelligence networks was a given. Instead, it could have entailed deeper changes to the attitudes and preconceptions of how an intelligence community should operate, in order to build an apparatus more capable, informed and objective than the one that existed before and during the first Bush presidency. According to Yossef Bodansky, director of the Congressional Task Force on Terrorism and Unconventional Warfare:

> “Within the intelligence community’s analytical elite there is by now a very strong echo-chamber effect. And recent history is full with cases of honest analysts who dared question the party-line (through channels) being fired or forced to resign because they would not tow the line.”

In regard to the FBI, a Senate Judiciary Committee report noted in 2003 that a "deep-rooted culture of ignoring problems" and discouraging internal criticism contributed to the FBI’s repetition of past mistakes, and that there had been very little progress in addressing it\textsuperscript{147}. According to the New York Times, there were similar problems in the CIA, with a paradox of increased funding by necessity and decreased productivity accountability\textsuperscript{148}. The government had to option to take steps to reform this culture of the intelligence community, to make such agencies

\textsuperscript{146} J. R. Nyquist, “Losing the War on Terror”
Consulted: 31/10

\textsuperscript{147} J. Bovard, “A Few Steps to protect America”, 
Terrorism and Tyranny, 2003, p. 332
more accountable, useful and honest in their interpretations of international and
domestic events. A more accountable intelligence community, one relatively free
of agents ‘towing the party line’ so prevalent during this period, might have
provided the US with an considerable advantage in terms of protecting the
continental US, and in terms of threat assessment overseas. This is due to the fact
that serious reform here would have allowed these agencies to fulfil their roles,
which are of fundamental importance to reducing the threat of terrorism somewhat
more successfully.

The diplomatic core in the US, the State Department could also have seen reform,
at least in terms of budget priority. The Bush administration did agree, on special
request, to increase funding to the State Department in 2003, in the middle of the
term, by approximately $400 million. However, this still left spending on the
State Department 32% below the peak its budget size in 1985 and contained only
$30 million for outreach programs to the Islamic world. One policy option which
needs little exploration would have been to dramatically increase the funding to
this vital organisation, though it would require fund to be reduced elsewhere. A
better funded diplomatic core might have achieved significant headway in the role
of mediating with foreign governments and NGOs and participating in more
multilateral, or uni lateral discussions and agreements.

148 “The Future of the C.I.A” (editorial), New York Times. (Late Edition (East Coast)), New York,
February 17, 2002, p. 4,10
149 Sen. R. G. Lugar, “Strengthen Diplomacy for the War on Terror”, American Diplomacy, Volume
VIII, Number 3, 2003
150 Sen. R. G. Lugar, “Strengthen Diplomacy for the War on Terror”, American Diplomacy, Volume
VIII, Number 3, 2003
Internationally, the specific options that the Bush government could have pursued at this time, are similarly numerous, and perhaps of even greater consequence. This last part of this chapter looks at possible alternatives to the international endeavours of the Bush administration.

First, many international options for the curtailing of the threat of WMD terrorism were overlooked during Bush’s first presidency in favour of the preventative wars and funds for controlling attacks once they had happened, which were admittedly significant. However, these unused means and policies were viable and may have been somewhat superior or supplemental in terms of success in the long term struggle against terrorism. Starting with the prospect of nuclear terrorism, there were several measures that could have been pursued in stead of policies of last minute prevention or invasion and their rights implications as discussed earlier. In the words of former senator Sam Nunn:

"...we [the US] find ourselves in a new arms race. Terrorists are racing to get weapons of mass destruction; we ought to be racing to stop them"\textsuperscript{151}

However, in their haste to attack terrorism at its ‘source’ or base in Afghanistan and catch terrorists at home, the Bush administration failed to declare and wage what Allison describes in \textit{Nuclear Terrorism} as ‘war on nuclear terrorism\textsuperscript{152}. For example, the Bush administration could have provided more funding for the long running Nunn-Lugar program, which was left largely dilapidated by the end of the Bush’s first term. Giving this program more attention and resources and a higher
priority would have significantly alleviated the problem of the proliferation of existing nuclear materials, 44,000 potential weapons worth of which remained vulnerable to theft in the Soviet Union\textsuperscript{153}. This would have cost as little per year as $3 billion, as opposed to $87 billion for 'supplemental spending' in Iraq in 2003 alone\textsuperscript{154}. This process could then have been refined and applied to other nuclear powers through international cooperation, for example, in Pakistan, where security of nuclear stockpiles is somewhat worrying. Pakistan could be engaged through their alliance with the US and through their long term good relations with China, whose safeguards are certified by the US itself\textsuperscript{155}. Reforming the Nuclear Non-Proliferation Treaty (NPT) might also have been given higher priority, in order to stop the spread of technology useable for the production of new weapons grade materials. Like Eisenhower's Atoms for Peace program of the 1950's, the US could have created a safer environment for the trade of civilian nuclear technology. Reinvigorated the NPT, particularly article IV, might well have provided both economic incentives for importing civilian fuel from US (having the added bonus of exposing motives for fuel production) while at the same time curtailing the extent to which states are able to produce nuclear material under the 'sovereign' protection of the treaty, which is vulnerable to abuse\textsuperscript{156}. This could have halted unnecessary nuclear power programs the world over, and by extension, reduced the proliferation of the material results of those programs. The US could also have

\textsuperscript{151} G. Allison, "Where we need to be: A World of Three No’s"**, *Nuclear Terrorism*, 2004, p.140

\textsuperscript{152} G. Allison, "Through the Prism of 9/11"**, *Nuclear Terrorism*, 2004, p.133

\textsuperscript{153} G. Allison, "Where we need to be: A World of Three No’s"**, *Nuclear Terrorism*, 2004, p.147

\textsuperscript{154} G. Allison, "Getting from Here to There: A Road Map of Seven Yeses"**, *Nuclear Terrorism*, 2004, p.177

\textsuperscript{155} G. Allison, "Where we need to be: A World of Three No’s"**, *Nuclear Terrorism*, 2004, p.153

dedicated more attention to preventing new states from entering the unfortunately growing nuclear family. Most importantly, this could have consisted of a consistent plan for dealing with North Korea, the response to which by the Bush administration was left wanting. Because hard-liners in Washington at the time refused making any concessions to Pyongyang, the government went so far as to refuse offers from Pyongyang for bilateral negotiations\textsuperscript{157}. However, it should also be conceded that the Clinton Administration attempted concessions and discussion and similarly failed to deal effectively with the problem and that creating such a plan is far from an easy task.

The proliferation of biological and chemical material viable for weapon production could also have been given a higher resource and time priority by the first Bush administration, as there are several policy options that could have been pursued. This is not to say that this wasn’t a priority, only that alternatives or supplemental policy that could have been used in stead of some policies which violate rights present themselves. Like the issue of nuclear terrorism, the Bush administration focussed its energy on immediate defence, with some results already explored in this thesis (the violation of rights via intelligence and law enforcement policy), but somewhat neglected policy options regarding prevention. For example, in regard to chemical weapons, the US could have altered its stance to the Chemical Weapons Convention and its implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW). This organisation suffers from two ailments that the US could have attempted to cure during Bush’s first presidency.

\textsuperscript{157} G. Allison, "Where we need to be: A World of Three No’s"\textsuperscript{\textdegree}, \textit{Nuclear Terrorism}, 2004, p.167
First, it suffers from a substantial lack of funding because of late and non-existing payments from the US and elsewhere to fund its annual assessments and inspections\textsuperscript{158}. The Bush government might have been able to significantly alleviate this problem. Secondly, the organisation lacks credibility because many nations, including the US, have been accused of being dishonest (and with good reason) about their chemical weapons production and/or stockpiles. If the US changed its policy on the availability of information to the organisation in regard to its capabilities, the organisation would be in a better position to continue its work unabated, and the US could push that agenda internationally without accusations of a double standard. Similarly, reform of the Biological and Toxin Weapons Convention could have been given greater importance by the Bush administration, which spurned the Ad Hoc Group and the associated protocol, to curtail the proliferation of biological weapon material and equipment. Most importantly, the Bush administration could have supported, rather than rejected the Ad Hoc Group and the associated protocol. This protocol, whilst demanding transparency on the part of the US, had three important elements. First, mandatory declarations of dual-capable activities and facilities. Second, routine visits of such facilities without specific evidence of a treaty violation. Finally, short-notice 'challenge investigations' of a suspect facility on request by a member state so as to address concerns about compliance\textsuperscript{159}. If supported by the US, these protocol measures could have significantly reduced the threat of further bio-weapon proliferation.

\textsuperscript{158} E. D. Harris, "Chemical and Biological Weapons", \textit{The Brookings Review}, Summer 2002, Volume 20, Issue 3, p. 24
\textsuperscript{159} J. Tucker, "The Biological Weapons Convention (BWC) Compliance Protocol" URL: \url{http://www.nti.org/e_research/e3_2a.html}
In efforts to combat the proliferation of both chemical and biological weapons to transnational terrorist networks, the US might also have expanded aid to Russia in order to help the Russian government meet deadlines for the destruction of existing weapons stockpiles, as well as increasing security at facilities storing them. This would have cost upwards of $1 billion over a five year period, but as we have seen, this would hardly have been beyond the reach of US defence spending. One final policy that could have been chosen by the Bush government was the expanding of international law to include individuals in criminal legislation regarding chemical and biological weapons, an effort that was supported by the British government at the time. This legislation and treaty might have aided non-proliferation by enhancing the role of individuals, and punishments for individuals relating to WMD procurement to international law. Like the alternative policies explored elsewhere in this chapter, any combination of these policies could conceivably have been adopted in stead of a number the rights violating policies of the first Bush government.

A specific and Important area in which the Bush government had options it chose not to follow was in its invasion of Afghanistan. As has been stated before, this thesis does not necessarily refute the argument for the invasion of Afghanistan; on the contrary, there is ample reason to support the notion that it was a necessary front of the War on Terror. However, the notion that the extent of the rights violations that occurred there were inevitable by-products of a necessary war is

Consulted 29/10
less set in stone. One perhaps less savoury strategic option that was overlooked in the Afghanistan conflict was a more, rather than less forceful approach to the ground invasion. Like the intervention in Kosovo (during which air were strikes carried out only in perfect weather and from an ‘ultra-safe’ 15,000 feet or more\textsuperscript{162}), the invasion of Afghanistan relied heavily on the US air force and its huge capacity for bombing campaigns against cities and strongholds. The problem from a human rights perspective is the scale of civilian casualties inherent to such war-making. If the US had been willing to risk the lives of its military personnel on the ground, a risk which they later took with gusto in Iraq, they could have spared innumerable civilian lives, rather than mirroring the air invasion of Kosovo which led to the deaths of more Serb civilians in the first three weeks than civilians died on both sides in the three months leading up to the US intervention\textsuperscript{163}. On a related note, the US could also have alleviated many of the human rights violations that occurred in Afghanistan by better choosing its allies and by using its own massive military machine, rather than recruiting third parties well known for their brutality to fight the ground war for them, though it is true that more pleasant potential allies in the region were scarce.

In regard to its occupation, two ignored options that could have saved lives and secured rights stand out. First, the US could have taken advantage of the sheer massive amounts of data available on Afghanistan through countless operatives who had worked closely with the people there, as much of this information was

\textsuperscript{162} E. Luttwak, “Give war a chance”, Foreign Affairs 78, 1999, p.40
right up to date. This might have led them to understand that a Western style democracy, naively installed, would never work, and allowed them an opportunity to nurture a more effective and popular regime. Even if this regime was far from being secular, or largely democratic, in having actually helped to a degree with the self-determination of the Afghani people, the US would have won a degree of respect and support amongst the population and perhaps in the larger global community. Second, the US could have exercised greater command and control over the troops involved in the occupation. If it is true that many of the instances of torture such as those already explored were the work of unlawful army personnel, then the Bush administration could have taken greater responsibility in ensuring that unnecessary violations were kept to a minimum. Without getting drawn into an exploration of the practices at Guantánamo bay, this argument applies to the troops stationed there as well. In doing this, the Bush government might have garnered substantially less ill-will abroad, helping its overall efforts, as well as ending unnecessary violations of the rights of captured individuals.

Thor is one policy change that deserves special mention, and could have provided momentum, time and resources for many of the alternative international anti-terrorism projects explored in this chapter – not invading Iraq. The negligible benefits, and the ill side effects, of this war have been discussed elsewhere in this thesis, but for the purpose of this chapter, it is importantly to explore the possible capabilities and benefits that would have been preserved by the US had it instead chosen not to invade Iraq in March of 2003. The cost of this invasion, both

economically and politically, was enormous. Had the US not invaded, the first
Bush government would have had almost $200 billion\textsuperscript{165} to spend elsewhere, more
than enough to fund many of the policies explored here and to have a substantial
effect on the long term War on Terror. Similarly, the time, effort and attention put
into the invasion and occupation was hard to exaggerate. In the lead up to the
invasion, anything that required attention or direction across the spectrum of the
vast US government floundered as the leadership circle devoted its energy
towards its case for, and execution of, the looming invasion\textsuperscript{166}. The military too
was obviously focused on the task of removing Saddam from power, with 210,000
of the National Guard’s 330,000 members serving tours, as well as a huge
component of the regular army\textsuperscript{167}. Additionally, 341,000 men and women served
two or more overseas tours in Iraq, a significant manpower drain\textsuperscript{168}. Many
specialist forces were also transferred into Iraq from Afghanistan, including the
Army’s Arabic speaking Fifth Special Forces Group\textsuperscript{169}. Had the US government
not invaded Iraq, all of these resources would have been available for more
important fronts in the War on Terror. In short, avoiding this conflict altogether
might have given a great deal of potential for the fulfilment of alternative goals and
more specific policies outlined in this chapter. Apart from simply ignoring Iraq,

\begin{thebibliography}{9}
\bibitem{164} Anonymous, “An Unprepared and Ignorant Lunge to Defeat”, \textit{Imperial Hubris}, 2004, p. 28
\bibitem{165} The Cost of War
URL: \url{http://nationalpriorities.org/index.php?option=com_wrapper&Itemid=182}
Consulted 30/10
\bibitem{166} G. Allison, “Through the Prism of 9/11”, \textit{Nuclear Terrorism}, 2004, p.133
\bibitem{167} P. Bennis & E. Leever, “The Iraq Quagmire: The Mounting Costs of War and the Case for
Bringing Home the Troops”
URL: \url{http://www.ips-cc.org/iraq/quagmire/#us}
Consulted 30/10
\bibitem{168} P. Bennis & E. Leever, “The Iraq Quagmire: The Mounting Costs of War and the Case for
Bringing Home the Troops”
URL: \url{http://www.ips-cc.org/iraq/quagmire/#us}
Consulted 30/10
\bibitem{169} G. Allison, “Through the Prism of 9/11”, \textit{Nuclear Terrorism}, 2004, p.133
\end{thebibliography}
which was of course one option, the US could have applied many of the same alternate methods explored here in relation to Afghanistan in order to reduce as much as possible the violations of rights by its military. As a result, it could have also reduced to a degree the hostility it met once the war was over, both internationally, and from the growing anti-American insurgency.

In closing, there are many alternative paths that could have been taken by the first Bush government in pursuing its War on Terror. This chapter has detailed many of these options, both in terms of sub-goals within the overarching conflict and in terms of specific policy alternatives, in order to show that the lack of alternatives cannot in itself justify the rights violations of the War on Terror. The government might have taken a different route in its domestic politics which did not involve the violation of so many formerly protected rights and liberties. It could also have dealt differently with its conflicts with Afghanistan and with Iraq. It might also have used time and resources it used in its policies to instead target root causes of terror, rather than focus on shorter term prevention. Many of these alternatives might also have provided better long term security to the people of the US, and thus detract from possible remaining justification for the version of War on Terror the Bush administration chose to wage.
Conclusion

In conclusion, this thesis has argued that rights and liberties were amongst the casualties of the War on Terror, and that while it is conceivable these numerous violations could be justified, the most important criteria for this argument are subject to considerable doubt. Therefore, it has been the theme of this thesis that these policies were, for the most part, unjust ones.

First of all, in exploring the policies of the first Bush administration in regard to the War on Terror, it is fairly apparent that a multitude of rights violations of varying natures took place, and that a great many of them were quite severe in nature and their scope. From domestic policies for surveillance, to the treatment of prisoners and suspects to the invasions and occupations of Afghanistan and Iraq, there were considerable implications for the rights, liberties and lives of both Americans, and suspected enemies of the US in the War on Terror. This provided the impetus for the exploration of possible justifications for these violations in this thesis. While this thesis has not tried to deny the possibility that these violations could be justified, it is relatively obvious that violations took place and thus the policies require justification.

The first potential justification explored was the severity of the threat posed by the groups the policies in question were forged to oppose. This thesis has found that it seems apparent that the threats posed by terrorism and by Iraq were insufficiently severe to alone stand out as a justification for the War on Terror. Though this
thesis has not detailed a particular 'just balance', the many significant problems relating to the acquisition and use of WMD, the relative peace on the American home front and the apparent weaknesses and nature of Saddam's regime cast considerable doubt on the nature of the threat. This shows that the means of facing this threat employed by the Bush administration at this time cannot be easily justified by the threat they are meant to thwart alone. This detracts some validity from the notion that these policies were just.

The question of whether the policies of the War on Terror provided a safer future for the US provided another possible justification for the policies explored. This was the next focus of this thesis. This thesis found that many of the policies in question were unsuccessful, or aided in creating a worse position for the US from which to fight the War on Terror. Many of the policies were potentially ineffectual at home, somewhat ineffective overseas and, importantly, damaging to America's reputation amongst potential allies. Additionally, many of the policies and their results had adverse affects on the ideological debates within the Islamic world between moderates and ultra-conservatives, weakening the position of the former by damaging America's reputation in these parts of the world. As a result, there is considerable doubt over whether their effectiveness provides a justification for the violations of rights revealed to be inherent to them. In the context of the thesis, this diminishes further the notion of the justness of these policies

This thesis finally explored the question of whether the particular policies of the War on Terror to which the world became accustomed were the only policy options
available to US policy makers at the time. As it is feasible to point out the possible justification for the War on Terror if the fact remains that the US was denied less aggressive or potentially successful alternatives, this question is an important one. However, this thesis has argued that these possible alternatives were significantly numerous, and largely lacked the discovered rights violations, both real and potential of the chosen policy directions, and so throw further uncertainty over the notion of justification by means of necessity. It has argued that the US government could have taken a different route in its domestic politics (one bereft of the violations discussed in Chapter 1), and could fought different conflicts (by limiting as much as possible the inherent rights violations of war) with Afghanistan and Iraq, and in the case of Iraq, avoided war altogether. It has also argued that the Administrations time and resources dedicated to targeting root causes of terror was somewhat lacking, and so could have been further emphasised. By outlining alternative policies and alluding to their potential success whilst reducing the need for the violation of rights, this thesis has detracted further from the notion that necessity in this case justified the violation of rights. In the context of the thesis, this reduced further still the notion of justification in the means of the War on Terror.

Combined, the scale of the many doubts cast over these three possible justifications for the policies of Bush’s first Presidency in this field mean that one can conceivably easily reach the conclusion that these policies were not just ones. By systematically shedding light onto these three points, this thesis has attempted to reveal these doubts, and in doing so, argue just that, that it is difficult to
considered these policies just. The thesis, however, is not without problems. In attempting to cover such a broad spectrum of themes and arguments that have arisen in the years since these policies were revealed and implemented, it has been unable to sufficiently give all of these debates the attention and depth they deserve. Further explorations are therefore possible into many of these debates. However, despite the fact that many questions have unfortunately been somewhat overlooked or understated in an effort to keep the thesis focused, in attempting to argue that the rights violations inherent to War on Terror cannot easily be justified, this thesis has raised considerable doubts about whether they were.

One certainty is that the violation of many formerly protected rights, both domestically and internationally, took place thanks to the policies of this period. Whether they were justified or not based on the nature and severity of the threat, their effect on long term US safety or their necessity are all issues that will undoubtedly be on the forefront of discussions in human rights, international relations and policy circles for many years to come. Though it is the future of rights protection, and the protection of innocent life that demand a great deal of our attention, we must always be mindful of the past, something US policy makers, and the American people, could benefit from a great deal.
Bibliography

Primary Sources

Books

Anonymous, Imperial Hubris, Brassey’s, Washington DC, 2004

Journals and Newspapers


Pope, J., “International students not applying to US”, The Daily Texan, April 28, 2004

Online

US Department of Justice
URL: http://www.lifeandliberty.gov

Geneva Convention Relative to the Treatment of Prisoners of War

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
URL: http://thomas.loc.gov/cgi-bin/query/D?c107:4.:/temp/~c107ytWdRd:

Amendments to the Constitution
URL: http://www.house.gov/Constitution/Amend.html

President G.W. Bush, State of the Union Address, 2002

CNN.com
URL: http://www.cnn.com

MSNBC
URL: http://www.msnbc.msn.com

BBC News
URL: http://news.bbc.co.uk
Secondary Sources

Books


Journals and Newspapers


Daalder, I. & Lindsay, J., “Nasty, Brutish and Long: America’s War on Terrorism”, *Current History*, December 2001, p. 404


Haqqani, H., “Islam’s Weakened Moderates”, *Foreign Policy*, July/August 2003


Hersh, S. M., “American soldiers brutalized Iraqis. How far up does the responsibility go?”, *The New Yorker*, May 10, 2004


Luttwak, E., “Give war a chance”, *Foreign Affairs*, 78, 1999, p.40


Parachini, J., “Putting WMD Terrorism into Perspective”, *The Washington Quarterly*, Autumn 2003

Raeburn, P., “The Costs of Fighting Terrorism; There's only so much that can be done-and much that shouldn't”, *Business Week*, New York: September 24, 2001, Issue. 3750, pg. 54


Online

American Civil Liberties Union
URL: http://www.aclu.org

Arms Control Centre
URL: http://www.armscontrolcenter.org

Bailey, W. S., “Deficit Watch Tracks Cost of War on Terror: S.A. Group Warns of Danger Posed to Economy”
URL: http://www.intlhorizons.com/article-jan3.htm

Bennis, P. & Leaver, E., “The Iraq Quagmire: The Mounting Costs of War and the Case for Bringing Home the Troops”
URL: http://www.ips-dc.org/iraq/quagmire/#us

Biological Warfare Agents, Federation of American Scientists
URL: http://www.fas.org/nuke/intro/bw/agent.htm

Bovard, J., “China: From Brutal Oppressor to Terrorist Victim”, The Future of Freedom Foundation
URL: http://www.fff.org/freedom/fd0312c.asp

Chernobyl – Overview of Health Consequences

Christian Science Monitor
URL: http://www.csmonitor.com

Dr. Ayman al-Zawahiri Profile and Biography
URL: http://atheism.about.com/library/FAQs/islam/blfaq_islam_zawahiri.htm
Consulted: 29/9

Dudley, M., “Inflexible, 'Brittle' Cities Vulnerable to Terrorism”
URL: http://www.planetizen.com/node/16897

Electronic Privacy Information Centre
URL: http://www.epic.org

Fischer, J., Statement, 22nd January, 2002

Global Security.org
URL: http://www.globalsecurity.org

Herold, M. W., “A Dossier of on Civilian Victims of United States’ Aerial Bombing of Afghanistan”
URL: http://www.cursor.org/stories/civilian_deaths.htm

Human Rights Watch, “Human Rights Watch Backgrounder of United Front/Northern Alliance Poor Rights Record of Opposition Commanders”, October 6, 2001
URL: http://www.zmag.org/hrwna.htm

Iraq Body Count
URL: http://www.raqbodycount.net/

Jachimowicz, M. & McKay, R., “‘Special Registration’ Program”
URL: http://www.migrationinformation.org/USfocus/display.cfm?id=116

Lawyers Committee for Human Rights, “Imbalance of Powers”

Nyquist, J. R., “Losing the War on Terror”

Preez, J.D, “The 2005 NPT Review Conference: Can It Meet the Nuclear Challenge?”, Arms Control Today

Profile: Saddam Hussein, Aljazeera
URL: http://english.aljazeera.net/NR/exeres/A4B113BA-8CCA-4538-B10E-7FDFA773EDF1.htm

Summary of conference on: WMD Terrorism: How scared should we be?

Terrorism 101
URL: http://www.themokinggun.com/archive/jihadmanual.html

URL: http://www.nti.org/e_research/e3_2a.html
The Cost of War
URL: http://nationalpriorities.org/index.php?option=com_wrapper&Itemid=182

"Under Bush, Federal Spending Increases at Fastest Rate in 30 Years"
URL: http://www.independent.org/newsroom/news_detail.asp?newsID=31

Utley, J. B., “36 Ways the US is Losing the War on Terror"
URL: http://www.antiwar.com/utley/?articleid=3234

Wiggins, D., “Losing the War on Terror"
URL: http://lewrockwell.com/orig4/wiggins2.html

Wohlforth, W. C., “New Security Challenge or Old? Russia’s Catch-22"

Zarqawi’s Journey: From Dropout to Prisoner to Insurgent Leader
URL: