

Can 9/11 and Counterterrorist Strategies be Described as a Just 'War'?

Written by Jenrette Nowaczynski

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JENRETTE NOWACZYNSKI, MAY 27 2013

Following Just War Principles can 9/11 and Counterterrorist Strategies be Described as a Just 'War'?

"The only unethical action you can take in warfare is the failure to act in the best interest of your people."[1]

In the wake of the 2001 World Trade Centre bombings, moral philosophy faced one of its most significant developments in recent years[2]: politicians, military leaders and academics questioned the legitimacy of just war theory as a standard for ethical behaviour, wondering if the theory must be adapted to suit contemporary issues. Yet, while this debate occurred in private circles of discussion, American troops began their retaliatory assault on Al-Qaeda forces dubbed as the infamous 'War on Terror.' Almost twelve years in retrospect, we still ask whether the reactions to the 2001 atrocities were just or if the attacks themselves were characteristic of and adherent to the rules of war.

This paper will argue that neither the 9/11 attacks nor the resulting counterterrorism responses follow the traditional principles of just war theory: these events cannot be described as just under the guidelines of *jus ad bellum* or *jus in bello*. More importantly, the events should not be deemed a war. Rather, these related acts are criminal offences that were thrust under the label of warfare due to the American interpretation of 9/11 as a 'first strike' tactic. In turn, they prompted a military response, setting in motion an international standard. The resulting 'war' has arguably been a series of violations of international law.

By analysing the cases of 9/11 and US counterterrorism efforts in Afghanistan and Iraq, this paper will evaluate the ethical and legal behaviour of both non-state terrorism and state counterterrorism responses. The argument will proceed in three parts. First, it will determine criteria for warfare while proving that the 2001 attacks and counterterrorism strategies defy this definition. Second, it will explain the requirements for a just war whilst conveying how 9/11 and its responses violate this criteria even if we accept these events as war. Third, the argument will establish the events as criminal acts, showing their breaching of international law. Ultimately, this paper will conclude that although just war theory has influenced much of the action and debate for the 'War on Terror', the real issue at hand is the legal implications of these events in the global pursuit of justice against terrorism.

Prior to analysing 9/11 and its responses in relation to the doctrine of just war theory, it is necessary to situate the theory within a historical context of the changing nature of warfare. By first defining the term, we may then determine if these events can accurately be deemed a war. According to Hedley Bull, war is "organised violence waged by sovereign states" which was the outcome of a "process of limitation or confinement of violence" via the ethical doctrine of just war theory.[3] Clausewitz further classified warfare as not just an act, but also a social institution for obtaining ulterior objectives (e.g. political) and strategic lines of command within and between states. In other words, he defined the social relationship between forces and the elements of war (rationality, chance and violence).[4] While these relations still exist, Martin Shaw claims that contemporary warfare has completely evolved so that the "core of the new mode of warfare is a different general relationship between warfighting and the political, economic, and cultural-ideological domains." [5]

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Indeed, the emergence of non-state actors, technological advancements, changing geo-political boundaries, and globalisation of ideas and culture have equally affected how we define warfare—in terms of its actors, methods of combat, and causes—making it increasingly difficult to separate acts of war from criminal acts and to determine the appropriate government responses.[6] Despite these developments, warfare is still internationally recognised as an act between sovereign states. For instance, aggression—the use or imminent threat of force which leads to war—is defined by the UN as specifically occurring “by a state against the sovereignty, territorial integrity, or political independence of another state.”[7] Therefore, while Al-Qaeda’s 9/11 bombings and declaration of war against the West may have been aggressive acts, they did not qualify as acts of warfare under the accepted definition because Al-Qaeda is a non-state actor. Rather, the US interpreted these attacks as such, resulting in a military counteroffensive. The ensuing ‘War on Terror’ also fails to meet the criteria of warfare since acts of war must occur between sovereign states. For arguments’ sake, however, let us assume that the 9/11 attacks and the resulting counterterrorism measures can be considered ‘war’ in order to determine if they follow the criteria of just war theory.

Simultaneously attempting to legitimise and restrict government action in war, just war theory consists of two principles. The first part, *jus ad bellum*, defines the logical reasoning that is necessary to declare war. In order to satisfy this principle, states must have a just cause, right intentions, a likelihood of success in the outcome, and must also show that a war would have proportionally greater benefits than costs. Additionally, a legitimate authority must declare the war and may only do so as a fulfilment of last resort, after having tried all other options short of war.[8] The second principle of just war theory, *jus in bello*, characterises the ethical actions states must take during conflict. In order to satisfy this principle, states must follow the tenants of proportionality and discrimination in warfare. Combatants must not use excessive force beyond what is necessary to achieve their just outcomes, and they must use discretion in identifying enemy combatants, being careful to avoid civilians and non-legitimate targets whose potential indiscriminate destruction would violate individual rights and autonomy.[9]

Since the just war doctrine is a secondary ethical theory,[10] however, the principles lack strict definitions for proportionality, likelihood of success calculations, and what constitutes a last resort. Moreover, the varying intentions of individuals and states present complications when defining just causes for war. Ultimately, the tensions between the rules of war and aggression are dealt with in a particular trend: moral action is determined by a combination of necessity and utilitarian calculus.[11] Consequentialism, Michael Walzer claims, may force us to violate the rules of war when faced with defeat that would devastate a political community; however, once the conflict between winning and fighting well diminishes, we tend to abandon this calculus (and presumably fall back on deontological ethics).[12] Hence, the absence of ethical primacy and ambiguity of the principles allows for various interpretations of the theory.

The 9/11 attacks and the resulting counterterrorism tactics are a prime example of this multi-interpretation. For instance, according to Al-Qaeda, the overwhelming US influence in the Arabian Peninsula after the Cold War began an ideological battle between Islamic and Western culture.[13] Furthermore, America is accused of pursuing its own political and economic gains while supporting Zionist cultures (i.e. Israel) and blatantly ignoring their abuses to Islamic citizens.[14] Due to these issues, Al-Qaeda constructed a just cause of self-defence for issuing a declaration of war and committing the 2001 bombings. According to *jus ad bellum* principles, however, Al-Qaeda’s justification was invalid as it is a non-state actor, and therefore, not a legitimate authority. Even so, one could argue that the attacks did provide the US with a just cause of self-defence for the subsequent invasion of Afghanistan.[15] Furthermore, the US believed the proportionality of warfare and likelihood of success were both positive and that warfare in this situation followed the last resort principle because negotiation was impossible. Issued by President Bush, the US declaration of the ‘War on Terror’ sought to eradicate the societal injustices and threats that harboured terrorism in Afghanistan, which could arguably be a just intent.[16]

Nevertheless, the Bush administration’s securitization measures and speech-act rhetoric suggest that US intentions were not entirely noble.[17] Rather than merely fighting the enemy at hand, the administration imposed its doctrine of pre-emptive war, in which the US claimed the right to wage war against any state presumed to harbour terrorists—most notably those states comprising the ‘Axis of Evil’ of Iraq, Iran, and North Korea.[18] Declaring war against an inanimate and abstract concept has also arguably nullified the country’s justification for its actions. While *jus ad bellum* holds self-defence as a just cause, it only provides for self-defence against state aggression.[19] Likewise, the 2003 US invasion of Iraq had no moral reasons to justify the cause. The government expanded the

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notion of a terrorist threat beyond states which harbour terrorists to generally include 'failed states' whose governments did not uphold democratic values and engaged in weapons proliferation.[20] Securitized Iraq as such, the US believed that Iraq's government challenged security by harbouring terrorists, refusing to cooperate, and amassing nuclear weapons that would lead to aggression. Thus, originally, invasion was necessary as a defensive precaution against the build-up of weapons of mass destruction; however, once it became clear that these WMDs did not exist, the argument became humanitarian.

A corollary to the pre-emption doctrine, the human rights argument in the US Security Strategy defined America's responsibility as a world-leader to deliver equal rights for all people.[21] In this way, the hegemonic power constructed a just cause and granted itself a right to act extra-territorially.[22] Granted, *jus ad bellum* allows humanitarian intervention as a just cause.[23] David Mellow argues that the Iraq war, for example, was justified because it did support the collective human rights of self-determination, and it sought to end the systematic violations of individual human rights and individual human suffering.[24] While US involvement may have secured more liberal freedoms than Afghanistan and Iraq previously had under the rule of the Taliban and Hussein (respectively), this outcome only resulted at the cost of violating other *jus ad bellum* principles and rights. As Rodin states, humanitarian intervention may defend the rights of citizens and uphold international security and peace; but it does so by assuming the forfeiture of state sovereignty rights.[25] The Iraq invasion was evidence of this sacrifice: humanitarian efforts reflected pre-emption as regime change became the primary goal. American officials argued that based on past aggressions towards its people, the brutal dictatorship would continue to be an immediate international threat if humanitarian intervention did not ensue. Realistically however, the civilian casualties incurred were presumably far more than would have resulted without a military invasion.[26] Ultimately, the costs of US counterterrorism responses proportionately outweighed the outcomes, undermining the humanitarian case for justifying its war and violating *jus ad bellum* by constructing a cause based on previous aggressions.

Similarly, both 9/11 and US counterterrorism strategies breach *jus in bello* principles of discrimination and proportionality. For instance, Al-Qaeda's strategy of suicide terrorism takes any person as a combatant and breaches the limits of force, using excessive means to achieve its aims. The American response following the events of 9/11 has often violated *jus in bello* principles as well, particularly by resorting to torture prisoners in detention facilities such as Guantanamo Bay and Abu Ghraib and by using targeted drone attacks in Iraq. In the first case, torture's violation of just war principles is twofold: first, subjecting individuals to excruciating circumstances and denying their human rights defies the principle of proportionality with the use of excessive force; second, torture breaks the rule of discrimination by targeting non-combatants for harm, particularly after they have been captured. As Alex Bellamy states, "by its very nature, torture involves deliberately inflicting harm upon non-combatants. Once terror suspects are taken prisoner they cease being combatants because they no longer pose a threat." [27]

Henry Shue presents the logic for the use of torture as follows: compared to just-combat killing in warfare which involves the total annihilation of a person, torture usually involves only partial destruction or temporary incapacitation to an individual, thereby rendering less bodily harm and generally being more morally permissible.[28] The use of torture as a counterterrorism tactic, however, suggests moral depravity and would set a precedent for other countries to adopt similar tactics.[29] Indeed, certain proponents like Alan Dershowitz have suggested a legalisation of torture for use in supreme emergency cases[30] like that of the hypothetical 'ticking bomb' situation, where a utilitarian calculus prejudices a moral outcome and assumes that torture could lead to life-saving information.[31] By idealising scenarios and abstracting them from reality in hypothetical cases, the institution of torture appears an excusable—if not justifiable—'lesser evil' of warfare dictated by necessity.[32] If unabated, one can easily assume this practice would become standard, perpetually violating *jus in bello* principles.

In addition, the US violates *jus in bello* with its use of drone attacks as an aerial counterterrorism strategy. Since the initiation of the 'kill list' strategy began during the Bush administration, Obama's use of targeted killings has more than doubled along with the number of casualties.[33] More troubling is the fact that the administration is attempting to create a legal framework for future presidents to guide their selection of terrorist targets.[34] While drones may reduce the number of American soldiers on the battlefield, they hardly account for the civilian casualties who become collateral damage in the crossfire. Michael Gross' examination of this practice places it morally close to torture as an intolerable practice. He argues that targeted assassinations complicate the "conceptual framework that justifies

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killing during war and distinguishes it from murder.”[35] While terrorists may not be innocent non-combatants, striking them down beyond the battlefield precludes the idea of individual self-defence and negates any moral innocence of a soldier serving the state—ideas that regulate human behaviour. Subjectively outlawing individuals means the war convention disintegrates[36]: state militaries lose legitimacy as they would not protect individuals from assassination, the distinction between combatant and civilian becomes blurred even further, and ultimately terrorism finds a new injustice to boost recruitment numbers.[37] Consequently, although drone strikes may fulfil a utilitarian calculus of proportionality and save lives with their precision, they violate *jus in bello* by specifically harming non-combatants and proportionally using force beyond what is necessary on the battlefield to accomplish state means. Resorting to these measures only perpetuates self-legitimation as we have seen in the American case where a legal framework is created after the action to bend the rules of warfare and justify the act. Ultimately, the use of torture and targeted killings violate just war theory.

As shown, the 9/11 attacks and counterterrorism responses have failed to fit under the definition of warfare. Alternatively, they are criminal acts because they breach international law. For example, Chapter VII Article 51 of the UN Charter states,

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”[38]

As a legal institution, the UN recognises the international right for self-defence distinctly provided to member states (therefore non-state actors, let alone hostile groups, such as Al-Qaeda would not apply). More importantly, the definition clearly holds that once the Security Council has taken action, states must refrain from self-defence. While the UN does not typically declare war, it passes a series of conditional resolutions before allowing member states to officially declare war. For the ‘War on Terror’, the UN passed Resolutions 1368, 1373, 1377, and 1441—all outlining actions against the criminal acts of terrorism—prior to the US invasions of Afghanistan and Iraq[39] and the US breached these by pre-emptively launching its military campaigns before the series of resolution negotiations were finished. Additionally, the Geneva Conventions set up under traditional state-based warfare practices outline the rights accorded to non-combatants, specifically providing for prisoners of war that have been captured in armed conflict between states. According to Convention III Article 13, POWs are entitled to humane treatment that does not alter their physical or mental conditions (i.e. torture) and are protected from “acts of violence or intimidation and against insults and public curiosity.”[40] Similarly, in Article 14 the Convention entitles them to respect and encourages upholding their honour.[41] In the Convention IV, which lists the rights of unlawful combatants (civilians who have engaged in hostile activity), Articles 4 and 5 claim that nationals of states including saboteurs and hostiles to state security may not be entitled to all the conventional rights afforded to non-hostiles (such as POWs); nonetheless, these individuals must still be “treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.”[42]

The US, however, claims that Al-Qaeda detainees—despite being considered ‘unlawful combatants’—do not qualify for the protections of the Geneva (III) Conventions as non-state actors.[43] Furthermore, the government has argued that Al-Qaeda fighters do not represent any country that is party to the treaty and therefore, America has denied them any rights under humanitarian law. Of course this statement is false since the terrorists are legally nationals of states that are party to the treaty; yet, due to the complications in terminology, the US has created a justification for its inhumane detention of prisoners and use of torture. As Erin Chlopak states,

“current U.S. policy at best misinterprets, and at worst ignores, this legal reality and potentially renders the U.S. in breach of its treaty obligations for any actions against detainees which contradict the Conventions’ guarantees.”[44]

Paradoxically, while the US justifies war against Al-Qaeda using a state-based theory, it uses the group’s identity as a non-state actor to vilify the prisoners, permitting the use of torture on individuals who have ‘forfeited’ their human rights.

In conclusion, neither the 9/11 bombings nor the resulting counterterrorism strategies can be described as a just

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'war' since they do not fit the definition of warfare. Analysing them according to *jus ad bellum* and *jus in bello* principles further shows the injustice of these events. Al-Qaeda's attacks cannot present a just cause, nor do they follow the guidelines of permissible use of force. Similarly, the US military response constructed just causes of self-defence and humanitarian assistance under false pretences thereby violating the first principle of just war theory; its use of torture and targeted assassination violate the second principle. Instead, these events are aptly deemed as criminal acts which break the conventions of international law. Ultimately, assigning ethics to war may help justify and regulate the act, but this does not excuse it. The only unethical action in warfare is not the failure to act in the best interest of your people, but rather the failure to accept war as the best interest for the people. If we move past the 'war' mind-set to view these events as they really are, the legal importance of these criminal violations becomes clear. Breaches of international law cannot go unpunished otherwise international organisations like the UN will lose legitimacy. These institutions must be resolute in equal retribution. The US in particular must answer for international crimes, cooperating with (and preferably acting as party to) delegations such as the International Criminal Court. At the same time, we cannot tailor just war theory to fit these events (or include the actions of non-state actors) otherwise any exceptions made will become norms and the criminal injustices will continue long after the process of post-war reconstruction. Therefore, we must expand just war principles beyond *jus post bellum* to include pre-war justice principles that may reconcile differences without the use of aggression. Rather than adhering to traditional war ethics, focusing on cosmopolitan concepts of justice such as compassion and benevolence may be beneficial. At worst, these concepts could instil a conflict resolution process that would not dissolve under tensions and at best, a stable and sustainable peace.

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[1] Jessica Snapper, "A Carefully Calibrated Attack," *The New York Times*, 14 Nov 2012, <http://www.nytimes.com/roomfordebate/2012/11/14/how-can-targeted-killings-be-justified/israels-action-in-gaza-was-a-carefully-calibrated-attack>, (accessed 2 Dec 2012).

[2] David Rodin, "The Ethics of War: State of the Art," In *War, Torture and Terrorism*, ed. David Rodin, (Oxford: Blackwell Publishing, 2007), 1-6.

[3] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, (New York: Columbia University Press, 1977), 179.

[4] Martin Shaw, *The New Western Way of War: Risk-Transfer War and its Crisis in Iraq*, (Cambridge: Polity Press, 2005), 40-41.

[5] Ibid, 55.

[6] Ibid, 95.

[7] United Nations, "General Assembly Resolution 3314: Definition of Aggression," 14 Dec 1974, p.143, [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/3314\(XXIX\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/3314(XXIX)), (accessed 13 Dec 2012).

[8] For further description of these requirements, please see Nicholas Fotion, *War and Ethics: A New Just War Theory*, (London: Continuum International, 2007), 10-23.

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[9] Ibid.

[10] It was generated from different overarching religious morals—most notably influenced by St. Thomas Aquinas and St. Augustine in Christianity—and was later secularised to the legal realm by Hugo Grotius. See Nicholas Fotion, "Applying Just War Theories to Wars Involving Terrorism," In *Just War and Terrorism: The End of the Just War Concept?* Ed. Wim Smit, (Leuven: Peeters, 2005), 31-46.

[11] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fourth Edition, (New York: Basic Books, 1977), 268.

[12] Ibid.

[13] Quintan Wiktorowicz and John Kaltner, "Killing in the Name of Islam: Al-Qaeda's justification for 9/11," In *Middle East Policy Council Journal* X, no. 2 (Summer 2003), <http://ics-www.leeds.ac.uk/papers/vp01.cfm?outfit=pmt&folder=10&paper=540>, (accessed 05 Dec 2012)

[14] Ibid.

[15] For instance, Walzer uses a domestic analogy to expand the individual right of self-defence to that of the state as a just cause for war, developing his 'legalist paradigm.' Aggression is acceptable provocation for war, and a defence of rights against violation (or as law enforcement) may be a just cause for fighting. See Walzer, *Just and Unjust Wars*, 58-72.

[16] George W. Bush, "Address to Joint Session of Congress," *CNN*, 21 Sept 2001, <http://edition.cnn.com/2001/US/09/20/gen.bush.transcript/>, (accessed 05 Dec 2012).

[17] Outlined in its 2002 National Security Strategy, the US government stated, "As we implement this strategy, we will be sensitive to treaty and other obligations; however, where we find existing international arrangements to be inadequate or counterproductive to our efforts to secure our homeland, we will work to refashion them." Focused on preventative action against terrorism, the Bush administration's policy clearly implies its national interest disguised behind a veil of just cause. Of course that is not to say that America blatantly disregarded justice. The US government increased transatlantic intelligence sharing with the EU, improved extradition processes, and supported the creation of institutions that would lead the fight against terrorism. Later security strategies also promoted increased international multilateral cooperation as a key counterterrorism weapon. While amenable, America still adheres to a pre-emptive security strategy in support of national interests, and therefore the justice of its actions may remain questionable. See U.S. Department of State, "The National Security Strategy of the United States of America," 17 Sept 2002, 60, <http://www.state.gov/documents/organization/63562.pdf>, (accessed 08 Dec 2012). Also see Wyn Rees, *The US-EU Security Relationship: The Tensions between a European and a Global Agenda*, (London: Palgrave, 2011).

[18] George W. Bush, "State of the Union Address," In *The White House Archives*, 29 Jan 2002, <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>, (accessed 05 Dec 2012).

[19] For an interesting counter-argument against the notion of self-defence as moral justification for war, see David Rodin's discussion of the relationship between war, individuals, states, and rights. David Rodin, "War and Self-Defence," In *Ethics & International Affairs* 18, no. 1 (Winter 2004): 63-68. David Rodin, *War and Self-Defence*, (Oxford: Oxford University Press, 2003).

[20] U.S. Department of State, "The National Security Strategy," 17 Sept 2002, 9-10.

[21] The responsibility of our government grew to extend beyond the borders of America itself. The NSS stated the terrorist threat to include "the physical well-being of the American people. We must also safeguard our way of life, which involves five key elements: democracy, liberties, security, economics, and culture." But in general, the

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document noted a greater responsibility to ensure these freedoms for other 'less-fortunate' countries whose human rights may be abused by terrorists and states harbouring terrorists. See U.S. Department of State, "The National Security Strategy," 17 Sept 2002, 8.

[22] Colin Flint and Falah Ghazi-Walid, "How the United States Justified its War on Terrorism: Prime Morality and the Construction of a 'Just War'," In *Third World Quarterly* 25, no. 8 (2004): 1379-1399.

[23] Walzer claims if the crimes committed "shock the moral conscience of mankind," cannot be internally solved, and if there is a reasonable expectation of success, then the general public may agree to humanitarian assistance as a cause to extend the legalist paradigm beyond self-defence of personal rights to defence of others' rights. Walzer, *Just and Unjust Wars*, 107.

[24] David Mellow, "Iraq: A Morally Justified Resort to War." In *War, Torture and Terrorism*, ed. David Rodin, (Oxford: Blackwell Publishing, 2007), 51-70.

[25] Rodin, *War and Self-Defence*, 131.

[26] Shaw, *The New Western Way of War*, 112.

[27] Alex J. Bellamy, "No Pain, No Gain? Torture and Ethics in the War on Terror," In *International Affairs* 82, no. 1 (2006): 140.

[28] Henry Shue, "Torture," In *Philosophy and Public Affairs* 7, no. 2 (Winter 1978): 125-126.

[29] Henry Shue and Richard Weisberg. "Responses to the Debate on Torture." In *Dissent*, (Summer 2003): 90-91.

[30] Refer here to Walzer's 'scale of anticipation' and 'sliding scale of war rights' in 'supreme emergency' cases which connect the decision for pre-emptive action with the moral constraints on action during war. In supreme emergencies, he believes nations may use excessive force to override certain *jus in bello* norms, specifically if the national political identity is threatened (which is an argument that could be constructed for the use of torture). Walzer, *Just and Unjust Wars*, 74-75, 229, 251-268 (respectively).

[31] Bellamy, *No Pain No Gain?*, 141.

[32] Henry Shue, "Torture in Dreamland: Disposing of the Ticking Bomb," In *Case Western Reserve Journal of International Law* 37, no. 2/3 (2006): 231.

[33] "Rules for Targeted Killings." The New York Times, 29 Nov 2012. <http://www.nytimes.com/2012/11/30/opinion/rules-for-targeted-killing.html>. (accessed 12 Dec 2012).

[34] Ibid.

[35] Michael L. Gross, "Assassination and Targeted Killing: Law Enforcement, Execution or Self-Defence?" In *War, Torture and Terrorism*, ed. David Rodin, (Oxford: Blackwell Publishing, 2007), 83.

[36] Ibid, 86.

[37] Ibid, 93.

[38] United Nations, "Charter of the United Nations, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," 24 Oct 1945, <http://www.un.org/en/documents/charter/chapter7.shtml>, (accessed 13 Dec 2012).

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[39] Res.1368 passed on 12/09/2001, 1373 on 28/09/2001, and 1377 on 12/11/2001 while the US declared war in Afghanistan on 21/09/2001. Similarly, the UN declared Res. 1441 on 08/11/2002 before the US declared the Iraq War in 2003.

[40] International Committee of the Red Cross, "Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949," In *International Humanitarian Law: Treaties and Documents*, 2005, <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>, (accessed 09 Dec 2012).

[41] Ibid.

[42] International Committee of the Red Cross, "Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949," In *International Humanitarian Law: Treaties and Documents*, 2005, <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>, (accessed 09 Dec 2012).

[43] U.S. Department of Justice. Office of the Assistant Attorney General. Office of Legal Counsel. "Memorandum for Alberto R Gonzales (Counsel to the President) and William J. Haynes II (General Counsel of the Department of Defense), Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees." 22 Jan 2002, <http://www.justice.gov/olc/docs/memo-laws-taliban-detainees.pdf>, (accessed 09 Dec 2012), 9.

[44] Erin Chlopak, "Dealing with the Detainees at Guantanamo Bay: Humanitarian and Human Rights Obligations under the Geneva Conventions," In *Human Rights Brief* 9, no. 3 (2002): 7.

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