

Human Rights and Islamophobia

**Violation of Human Rights on the Pretext
of War on Terror**

**A Collective of ODVV Articles for the
16th Session of the Human Rights Council Side Events**

Organization for Defending Victims of Violence (ODVV)

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- **Introduction 7**
- **Panels Moderators 9**

Chapter One:

Human Rights and Islamophobia

- **The Media and its role in the promotion of the Islamophobia 13**
- **American Islamophobia as a Cultural Ideology 51**
- **Right to implication and Islamophobia in the west 61**

Chapter Two:

Violation of Human Rights on the Pretext of War on Terror

- **The impact of counter terrorism on the criminal justice system 85**
- **Analyzing of Legislative Function of United States in War against Terrorism 119**
- **War on International Terrorism within International Humanitarian Law 141**

Introduction

As part of the activities while attending Human Rights Council Sessions, the ODVV holds thematic panels on the sidelines of the Sessions, with national and international expert panellists.

The ODVV has arranged to hold 2 sidelines panels on “Human Rights and Islamophobia” (to be held on Monday 14th of March), and “Violation of Human Rights on the Pretext of War on Terror” (to be held on Wednesday 16 March).

Dr. Alireza Deihim, the head of the ODVV board of directors is the moderator of both panels. The speakers of the first panel are: Dr. Mohammad Javad Javid, lecturer at Tehran University, who’ll be speaking on Islamophobia and the Right to Morality in the West; Dr. Amir Saeed, from the University of Sunderland (England), who’ll be speaking on the Media and its Role in the Promotion of Islamophobia; dr. Stephen Sheehi from University of South Carolina (USA) who’ll be speaking on American Islamophobia as a Cultural Ideology.

The speakers of the second panel are: Dr. Seyed Bagher Mir Abbasi from Tehran University who’ll be speaking on the War against Transnational Terrorism in the Light of International Humanitarian Law; Dr. Abbas Ali Kadkhodaei from Tehran University who’ll be speaking on Analyzing of

Legislative Function of the United States in the War against Terrorism; Mr. Biro Diawara Representative to Interfaith International United Nations in Geneva who'll be speaking on Violation of Human Rights regarding the Private Life of Citizens in the Context of the Combat against Terrorism; and Dr. Amir Saeed, from the University of Sunderland (England), who'll be speaking on the Impact of Counter-terrorism on the Criminal Justice System.

Dr Alireza Deihim



Panels Moderator:

Deihim Alireza Legal Advisor to the Deputy President,
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Director of Treaties and the International Department in
the Ministry of Foreign Affairs; Deputy Director General
of the Asian African Legal Consultative Organization;
Director of the Legal Department in the Ministry of Foreign
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Ministry of Foreign Affairs; Counsellor to the Permanent
Mission to the UN in New York; Counsellor to the Embassy
in Switzerland; Professor; Author; Delegate to the Merida

Conference; Delegate to the First Ministerial Conference
on the Draft African Union Convention on Preventing and
Combating Corruption; Delegate to the third session of the
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including extradition

Chapter One

Human Rights and Islamophobia

The Media and its role in the promotion of the Islamophobia



«With skillful manipulating of the press, they're able to make the victim look like the criminal, and the criminal look like the victim.»

Malcolm X

February 14th 1965 Speech

Los Angeles Times 18th of September 2006

The truth is that there is every reason to believe that a terrifying number of the world's Muslims now view all political and moral questions in terms of their affiliation with Islam. This leads them to rally to the cause of other Muslims no matter how sociopathic their behavior. This benighted religious solidarity may be the greatest problem facing civilization...

(Harris, 18/09/06)

By: Dr Amir Saeed
Department of Media and
Cultural Studies
University of Sunderland



What they (media) exercise is the power to represent the world in certain definite ways. And because there are many different and conflicting ways in which the meaning about the world can be constructed, it matters profoundly what and who gets represented, who and what regularly and routinely gets left out; and how things, people, events, relationships are represented. What we know of society depends on how things are represented to us and that knowledge in turn informs what we do and what policies we are prepared to accept'

(Miller 2002, 246)

This article looks at how the media in the UK represent one minority group, Muslims. Although theoretically speaking British Muslims are a heterogeneous group comprising of many different ethnic backgrounds (Poole, 2002). Modood (2003, 2005) further notes that this heterogeneity is further complicated by political, cultural and socio-economic factors. Modood (2003, 2005) suggests that the category

“Muslim” is as internally diverse as other group categories such as ‘British’ or ‘Christian.’ However despite these reservations it is a useful classification for identifying ‘visible minorities’ (Modood, 2003) who are the subject of public anxiety. This public anxiety can manifest itself most clearly in media representations of Muslims and Islam thus the importance of analyzing and debating such representations.

In order to do this the article will suggest that recent social and political concern over Muslim minority groups can be understood as a form of cultural racism (Modood, 1997). It will be argued that Muslims are thought of and represented as UnBritish. This echoes previous research into national identity in the UK that argues that non-white minority groups in the UK are thought of as ‘UnBritish.’ (Gilroy, 1987). These concerns about who is and who is not ‘British’ have in recent years grown to wider debates about the problems of a multicultural society (Cottle, 2006; Fekete, 2002; Modood, 2005, 2003, 1992). These concerns over who is ‘British’ can be understood in relation to the media treatment of minority groups. The article reviews previous research into the media portrayal of minority groups concentrating on press treatment of British-Muslims and/or Islam. It is suggested that the representation of British Muslims echoes previous research on how minority groups are portrayed in the media. In many respects the media representation of minority groups is a ‘double edged sword.’ Firstly. It marginalises minority voices thus they are virtually ignored or invisible (Saeed, 1999). Simultaneously actual representation of minority groups is often construed in negative discourses (Hartmann and Husband, 1974).

When these frameworks are applied to audiences who have little social contact with minority groups, the role of the media as sole provider (or primary definer, Hall 1978) becomes crucial (Van Dijk, 1992). Cottle argues that the media hold a powerful position in conveying, explaining and articulating specific discourses that help represent (and misrepresent) minority groups (Cottle, 2006; Cottle, 2000).

As late back as 1993 Ahmed noted that many Muslims voiced concern of the negative representation of Islam and Muslims by the Western media. However following on from the such as the Rushdie affair, the first Gulf War and 9/11, interest in media representations of Islam have grown. An ever-increasing body of research has argued that on the balance the images, representations and discourses relating to Islam/Muslims in mainstream Western media tend to be negative and hostile (Poole and Richardson, 2006). Various studies have examined the specific relationship between media and Islam (Ahmed, 1994; Runnymede Trust 1997, 2001); the representations of Muslim minorities in the West (Poole, 2001; Allen 2005) and other on Muslims/Islam in the global media (Poole and Richardson, 2006; Zelizer and Allan, 2002). Ideologically these constructions can be traced back the expansion of Western imperialism where a dichotomy of 'West' v 'East' was constructed (Said, 1978).

In short this article provides a summary of previous research into the British press's representation of minority groups and then argues that British Muslims and Islam are depicted in a similar way. These representations can be linked to issues of changing discourses of racism and to issues of national identity. Thus research into the press portrayal of British Muslims shows that they are represented

as the ‘alien within’ British culture.

National and International Concern

Recent academic research into the British media’s coverage of issues relating to immigration and asylum has drawn attention to the underlying themes of race and nation which dominate media reporting (Finney and Peach 2006). It may be added that Gilroy has claimed that in the past twenty years the ‘new racism’ has successfully distanced itself from crude notions of biological inferiority and instead forged links between race, nationhood, patriotism and nationalism. It has done so by defining the nation as a unified cultural community, a national culture ethnically pure and homogeneous in its whiteness. (Gilroy 1992, 53) For example, Greenslade has claimed that the general response of the British press to asylum and immigration is typified in the following remark by Charles Moore, the distinguished former editor of The Times newspaper:

Britain is basically English speaking, Christian and white, and if one starts to think it might become basically Urdu speaking and Muslim and brown, one gets frightened.

(Greenslade 2005, 6)

Although Moore’s comments were made in the context of The Spectator (Time for a More Liberal and ‘Racist’ Immigration Policy”, The Spectator, 19 October 1991), a relatively small-circulation magazine noted for its outspoken and unashamedly right-wing views, Greenslade is nevertheless correct in claiming that such views are highly symptomatic of the British press’s general approach to questions of asylum and immigration.

Throughout the years Britain’s black and other ethnic minorities have tended to be portrayed in terms of a

limited repertoire of representations and within contexts characterised by conflict, controversy and deviance (Cottle, 2002). In the 1960s and 1970s studies observed how immigrants were reported in relation to problems of ‘numbers’ and tensions of ‘race relations’ (Hartmann and Husband, 1974; Troyna, 1981). In the 1970s and 1980s representations tended to criminalise Britain’s black population – ignoring social inequalities and growing anger at police tactics – and the 1990s have witnessed attacks on anti-racist groups, vilifications of black representatives and the seeming endorsement of ‘new racism’ by prominent politicians – actively disparaging attempts to further multicultural and anti-racist agendas (Murray, 1986; Van Dijk, 1991). The current representation of asylum seekers and British Muslim communities appears to follow this trend of problematising non-white communities as Un-British (Saeed 2004). Although it has to be stressed that not all asylum seekers are non-white furthermore recent media debate about Eastern-European migrants to the UK seems to suggest that certain white communities are problematised by the media.

Hall, Held and McGrew (1992, 298) have observed that in recent times biological notions of race have been replaced by cultural definitions which draw on discourses of national belonging and national identity. This has led to a new form of ‘cultural racism’ associated as much with ethnicity as race. In this context Gandy (1998) has suggested that the concept of ethnicity was first employed by social scientists and policy makers as a way of shifting the definition of race away from the biological and towards the cultural. His views are supported in this respect by Mason (2000), who

holds that ethnicity is a more appealing concept than race not merely because it is inherently social but also because ethnic categories are defined partly through the conscious efforts of those who belong to them. Following the same argument,

For example, Modood (1992) reminds us that the term ‘British’ is practically ‘quasi-ethnic’ in its close identification with whiteness. He goes on to claim that the right of individuals and communities to be culturally different in Britain is often neglected in favour of the expectation that they be absorbed or assimilated into the homogeneous host culture. Likewise Mason (2000, 15) has observed that the distinguishing criterion for belonging to a designated ‘ethnic minority’ group is normally skin colour. Thus the conflation of ethnic identity with skin colour can lead to the classification of second or third generation immigrants – who may be culturally indiscernible from their white neighbours – as ‘ethnic minorities’:

Thus people with non-white skin in Britain have habitually been designated as outsiders (or Other), as ‘ethnic minorities’ whose culture is alien and incompatible with that of the host nation. Furthermore it could be suggested that the issues of asylum seekers/refugees has been conflated with the issue of (Islamic fundamentalist) terrorism to create a new form of racism. Racism, has many authors have noted, does not remain static but evolves and adapts to circumstance and situation (Mason, 1995; Solomos, 2003). For example national research in the 1980’s signalled that fewer people in the United States thought blacks to be racially inferior. This did not mean that racism disappeared completely. It was argued that instead of ‘classical’ racism, new and

more subtle types of racism began to emerge. The same circumstances were detected in Europe (Saeed et al, 1999)

West and the Rest

However it should be noted that at times ‘new racism’ is not always covert and at times it seems to echo discredited biological assumptions about ‘race’ and the perceived superiority of the West. This link can be most clearly seen in the appropriation of Samuel Huntingtons ‘Clash of Civilisations.’ He argues that that a new cold war is taken place based not upon economics or politics but on culture. He continues that Islam with its innate propensity to violence poses the most serious threat to Western civilisation. It is clear for Huntington that Islam is and Muslims are inherently inferior whilst this argument is based on religion and culture the essentialist argument forwarded is similar to the biological reasoning forwarded in the nineteenth century to justify colonialisation and imperial war.

Sardar and Davies (2002,49) illustrate how Huntington’s thesis has been appropriated,

On Dec .3 2001 issue of the National Review, with a drawing of George Bush as a medieval crusader on the cover contained an article headlined martyred: Muslim murder and mayhem against Christians in which the author cites with the approval the conclusion in Samuel Huntington’s book. The Clash of Civilisations and the Remaking of World Order: The underlying problem for the West is not Islamic fundamentalism. It is Islam, a different civilisation whose people are convinced of the superiority of their culture and are obsessed with the inferiority of their power.

This example echoes this media representation of the War on Terror and Islam may well help explain why many

Muslims look upon the War on Terrorism as a War on Islam. However as Halliday (1998, 2002) clearly points out even prior to Huntington's thesis Islam was presented as a threatening other. Said's Orientalism (1978, 286-287) provides the classic framework in understanding relationships between the 'West' (and the 'Rest') and Muslims in particular.

Said (1985) focuses primarily on the Middle East - the territory occupied principally by Muslims. What he argues is that European domination took not only political and economic forms, but also a cultural form. It involved the construction of a particular discourse, Orientalism, whose structure promoted the difference between the familiar (Europe, the West, <us>) and the strange (the Orient, the East, <them> or <the other>) (Said, 1985, 19).

He further argues that in this context, Islam was regarded as mediievally backward. Different discourses varyingly articulated this. In the science of anthropology, Arabs were held to be inferior, whilst in political discourses tests were woven around the paternalistic idea that colonial subjugation would not only benefit the West but also the Orient itself.

In a similar manner Hall (1992) suggests that European contact with populations elsewhere involved a process of representations and with European expansion, a construction of the West's sense of itself through its sense of difference from others. The consequence was the emergence of a discourse which represented the world as divided according to a simple dichotomy the West/ the Rest (Hall, 1992).

Miles (1989) provides two examples of this division

.The first is based upon colour. In the act of defining Africans as 'blacks' and 'savages' and thereby excluding

them from their world, Europeans in the eighteenth and nineteenth century were representing themselves as ‘white’ and ‘civilised’. The second is based upon culture, European representations of the Islamic world extensively utilised images of barbarism and sexuality in the context of a Christian/heathen dichotomy

(Miles 1989, 34-5).

Whilst Donald (1992) summarises the argument on the development of this discourse thus:

First chains of characteristics are attributed to these categories. Thus Westerners are depicted as civilised, logical, rational, virtuous, sceptical, empirical and dedicated. Orientals, on the other hand, are shown as gullible, cunning prone to intrigue and flattery, lethargic, stupid, irrational and childlike. Second these various attributes are taken to define that which is essentially Oriental, an essence that is then ascribed to nature. The West has a natural affinity with self government, the East a natural affinity with despotism. Finally these representations are presented as fixed and unchanging identifications for the reader of Orientalist discourse: the West is us, and the Orient them.

(Donald 1992, 75).

Orientalism has, however, been accused of embracing the very ‘discursive structures’ of which it critiques (Malik 1996, 228 in Ferguson 1998) in its failure to consider any ‘tensions or contradictions in the meanings to be negotiated’ from the texts to which it refers (Ferguson, 1998, 71). Despite this, Orientalism provides a wealth of resources and historical documentation that demonstrates how the ideologically constructed knowledge of the Orient was both supportive and reflective of the dominant ideology of the European imperialist elite in not only securing but also justifying the exploitation of ‘Europe’s greatest and riches

an oldest colonies' (Said 1995,1). The exploitation of the Orient's resources and peoples was legitimated through the ethno centric language of Christian European identity that propagated the myth that the predominantly Muslim (and other non-Christian religions) peoples of the Orient were irrational, uncultured, uncivilized, barbaric and ultimately inferior. As Stuart Hall (1992) notes, the colonial discourse of 'The West and the Rest'

continues to inflect the language of the West, its image of itself and 'others', its sense of 'us and 'them', its practices of power towards the Rest' through 'the languages of racial inferiority and ethnic superiority which still operate so powerfully across the globe today (1992, 318).

Media and Race

One example of this can be seen in the media's representation of 'race' and ethnicity. In relation to race and ethnicity, the media provides information where public knowledge is fragmentary. Although there are some two million black people in Britain, they live mainly in a few major population centres and therefore the white majority's contact with them is often slight (Van Dijk, 1991). Research into the media's treatment of race over the years has suggested that its reporting has been limited in its themes and negative in its content. Research into minority representation in the British context can be summarised in two distinct but complementary stages (Saeed, 1999). Firstly, immigration issues have been formulated as a 'problem', or to use Thatcher's words a fear of 'swamping.' Secondly, minorities who were born in Britain have also been perceived to be 'problems.' From the "criminal

mentality” of the Afro-Caribbeans (Hall, 1978), to the “cheating Asians” (Sivanandan, 1985) and the “Islamic fundamentalists” (Ahmed, 1993) minority communities tend to be represented in negative ways. The most recent surveys of the media (Speers, 2001) clearly show that the media is biased and at times overtly racist in its attitudes to asylum seekers:

As soon as asylum seekers are described as ‘illegal immigrants’, it is a small step before the debate spills over to the issue of immigrants generally, and the very notion of Britain as a multiracial society is called into question.

(Kundnani 2001, 50)

However exceptions can be found; commentators have recently begun to uncover, for example, the changing cultural representations of ethnic minorities in British television across the years. These indicate that representations are far from historically static and tend to give growing expression to the surrounding cultural politics of ‘new ethnicities’ and ‘hybridities’ and multiculturalism (Hall, 1992; Ross, 1996). Indeed Cottle (2000, 28) notes that the term ‘multicultural’ and its relationship to cultural identity may be crucial in understanding the media’s role in representations of ethnic minority groups.

Media as ‘Elites’

In *Policing the Crisis* Hall (1978) subscribes to a neo-Marxist model of media racism. Hall considers that the primary definers of what is ‘important news’ and what the ‘correct’ perspective on what news should be (such as from politicians, business leaders etc.) are in fact very important. The ideas of such people have hegemonic value in society

and in the media, the latter because their ideas become integrated into concepts of news values, and professional journalism and so on. In short, the official sources of the media establish the initial interpretation of the topic (Miller, 1993). Hall (1986 p95) says the media constitute a 'machinery of representation' determining

...what and who gets represented and what and who routinely gets left out (and) how things, people, events, relationships get represented... the structure of access to the media is systematically skewed towards certain social categories.

They are thus able to 'command the field' in all 'subsequent treatment' (Miller, 1993). Schlesinger (1991) argues that this hegemonic model is too bound to the concept of the dominant ideology, and fails to recognise that, in many instances, there is no single definition of an issue or an event's meaning. The primary definition thesis for Schlesinger, 'tends to understate the amount of conflict among those who principally define the political agenda.' (Schlesinger 1991, p64).

Miller (1993) also criticises primary definition model for a number of reasons and concludes that:

this model misconceives the relationship between the media and the state because it sees that output of the media as guaranteed in advance by the structural relationship between the media and official sources.

(Miller 1994, p258)

For Schlesinger and Miller it appears that structures of access to the media, through which primary definitions emerge, shift over time as the political environment changes; and that primary definitions are the product of

complex processes of negotiation between competing social actors. Van Dijk (1987, 1991, 1993) links the idea of 'primary definers' to the notion that media constitute an 'elite' in society. Whilst accepting that the media have conflicts with other social actors he argues that in terms of race and ethnicity an ethnic consensus is prevalent. Van Dijk (1987) argues that these other social actors can be termed elites. These elites are predominately white and have various types of power and control, whether political, economic, social or cultural. These socio-political elites are in control of the decisions that directly affect the daily lives of ethnic minority individuals (see Van Dijk, 1993 for a full discussion of elites). In short when ethnic information is relayed or involved few other sources of information which can match the power of the elites can contest this 'ethnic consensus' (Van Dijk, 1987). Cottle (2000) does offer some criticism of this argument noting historical and structural factors that lead to exclusion may not be grounded in ideological racist thinking.

a A Question of Numbers, A Question of Threat

Early research has examined the media concern about 'race' as a problem and the racialisation of 'immigrants' in particular, throughout the 1960s and 1970s. Forms of content analysis have been employed by a number of studies in relation to the local and provincial press (Bagley, 1973; Critcher et al, 1977; Troyna, 1981); national newspapers (Hartmann and Husband, 1974; Hartmann et al., 1974); the entertainment media (Hartmann and Husband, 1974); as well as local radio (Troyna, 1981). In addition Bagley (1973), Hartmann and Husband (1974) and Troyna (1981)

have attempted to investigate the impact of these media portrayals upon representative audiences, whilst Van Dijk (1991, 1993) has attempted to employ discourse analysis along with concepts of symbolic racism to discuss theoretically the impact of media representation.

Harman and Husband (1974), in their study of racism and the mass media, have explicitly paid attention to these information sources for what people find out about ethnic groups. In their analysis of the national press between 1963-1970 they found that race relations coverage tended to focus upon signs of racial conflict and to give very little attention to the access of black people to housing, education and employment, 'competition for which would seem to be among the underlying roots of tension'(Hartmann and Husband 1974, 132). In short immigration and social problems were re-defined as a <race> problem. On the whole minority groups were not represented as being part of British society, but as outsiders who preferably should be kept out. Hartmann and Husband (1974) note that rather than call their book 'Race and the Mass Media,' it is called 'Racism and the Mass Media,' because they argue that it is not <race> but <racism> that is the problem of race relations in the UK and its media.

Hartmann and Husband discovered that when social contact with non-white people was limited, knowledge about ethnic affairs was derived from the media. The authors conclude that,

...the perspective that coloured people are presented as ordinary members of society has become increasingly overshadowed by a news perspective in which they are presented as a problem.

(Hartmann and Husband 1974, 44).

b The ‘Alien’ Within

If ‘race’ has continued to be signified as an ‘external threat’ in relation to immigration ‘scares,’ periodically resulting in headlines with emotional metaphors such as ‘swamping,’ ‘tidal waves,’ and ‘floods,’ throughout the 1960s and 1970s and continuing up to the present (Searle, 1987; Gordon, 1989; Gordon and Rosenberg, 1989), other studies have also noticed how the growing number of British-born second and third generation minorities have been subjected to representations of the ‘alien within.’ This began with the so-called ‘criminalisation of black youth’ (Hall et al. 1978) and, it could be argued continues with the reactions to the Muslim community in recent years (Wahab, 1989). Hall (1978) by employing the notion of the ‘moral panic’ argued that ‘race’ and ‘crime’ news converged. He notes that the causes of crime were rarely mentioned or discussed, rather the outcomes. In short the violence was highlighted and it was suggested that this was inherent to West Indian culture (Gilroy, 1987) thereby at odds with the ‘British way of life’ Troyna (1981) notes that the media’s treatment of black people was chiefly organised around the idea of the ‘outsider within.’ She also noted that the impression created was still basically negative and ideological: in ‘the media’s’ representation of reality, cultural differences are disparaged and the British-Black population seen as a problem to, and essentially different from the mainstream of the society’ (1981, 183). Indeed Van Dijk (1992) argues that stories about specific minorities are readily applied to all minorities by the indigenous white population. Thus all minorities are

categorised as homogeneous despite them having cultural differences.

British and Muslim?

During the late 1980s and continuing into the 1990s interest in the whole Muslim community in the UK increased significantly. Beginning with national issues such as the Rushdie affair and international matters such as the 1991 Gulf War, a series of events brought Muslims into the media spotlight and adversely affected the Muslim population in the UK. New components within racist terminology appeared, and were used in a manner that could be argued were deliberately provocative to bait and ridicule Muslims and other ethnic minorities. Many social commentators have noted that media language has been fashioned in such a way as to cause many to talk about a ‘criminal culture’ (Poole, 2006; Saeed et al, 1999)

The perceived support amongst British Muslims of Bin Laden, Palestinian suicide bombers and Kashmiri separatists have been further fuelled by these recent events in the North of England. The disturbances in the North of England have in some quarters been presented as a particular problem with the Muslim community and not with the British-Asian community as a whole (Saeed, 2003)

Pakistani and Bangladeshi communities in particular have been represented in the media as separatist, insular and unwilling to integrate with wider society. Furthermore the old stereotypical image of “Asian passivity” has been replaced by a more militant aggressive identity which is meant to be further at odds with ‘British secular society’ The concept of culture clash have been re-introduced to imply

that British-Muslims are at odds with mainstream society (Anasri, 2003; Modood, 1994, 1997). Modood (2003, 2005) further suggests that the emphasis placed on Muslims lack of willingness to integrate with British society has led to the questioning of the whole concepts of multiculturalism.

the extent of the «backlash» against multiculturalism - the political accommodation of post-immigration minorities - will be familiar to many with even a passing interest in the subject. True, multiculturalism has always been controversial and contested its critics are far from sharing a single view of what is wrong with it. But two additional factors have coalesced to make their critique more powerful and more important to address today: its association with Muslims, and its linkage to arguments about national identity.

http://www.opendemocracy.net/faith-terrorism/multiculturalism_4627.jsp

Islam and the Media

Said (1981) claims that he is not comfortable of speaking of 'Islam' and 'Islamic' as the terms have been misused in Muslim- and Western societies as a 'political cover' for much that is not religious (Said, 1981, 54-56). Various authors have noted that Islam and Muslims are treated homogenously in Western media and depicted as the opposite of the West (Akbarzadeh and Smith, 2005; Conway 1997; Halliday, 1999; Poole, 2002; Sardar and Davis, 2002)

There is a complexity of reasons why the Western media has a certain unsympathetic view on Islam (Poole and Richardson, 2006); Said (1981) argues that the main reason is that the West has its 'own' 'experts' (reporters,

commentators, academics/scholars etc.) commenting on Islam; making statements about it, explaining it and so on. The problem he says is that ‘We’ the West, represent ‘Them’ (the East), hence, ‘They’ are not representing ‘themselves’. Saeed and Drainville (2006) argues that such

‘...binary conceptions not only depict all things oriental as ‘other’, but also define Islam as the ‘other’ religion to Christianity. With the ‘other’ constantly described as inferior, even barbaric, it is easily accepted by a Western audience that terrorism stems from Islam’

(Saeed and Drainville, 2006: paper presentation).

In his book ‘Covering Islam’ Said looks at how the definitions of Islam today are predominately negative saying, “The West is radically at odds and this tension establishes a framework radically limiting knowledge of Islam.” (Said, 1997,163.) For example this was highlighted when a Danish newspaper published caricatures of Prophet Muhammad suggesting he was a terrorist, among other things. It could therefore be argued that these publications suggest that Islam is the root of terrorism.

On the other hand, if one looks closer at the religion of Islam one can find that it is interpreted in multiple ways in the universe of Islamic cultures, societies and history, ranging from China to Nigeria, from Spain to Indonesia etc (Said, 1981: 56). Moreover, Said (1978, 286) notes that ‘if the Arab occupies space enough for attention it is as a negative value’ i.e. that ‘they’ are portrayed as a constant threat to the Western’s free and democratic world. It is further argued (Said, 1981, 26) that: ‘[i]t is only a slight overstatement to say that Muslims and Arabs are essentially covered, discussed, apprehended, either as oil suppliers or as potential terrorists.’

Moreover he notes that:

In newsreels or newsphotos, the Arab is always shown in large numbers. No individuality, no personal characteristics or experiences. Most of the pictures represent rage and misery, or irrational gestures. Lurking behind this is the menace of jihad. Consequence: a fear that the Muslims (or Arabs) will take over the world

(Said 1978, 287)

This is of course a massive generalisation (Ferguson, 1998) but is nonetheless relevant in current world affairs, especially the way Arab/Muslims are portrayed in Western media. Another criticism of the media is that they tend to treat Islam and the West as opposites and different. Though neither the West nor Islam exists as monolithic entities, journalists and politicians insist on framing the current situation in these terms (Abukhalil 2002,18). This distinction is useful to the media in maintaining the stereotypes it creates of Islam as 'other' and 'different'.

Ghareeb (1982) points out that not all journalists write from a bias point. In a similar to vein to Cottle (2000), Poole (2000) raises a valid point about the homogenisation of Western media

I take issue with the homogenisation of the west and its Media. Different countries have different political circumstances and motivations which are reproduced and reconstructed in their social systems, including that of the media. Yet neither are media systems homogenous. The 'media' incorporates a range of communication modes and within these, there are numerous genres, different affiliations, priorities and constraints

(Poole 2002,19).

Although the considerations raised here are valid and must be noted, the point remains that the media do indeed present negative images of Muslims and Islam. Such images are transferred to the public at large, therefore the media is guilty of reinforcing anti-Muslim racism. Hartman and Husband (1974) conducted a widely quoted survey to find out what people know and how they found out about ethnic groups. In areas where there were few or no ethnic minorities, the media scored highly in how people found out and formed their opinions about ethnic minority groups. Van Dijk (1991) argues that the media successfully reproduces racism not so much because the media audience always take on board the opinions of the media, but rather because the media “not only set the agenda for public discussion... but more importantly they strongly suggest how readers should think and talk about ethnic affairs” (Van Dijk 1991, 245). Cottle (2000) also provides a useful summary of research into media and ‘race’ that examine the impact on the audience, contexts of media production and also the media in relation to broader multicultural politics.

Prior to the upsurge in interest/debate about Islam/Muslims following the events of 9/11, Madrid Bombing/7/7 and the current ongoing War on Terrorism, Ahmed (1992,9) had argued

“Very often the news shown about Muslim centres around negative stories”

Post 9/11 has seen a dramatic increase in newspaper coverage about Islam and Muslims. Whittaker’s research (2002) noted the extraordinary increase in the number of articles containing the word ‘Muslim’ before and after 9/11. These findings were summarised by the Islamic Human

Right Commission (2007,15) and are reproduced below

Table 1 Articles Containing the World ‘Muslim’			
Newspaper	2000-2001	2001-2002	%increase
Guardian	817	2043	250
Independent	681	1556	228
Times	535	1486	278
Telegraph	417	1176	282
Mail	202	650	322
Mirror	164	920	561
Express	139	305	219
Sun	80	526	658
Star	40	144	360

Unsurprisingly, the broadsheets, especially the Guardian and The Independent showed more interest in Islam/Muslims both before and after the event but the increase in every newspaper was dramatic.

This increase in reporting at times included supportive and more balanced views of Islam/Muslims, however the increase in overall representation was on the whole not indicative of a more positive view of Islam or British Muslims. Nahidi (2003) suggests that Western media homogenises the Muslim population and fails to look at the varying traits/differences of the global Islamic ‘ummah.’ Furthermore Nahidi (2003) argues this misrepresentation is compounded by the attention focused on Muslim extremists/fundamentalists. Thus it could be suggested that the ‘preferred reading’ of these discourses highlights the ‘otherness’ of Muslims/Islam from mainstream society.

Similarly, Whittaker (2002,55) notes that Muslim representation in the British press can be characterised by “four very persistent stereotypes that crop up time and time again in the different articles. These tells us Muslims are intolerant, misogynist. Violent or cruel. And finally strange or different”

Likewise Richardson’s (2001) empirical research on the broadsheet press also implies British-Muslim communities are absent or invisible except in negative contexts. Richardson further suggests that British-Muslims rarely feature as ‘informed commentators’ on news stories rather as participants. The consequence of this is that concerns/issues that effect the British-Muslim communities are absent in the broadsheet press.

These finding that assert that the media overwhelmingly associate Muslims/Islam with negative connotations have been reproduced in research throughout Western media. Karim (2002) notes that negative and distorted images of Islam dominated US media since the Iranian revolution of 1979. The Council on American Islamic Relations (2002) noted that media distortion of Islam had led to an increased number of ‘hate crimes’ on Muslims throughout the USA. Gerdes (1999,51) notes

According to Professor Richard Bulliet of Columbia University, Americans have quite readily accepted the notion that acts of violence committed by some Muslims are representative of a fanatic and terroristic culture

Similar findings that highlight the negativity of Islam/Muslims are have been found in media research conducted in Canada (Elmasry, 2002), Australia (Manning, 2006) and throughout the European union (Fekete, 2002). Allen

and Neilsen (2002,47) on research on the 15 EU states summarise

“the media’s role cannot be overlooked, and it has been identified as having an inherent negativity towards Muslims and Islam”

Islamophobia

Sardar argues that Islam has essentially created a problem for the Western universal project of globalization by its refusal to be subsumed with Western ideals and networks of politics and culture. (Sardar, 1999.) This refusal to comply with the West and their way of life, not having the same shared values or the same common sense beliefs has on a certain level resulted in a fear of an assumed Islamic threat.

Allen (2005) raises the issue that a new type of racism has emerged that is largely based on culture and religion rather than colour,

While racism on the basis of markers of race obviously continues, a shift is apparent in which some of the more traditional and obvious markers have been displaced by newer and more prevalent ones of a cultural, socio-religious nature (Allen 2005,49).

Elizabeth Poole describes how this contemporary manifestation of this Orientalist discourse and constructions of the ‘other’ as mentioned previously has been defined as ‘Islamophobia’. (Poole, 2002.)

“The word ‘Islamophobia’ has been coined because there is a new reality which needs naming: anti-Muslim prejudice has grown so considerably and so rapidly in recent years that a new item in the vocabulary is needed”

(The Runnymede Trust 1997, 4)

Weedon describes Islamophobia as “unfounded hostility

towards Islam ... unfair discrimination against Muslims individuals and communities” (2004, 165). It could be argued that Islamophobia came about because of a desire, by Western powers, to prolong the ideology of white supremacy:

“claims that Islam is totally different and other often involve stereotypes and claims about ‘us’ (non-Muslims) as well as about ‘them’ (Muslims), and the notion that ‘we’ are superior. ‘ We’ are civilised, reasonable, generous, efficient, sophisticated, enlightened, non-sexist. ‘They’ are primitive, violent, irrational, scheming, disorganised, oppressive”

(The Runnymede Trust 1997, 6).

Halliday (1996,160) however notes that a distinction must be made between Islamophobia and anti-Muslimism

“The tone of this rhetoric is often alarmist, and encompasses racist, xenophobic and stereotyping elements. The term ‘anti-Muslimism’ is used here to signify such a diffuse ideology, one rarely expresses in purely religious terms but usually mixed in with other rhetoric’s and ideologies..... It involves not so much hostility to Islam as a religion.....But hostility to Muslims, to communities of peoples whose sole or main religion is Islam and whose Islamic character, real or invented, forms one of the objects of prejudice. In this sense anti-Muslimism often overlaps with forms of ethnic prejudice, covering peoples within which there may be well a significant non-Muslim element, such as Albanians, Palestinians or even Caucasians.”

In short it appears that what Halliday is arguing is that ‘anti-Muslimism’ is almost a new form of racism that discriminates not only on physical traits but also religious characteristics. For Halliday the term Islamophobia is inaccurate because it is too uniform. Halliday (1999) points out that usage of this term implies that there is only

on Islam and that all Muslims are homogenous. In short Halliday (1999,898) is proposing that Islamophobia as a term suggests fear of Islam as a religion not fear of the people who follow Islam

“The attack now is not against Islam as a faith but Muslims as a people, the latter grouping together all, especially immigrants, who might be covered by the term.”

However Halliday does acknowledge that such academic debates might not prove fruitful for victims of such prejudice. Furthermore Fekete (2002) and Abukhalil (2002) point out that Post 9/11 some of the critics of Muslims have actually questioned the Islamic concepts of jihad and the hadiths of the Prophet Muhammad. For Modood (1992) the catalyst for the emergence of anti-Muslim racism was the Rushdie affair that saw the emergence of Islam as a religion questioned. Post 9/11 these debates became entrenched in the aforementioned “Clash of civilizations” debate.

Therefore, the terminology of ‘Islamophobia’ should also encompass the effects of such hostility on both the individual Muslim and the wider Islamic community. Islamophobia, like the colonial discourse of its predecessor, Orientalism, does not allow for diversity; contradictions and semiotic tensions are ignored as the homogenising ethnocentric template of otherness assumes that there is only one interpretation of Islam. This homogenous perception of Islam is purported by Bernard Lewis (2004) who argues that;

For Muslims –as also for most medieval but few modern Christians –the core of identity was religion... and the basic divisions of mankind were religiously determined.

(Lewis 2004, 255)

The above can be seen as an example of contemporary

neo-Orientalist thinking. Firstly, this is indicative of Western ethnocentric thinking that homogenises Muslim identity, borrowing from the established conventions of traditional Western identity defined first and foremost by religion, i.e. Christianity, to which Lewis refers. However, in using this referent, followed by the negation that this is no longer the case with modern Christians, it is also suggesting that Islam or the people of Islam, are somehow less advanced than modern Christians, which once again repackages the historical conceptions of the Orient as ‘uncivilised’, ‘uncultured’ and ‘irrational’. As Stuart Hall (1992, 281) argues to the detriment of Lewis; ‘No single identity... could align all the different identities into one, overarching ‘master identity’, on which a politics could be securely grounded’.

A good example of how these ideas relate to the media’s coverage of race and immigration can be seen in a recent Daily Mail article penned by columnist Richard Littlejohn. In a column entitled ‘If they hate us so much, why don’t they leave?’ Littlejohn invokes a very particular notion of what constitutes the ‘imagined community’ of the British nation, against which he defines a threatening Other, in this case young British Muslims.

“Young Muslims ... are encouraged to put loyalty to their faith above personal responsibility to their country of birth. They are brainwashed into treating any misfortune which befalls any Muslim in the world as personal insult.” He goes on: **“For a larger number of Muslims, their faith is incompatible with Western freedoms and democracy.”**

http://www.dailymail.co.uk/pages/live/articles/news/newscomment.html?in_article_id=399515&in_page_id=1787

Such comments lend weight to Said's view that politicians and journalists in the West often feel sufficiently qualified to paint psychological portraits of millions of 'Orientals' as if they are a single, homogeneous mass. (Said 2003: 48) The implicit reasoning being Littlejohn's remarks, although he doesn't say so explicitly, is that 'they're all the same' and 'they don't belong here.' Islam comes to symbolise, in Said's words, "**terror, devastation, the demonic, hordes of hated barbarians.**" (2003: 59)

Littlejohn concludes his column with a simple suggestion: "If we promise not to profile them at the airport, they should leave..." Littlejohn's use of the term 'we' is especially interesting and is characteristic of much media comment on asylum, race and immigration. To whom is he referring? Presumably he means the security staff who's job it is to profile suspected terrorists at airport terminals; or perhaps he means the state apparatuses which decide and authorise such security policies in the first place. Either way, what is interesting is the way 'we' are identified with them – 'we' the audience are the authorities whose job it is to suspect and profile every Muslim or non-white traveller (and they are us). It is 'we' who must be wary of Muslims and non-whites

Post 9/11 Conclusion and Discussion

The idea of images of Muslims as non-British is developed by Poole (2000) who asserts that the focus in British newspaper articles is predominantly global, therefore, the image of Islam is predominantly 'foreign'. She goes on to detail the images that are presented in the British media regarding Muslims:

The way these topics are framed then, gives rise to the expression of a few central defining due to their involvement in deviant activities; that Muslims are a threat to British mainstream values and thus provoke integrative concerns; that there are inheritant cultural differences between Muslims and the host community which create tensions in interpersonal relations; that Muslims are increasingly making their presence felt in the public sphere

(Poole 2002,20).

Gilroy (1987) argues that the media discussions have led to a way of thinking that ethnic minorities cannot fully participate in British culture because they are presented as ‘other’. Representations of ethnic minorities in the media have been contextually framed by these discourses of the ‘other’. Furthermore, these discourses imply that Muslims are alien to indigenous culture, therefore they cannot adapt to the ‘British way of life’. In short, they cannot be British because their culture is at odds with it (Gilroy1987,43).

In a similar vein Balibar writes:

the racial-cultural identity of “true nationals” remains invisible, but can be inferred (and is ensured) a contrario by the alleged, quasi - hallucinatory visibility of the “false nationals”: the Jews, “wogs,” immigrants, “Pakis,” natives and blacks.

(Balibar 1991, p60)

Halliday (1996, 1999) points out that this notion of an ‘Islamic’ threat has recently taken a more ‘inward’ direction centring on Muslims living in the West. Halliday (1999) illustrates how anti-Muslim sentiment has fostered and found voice in countries across the West (and also in Israel and India). Fekete (2002) and Halliday (1996) both provide useful summaries and commentary on a number of

anti-Muslim, anti-immigration and anti-Islam statements written and supported by leading members of the political community in the West. Faisal Bodi writing in the Guardian (21/3/2003) argues that

‘The inordinate fear planted in our minds first asked us to make an imaginary connection between 9/11 and Saddam Hussein, now demands that we invent more mental dots to connect terrorists with asylum seekers. Seeing a political opportunity, the right has fused the less popular xenophobia with the more popular Islamphobia.’

Anthias and Yuval-Davis (1992, p55) further relate this exclusion to issues of Britishness,

‘Since the Rushdie affair, the exclusion of minority religions from the national collectivity has started a process of racialization that especially relates to Muslims. People who used to be known for the place of origin, or even as ‘people of colour’ have become identified by their assumed religion. The racist stereotype of the ‘Paki’ has become the racist stereotype of the ‘Muslim fundamentalist’

However much they seek to identify themselves as British, young Muslims regularly find that other assume them to be first and foremost Muslim. In Britain today, especially after the events of 9/11 and the beginning of the so-called ‘War on Terror’, it is now Muslims who have been identified as a group of potentially “false nationals” and systematically constructed as the Other. A discourse has been produced which directly links British Muslims with support for terrorism, fundamentalism, “illegal immigration” and an “Oriental” stereotype of the East. British-Muslims are repeatedly implored by voices in the media and by politicians of all sides to make more strenuous efforts to

“integrate” into British society, and re-assert their loyalty to the British state in a manner that no non-Muslim anti-war group would ever be instructed.

In conclusion this article has attempted to show that the media constructs ethnic minorities as the “other” and that they are alien outsiders to the “ British way of life,” This construction is rooted in ideological thought (Orientalism) and manifests itself in a ‘new racist’ thinking (Islamophobia) that suggests that British Muslims (regardless if they are British citizens or not) are still tied to to “foreign” culture (backward?) of Islam.

The role of the media in representing Muslims/Islam is crucial to how British-Muslims are treated as British citizens. Cottle (2000:2) eloquently summarises the connection between representations and belonging,

“It is in and through representations, for example, that members of the media audience are variously invited to construct a sense of who ‘we’ are in relation to who ‘we’ are not, whether as ‘us’ and ‘them’, ‘insider’ and ‘outsider’... ..’the west’ and the ‘rest.’

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**American Islamophobia
as a
Cultural Ideology**



By: Stephen Sheehi



Islamophobia is not a political ideology in itself nor is it an isolated dogma just as Islam itself is not a political ideology. Islamophobia does not have a platform or even a political vision. Islamophobia is something more substantive, abstract, sustained, ingrained and prevalent. Islamophobia is an ideological formation. This does not mean that it is the purview of any particular political party. Rather, an ideological formation is created by a culture that deploys particular tropes, analyses and beliefs, as facts upon which governmental policies and social practices are framed. Islamophobia appears as a new ideological formation that has taken full expression since the collapse of the Soviet Union. It does not originate in one particular administration, thinker, philosopher, activist, media outlet, special interest group, think tank, or even economic sector or industry though indeed, these actors are collectively

responsible for the virulent dissemination of anti-Muslim and anti-Arab stereotypes and beliefs, circulated in order to naturalize and justify US global, economic and political hegemony. The Bush administration officials and supporters unabashedly wore its disdain for Muslims and Arabs on its sleeve from the first day of the administration. Much to the embarrassment of progressive Americans, the Obama administration (and before it that of Clinton) is rife with Islamophobic paradigms and acts that couple with a similarly imperial American outlook. Indeed, we have witnessed the unprecedented mainstreaming of Islamophobia since 9/11. An extremist flake such as Robert Spencer, for example, has authored two vitriolic, racist screeds on Islam that became New York Times bestsellers while Bruce Bawer's incendiary and hackneyed *The Enemy Within* was nominated by the prestigious National Book Critics Circle for the best book of criticism.

Rather than understanding Islamophobia as a series of actions and beliefs that target Muslims and arise from a generic misunderstanding of who Muslims are and what Islam is, it is an ideological phenomenon which exists to promote political and economic goals, both domestically and abroad. The effects of Islamophobia can be a series of acts institutionalized by the United States government ranging from war to programmatic torture to extrajudicial kidnappings, incarcerations and executions to surveillance and entrapment. The effects of Islamophobia are experienced in the daily lives of Muslims who encounter harassment, discrimination and hate speech in the street, anti-Muslim rants on nationally syndicated television and radio shows, and hate acts such as mosque bombings. These

effects, however, will only be understood as scattered albeit tangentially related acts if they are not seen to be located in a complete paradigm or discourse of Islamophobia that permeates American culture and society.

The fact that we today are still discussing “what is Islam,” who are Muslims, “why do they hate us,” and so forth is shocking especially as scholarship of eminent Orientalists such as Jacques Berques, Maxime Rodinson and Albert Hourani demolished the idea of Islam as a singular religion without any internal variations between peoples, times, and geographies. Too many good studies of Islam have been published to justify what continues to be not an inquiry but an inquisition into Muslim identity and faith. Such a phenomenon indicates that Islam is not only a religious practice but that, in the global era, it has taken on a larger status—particularly in light of the fact that Islamist forces seem to be offering the primary resistance to the direct incursion of American or proxy forces into the Muslim homelands. Arguably as a result, Islam has been involved in the formation of Muslim “identity politics” in the post-industrial era. However, Islam as an identity marker means different things for different people in different places. For example, for all its obsession with the “veil,” the media and mainstream commentators have ignored the contexts of why and when Muslim women wear the hijab. Had they asked why Egyptian women might have adopted it under the rule of an authoritarian “secular” regime, they might have better understood the mass uprising against that regime in the January 25th Revolution.

Just as Islam takes on meanings within a construct of identity politics informed by local political and social

contexts and conditions, Islamophobia is deployed with particular ideological intent and effects that differ depending on specific and varying social, political, historical and economic conditions. It is not a universal condition or a monolithic ideological construct. For example, European and American Islamophobias are two separate socio-political phenomena just as I would argue that right wing Christian Arab Islamophobia, whether expressed by Maronites, Orthodox, Chaldeans or Copts, is a separate phenomenon. Likewise, while equally abhorrent, a mosque burning in Indonesia and a mosque attack in the United States or Germany are not the same ideological act.

The tradition of North American Islamophobia differs from its European counterpart. Recent European documentaries like the BBC's "Generation Jihad" exude anxiety that arises from Britain's colonial past. Muslim immigrants are seen as a pariah community, whose anti-assimilationist philosophy makes them vulnerable to the threat of "Islamic" radicalization. Europe's fear of Muslims is rooted in its paternalism towards non-Western peoples at a time when that unchallenged paternalistic authority no longer exists. The colonial centers have always had historical discomfort with interacting with brown people as equals, especially those they presented themselves as mandated to civilize. But also, European Islamophobia finds its origins in the anxiety about and hatred of its own European others, namely European Jewry. Hence, in the post-Holocaust and post-Israel era, Europe's propensity to anti-Semitism and its hatred of Jews was displaced onto its new Muslim immigrants. Additionally, the displacement of anti-Semitism onto Muslim communities in Europe is a

transposition of feelings of loss, resentment, and anger that the former imperial powers of Europe no longer enjoy their global empires while still having to bear the social, cultural and economic burden and responsibility of their colonial past. As a consequence, the rise of Islamophobia in Europe has expressed itself in terms of fears of the “Islamification” of Europe, the degeneration of institutionalized secularism, the bankrupting of the welfare state and the “demographic bomb.”

Likewise, understanding Islamophobia as an ideological formation within the context of American Empire allows us to remove it from the hands of “culture” or from the myth of a single creator or progenitor, whether it be a person, organization or community. Islamophobia as an ideological formation must be distinguished from previous forms of racism and bigotry, including Orientalism. This, however, does not exonerate Orientalism and previous versions of Arab-hating from their pernicious past. Indeed, Orientalism has existed since the dawn of the colonial era. Edward Said’s monumental work reveals how the Orient and the “Oriental” subject were constructed through scholarship in the colonial metropolises. The scholarship set the discursive foundation for the justification of colonialism, for the civilizing mission, for colonial policies and for the reorganization of the Arab world. Said shows us that Orientalism is not a unified, seamless, and timeless phenomenon. With the transformations of geo-political and economic conditions, it has experienced many variations and modulations.

Orientalism does not involve a hate of the East although many Orientalists have had disdain for Arabs. In fact, many Orientalists were Arabophiles. Orientalism, instead,

pervaded the thinking of the West as it structured the way in which “we” think about the East. It created the East, the Muslim world, the Middle East, and the Orient as objects of study, objects of control, objects of reform, fantasy, fascination and disdain. It created the East to distinguish the West from their neighboring, Semitic Others.

Hollywood shows us how fear and hatred of Muslims was really one more variation of racist hatred of Arabs. Since the dawn of cinema, Arabs have always been exoticized. They were dashing Bedouins, oversexed barbarian camel jockeys, noble savages. Eventually the representations of Arabs would change into secular, radical leftist extremists, Communist allies, or oil-shaykhs. In the 1980s, the images were slowly transformed into those of the Muslim-Arab extremists, which still were contrasted by Rambo’s heroic Muslim mujahidin. Arab-Americans, both Muslim and Christian, have always been cognizant of these representations and scholars have published many good studies regarding the stereotypes of Arabs in Hollywood, print and TV. But more important than studying the pernicious stereotypes of Arabs, works such as *Covering Islam* or *Epic Encounters* have shown the direct ideological effects and the intent of the deployment of Arab demonization. The insights of the study of Orientalism and the stereotyping and profiling of Arabs provide us with the tools to understand how Islamophobia serves similar ends for American political designs.

Orientalism is however not the same as Islamophobia. Islam was but one cultural, even racial, trait considered in a larger protocol of studying and defining the Arab Orient. Orientalism’s paradigms are fundamentally ethnically and racially oriented. In this respect, Arabs, Persians, and Turks

are seen as distinct groups. According to eminent founding Orientalists such as Ernest Renan, that they are all Muslims is practically a historical vagary

With the fall of the Soviet Union and the rise of the United States as the unchallenged global hegemon, the preexisting forms of Orientalism and Arabophobia were blended into new forms of political Islamophobia. Indeed, Arabs (both in North America, Europe and the Arab world) are still identified as the source of all things malevolent within Islam. However, the difference between previous strains of Orientalism and contemporary Islamophobia is that the sins of Arab Muslims are now visited on all Muslims. Now all Muslims are saddled with the failures, irrationalism, and backwardness that Orientalists previously defined as particular to the Semitic Arab culture and history. Islamophobia in North America is Orientalism on steroids and upgraded to its new post-modern 3.0 version. Where previously brown Arabs were the pariah, the view of Muslims has been integrated into America's racial unconscious.

Black Muslims have long been targeted and stereotyped by mainstream America, despite the fact that Black Muslim organizations, including the Nation of Islam, have diligently worked for the empowerment of impoverished black communities and have been at the forefront of fighting against the infiltration of drugs, alcohol and gang activity in their communities. Black Muslim organizations and individuals have been a self-policing and self-educating force in African American communities and also a positive presence in the "rehabilitation" of many in the prisons where Black Americans are disproportionately represented. Previously, the demonization of Black Muslims was linked

to the demonization of the Black power movement. It came as a reaction against any successful empowerment of Black people who overtly refused assimilation and whitewashing as a solution to historic racist inequities. However, more recently, mainstream America has begun to demonize Black Muslims as a potentially seditious minority within a minority. In particular, journalists, pundits and activists have created the image that America's prison system is the epicenter for the radicalization of Black America. Indeed, the thought does not occur to these commentators that no such threat would exist if the United States did not lock up one out of every eight black men in their 20s. Rather, the assertion in mainstream criminology venues is that America's gulags are now a recruiting and training hub for radical Islam. Even the Rand Corporation has issued a report warning of the dangers of radicalization of Black inmates inside America's prisons.

The way in which the threat of Black liberation is folded into the threat of Muslim conquest speaks to the racial anxiety that underlies Islamophobia. After all, the first Muslims in the United States were African slaves. Several powerful studies have demonstrated that the historic journey of Arab and Muslim Americans has not been easy. While the tribulations of African Muslim slaves overshadow any suffering of their Arab counterparts, Arab immigrants into the United States, who were mostly Christian, were subjected to a battery of racist legislation, social abuse, prejudice and harassment. This included lynchings in the Jim Crow South and prosecution for miscegenation. The issue of race cannot be separated from Orientalism, Arab-hating or Islamophobia. What distinguishes the racist violence

and paradigms, however, are the political conditions and contexts in which Islamophobia has been mobilized.

Like American white supremacist racism against Blacks and Latinos, Islamophobia is part of larger ideological formations within US culture and politics. Islamophobia came together as an ideological amalgam within the politics and culture of the 1990s, accompanying globalization and the rise of the US Empire. Indeed, Islamophobia is the latest ideological construct deployed to facilitate American power; in its particular case, American power in its “unipolar moment.”

Right to implication and Islamophobia in the west



By: Dr. Mohammad Javad Javid



Summary:

Islamophobia is wanted or created by western governments in similar way that word of anti Semitism is indebted to western society. Considering this assumption, opposite to second word, first phrase does not indicate necessitating approach and supporting umbrella from one minority religious in the western society, inversely, Islamophobia thoughtfully and practically indicates a kind of privative approach to prevent of Islam and Muslims development in west, which with Europe pivotally and reticence or companionship of some western governments and European union extremely increases. Therefore, present article is provided on the basis of this assumption, which European governments non-legally with act or leaving their act, with exacerbates to crisis such as Hijab, Muslims occupation and their instruction, and also with silence to unfair discriminates

against Muslims, help to promotion of cogitation and act of Islamophobia. This effort on the basis of human principal and international documents completely is opponent to human right.

Key words: Islamophobia, Hijab, human right, west, Islamic revolution of Iran.

Introduction:

1. Islamophobia is a phenomenon that indicates a kind of discriminate against Muslims and negative propagations and also detestation creation respect to Muslims. This stance respect to Muslims minority and their beliefs in the west sometimes rises to level of Islam quarrelsomeness which its purpose is aggressive approaches adopting especially by media. On the basis of specific report of human right reporter of UN, Islamophobia in individual and group frames causes deprival of Muslims social and political rights and their elimination from public areas. Although during recent three decades Islamophobia due to Islamic revolution of Iran, the fall of Soviet and September 11 event in USA is intensified. Resent event gives a beautiful evasion to some of western governments to produce a terrible aspect of Islam to impose to their public thoughts. Understanding the confederacy of Islamphobia in west with western government politics in international arena is a investigable subject to represent more dimensions of conversion process of Islamophobia to Islam quarrelsomeness in the west and racial tendencies respect to west.

2. International document around the human right consider to religion and religious right of society people in such a way that their total resultant shows existence of right to religion

as human fundamental right. Right to religion or right to religiousness actually belongs to right to implication and spirituality tendency which is considered as a part of initial needs of human. Natural right of human in an important part in addition to physical needs indicates human spiritual needs which reply to these needs is considered as a part of initial and fundamental rights of human. Right to implication means right to believe to human spiritual aspect and right of believe to creation ultra-aspect. Believe to existence of invisible and corporeal world, existence of creators except seeming creators and finally human has other aspect except material aspect and also has needs except seeming needs. Hence in this article assumed that right to implication has close relation with right to religiousness and this relation logically can be called as general relation and absolute regard. Because this right indicates recognition of other human aspect next to human material aspect in which its outward appearance will be religiousness. Therefore, right to implication and implication tendency can not stay concealed and naturally outward symbols such as religious rites indicates influence of this right in social life of faithful people. All of monotheism and non-monotheism religions recognize circle of spirituality and spiritual tendencies for their religious people in such a way that give priority to circle of material needs and their provision. Thus in a group life and inside a civil society without attention to government ideology such as laic or theocratic, provide of these two human aspect needs and their rights should be considered.

3. Religion actually is ocular symbol of right to implication which appears in the form of religious rites, hence in the human right documents right to religion is considered as

ocular right in actual universe. In present texts, in addition to look at human right documents regarding right to implication, religiousness and spirituality status in west, and Muslim rights situation in Europe will be investigated. The assumption of present article is despite of initiative of western society in human right promotion as immense discussion of current world, unfortunately practically, contravention of Muslims minority right in Europe causes disapproval to west world human right. This approval due to contrivance to Islamophobia in west can causes to west governments become responsible. Present article wants to in addition to represent of relation between religious rites in general circles and Muslims personally beliefs, represents international documents about respectability to this aspect of human right. The right which at least about Muslims minority in Europe due to intentionally or inadvertently actions of some western governments is considered as death laws. For scrutinizing of these subjects some of Islamic symbols such as Hijab as the biggest problem of some western country about right to religion are used.

International documents and right to implication:

4. Glance to documents related to human right and pivotal freedoms represents in the most of them implication tendency in the form of religious freedom or discrimination prohibition on the basis of religion is determined but “religion” word has never determined. Even some supervisor units on the documents such as human right council which supervises on the regulations mentioned in the political and civil right international convention (1966) and performs some developments about some rights mentioned in this

convention, till now has never represented determination of word. In various legal cultures, mainly Religion word is determined in the form of branched from right to spirituality and worship and necessary ingredient of religion are known as believe and worship to God. Despite it is not considered on a particular concept but it is considered to understand and legal explaining necessity of the subject. Therefore, international system of human right in related documents without distinct definition of religion and right to implication, in the form of some phrases such as individual right, right to freedom of religion, belief, thought and conscience, supports a set of ingredient of rights and freedom related to religious and spiritual aspect of human, on the other hand can not be forgotten that international documents are provided in western cultural medium, despite it is note propitious for Muslim countries and Islamic conference organization members, but for Muslim inhabited in the west can be propitious. Satisfaction of western Muslim is due to western government on the basis of written or unwritten law against violate of human right of religious minorities such as Muslim in their countries can be responsible.

5. Note that support of freedom of religion in international system of human right possesses long history in internal, regional and international levels, and can be separated in three periods. In the first period, support of religious minorities is considered and in the second period individual right and indiscrimination principle on the basis of religion and in third period modern problems about complete performance of right to religion in various countries are considered. As an examples: article 18, universal declaration of human rights (1948), article 18, international convention

of civil and political rights (1966), article 5, International Convention on the Elimination of all forms of Racial Discrimination (1960), part b, paragraph 1, article 5, the UNESCO convention against discrimination in education (1960), declaration on the elimination of all forms of religious intolerance and of discrimination based on religion and belief (1981). These cases are international cases which right of freedom of religion or discrimination interdict based on religion is considered. In regional level also right of religion freedom in paragraph 1 article 90 convention for protection of human rights and fundamental freedom, article 3 American declaration of the rights and duties of man, article 8 the African charter on human and people rights and other numerous documents is assured. Note that till now any universal imperative treaty particularly about freedom of religion has not approved and existent cases are remained as a declaration.

Group precepts of Islam and human rights in the west:

6. The more considerable things in international documents indicating right to religion and implication tendency is separation of seeming aspect of a religious from its intellectual aspect. Therefore, consider that various religions in addition to spiritual aspects in religious beliefs circle possess outward aspects which as religious rites will be determined. Rites indicating religious action of religious believer are out of personal circle and mainly are in the society level. If right to implication tendency locates under concept of human right, right to religion and religious rites performance will be located under citizen rights and

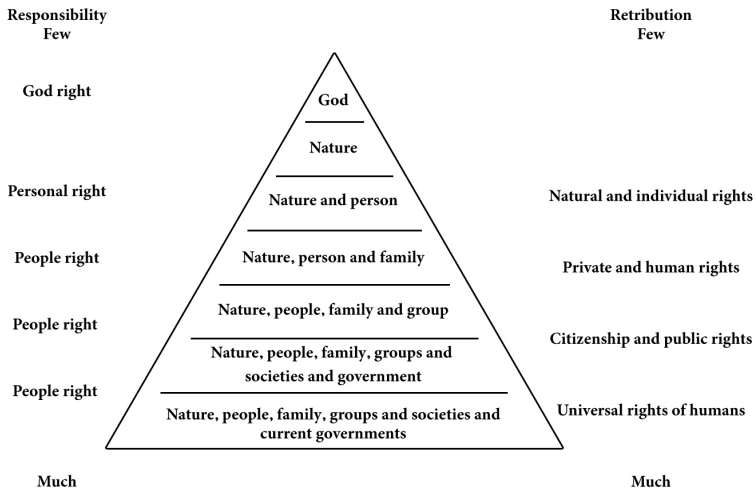
governments are guarantor to observance along with human rights. Islam is one of the religions which its religious act in public circle is common. Aggregate of these two circles for Muslim represents integrity of faith and with separation of them, sometimes religion performance will be impossible. Hence, Islam is a social religion and someone in immense level knows Islam as religion with political ability. Right to implication tendency and religion in Islam is recognized and should be evaluated in three levels of subjective, group and civil, in all of the levels, Muslim belief is not relative and Muslims have to observance of religious principles. The most of religious texts know this right as fundamental right for human, but notice coming from western culture in the international documents, emphasizes on religiousness as private subject. This viewpoint causes right to Muslim religiousness in subjective level will be exposed in the way that people and governors can be religious without declaration in the public circle. On the other words everyone can be religious without other people awareness. Therefore, Muslim person should not take right to religion and right to freedom in the similar level. This viewpoint causes especially in secular custom of western societies or western Jewish-Christian religious tradition, religious situation of Muslims is not perceived and western governments do not try to understand Muslims beliefs. Attention to this subject can express important part of reasons of Islamophobia development in the west.

7. Therefore, Islam in opposite to other religions can not be expressed in private circle of any person. Any Muslims can not be Muslim only in his or her private circle and be neutral in the public circle. Combination of these two

circles does not mean denial of private and public circles in Islam, but it means religious rites of Muslims is expressed in such a way that Muslims in their public relations with other people can not be exempt of religious rites. Despite in Islam separate laws for private circles of people are determined which research in it is considered as trespass into private safety sanctum and in addition to sin will be as crime, Muslim in society is obligated to these laws in the similar way as private situation. On this view Islamic laws in group and public circle is not threatened and closed but still remains and Islam gives more value to performance of worship among group. As an example any Muslim can not leave his or her pray even in the death state also is obligated to performance even with gesture. This particular law indicates that Islam gives much value to group pray which this individual pray this much of reward does not exist. Naturally pray in mosque is more valuable respect to pray in shop and pray in city universal mosque will be more valuable respect to regional mosque. Therefore pray in MASJEDOLHARAM will be more valuable respect to other mosques. Thus, Islam always insists on present of Muslims in the society. Therefore, Muslims in many cases are obligated to present in the group in any societies. As an example, Islamic Hijab can be mentioned which never should be leaved in group but in private circle and individual sanctum naturally this law will be cancelled and Muslim woman is not obligated to observation. Many of Muslims laws should apply in group and of course maybe this logic is not intelligible for some current Jewish and Christian believers in the west. For Muslim leaving the pray in private circle is sin as much as leave because of present in group, and

nonobservance of Hijab is sin as much as leaving the pray. More important is that Islam involves to legislation in public circle more that private circle and aboveboard trespassers from Islam laws in the case of offence into public rights, will be more meritorious to punishment. Vice versa, government have to provide suitable field for Muslims safety to perform religious rites in private and public circles.

8. For more understand of this unwritten logic and public reactions to Muslim verb which is principle of Islamic criminal performance, its relation to Islamic retribution will be considered. Among the grate Islam scholars, rights dissertation of Imam SAJD can be considered which in addition to mentioned rights, three sets of God right, personal right and people right are observed. Based on this criteria and recent classification, below image will be traced in retributions and hierarchy of legal norms of Islam and the rate of guaranties will be shown.



Pyramid of relativity of responsibility and retribution in society

9. As is represented in above image with develop in the rate of individual action in group circle, public effect will be increased and retribution also will be increased. Even in some situations in this pyramid of legal norms, spiritual values also if have social aspect are added. Due to this significance in public circle, in social laws violation of law has more retribution respect to individual state. Therefore, in social retributions of Islam for some crimes tough retributions are considered to observance hierarchy of religious values and legal norms of Islam accurately and due to trespassers effect more circles hence they are culprit more than individual circle. As a result exempt of 1) relation of each person with his or her God and its following responsibilities and delinquency from them has heavenly remuneration and 2) in the cases which each person is observed individual and non-civil, if undertakes any rights, it is postponable, dispensable and even ignorable, 3) in other social and public cases in symbiosis with other, even in individual right can not insist on oneself the group. Because with increase in propagation of these relations, personal responsibility will be increased. In social retributions also situation is same. Considering violence retribution for some crimes in Islam is due to its public aspect. Maybe all or at least a big part of criteria of retributions in Islam is related to reflection of one crime in the society. Hence religiousness value in public and social circle will not reduce even have high sensibility. Islamic Hijab is one of social laws of Islam which adult is not allowed to trespass from it in public circle but in the private circle is free. Having Hijab is a part of religious rights of each Muslim. Further this subject will be more expressed but before that we look at human rights obligations of

governments in this regard.

Human rights documents and freedom of religion for Muslims:

10. Human rights documents always recognize freedom of religion. In expressions of committee of human rights concept of religion proposal is considered which is located in frame of freedom of religion right, and consists of some regulated actions including religious and ceremonial rites, use of religious symbols, wearing specific clothes or headband, participation in group religious rites in determined steps of life and use of particular language. Naturally freedom of beliefs proposal is a part of religious freedom. First paragraph of second article of universal declaration of human rights ecumenically manifests to discrimination interdict and declare interdict based on the religion as one of criteria of this interdict: “every one without any discrimination especially in the cases of race, color, sex, language, religion, political belief or any other belief and also nationality, social condition, wealth, birth any other situation can benefit all of rights and freedoms mentioned in present declaration”. As an example, article 18 of universal declaration of human rights says: “everyone can benefit of freedom of thought, conscience and religion, this right guaranties freedom of belief or religion change and also guaranties freedom of showing opinion and faith and also includes religious education and religious rites performance, everyone can benefit of these rights individually or collective, privately or publicly.” According to first paragraph of article 18 of convention on civil and political rights: “Everyone has right of freedom of thought and conscience and religion. This right

includes freedom of have or accept of religion or believe to his or her select, and also freedom of religion expression or believe to his or her select, individually or collective, hidden or aboveboard, in worship and performance of rites and religious education.” General comment No. 18 office of high commissioner for human rights in the first paragraph expresses: “any discrimination does not exist, all the people are equal in front of law and possesses same protection from law without any discrimination, therefore due to first paragraph of second article of international convention of civil and political rights, all of the governments party to this convention are obligated respect to all of the people in the qualification circle of their land and judicial, provide and observe recognized rights in convention without any distinction such as race, color, sex, region, political opinion or any other opinions, social or national origin, rate of asset, birth or other situations. Article 26 also manifests that people are equal in front of law and have effective support of law, but any discrimination under law is forbidden effective and equal support of people against discrimination in any fields such as race, color, sex, language, religion, political opinion, or any other opinions, social or national origin, rate of asset, birth or other situations, is guaranteed.

11. Also article 9 European convention for the protection of human rights and fundamental freedom (ECHR) explains: “1- Everyone has to right to freedom of thought, conscience and religion. This right includes freedom of change in religion or belief and freedom of religion expression or belief, singly or with other people, publicly or hidden, in the form of worship, education and religious rites. 2- Freedom of religion and belief expression can be restricted

just by restrictions mentioned in law, and also in the case of restriction applying in a democratic society for public safety preservation, protection of collocation, public health and comportment and for protection of others freedom be essential.” Relevant to this documents religious freedom of people consists of two aspects: “At the first freedom or acceptance of one religion, and second freedom of religion expression.” Therefore, according to above article, expression of religious consists of four following forms: worship, teaching, practice and observance.

Religious conscience and religious rights:

12. Depends on Islamic Hijab is determined as symbol of religion or as tradition chosen in public circle, in viewpoint of western law in both of the forms if Islamic Hijab be expressed based on Jewish or Christian religions or based on non-oracle religions such as Brahma and Buddha, the answer will not contradictory for the governments. Due to this simple reason which religion and its belongings are determined in circle of private and individual chosen, hence, if religious actions or manners trouble public fundamentals easily can be eliminated and basically outward aspect of religions are not natural and hidden and non-trouble aspect of region is natural. Therefore, according to private and public circles on what cases are agreed, religion can be present. For explain, usually in communication of people with each other two particular scopes, private and personal scope and governmental and public scope.

13. Therefore, in public circle, which is common among all of the political systems, government inters in this circle and determines red lines. But these laws can not be in opposition

to treaties of human rights or against religious conscience of citizens. As an example, about Hijab critics of Islamic rights mainly are neglected from this reality in which opposite to other current religions, in Islam as is common and everybody believes that religion and government can not be separated from each other, separation of religiousness and citizenship is not possible and as prior mentioned Muslim can not be faithful and lives in seclusion. On the other words, except of religion ramifications which have group approach, complication of region in stealth is not possible. Therefore, emphasis of Islam on the Hijab is for optimum adjusting of social relations in society for human development and belonged group values. Sing of Quran emphasizes that women observe the Hijab for better reorganization (in society): “prophet, say to your spouses and daughters and faithful women, fall your kerchiefs on yourself, this is better to be recognized and don’t be bothered troubled (and if till now they have sin or neglecting, they should repent) God always is forgiver and merciful.” Therefore principle of Islamic Hijab is determined under social affairs and public circle, hence when Muslims are ordered to the Hijab, indicates to present in society or in communication with strangers. Naturally among the intimates these obligations don’t exist but oppositely makeup also is proposed. Hence, in prophet period Hijab law allocated to Muslim women, therefore non-Muslim women was living under Islamic government could don’t observe the Hijab. On this basis even Islamic government have no right to impose any order in opposition to religious conscience of citizens. On the other words, despite under citizenship rights and due to public policy, governments are allowed to produce lawful developments

even about human rights of their citizens, but they are not allowed to enactment laws against religious conscience of people. Whereas if the law be enactment against religious conscience of religiousness person, it will not sustainable and this citizen is allowed to disobedience of this law.

Levels of human rights and citizenship rights in the west:

14. Government has no right in opposition to religious conscience of citizens impose any order. For example they are allowed to temporary (1) have laws even unfair. (2) Enactment laws opposite to group thought. But they are not allowed to enactment laws against religious conscience of people. Because in two prior cases non-logical and unfair laws at least for a short period of time are sustainable and citizens are not allowed to disobedience, (3) but if law enacted against religious conscience of religiousness people, i.e. faithful person with this action feels irreligiously, due to that maybe it brings bad backwash on the initial rights of human, is not sustainable and this citizen will be allowed to disobedience of this law.

15. For example, consider recent law of united kingdom parliament in which people deputies have to repair their chair electricity, other laws forbid death in the parliament, law which forbids more than 13 persons community, the law which without any specific reason along with public policy gives more prominence or tax increase to particular citizens, the law of 2007 which some American airlines can take more tax or extra money from fat people, the law of may 2008 which Estonia government take extra tax from cows owners due to gas produced by cows stomach effecting on carbon

dioxide and environment pollution or Ozon layer damaging, other law that imposes specific clothes for all of the citizens, plan of social provision organization of UK in retribution of parents of fat children to prevent of municipalities costs, the law of donkey mounting for children heavier than 50kg in Britain beaches, etc. Even more violent is the law in Denmark which allows the juveniles to celebrate their entrance into adult step with killing the dolphins. These laws are far from human munificence and logic but currently are performed. In some cases such as recent case, law in addition to conflict with natural laws is considered as unfair and should be forbidden.

Islamic Hijab and laws against human rights:

16. In all the above cases and also similar cases, citizens at the time of law performance don't involve with immediate crisis, crisis that jeopardizes their life, unless law directly be against their religious conscience so that at the moment of law performance the person sees his or her existence (nationality) against to oneself nonexistence (personality and identity). For example consider the law citizens believing remove the Hijab is equal to irreligious have to remove it, or consider the opposing logic, fair and conscience recommendation of Kerit Filders who believes: "any Muslim women want to have Hijab , at the first should take permission from the government and before that have to pay fine and tax. The tax should be thousand Euros per year... because we hate the Hijab. Hijab, mosque, whisker and clothes of Muslim men ugly the view of the Netherland streets." Naturally to reaction to these contemptuous and conscience aggressive, citizens such as Muslim, Jewish or Hindu will leave any

material values but never leave their beliefs. Sometimes to preserve of these values, they are ready to accept the death and feels it is more valuable than life without these values which is equal to irreligious and gradually death. Hence, they will disobey fast. Latest example of this subject in addition to law of 15 March of 2004 in France against veiled Muslims is tragic event of killing the veiled Muslim woman in Germany court on the first of Jun 2009 and finally the motto “martyr of Hijab way”. Governments are not allowed to enactment laws opposite to conscionable belongings of their citizens which their performance will be equal to lost of human initial rights. Because beliers to cover, in addition to giving right to themselves, always insist on that “the things they have inside their head is more important that the things they have on their head”. Therefore, scarf is symbol of inside head beliefs of citizens. According to recent wave of prohibition of mask and Hijab for women which mainly are taken from Islamic cultures instead of Islamic laws, legally justification of this prohibition in many western countries such as France is with many doubts. Thus, despite cabinet of Nicolas Sarkozy, French president, through an approved law prohibits use of cover which covering the face in public areas, but governmental council –highest administrative reference in France- cautions that this law maybe conflicts to constitution and discriminates European human rights. But this council justified Hijab interdict in public areas such as schools, hospitals and courts for security reasons and also to prevent of cheating and defraud and also response to some public services requirements, and not based on human rights principles. Interesting that national congress of France in 2010 confesses to dependency of Islamic Hijab to religious

beliefs of Muslims.

17. Therefore Hijab in two countries of Iran and France under above laws are investigable. Law of 15 March of 2004 in France is a law opposite to human rights of citizens, because at the first it is without legal proper compoment and legal history and also does not rises from specific agreement between government and Muslim citizens. Secondly, it is considered as law against religious conscience so that veiled Muslims know the unveiling of women opposite Quran and their fundamental beliefs. Some consultants of above low are in doubt in the legality of this law and someone knows it as delinquency from wisdom in law enactment that due to many mistakes can be remained just with violence. But laws of Islamic Republic of Iran on Hijab whereas at the first is based on initial agreement with non-Muslim citizens and secondly due to any believer citizen does not exist which believes compulsion to have (and not remove) a particular kind of cloth is equal to lack of existence, personality, identity and finally become hellish based on his or her religious principle, thus, this law is not opposite to citizenship rights unless in the performance some rules will be discriminated.

Conclusion:

18. Islam is religion which its private and public circles are compounded. Having a look on the religious laws and rites of Muslims represents separation of these two circles and allocation of Islamic religiousness to private circle is not possible. Especially study of retribution laws of Islam shows more than 90% of Islamic retributions are about crimes in the public circle. With the same ratio the value of religiousness in public circle and society not reduce but

possesses high sensibility. Lack of correct understanding about situation of faithful Muslim in this regard causes unfortunately during recent two decades Islam and Muslim in the west are unfair discriminated which maybe is not repeated during history. Because discriminations and inhumanity behaviors are occurred in some societies which know themselves advance in human rights and freedom of religion around the world. France, Switzerland, Belgium, Germany, Nederland, Denmark and USA clearly with reason of protection of human rights discriminate human rights of their Muslim citizens. Muslim minority in the west especially in Europe is victim of silent holocaust and any judgment except take hold of principles of European human rights does not exist. According to reports of judgments of European court of human rights also in the most of the cases show reject of Muslims request and judgment to European governments. Major of these discriminations are against international principles of human rights and constitution of European countries about freedom of religion and religious rites in society. Present article wants to show how religious beliefs of Muslims and their religious rites such as Hijab are considered as ingredient of religious conscience of Muslims which can not be imposed on anyone and can not be stopped by force. Recently with avowal of legal centers in this regard, these type laws of prejudicial and against human rights in current Europe still have performed. Maybe correct understanding of Islam and Islamic beliefs in the west does not exist. Maybe conflict between Islamic beliefs and Jewish-Christian existent beliefs exist and maybe intentionally Islamic opinion is evaded and not realized. Therefore, this text insists on this belief that Islamophobia and its

stability is product of negligence of western governments respect to offensive behaviors of opponents from Islam and Muslims in western society. These types of behaviors are obvious in the forms of hate creating respect to Muslims, propagation of national identity instead of religious identity, lack of separation between Islam and terrorism, promotion and propagation of aggressive to Islam, showing Muslims stranger and dependent, expression and tact performance of human rights and democracy. Anyway it is clear that while any Muslim citizen in the western society due to Islam is panic, this society can not claim of democracy and human rights.

Chapter Two

Violation of Human Rights on the Pretext of War on Terror

The impact of counter terrorism on the criminal justice system



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ABSTRACT

The work will examine Herman and Chomsky's 'propaganda model' (1994) in order to ascertain its relevance to the so-called 'war on terrorism'. The essay will argue that the Western powers (primarily, in this case, Britain and the US) have waged a propaganda war against their own citizens in order to justify their (what some might argue) morally repugnant foreign policy, using examples drawn from media coverage of the debacle in Iraq and the portrayal of Muslims and Islam in the mainstream media. It will be argued that, effectively, the 'war on terrorism' is a war on human rights. The essay will argue that the Western powers (primarily, in this case, Britain and the US) have waged a propaganda war against their own citizens in order to justify their foreign policy. Using examples drawn from media coverage of the portrayal of Muslims and Islam in

the mainstream media. It will be argued that, effectively, the 'war on terrorism' is a war on human rights.

WESTERN PROPAGANDA AND THE WAR ON TERRORISM

Propaganda is mainly perceived in the West as an aspect of Communist, Fascist or totalitarian regimes where the media is controlled by the state. It is assumed that in the West, where much of the media is in the hands of private enterprise, that formal propaganda is absent. This essay is primarily concerned with the disparity between the world as presented by the mass-media, and the world as experienced by those on the receiving end of US foreign policy, such as those living in countries suffering from repeated US intervention. It is proposed by Herman and Chomsky (1994) that the media in ostensibly democratic societies, through submission to government and corporate interests, engage in propaganda campaigns in order to sway public opinion to lower resistance to such policies. Herman and Chomsky's 'propaganda model' (1994), is based on the 'economic determinism' (Altschull, 1995: 206) school of Marxism. This is then linked to Gramsci's idea of hegemonic control (Storey, 2001: 103- 108) will then be added to the discussion, in order to illustrate that ideological control in the context of the dissertation is not necessarily a 'top-down dictatorship', but takes into account ideological interaction between the elite and the dissenters of society. This will be illustrated employing such concepts as 'ideology' (Storey, 2001), the 'public sphere' (Habermas, 1992), and the media as the fourth estate.

The essay will examine this proposition, and will analyse

the ideological factors which may drive such propaganda campaigns, using examples from the 'war on terror' in order to illustrate the arguments given. The media representations of Muslims in the media will also be discussed given its implications for both domestic and foreign policy. In short, this essay is concerned with how in 'Western democracies' the mass-media becomes a potent tool for disseminating ideology:

'Those who controlled the language controlled society and could bring humankind to slavery or to freedom... Those who controlled the press controlled the ideology and the social order.' (Altschull, 1995: 206) For many writers the media are seen as part of an ideological arena in which various class views are fought out. Although within the arena ultimate control is increasingly concentrated in monopoly capital. Thus media professionals, while enjoying the illusion of independence, are socialized into and accommodate the norms of the dominant culture; the media taken as a whole, relay interpretive frameworks consonant with the interests of the dominant classes. Media audiences, while sometimes negotiating and contesting these frameworks, lack ready access to alternative meaning systems that would enable them to reject the definitions offered by the media in favour of consistently oppositional definitions.

IDEOLOGY, HEGEMONY AND MASS MEDIA

This interpretation is contested by liberal pluralists. The mass-media is seen by pluralists as for the most part representing the diverse range of views in society, and fairly autonomous from the state, with individual operatives

and journalists enjoying a fair degree of freedom. The relationship between the government, the media and public opinion is seen as essential to the operation of any fair democracy:

The idea of the public sphere (Habermas, 1992) is integral to liberal pluralism- that the mass media form an arena which the public can access for the production and consumption of information, thereby obtaining a range of views.

However, theories of liberal pluralism and the public sphere ignore such issues as the ideological formation of the mass-media through factors including media ownership and the role of the state; these are matters that will be examined in the discussion of Herman and Chomsky's propaganda model (1994).

Related both to ideology and to the theory of the public sphere (Habermas, 1992), is Antonio Gramsci's theory of hegemony (Storey, 2001: 103-108). According to Storey (ibid.), hegemony is the theory that the ruling class in society exercise power through ideological (or 'moral and intellectual') leadership rather than control. This is achieved through the incorporation of resisting ideologies into the framework of the dominant ideology, thereby changing the resistant ideas and rendering them ineffective in harming the dominant ideological framework of society. This leadership is naturalised and accepted by the dominated class(es). As Storey (2001: 105) maintains, hegemony is the result of 'negotiation' between dominant and dominated groups: it is not simply a 'top-down' power influence. However, as the subordinated classes must never be allowed to challenge the 'economic fundamentals of class power' (ibid.)-

... when moral and intellectual leadership is not enough to secure continued authority, the processes of hegemony are

replaced, temporarily, by the coercive power of the ‘repressive state apparatus’: the army, the police, the prison system, etc. (ibid.)

PROPAGANDA IN WESTERN MEDIA

Herman and Chomsky’s (1994) view therefore, is that the various forms of media are, in effect, a powerful tool for the furthering of ‘elite’ interests. This includes as specific entities corporate monopolies and governments, in fact those that have the power directly or indirectly to influence government policy and/or public opinion.

In countries where the levers of power are in the hands of a state bureaucracy, the monopolistic control over the media, often supplemented by official censorship, makes it clear that the media serve the ends of a dominant elite. It is much more difficult to see a propaganda system at work where the media are private and formal censorship is absent. This is especially true where the media actively compete, periodically attack and expose corporate malfeasance, and aggressively portray themselves as spokesmen for free speech and the general community interest.

(Herman and Chomsky, 1994: 1)

Herman and Chomsky (ibid.) therefore appreciate that censorship is not always actively induced by the government, such as in totalitarian states, but in fact self-censorship is apparent in the media in ostensibly democratic societies due to the semi-invisible relationship between governments, media organisations, corporations and the desire among all parties for profit. This view, furthermore, builds on the hegemonic model.

The interaction between the government, the mass media and private interest can be explained by Herman and

Chomsky's 'propaganda model' (1994: 3-31), which is a Marxist-based proposal that various 'filters' shape the nature of the information the public receives from the mass-media, 'filtering' out information that is seen as undesirable for the public to receive. These filters are: (1) size, ownership and profit orientation of the mass-media, (2) the advertising 'license', (3) 'sourcing' of mass-media news, (4) 'flak' and (5) anti-communism (ibid.).

In short,

Because each of the dominant firms has adopted strategy of creating its own closed system of the control over every step in the national media process, from creation of content to its delivery, no content- news, entertainment or other public messages- will reach the public unless a handful of corporate decision-makers decide that it will.

(Bagdikian, 1999: 149)

The final filter is what is defined as 'the ideology of anticommunism' (ibid: 29). Herman and Chomsky believe that Communism has been constructed for the US public as the 'ultimate evil': in a world where the state or the people own production the current owners of production can hold no power. In order to justify atrocities against a certain society or people, true political debate must be suspended:

... when anti-Communist fervour is aroused, the demand for serious evidence in support of claims of "communist" abuses is suspended, and charlatans can thrive as evidential sources. Defectors, informers, and assorted other opportunists move to center stage as "experts", and they remain there even after exposure as highly unreliable, if not downright liars.

(Herman and Chomsky, 1994: 30)

While Communism is one memorable enemy for the public to fear (thereby reducing dissent against aggressive policy versus 'Communist' states), it must be made clear that

‘long-term’ enemies such as this are not the only enemies constructed by the media in the public consciousness: Hegemony or Survival? (Chomsky, 2004: 115- 121) gives other examples that served more short-term goals such as Nicaragua, or the ‘Libyan threat’. However Islam, it could be argued, has replaced Communism as the long-term (i.e. major) bogeyman for the public (e.g. Karim, 2002).

Karim (2002: 101-102) notes that in times of great tragedy, journalists tend to fall back on set patterns of reporting that are heavily reliant on existing dominant socio-cultural ‘worldviews’. Karim highlights the emergence of dominant discourses regarding the nature of Islam and of Muslims in general, and the perceived connection between Islam, violence and terrorism (ibid.), a view that is backed by the UN:

The U.N. Commission on Human Rights... voiced concern that some media were being used to incite violence and discrimination against Islam... The resolution expressed... “deep concern that Islam is frequently and wrongly associated with human rights violations and with terrorism.”

(Black Journalism Review, 2004: www.blackjournalism.com).

The media discrimination against Islam is not ‘new’: ‘They hate us... because their culture is backward and corrupt... they are envious of our power and prestige...’ So wrote military historian V.D. Hanson (as quoted by Sardar and Davies, 2002: 23), or as Edward Said sums up:

In this country... Several generations of Americans have come to see the Arab world mainly as a dangerous place, where terrorism and religious fanaticism are spawned, and where a gratuitous anti-Americanism is mischievously inculcated in the young by badly- intentioned clerics who are anti-democratic and virulently anti-Semitic.

(Said, 24/07/03: www.zmag.org)

Islamic terrorism is perceived to be the biggest threat to the Western world today (Laqueur 2003), and it would seem that:

“...the mere fact of peoples being ‘Islamic’ in some general religious and cultural sense has been conflated with that of their adhering to beliefs and policies that are strictly described as ‘Islamist’ or ‘fundamentalist’...The fact that most Muslims are not supporters of Islamic movements is obscured, as are the conditions under which people who are Muslims do turn to this particular option”

(Halliday 1995: 107).

It could be argued then that the popular construction of the ‘Arab-world’ as supportive of terrorism against the West is part of an ongoing tradition of engendering the creation of an ‘enemy’ in the public mind. Herman and Chomsky (1994) note the reliance on ‘received opinion’ and ‘expert knowledge’ for the justification of harsh government policy at home and abroad and in Bill Berkowitz’s article (14/10/02, www.alternet.org), the construction of Republican Middle-East ‘think tanks’ with distinctly anti-Arab tendencies is highlighted. The members of these think tanks are constructed as ‘experts’ despite their biased (i.e. government) agenda.

Therefore, filter five, the ‘ideology of anti-communism’ can be construed in today’s climate as incorporating anti-Islamic discourse. The impact of this will be further investigated later in the dissertation in section.

The propaganda model therefore argues that corporate and governmental influences, combined with the profit-driven nature of the mass-media, can restrain true discourse, eliminate voices, opinions and facts that the elite do not wish

to be heard, and encourage views and news that are pro-establishment. This is not to say that dissenting groups are necessarily completely eliminated from popular discourse, but the system makes it extremely difficult for their views to be expressed, or even understood by the public:

However, one item that must be taken into account is that while dissenting views are available in the mass-media, particularly in the press and on the Internet, consumer trends can help illustrate what information is actually received by the public. For example, in the build-up to the invasion of Iraq, the views of the *The Sun* were extremely in support of the government decision and of the war itself, while, again, *The Guardian* attempted a more ambivalent approach.

As regards the Internet, it is an example of pluralism at work: 'Once the Internet allowed Americans to tap into... newspapers abroad... they were not reading in the English press what they were reading in the *New York Times*. (Fisk, 2004: 219). Furthermore, while there are a plethora of 'alternative' news and information sites available for perusal, such as 'Alternet' and 'Red Pepper' (Alexander, 2004: 278) that every day reach a global audience, the main factor for obtaining news information is accessibility: CNN.com, owned by AOL-Time Warner (Los Angeles Independent Media Center, 2003: <http://la.indymedia.org>), is the major player for Internet news in the US, reaching 26 million unique users (Alexander, 2004: 277).

The mainstream media then leaves people feeling 'marginalized and distracted' (Chomsky, 2002: 31), so even if they were to have views that conflict with that expressed in mainstream media, they have little way to '... organize or articulate their sentiments, or even know that others have

these sentiments...’ (ibid.).

However, the reason therefore that there were people protesting against the invasion of Iraq, and the reason for popular opposition against government policy in the US and UK is that there has been a culture of dissidence growing since the 1960s (ibid.). While there has arguably always been a history of popular protest in the United Kingdom, the Vietnam war was in many ways the beginning of a small, but growing, ‘protest culture’ in the US. The strength of the culture of dissidence is that it is organised, and-

Organization has its effects. It means that you discover that you’re not alone. Others have the same thoughts that you do. You can reinforce your thoughts and learn more about what you think and believe. These are very informal movements... just a mood that involves interactions among people.

(ibid: 40-41)

With the reference to the growing ‘protest culture’ in the US and UK, Gramsci’s theory of hegemony must be acknowledged. The way in which hegemony works is through an incorporation of resistant ideologies into the framework of the dominant one, and is based on a perceived ‘compromise’- for example the United Kingdom government initiated the ‘Hutton Inquiry’, which was an investigation into the assertion by Tony Blair that Iraq could launch WMDs within 45 minutes. However, a cynic could ask the question, ‘Why not investigate the claim that Iraq possessed WMDs at all, the ostensible reason for going to war?’ It might be reasonable to ask if the inquiry may have been a tactic attempting to appease critics of the government, and John Pilger (Breaking the Silence, 2003: Carlton Television) believes this to be the case. Ultimately, with regards to hegemony, these ‘compromises’ do not harm

the essentials of the dominant ideology, and as Chomsky claims above, ultimately reinforce it through an appearance of free-speech, democracy and a caring government:

Undoubtedly the fact of hegemony presupposes that account be taken of the interests and the tendencies of the groups over which hegemony is to be exercised, and that a certain compromise equilibrium should be formed- in other words that the leading group should make sacrifices of an economic-corporate kind. But there is no doubt that such sacrifices and such a compromise cannot touch the essential...

(Gramsci, 1971: 161)

Ultimately, as with the UN relationship to the US, if the dissident in society remain unappeased, then they are ignored by the government. Unfortunately, mainstream media coverage of the anti-war movement in the UK is grudging and sparing, and dissident views remain for the most part absent from the mainstream (i.e. the most accessible) media (Miller, 2004).

EXAMPLE 1: MEDIA, IRAQ AND THE WAR ON TERRORISM

As the US and UK governments spend so much money and effort on the distribution of propaganda (Miller, 2004: 80- 99), the ideology that drives the desire/need to propagandise must be examined.

Since September 11 September 2001 both the US and UK governments have comprehensively overhauled their internal and external propaganda apparatus. These have been globally co-ordinated as never before to justify the ‘war on terror’ including the attacks on Afghanistan and Iraq and the assault on civil liberties at home. To win the war on Iraq the US and UK governments evidently believed that they could

not rely on the media to report consistently in conformity with the official line.

(Miller, 2004: 80)

Despite all official weapons inspector (and espionage) sources reporting to the contrary, the claim that Saddam Hussein had access to WMD (that could be deployed within 45 minutes) was repeated over and over in the press and on television (Miller, 2004). Although there was fierce and vociferous public opposition in both the US and the UK before and during the invasion (Miller 2004: 6), this was for the most part ignored by the mainstream press (ibid.): neither government was deterred. After the invasion was underway, the media were apparently perfectly willing to believe and report on every claim of a discovered Iraqi WMD dump, no matter how dubious (Thomas, 2004: ix). ‘...it was the media reporting exactly what they were told without properly questioning it. This was mainline uncut propaganda.’ (ibid.)

Overall, 86 per cent of the [television news] reports we examined that referred to weapons of mass destruction suggested Iraq had such weapons, and only 14 per cent raised doubts about their existence or possible use... the coverage was more likely to support the government’s case than undermine it. Indeed, we found only one reference that flatly suggested there were no weapons of mass destruction- a notable absence given that none have been found to date.

(Lewis and Brookes, 2004: 135)

As the war dragged on, and as the bogus discovery of biological weapons factories, etc, were revealed as false, the focus of the war shifted from it being a ‘pre-emptive strike’ to being one of ‘regime change’, to a war of ‘liberation’ for the Iraqi people:

“As we and our coalition partners are doing in Afghanistan, we will bring to the Iraqi people food and medicines and supplies... and freedom.”

George W. Bush

(Pilger, *Breaking the Silence*, Carlton Television, 2003)

The war therefore employed Orwellian-style ‘doublethink’ that presented a war for ‘peace’, occupation as ‘liberation’, destruction of necessary infrastructure as ‘humanitarian action’ and of course, the chaos that Iraq is in today as ‘freedom and democracy’. (Kellner, 2004: 148).

Throughout, the invasion was framed by the ‘embedded’ media. ‘Embedding’ (i.e. the placement of journalist personnel in military units) is not a new concept (Freedman, 2004: 67), but the degree of immediacy gained from such a unison of military and media in today’s satellite-driven communications era was unprecedented: ‘Embedded journalists were the PR coup of the war.’ (Miller, 2004: 89). While ‘embeds’ had direct access to the fighting, and protection from harm by the military, giving them unique insight into the mindset of the units they bonded with, they also had imposed on them severe restrictions on what they could and could not report (Miller, 2004: 89-90). Furthermore, by encouraging the reporters to identify with their units, the reporting could be further biased towards the values put forward by the military (ibid.).

The importance of the ‘embedding’ of reporters in military units cannot be underestimated. The so-called ‘unilateral’ reporters, i.e. those who weren’t embedded and supportive of the US and UK military 100 percent, were considered incidental in the conflict, if not actual targets (Knightley, 2004: 100-101).

Even more chilling is the warning issued by US Deputy

Assistant Defence Secretary for Public Affairs, Rear Admiral Craig Quigley, to those sections of the media not fully on our side. It can be summed up as, ‘Don’t get in our way, or we’ll bomb you too.’ This is of particular significance because the main American TV networks and the BBC have been planning to cover a war against Iraq not only from the American side but- as they did in the first Gulf War- from the Iraqi side as well.

(Knighley, 2003: 255)

The upshot is that the assertion that ‘you are either with us or against us’ made by George W. Bush after 9/11 doesn’t just apply to terrorists, it apparently now also applies to journalists.

The propaganda operation is entirely outside of democratic control and appears not to be constrained by adhering to any significant standards of truthfulness. It seems instead to operate on the basis that anything goes so long as it is calculated that it can be got away with.....Overall the operation shows a great deal of contempt for the process of democracy, since the lies are constructed to misinform and persuade-in art- the electorate of the US and the UK as well as world opinion.”

Miller 2004:95

EXAMPLE 2: TERRORISM

The upshot of declaring a ‘war on terror and those who harbour them’ is that it is effectively a war without end (Glover, 2002: 221). Furthermore, the WOT has no clearly definable enemies; the words ‘either you are with us or you are with the terrorists’ are an ultimatum: if you do not unquestioningly follow the US government agenda then you are our enemy and will be treated as such (Parenti, 2002:

41). It is easy then, for supporters of government policy, to declare any reasoned opposition ‘unpatriotic’, further reducing debate: ‘... in the aftermath of September 11 the national media have confused the questioning of official policy with disloyalty.’ (Navasky, 2002: xvi).

In a discourse regarding terrorism, one must first define what a ‘terrorist’ is; several definitions of ‘terrorism’ will therefore be examined:

Ter-ror-ism

n. The unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons.

Ter-ror-ist

n. One that engages in acts or an act of terrorism.

Adj. Of or relating to acts of terrorism.

(yourDictionary.com 2000: www.yourdictionary.com)

The dictionary definition is straightforward; however the CIA definition of ‘terrorism’ is slightly different, although parallel:

The Intelligence Community is guided by the definition of terrorism contained in Title 22 of the US Code, Section 2656f(d):

The term “terrorism” means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.

—The term “international terrorism” means terrorism involving the territory or the citizens of more than one country.

—The term “terrorist group” means any group that practices, or has significant subgroups that practice, international terrorism.

(Central Intelligence Agency, 2002: www.cia.gov)

The CIA definition implies that ‘terrorism’ does not cover ‘official’ state violence (e.g. the carpet-bombing of much less powerful nations), however what about state-sponsored terrorism? The CIA has, in the past, had many and varied engagements with ‘international terrorism’, and they could be defined as a ‘subnational’ group.

By their own definition, therefore, the CIA are terrorists (Chomsky 2000; Blum 2002).

The use of the word ‘terrorist’ by politicians and the media today therefore denies context and sets arbitrary boundaries. It denies context by denying the ‘terrorists’ in question an agenda or historical motivation for their actions. By referring to the actions of individuals against a state merely as ‘terrorism’, one separates them from state violence by marking them as evil, as unnecessary violence, as opposed to the murder of civilians or sponsorship of the same by the state (e.g. the US funding of ‘Contra’ death squads in South America) (Chomsky, 2000). Calling such individuals and groups ‘terrorist’ sets boundaries by marking the distinction between us and them: they are evil, we are good.

In fact in the immediate aftermath of the recent suicide bombings of London Tony Blair issued a statement which ended:

“Whatever they [the terrorists] do, it is our determination that they will never succeed in destroying what we hold dear in this country and in other civilised [my emphasis]nations throughout the world”(Independent 8.7.05).

Indeed Parenti argues that ‘US leaders have been the greatest purveyors of terrorism throughout the world’ (2002:7) even though they have been allowed to promote themselves as the greatest defenders of peace and freedom.

“In alternative discourses, such as those of Noam Chomsky (1991) and Edward Herman, the violent world order also includes the support of powerful states for smaller “National Security States.” The oppression of these states’ populations (usually to ensure that supplies of raw materials and cheap labour keep flowing to Western corporations) and the arming of regional powers to destabilize neighbouring countries is the “real terror network” . They describe how the “Free Press” has in various periods overlooked US involvement in supplying and training the armies of repressive regimes. Dominant discourses on terrorism avert their eyes from what these authors call “wholesale violence” perpetrated by hegemonic states and their clients and focus instead on the “retail violence” of non-compliant states and groups.

(Karim, 2002: 102)

There is furthermore a distinction between what can be called ‘structural’ terrorism and ‘classical’ terrorism. Structural terrorism, normally undertaken by states, is designed to coerce governments (or induce a people to rise up against their government) by damaging the infrastructure of a society, for example in the case of embargoes, sanctions or otherwise damaging the economy of a state. This routinely leads to civilian death, often more than would occur with violence alone:

CONSEQUENCES:

WAR ON HUMAN RIGHTS?

Marking 9/11 as a ‘terrorist’ attack, associated with Islamic extremists, had unfortunate consequences for American (and correspondingly British) Muslims, and furthermore, for the dissident members of society (Saeed, 2004). The

simultaneous patriotic fervour and fear of further attack the government and media instilled in the population meant that extreme measures for further domestic control could be rushed through congress largely without question (e.g. the PATRIOT Act, or similarly in the UK, the ‘Terrorism Act’ of 2000 [Queen’s Printer of Acts of Parliament, 2000: <http://www.hmso.gov.uk>] or the ‘Anti-Terrorism and Security Act’ of 2001, [Queen’s Printer of Acts of Parliament: <http://www.hmso.gov.uk>]) due to a perception that the public would be safer with such legislation in place.

The measures taken by the US government in their domestic policy in order to fight the WOT, have had the additional effect of nearly criminalising dissent. This it could be argued that is connected to a wider xenophobic attitude towards all immigrants; since 9/11 the tendency has been increasingly to associate all Muslims and ‘asylum seekers’ with terrorism (Saeed, 2004: 70-75), (Poole, 2002).

The mass-media, despite the government claims that ‘loyal’ Muslims have nothing to fear, have been unerringly identifying Islam and terrorism as inextricable (ibid.).

It should be mentioned though, that ‘loyal’ Muslims do not live in a vacuum; any Muslim in the US and UK can be discriminated against on the basis of their religion due to increasing Islamophobic tendencies in those states (Saeed, 2004).

As well as killing many thousands of people, destroying the most powerful symbol of American world trade dominance and sparking war on Afghanistan, the events of September 11 have generated a worldwide moral panic about terrorists, Islamic fundamentalists and, more generally, the migration of populations whose origins lie in the Middle East, Africa and the Indian subcontinent.

(Weber and Bowling, 2002, 123)

By implicating ‘Muslim’ terrorists in 9/11, and reliance on ‘received opinion’ concerning Muslims and Islamic states, the US government could play up the perceived innocence of ‘free’ America: in the case of 9/11, the people of the US were understandably stunned; as an example of the effectiveness of the propaganda model (Herman and Chomsky: 1994), most Americans were completely unaware of the many actions of the US state around the world that are seen by many as themselves evil or unjust, let alone US intervention in the Middle-East (for example in Israel) for which individuals may feel justified in retaliating against.

The upshot is that the world has become more dangerous for Muslims due to the moral panic regarding terrorism, in the same way that the world became more dangerous for communists under McCarthyism. However this is not to deny that the demonisation of Muslims has a historical context- for example Vaughan’s work on the media marginalisation of the Moros- Muslims of the southern Philippines (2002: 11-20) highlights an older example of the Western propaganda system at work on this front, and it is interesting to note that, yet again, it was connected to a military venture.

US news media remained largely oriented toward the military view, and so therefore did the reading public... Moros, after all, were portrayed from the outset as “piratical fanatics” who “offer the most serious problem in the pacification of the islands”.

(Vaughan, 2002: 14)

To conclude, the downward trend in media factuality, coupled with a rise in ‘entertainment’ television and the

‘tabloidisation’ of news in any format combines to propagate a culture of ‘knowledgeable ignorance’ in the US and UK wherein the recipients of news have much information but little fact.

The American media functions primarily to keep the American audience ignorant of the rest of the world; it is interested in producing happy customers, not informed, free-thinking citizens who question the foreign policy of their government... Hyper-commercialism has implicit bias against political action, civic values and anti-market activities, and tends to regard consumerism, class inequality and so-called ‘individualism’ as natural and benevolent.

(Sardar and Davies, 2002: 9)

It must be noted though, that these propaganda campaigns need not be Machiavellian-style plots: powerful individuals and corporations may simply see themselves as looking out for their own financial interests as in the ‘Gulf and Western’ case discussed above (Herman and Chomsky, 1994: 17). Additionally, the theory of hegemony insists that cultural dominance is maintained through the very resilience of the dominant ideology against change.

Regardless, it is apparent that dissident voices can be heard and alternative information is available for the public, however these sources are often under-funded and under-publicised or otherwise not as accessible as mainstream media voices. The dissident section of the US/British public has therefore been marginalised as it is a barrier to successful indoctrination of the people: ‘... an audience that thinks critically and is prepared to challenge your message becomes a problem that must be overcome... propagandists regard rationality as an obstacle to efficient indoctrination.’ (Rampton and Stauber, 2003: 135).

To continue, since 9/11 the US and UK governments have spent staggering amounts of money on their ‘propaganda apparatus’, which they cooperate on globally (Miller, 2004: 80): the UK Foreign Office ‘public diplomacy operation’ costs £340 million to run annually (London-based work not accounting for money spent internationally), and the US ‘Office of Public Diplomacy’ spends more than \$1 billion annually (ibid). Miller (2004) writes of the many and varied tactics that the UK and US use to sway the ‘hearts and minds’ of their public, allowing as few people to see the relative truth of events as possible, e.g. the ‘embedding’ of journalists in the invasion of Iraq, to outright censorship. Consider:

A study by the Project of Excellence in Journalism of 40.5 hours of prime-time coverage spread over three days by ABC, CBS, NBC, CNN and FOX examined 108 reports from embedded reporters. Not a single story depicted people hit by weapons. Not one.

(Goodman, 2004: 198)

Despite the popular public protests against the invasion of Iraq in the US, Britain and, indeed, much of the globe, despite the current peaceful, yet vociferous movements in the US against their own government there is now little question of whether or not the US will continue its imperialist strategy by invading Iran for its resources some time in the near future; the only real factor is ‘when?’ It appears to be little coincidence in terms of US foreign policy that Iran is fairly oil-rich, but more importantly, controls the Strait of Hormuz- the only sea passage for the massive amount of oil that flows from the Persian Gulf states to the open ocean for export. In recent months it has become patently obvious that the hawks in Washington have been gearing up

the US war machine for some sort of showdown with Iran: for example, Bush has been quite open about the prospect of ‘surgical strikes’ against Iran’s nuclear facilities (Bennis, 2006). Bennis also notes that what is obvious about an attack on Iran is that, if it occurs, it won’t be about reducing Iran’s capacity for producing nuclear weapons: Iran currently does not have the capability to enrich uranium to more than 5 percent, whereas a nuclear weapons program would require enrichment of at least 90 percent

If one takes a closer look at the recent actions of Israel (the United States’ proxy) against Lebanon, it becomes apparent there is more to the conflict than meets the eye: Interestingly enough, the British media have been careful not to term the Hezbollah a ‘terrorist’ group, preferring to use the term ‘militants’. Furthermore, the Israeli ‘International Policy Institute for Counter Terrorism’ (ICT) makes a clear distinction between guerrilla warfare and terrorist tactics (Ganor, 2001). As of August 10, the number of Lebanese civilians killed amounts to 1,032, the number injured to 3,589 and the number of civilians displaced from their homes is almost one million (Ya Libnan, 2006). Amnesty International has accused Israel of war crimes and crimes against humanity on the basis of Israel’s deliberate destruction of Lebanon’s infrastructure (AI, 2006). However as Monbiot (2006) point out there seems sufficient evidence to suggest that Israel was looking for an ‘excuse’ to invade Lebanon months before the actual onslaught started. Monbiot notes (2006)

The San Francisco Chronicle reports that “more than a year ago, a senior Israeli army officer began giving PowerPoint presentations, on an off-the-record basis, to

US and other diplomats, journalists and thinktanks, setting out the plan for the current operation in revealing detail”. The attack, he said, would last for three weeks. It would begin with bombing and culminate in a ground invasion. Gerald Steinberg, professor of political science at Bar-Ilan University, told the paper that “of all of Israel’s wars since 1948, this was the one for which Israel was most prepared ... By 2004, the military campaign scheduled to last about three weeks that we’re seeing now had already been blocked out and, in the last year or two, it’s been simulated and rehearsed across the board”.

[http://www.guardian.co.uk/commentisfree/
story/0,,1839280,00.html](http://www.guardian.co.uk/commentisfree/story/0,,1839280,00.html)

Monbiot also suggests that this could be used as another excuse for the Hawks in the Bush administration to finally start the ball rolling on the military invasion of Iran, given Iran’s outspoken support of Hezbollah.

Iran is the key country in Bush’s famous “Axis of Evil” (Iraq, Iran and North Korea) and the main prize in the current war on West Asia. If the invasion of broken little Afghanistan was a dry-run for the invasion of Iraq, the occupation of the oil-rich Iraq... was itself conceived as a prelude to the subjugation of Iran. Developments over the past two years, however, have made the quick subjugation of Iran immeasurably more difficult but also, paradoxically, more urgent for U.S. strategy not only regionally but also in global terms.

(Ahmad, 29/01/06: www.globalresearch.ca)

Undoubtedly, the media terrain will once again be a key feature in the ideological battle to win hearts and minds.

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Analyzing of Legislative Function of United States in War against Terrorism



"Let
Freedom
Reign" by
Nelson Mandela,
May 10, 1994 Your Ma-

jesties, Your Highnesses,
Distinguished Guests, Comrades
and Friends: Today, all of us do by our
presence here, and by our celebrations
in other parts of our country and the world,
confer glory and hope to newborn liberty. Out of
the experience of an extraordinary human disaster
that lasted too long, must be born a society of which all
humanity will be proud. Our daily deeds as ordinary South
Africans must produce an actual South African reality that will
reinforce humanity's belief in justice, strengthen its confidence in the
nobility of the human soul and sustain all our hopes for a glorious life for all.

All this we owe both to ourselves and to the peoples of the world who are so
well represented here today. To my compatriots, I have no hesitation in saying that
each one of us is as intimately attached to the soil of this beautiful country as are the
famous jacaranda trees of Pretoria and the mimosa trees of the bushveld. Each time one of
us touches the soil of the land, we feel a sense of personal renewal. The national mood changes
as the seasons change. We are moved by a sense of joy and exhilaration when the grass turns green
and the flowers bloom. That spiritual and physical oneness we all share with this common homeland
explains the depth of the pain we all carried in our hearts as we saw our country tear itself apart in a terrible
conflict, and as we saw it spurned, outlawed and isolated by the peoples of the world, precisely because it has
become the universal larer of the pernicious ideology and practice of racism and racial oppression. We, the people
of South Africa, feel fulfilled that humanity has taken us back into its bosom, that we who were outcasts not so long ago,
have today been given the rare privilege to be host to the nations of the world on our own soil. We thank all our distinguished
international guests for having come to take possession with the people of our country of what is, after all, a common victory for
justice, for peace, for human dignity. We trust that you will continue to stand by us as we tackle the challenges of building peace, prosperity,
non-sexism, non-racism and democracy. We deeply appreciate the role that the masses of our people and their political mass democratic
religion, women, youth, business, traditional and other leaders have played to bring about this conclusion. Not least among them is my Second
Deputy President, the Honourable F.W. de Klerk. We would also like to pay tribute to our security forces, in all their ranks, for the distinguished role
they have played in securing our first democratic elections and the transition to democracy, from blood-thirsty forces which still refuse to see the light.

The time for the hearing of the words has come. The moment to bridge the chasms that divide us has come. The time to build is upon us. We have, at last,
achieved our political emancipation. We pledge ourselves to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and
other discrimination. We succeeded to take our last steps to freedom in conditions of relative peace. We commit ourselves to the construction of a complete, just and
lasting peace. We have triumphed in the effort to implant hope in the breasts of the millions of our people. We enter into a covenant that we shall build the society
which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity—a radi-

ation at peace with itself and the world. As a token of its commitment to the renewal of our country, the new Interim Government of National Unity will, as a mark
of urgency, address the issue of amnesty for various categories of our people who are currently serving terms of imprisonment. We dedicate this day to all
heroes and heroines in this country and the rest of the world who sacrificed in many ways and surrendered their lives so that we could be free. Their de-

eds have become reality. Freedom is their reward. We are both humbled and elevated by the honour and privilege that you, the people of South Africa,
bestowed on us, as the first President of a united, democratic, non-racial and non-sexist South Africa, to lead our country out of the valley of darkness.

Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity
together as a united people, for national reconciliation, for nation building, for the birth of a new world. Let there be justice for all. Let there be peace
at all. Let there be work, bread, water and salt for all. Let each know that for each the body, the mind and the soul have been freed to fulfil their own
potential towards the greater good of our people and the greater glory of the Creator of us all.

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By: Dr. Abbas Ali Kadkhodaei
Tehran University



Abstract

First years of 21st Century presents climax period of modern legislation movement against terrorism that among them we can mention to Australia, Britain, Canada and United States as pioneers of legislation movement against terrorism. Although terrorism is not a new phenomenon, but application of law would be a modern approach for counter-terrorism policies of states in recent times.

Significant point is that despite of lack of unanimously definition of terrorism in international level and increasingly globalization which leads to plenty opportunities in the hands of terrorists, legislative approach is put on the table by some governments under title of war against terrorism beside other financial, military and even legal aspects that in case of recent case we can mention to legislation of national rules against terrorism.

In present article after considering international community legal strategies to combating with terrorism and revising of anti-terrorism acts approved in some Western Europe countries in first decade of 2000, we will try to analyze President Bush military order dated on 13 November 2001 about establishment of military commissions for detention and trial of suspected foreigners in war against terrorism, White House guidelines on status of Guantanamo detainees dated on 07 February 2002, and American military commissions act adopted in 2006 and reply this main question that United states some what is successful in combating with terrorism in order to observe human right by application of law approach. In other words, is legislative function of America in war against terrorism comparison to international regulations or not?

1. Introduction

When we are speaking about relation of terrorism with human international rights and international humanitarian law, a phenomenon which first springs to the mind is policy of war against terrorism that allotted special place to itself in policy of some European and also United States governments. Significant problem to combating with terrorism is failure to cooperate internationally that its main reason is lack of general definition of terrorism; however international community fills this vacuum impressively by presenting definition of thirteen meanings of international terrorism.

One simple principle in contemporary world mentions to this fact that whatever transnational terrorism exceeds by resorting to traditional and modern genocide weapons,

information technology and other capacities are resulted from globalization process, more serious issues will be planned to combating with terrorism. Although legality base of war against terrorism is researched in legal defense doctrine, but fact is that the present combat rejects all constitutional bases and conditions of legal defense and even on the other words, gift of expanded field that is drawn for combating with terrorism is altering boundary among peace legal system and armed hostilities legal regime.

According to the above-mentioned remarks, whether United States, that is reviving abolished theory of upright war to combating with terrorism, can be claimer of preserving its and its citizens' safety lawfully by breaching imperative obligations like life, personal security, forbidding discrimination, privacy, just trial, separation principle among militants and civilians, prohibiting persecution and freedom of ware prisoners after ending active hostilities.

Violating observation of human rights rules by governments to combating with terrorism, on one hand explains necessity of revising legal rules inserted in human rights system related to coercive measures in order to prevent from human rights expanded breaches by officers of combating with terrorism and preserve discipline of their behaviors more than before and on the other hand, it demonstrates pressing need to developing appropriate reaction mechanisms in order to give immediate and appropriate legal answer to human rights and humanitarian law ever-increasing breaches.

2. Legal Approaches of Combating with Terrorism in International Community

None of different approaches that are applied by governments to combating with terrorism has capacity of being effective to suppress terrorism comprehensively and it shows attention to international terrorism subject constitutionally that either remains unaware of necessity of observing human rights and also takes no notice to law ruling criterions.

2-1 Preventing Policies in lieu of International Terrorism

Undoubtedly outreaching against terrorism is one of applicable means to combating with it that terrorism creation factors like poverty, economic under development, failure to observe basic rights of the minorities and using discrimination from self-centered regimes that leads to terrorism development are considered in this approach. In long term, this approach will cause to demolishing origins of terrorism appearance in different communities and definitely has more stable effects in comparison with other methods. Principles of Europe Union Council Guidelines on Human Rights and Fight against Terrorism considers this subject and announced in Introduction of this document that combating with terrorism involves long term activities with preventing viewpoint of terrorism reasons that will be ascertained through expanding solidarity among communities and speaking among religions and cultures. Of course, in addition to the said points choosing active approaches in order to reveal and nullify terrorist activities is important because terrorists applied modern methods and weapons for putting its purposes to effect. In this direction, training police and specialized forces for combating with

terrorism, improving immunity standards in protecting places, considering terrorist penalties as crime, increasing public information of people about terrorism threats, expanding international cooperation through exchanging information and experiences and judicial collaboration and finally necessity of considering appropriate mechanism for compensating loss of terrorism victims, are noticeable.

2-2 Military Policies in lieu of International Terrorism

Richard J. Erickson is first person that because of insufficient mechanisms of law performance to combating with some terrorist activities calls terrorists as Illegal Combatant that perform some actions against humanitarian international law and therefore planned military approach against terrorism and armed disputes rights coherently. So, if terrorists have been considered as combatants that are deprived from militancy points, suppressed government is entitled to kill them as hostile and even furthermore terrorist suspects are deprived from humanitarian law support. Although United States and United Kingdom believed from long time before that armed legal defense against terrorist attack is permitted in order to support their interests and citizens, but first time United Nations Organization Security Council recognize possibility of using coercive in form of legal defense system against terrorist attacks officially. Thus from the viewpoint of Security Council decisions, against some authorities' viewpoint, the said attacks have been considered in lieu of armed attack according to concept of Article 51 in Charter and same position have been considered by NATO. In the case that this Council did not approved legal defense in return for terrorist attacks to United States embassies in Kenya and Tanzania in the year

1998.

Free from resorting to unilateral force, performing coercive actions by Security Council on the strength of 7th Chapter in Charter means acceptance of relation between terrorism, international peace and security from the viewpoint of international community. We should remember that United Nations Organization general assembly by virtue of Manifesto No. 42/159 approved in the year 1987, Manifesto No. 44/29 approved in 1989, No. 46/51 approved in 1991, No. 50/53 approved in 1996 and No. 57/83 approved in 2003 and also Security Council by virtue of Manifesto Nos. 731 and 1044 approved in the years 1992 and 1996 called terrorism as a threat against international peace and security but they never used its practical effects.

2-3 Financial Policies in lieu of International Terrorism

Experience of international community expresses this fact that when terrorism financial resource is not eradicated, its suppression is more difficult and indecisive. Therefore, general assembly considers preparation of terrorist activities financial resources as crime and furthermore obliges governments to eradicate terrorists' financial resources. Manifesto 1373 of Security Council that is inspired from Manifesto 45/109 of general assembly dated on 25 February 2000 and leads to drawing up International Convention for terrorism financial resources suppression, considers this issue clearly according to 7th chapter of Charter.

2-4 Legislative Policies in lieu of International Terrorism

Traditional approaches of combating with terrorism identified this phenomenon as an offence and it is clear that opposite of it, reaction orders is predicted under supervision of penal system. Result of this approach is emphasizing on

the terrorist accused prosecution and necessity of observing principles of penal law like legalization principle of crimes and penalties, innocence principle and etc. In this direction human rights committee as a supervising foundation on performance of civil and politic law international promise, announced its worry in national penal rules collection about presenting exact definition of terrorist crime and membership in terrorist groups.

One of serious losses of this strategy is lack of unanimous definition of International Terrorism in international community since difference of opinion in definition of this phenomenon is prevented from decisive penal reaction against terrorist activities. However considered proofs in Anti-Terrorism thirteen-fold conventions present noteworthy role in drawing scope of international terrorism concept, but yet we confronted this fact that some governments reject the accused trial or extradition on the strength of their definition about terrorism or abuse this subject to combating with their protestors.

As mentioned before law performance approach considers terrorist actions as penal actions that should be prosecuted, trailed and punished. So researches, prosecution and arrest are main mechanisms of this system. It should be mentioned that this method in comparison with others is so precise also terms and rules that are performable at time of peace or armed hostility is so limiting. In case of retaining armed dispute, resorting deathful force is permitted in principle except exceptional cases but purpose of police antiterrorist actions is decreasing vulnerability against terrorist attacks.

Someone believe that legislative strategies have efficiency for usual guilty and only resorting to researches,

prosecution and arrest that are main mechanisms of penal law performance system is not sufficient for confronting with terrorist threats. These persons explain their opinion in a way that in confronting with terrorism phenomenon, which has first degree of importance is prevention from terrorist attack and punishment of terrorist agents has no subject automatically after performing their plan and in simple word it is not accounted as a purpose by itself. In addition, it is announced that because of lack of an international effective police station and corruption of local police station, also because of lack of an efficient international law court that investigated terrorists' crimes and non-satisfactory extradition system, an approach that selects legal mechanisms to combating with international terrorism is not effective; of course, instead of it military strategies should be applied in agenda.

3- Comparative Study on Anti-Terrorism Act Enactment

Just as mentioned before some countries have resorted to enact Anti-Terrorism national regulations in direction of legislation policy to combating with terrorism; some of these countries are named in brief as follows:

3-1. Canada

Anti-Terrorism Act in Canada is one of forming elements of this country general strategy to combating with terrorism. In fact the said Act is an amendment to Canada Penalty Law, Governmental Secrets Law, Canadian substantiation Law, Law for combating with money laundry and some other procedures. This Act is a reaction to 11 September attacks that increased powers of Canadian Government

and foundations of Canada Security Organization. But it is necessary to mention that this increase is encountered to opposition because of inconsistent with Canada Right and Freedom Treaty especially about possibility of holding close trails, preventive arrest and expanded security and spying powers.

3-2. Australia

This country approved amendment of Anti-Terrorism Act on 06 December 2005. This Act that has been prepared and edited by Liberal-Nationalism Coalition Government is an answer to some terrorist attacks out of Australia especially attacks in London.

3-3. England

In England, Anti-Terrorism, Crime and Security Act, in 12 sections and 129 articles, which is approved in November 2001 considers combating with terrorism as legislation subject. This Act has been presented and approved two months after 11 September attacks; of course, most of regulations of this Act are not related to Terrorism. Lords of the Senate announced through a decree on 16 December 2004 that 4th Section of this Act, that is related to immigration and refugees and also considers different issues including international terrorism suspected and refugees' agreement and etc., is contrary to human rights European Convention and it is no longer valid.

3-4. United States

There are some regulations related to terrorism that most important of them is USA Patriot Act approved in the year 2001. This Act takes root in two other acts that the said act has been approved after combination. Financial Anti-Terrorism Act that obliges Federal Government to increase

power of controlling and supervising on financial offenders and jailing them, has been approved at the Parliament on 17 October 2001. This Act is recognized as Patriot Act after attaching to Uniting and Strengthening American Act approved on 11 October 2001.

3-4-1. Military Commissions Act

One of the last innovations of USA for legislating Anti-Terrorism regulations is USA Military Commission Act approved in the year 2006. This Act is one of discussable approvals of the American Congress that Jorge Bush signed it on 17 October 2006. After issuing verdict of Supreme Court of United States about Hamdi file against Rumsfeld that was announced by High Court of United States in June 2006, military commissions created for trying Guantanamo detainees by Bush government is violator of America Uniform Act about the Army trail and also violator of Article 3 common between Geneva fourfold commissions dated in 1949 in the field of humanitarian law. Bush government has compiled this Law. Furthermore, the Washington Court voted that Guantanamo prisoners can attend at the court with their attorneys without presentation of soldiers. Supreme Court of United States voted on 28 June 2004 that trial of Guantanamo detainees is rejected in Military Commissions and the detainees can ask revising in civilian authority.

Purpose of this Act according to claims of its confirmers is facilitating performance of justice against terrorists and other enemy combatants through comprehensive and judicial trials by the military commissions. Before final confirmation of this Act, that validity of confession received by excruciation was not clear, some suggestions have been presented that one of the most important of

them is suggestion of Ted Kennedy, democrat senator, who supports liberals. By virtue of this suggestion, some of investigation and excruciation methods are prohibited. Bush government opposed this suggestion for a long time but it is approved then. Bush said after signing this Act: “Today, The Senate sends a clear message to terrorist based on this point that we continue use of all national authority powers for prosecuting our enemies and preventing from attack to America.”

It is noteworthy that approval of this Act was confronted with many opposes especially from human rights organizations. Because, persons who subjected to this Act are supposed as foreign hostile illegal combatant and courts of United States had no competency for investigating detention appointment and no license has been considered in order to invoke to international regulations and Geneva conventions for detainees. Civil Freedoms Union of United States expressed through a manifesto: “with confirmation of congress, the President can detain people without accuse them for an unlimited term, horrible excruciation supports are terminated, people will be condemned at courts based on gossips.” New York Times Newspaper wrote in an Article dated on 28 September 2006 that this Act can not help to protect people against terrorist and in addition it causes a serious interruption in American Legal Law. It is mentioned in this article that Liberals voted to this Act for fear of failure at middle period elections and democrats treason to their principles. Article’s writer announced that our Democracy is a great loser. International Amnesty Organization announced on 29 September 2006 approval of this Act by American Congress confirmed actions violating

human rights that America committed against terrorism during war. Human rights supervisor recognized military commissions before and after confirmation of Military Commission Act and announced that its new changes are superficial and criticized this Act.

3-4-2. White House Guidelines about Guantanamo Detainees

President of United States issued a guideline in case of Guantanamo Detainees on 07 February 2002 that by virtue of this guideline however it was cleared that America should behave detainees humanely and according to principles of Geneva 3rd Convention dated in 1949 in limitation of military necessities, but exercising Geneva conventions was rejected for Al-Qaeda detainees explicitly. Reason of America about this point indicates that because Al-Qaeda is a foreign terrorist group against Taleban and is not a member of Geneva Conventions as a government; therefore, they would not be behaved as a prisoner of war. Security observations will be considered as ground of action, even about all first facilities that prepared by America for detainees like 3 meals, water, medical cares, shoe and clothing, shelter, health instruments and praying time.

3-4-2. Military Order of the President about Establishment of Military Commissions

Jorge Bush issued a military order on 13 November 2001 about establishment of military commissions for detention and trial of detained foreigners in war against terrorism and according to this order this point has been announced that Al-Qaeda actions lead to armed attacks in America and even emergency situation of 14 September 2001 is mentioned in

this order and United States of America becomes forced to apply its military force for combating with international terrorist. This order also includes this point that supporting America, its citizens and united countries of America requires use of military forces.

In this Act, military courts have exclusive competency about detainees' offense and there is no right to revision or ask to give indemnity in other federal courts of America and Its United States and also other countries courts and/or international courts.

4- Legal Regime Managing War against Terrorism

Identifying regulations can be performed for combating with any social coarse phenomenon requires precise recognition of that phenomenon. In governments' legislation approach for combating with terrorism, terrorist actions have been considered like penal actions that should be prosecuted, tried and punished through internal mechanisms.

If we have faced to simple terrorist operations regulations of human rights should be observed for combating with terrorist, unless terrorist operations make emergency situation which treats nation live and in this case human rights system permits government is combating with terrorism to suspend some of regulations provisionally and exceptionally; but if terrorist operations are on the verge of armed attacks, humanitarian rights is performable for suppression.

4-1 . Exercising Human Rights in War against Terrorism

Necessity of observing human rights to combating with terrorism is confirmed by most manifesto of general assembly and some of manifesto of Security Council. Anti-Terrorism Conventions also emphasized on necessity of observing human rights and persons fundamental freedoms. For example necessity of using just trial right and international human rights performance are pointed in Article 12 of Nuclear Terrorist Actions Suppression Convention. American Governments Organization expresses clearly that the governments can not ignore complete observation of human rights and constitutional freedoms in combating with terrorism. Also, Guidelines of Europe Council stipulated that observation of human rights in combating with terrorism not only possible but also is binding.

In this direction, Buergenthal Judge about retaining wall said separately that terrorism sacrificed government can not defend itself against this disaster by relying on actions which are prevented in international law. As same as the said position, human rights commission recommended that member governments should consider their obligations related to all human rights documents.

4-2 . Exercising Humanitarian Rights in War against Terrorism

If physical omission policy has been recommended instead of arrest, government which is suppressing with terrorists is permitted to resort to deathful force without observing limiting regulations of human rights and attacked terrorist with fiery weapons. So, exercising this legal

system is subjected to begin attacks with weapon and force by the terrorists who lead to physical and financial losses. Of course, it is clear that near humanitarian rights as *Lex Specialis*, human rights are performable as *Lex Generalis*. Incomplete regulations of human rights in many districts of armed attacks like combat operations and implements of war guild methods doubled necessity of exercising humanitarian rights near human rights. Anti-Terrorism International and Regional Conventions do not deny ability of exercising humanitarian rights. For example: first paragraph of Article 19 in Terrorist Bombing Suppression International Conventions emphasized on necessity of observing purposes and principles of the United Nations Charter and international humanitarian rights.

In addition, Principle 16 of Europe Council Guidelines principles ask observing humanitarian rights to combating with terrorism.

4-3 . Emergency Status of Terrorism

According to the said organization and terrorist group accessibility to genocide weapons, base of governments' continuity is vulnerable because of these groups' actions. And we should accept that terrorist attacks may figure as one of the evidences of temporary public necessity. It is clear that most important effect of announcing emergency status is suspension of some regulations of human rights that their observation by governments is obligatory. However, announcing emergency status has no meaning of leaving all regulations of human rights.

Furthermore to Article 4 of Civil and Political Law international agreement, in case of emergency status that possibility of suspending performance of some rights and

rules inserted in this agreement is permitted, we can invoke to human rights European Convention approved in 1950; by virtue of Article 15 of European Convention that permitted member governments to make decision in war conditions or other public emergency situations which treat nation eternity, it is subjected to this point that the said decisions are confirmed to with other international obligations of member governments. Also, the same status exists in human rights American Convention.

Meanwhile suspending considered rights during war in Article 27 of American Convention, some conditions which threat member government liberty and security are stipulated as emergency situations; therefore, it should be mentioned that by virtue of this convention threshold of emergency conditions became lower in comparison with agreement. Maybe most constitutional difference between Civil and Political Law agreement and human rights European Convention is related to legal difference that recognized in these two documents as irrevocable rights. As life right, excruciation and slavery prohibition and illegal punishment prevention are common in both, but by virtue of agreement, prohibiting detain because of disability of presenting contractual obligations, legalization principle of offender and punishments, principle of failure to refer to previous items of penal regulations, recognizing legal entities, opinion and religious freedom and finally prohibiting execution punishment, are inserted according to 2nd optional Protocol of the said agreement.

For exercising of legal regime governed public emergency status, following conditions should be resulted from the above-mentioned items.

- 1- necessity of announcing emergency status,**
- 2- proportion of suspended actions with emergency status,**
- 3- not discriminating against suspended actions,**
- 4- failure to contradiction of suspended actions with other international obligations,**
- 5- conclusion**

It is clear that, however this article tried to pay attention different decisions that made by governments in order to combat with terrorism and we have studied on legislation approach of war against terrorism but, we should remember that performance of unit system against terrorism, without considering to terrorist action nature and intensity of its harshness, presented critical solution for recognizing rules and its conclusion is inefficiently and abuse of possibilities of selected approaches.

By considering terrorists as illegal combatants, trying to exercise humanitarian rights for them is refused by us. In fact, using word “war” against terrorism is not for expanding execution of humanitarian rights but it means releasing from any legal form for terrorists suppression. Just as, not only war party is not determined but also war time is not supposed. May be theses losses justified this fact that military approach will be rejected and legislation solution will be considered.

This point can be emphasized that any unilateral resorting to force against terrorist operations is inevitable to consider legal defense right for other party and necessity of observing conditions of this right from another party.

Thus, existence of terrorism attack in amount of an armed attack, as mentioned in Article 51 of the United Nations

Charter, is subjected to and in addition resorting to force in position of legal defense should be companioned with observing two principles of necessity and proportion. Any way, we should remember that any exaggeration in making military decisions leads to weakening principle of prohibiting resorting to force.

Legalization principle of offender and punishments is starter of any kinds of penal reaction and also is guarantee of these actions. This principle prevents from abusing prosecution or punishment of terrorism accused. Actually, governments should not be permitted to select harsh actions as terrorist actions according to international standards. Therefore, selecting legislation approach to combating with terrorism and insisting for observing human rights and legality in war against terrorism follows some below practical privileges:

At first, an instrument for combating with terrorist crime agents, secondly it has prevention aspect against terrorist operations and thirdly the governments can not indulge in recognition of all hostile actions as offense or crime and confirmed their despotic strategies. Fourthly, governmental officers are obliged to observe special behavioral forms according to international human rights against terrorist offenders. Considering governments function indicates that governments which are involved to harsh terrorist activities, including United States that attacked by Al-Qaeda Group, do not use possibilities of Article 4 of Civil and Political Law agreement but we are witness of violation of international human rights by some countries including United States as follows:

- American, England and Spanish governments increased

competency of their information agencies and also gathered information from private companies which present communicational services, and this point is supposed as clear violation of citizens' privacy.

By virtue of Patriot Law approved on 24 October 2001, American law enforcement officers can inspect/search a person's properties without his/her previous consent and also all international communications from/with United States can be heard, then it was cleared that this hearing is not limited to international communications and has been exercised before.

- Not discriminating principle is performable as non-prosecuted imperative principle. So, United States exercised clear discriminating trends against the minorities specially Moslems of that countries. One of these discriminations is indicated in order of the President of America dated on 13 November 2001 that restricts competency of military commission to un-American citizens.

- In the above-mentioned order, the President of America establishes military commissions for investigating offense as subject of this order, which is contrary to prohibition of using military courts for civilians according to 1st Paragraph of Article 14 of Civil and Political Law agreement. It is necessary to mention that establishment of military commissions is opposite to provisions of Geneva Convention of 1949 and also is contrary to American constitutional law. For this reason, trial of Guantanamo prisoners is illegal.

- According to trend of American regulations to combating with Terrorism, the trial can be closed, and in addition investigation in these conventions is without presentation

of the Jury. Therefore, clear violating of Article 14 of Civil and Political Law agreement by America can be observed again. Of course, furthermore we can point to America action according to Patriot Law and order of the president darts in November 2001 based on limiting right of revision.

- Although, precautionary detains are limited in Article 9 of this agreement but America detained by way of precaution about 760 persons of Arab settlers related to 11 September researches and even instead of observing detention standard for a reasonable term and takes detaining policy up to clarification of detainees' status.

Conclusion is that the United States transcript in war against terrorism not only is not illuminated but also has dark points. Now it is not clear that by expended violations of governments especially America to combating with Terrorism, whether we can achieve to gain success about this case in international level or not?



**War on International Terrorism
within
International Humanitarian Law**

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1 – Introduction

Blind acts of terrorism, are inhuman and violent actions which mostly target innocent individuals and are clear violations of the most fundamental rights of mankind such as the right to life, security, physical health, freedom. The overall roots of the occurrence of terrorism before anything else must be seen in the lack of rule of law, abuse of the rights of others, ethnic, religious and national violence, and in the political-economic dimensions, and the marginalisation of a group of people and in fact the lack of active and all sided political, social and economic activities. According to French professor Charles Shermon, terror campaigns are always conducted by the oppressed against the arrogant, and it is enough for the arrogant to put an end to their oppression and greed and or occupation, so that acts of terrorism stop.

According to a 1984 conducted by two Dutch researchers, over 109 definitions from the concept of terrorism exist.

According one of United Nations 212 definitions of terrorism exist among Anglo-Saxon countries alone. The common denominator among the aforementioned definitions reveals the following elements in the establishment of the concept of terrorism: being violent through serious disruption of order and safety, targeting the life and health of citizens for the purpose of creating fear, and the pursuit of political objectives through affecting governments' or international organizations' decisions.

The rise in number of security threats due to international terrorism, and the daily increasing diversity in the methods of these acts, has created important issues one of which is the appearance of serious challenges in the way of the legal system for the fight against terrorism. This is why states who till recently saw themselves as immune to coming under armed attack, when confronted by terror threats, illegally and through tracking and monitoring phone calls and internet communications, they illegally detain unlimited number of individuals particularly ethnic Arabs and Muslims and prosecute civilians contrary to fair trial principles and refusal to allow appeals process to take place.

The important point is that the said violations is that in the form of the legal definitions and doctrines and they have put the legitimisation cloaks on the reply to which requires the re-reading of international legal principles. One of these notions is the war on terror doctrine which following the 9/11 attacks, the United States and United Kingdom campaigned for its promotion, and thus for an indefinite period of time they've put themselves in the armed conflict against terrorism conditions. And in a joint session of the Congress on 20 September 2001, President George W. Bush

said, “our war on terror shall not end until all terror groups in the world are not stopped and destroyed.”

This short article attempts to while reviewing the theoretic foundations of the war on terror doctrine and the criticism that are raised against it, to answer the following crucial question which is: Has the United States of America stayed committed to international law principles in its war on terror or violated this law?

2. War on terror doctrine

2.1 Theoretic concepts

Even though the war on terror doctrine gets its legitimacy from self defence, but it seems that it has not been committed the necessary conditions.

Article 51 of the Charter of the United Nations accepts self-defense only if it is in response to armed attack. This fact, has been stressed regarding the Nicaragua case and also the International Criminal Court following 9/11 regarding the attacks on Iranian oil platform once again stated that armed attack is the inherent precondition for the use of force in the form of self-defence . With this in mind the answer to the question as to whether terror attacks by a group, organization and or overall a nongovernmental actor justifies an armed attack or not, the answer is at least up to 9/11 this idea accepted by all members of the international community as a state procedure. This can be observed in the 1998 Security Council resolution that condemned the Al-Qaeda 7 August terror attacks on US embassies in Kenya and Tanzania, but it did not grant a green light for self-defence against these actions. Many law experts are also against armed attacks against nongovernmental actors.

Furthermore, the response to an armed attack which is done through the right to self-defence must be immediate, and if otherwise it should be replaced by Security Council measures. This is while America's response to 9/11 seems to have taken place with a delay. The observation of the self-defence governing principles, i.e. necessity and proportion requires the defending state to use armed only to the extent of removing terror threats is necessary to used armed response, and with certainty the army and infrastructure of the state that the terrorists have refuge in are not deemed as legitimate self-defence targets.

In any event, it must be noted that these types of theories despite their legal appearance, are exploited for the undermining of the international law mechanism and also finding excuses to ignore international principles; to an extent where some in America are dead set on the realisation of obsolete justifiable war doctrine, which is another step towards the undermining of the prohibition of the use of force.

2.2 Practical challenges

Unlike a self-defence conflict, war on terror does not abide by all war operations which take place in classical warfare, it is not restricted and this war includes a vast spread of police and military measures, none of which abide by an independent or different legal systems. This is in a way that the rules regarding the taking of life during peace and during armed conflicts are very different. Police operations are conducted within the framework of human rights system, and this is while military operations must be done within the rules of war and humanitarian law during armed conflicts. In view of the vast territory that it allows

itself, the war on terror doctrine violates the boundaries of both legal systems. For example, while pursuing its war on terror, the US Government allows itself to target terror suspects wherever they may be, without seeing itself as having to abide by humanitarian law in the case of enemy combatants i.e. terrorists.

The war on terror doctrine is also a challenge to other aspects of the international community's legal system regarding the use of force. Aside from the time period of the war being unspecific, the war on terror condition timeline is unspecific. Because the other side of war on terror, there is a terror group or organization which no choice but be based in another country, and this means that the use of force against the group or organization might be seen the use of force against the government of the country where the terrorists are based. In these circumstances, the only justification that can be made for the violation of the authority of such government legally is to refer to the fact that the government's assistance to terrorism or in other words the violation of international commitments that are within UN resolutions based on states' obligations to refrain from organizing, creating, assisting and participating in terror acts in other countries, can be a basis for the legitimisation of resorting to the use of force within the self-defence being equal to armed attack.

Another point where the war on terror doctrine clashes with international law system that includes humanitarian law is the concern on the number of target countries in the war on terror. According to some reports which cannot be confirmed is that the whole Al-Qaeda network – which allegedly carried out the 9/11 attacks – is spread in sixty

countries. Most certainly if all these countries were targeted in self-defence; this type of conflict would result in the outbreak of world war three.

3 – Governing law in the war on terror

Modern terror attacks that take place despite strict security measures, prove the fact that terrorist possess weapons that used to be in the hands of governments alone, and also have become so organized that they are able to conduct complex military operation. In this framework in its resolution 1377 which was ratified at foreign ministerial levels, the Security Council deemed terrorism as the most serious threat against international peace and security in the 21st Century.

In all situations where we see armed conflict, humanitarian law and international armed conflict laws are applicable in war as *Lex Specialis* and of course human rights principles can be applicable as *Lex Generalis*. The ability to application of international humanitarian law in military crackdown on terrorism, is more or less the consensus of all regional and international documents and organizations. With this in mind an example can be pointed out in paragraph 1 of Article 19 of the International Convention on the Suppression of Terrorist Bombings. Also the final resolution of the 2005 World Heads of State Conference can be mentioned. Although some have tried to reason that the terrorists failure to observe humanitarian law, justifies the opposition towards the application of this legal mechanism, but it must be reminded that as a legal mechanism for such conditions, international humanitarian law has foreseen certain rules when the parties involved in armed conflict commit grave violations of the rules of war, and the

violators can be pursued at national and international levels. Therefore the possibility of the violation of the principles of one legal system, is not a good reason to draw a conclusion that humanitarian law is not applicable.

We are faced with a complex situation in the military suppression of terrorism, because classically international humanitarian law is applicable when the conflict is between two specific states or a state against an organized armed group and or between groups. Consider that the characteristics of international torero groups is their not being permanently based in one country. This is why there are differences of opinions towards the applicability of humanitarian law in these conflicts.

3.1 The application of the legal mechanism of Common Article 3

One of the authors alongside the International Committee of the Red Cross positions , Human Rights Watch and the American Commission on Human Rights have reaffirmed that the contents f the Common 3 Articles of the Geneva Conventions have minimum applicability. The basis of this reasoning is aside from the nature of the conflict, the application of a portion of the norms have been recognised in all armed conflicts, where Common Article 3 and the military necessity principle and humanity principle which prohibits unnecessary suffering and destruction is placed in this category.

3.2 Application of legal mechanism in international armed conflict

Another group of international jurists believe that the governing international laws on international armed conflicts are also extended to include states fighting

terrorists. In theory, the making of an internal armed conflict into an international one it does not change the legal status of terrorists as non-military aggressors. From the practical point of view it must be noted that the becoming international doctrine is based on the expansion of examples of international armed conflicts and the question arises as to whether with the dispersal of activities of terror networks such as Al-Qaeda and the presence of their leaders and members in more than 50 countries, the said expansion is called for or not?

3.3 Application of the International Human Rights mechanism

As well as what has been said the further observation of the expansion of the application of human rights principles in conflicts between state and terrorist group can be useful and prepare a basis for the injection of an accountability mechanism existent in human rights to humanitarian law system, as well as the completion of substantive humanitarian law regulations. As it is evident this suggestion is based on a combination of the legal principles of resorting to force in the human rights and humanitarian law mechanisms, where an accurate accountability mechanism has been foreseen, which is solely for resorting to force during peace, restricts the possibility of government forces from possibly violating or exploiting humanitarian law regulations in resorting to force.

4. The legal status of terrorists in the war on terror

According to international humanitarian law, individuals are split into two groups of people during armed conflict: civilians and combatants. According to ICRC's

interpretation of Article 4 of the Fourth Geneva Convention (1999) any individual that is captured by the enemy must have one of the following three statuses: prisoner of war who are included in receiving the protections stated in the Geneva Convention; civilian who has rights as stated in the Fourth Geneva Convention, and or military medics and medical personnel who have rights as stated in the First Geneva Convention.

4.1 The meaning of legal combatant

Because of the date that the Fourth Geneva Convention dated 1907 with regards to the laws ad regulations of land wars for the first time has been for combatants that include: members of regular armed forces, irregular members of armed forces, and resistance movements. Article 2 of the Convention states that states that signatories are bound by the convention both in war, armed conflicts where war has not been declared and in an occupation of another country's territory. Article one of the Hague Convention VI states that irregular militias are combatants under 4 conditions: must be commandeered by a responsible individual with subordinates, having clear insignia that can be distinguished from a distance, carrying unconcealed weapons and conducting operations in accordance to war regulations and customs. Of course it must be said that the in the Third Geneva Convention due to the members of the French Resistance being denied of prisoner of war rights, the extent of armed irregular forces or militias which were deemed as combatants in the Hague Convention expanded. And members of militias or volunteer groups such as members of resistance of occupied countries whether operating from inside or outside and even if their lands are occupied, they

are deemed as combatants. The Geneva Convention's initiative is that despite the independence of militias from the country's armed forces and even without being present in occupied territories, they are still given a combatant status.

The significant point here is that although deeming the Geneva Four Convention conditions necessary for combatants, this will have the result that for example the Taliban will be deemed as combatants and naturally, prisoners of war, but in this event a lot of US military personnel who do not carry firearms and wear Afghan clothing or sports clothes must also be denied prisoner of war status. The second point is that there are instances in state procedures where irregular armed forces and guerrillas despite not observing the military uniform and hats, they are given combatant status an example of which is America's procedure in the Vietnam War.

These noticeable weak spots within the Geneva Convention with regards to granting combatant status and prisoner of war to militia groups such as applying standards where it is impossible to distinguish between militia and civilians and provision of legal escape routes through which the occupation power can refuse to grant prisoner of war status to captured combatants; prepare the basis to extend the examples of combatant in the First Protocol of 1977. According to paragraph one of Article 43 of the Protocol, the existence of a governmental command in the party in conflict for the belonging of irregular armed forces or militias to regular armed forces and therefore enough combatant status has been given. According to paragraph 2 of the same article the failure to observe war customary

laws and regulation, the fighter will not lose his combatant status and not be denied his rights as prisoner of war, and paragraph 3 states that the duties of the combatants in distinguishing themselves from civilians is only specified to when they are attacking or in preparation of military operations for attack, and wherever the combatant in spite of carrying a unconcealed weapon cannot distinguish himself from others, he will not lose his combatant status.

4.2 Definition of illegal combatant

In view of what has been said organized terrorist groups whose most important reason why they are not deemed as combatants, as well as ignoring customary laws and regulations that are applicable in armed conflicts, their failure to wear distinguishing uniforms and insignia, must be put under protections that come from having combatant conditions, and be deemed as prisoners of war, but relying on the opinions of a number of law experts and jurists the United States takes a position that the moral values stated in the Hague Convention are null and void if the conflict is symmetrical and the enemy is one that does not observe the contents of the conventions. Therefore the aim of an armed conflict must not determine who is permitted the rules of war , but the method of the armed conflict must be set as the criteria, and paragraph 3 of Article 44 of the Protocol is pointed out that legitimate excuse isn't given to terrorist methods to be deemed combatants.

It must be further added that according to part two of Article 5 of the Third Geneva Convention that even if terrorists are arrested and there is a doubt about rules regarding prisoner of war based on humanitarian law or laws about ordinary detainees according to human rights, so that they

benefit from the Third Geneva Convention's protection in a competent court. The interesting point here is that in the case of Hamdan, the US Federal Court pointing out the President's Military Directive which did not deem Afghan detainees as prisoners of war, it explains that according to Article 5 of the Third Geneva Convention decisions must be made by a competent courts and not the President. The position of some jurists is based on the military interests of the United States, and disregarding the rules of war, it has gone so far that fundamentally the granting of doubt status to detained terrorists are ignored, and they claim that the precondition stated in Article 5 the act of aggression and doubt in condition, but with regards to an act of terrorism which is not an act of aggression and does not have a clear uniform and insignia and isn't carrying an unconcealed weapon there is no doubt about him not being a combatant. In this regard the term unlawful combatant has been used the history of which dates back to 1942 where the US Supreme Court in the case of *Ex Parte Quirin* to explain the conditions of a number of German Navy personnel that were conducting operations on US soil without wearing uniforms. The thing that became common in the literature of current American jurists and the language of the former US President particularly following 9/11 as unlawful combatant, combatant without credit, and enemy combatant, were to define civilians that directly participated in conflicts. In any event where terrorists are denied from having combatant status as a civilian aggressor and protections of the Third Geneva Convention, they will have customary protection from Article 75 of the First Additional Protocol and also the Common Article 3 of the Geneva Conventions.

5. United States record in the war on terror

The identification and determination of applicable laws and rules in fighting any social anomaly requires an accurate definition of that particular phenomenon. This necessity clearly shows itself regarding terrorism, and only domestic societies are vulnerable, but in international terrorism it can easily threaten international order and stability.

The tendency for a military approach in fact, is due to the impracticality of legal mechanisms and approaches, and its fruit is the seeing of resorting to methods that fundamentally are applicable in military operations during armed conflict as apt. It is clear that in the event of the definition of acts of terrorism or terrorists armed resistance against anti-terror operations as an armed conflict, the applicable laws will humanitarian laws and not human rights.

The US Federal Court of District of Columbia in the case of *Hamdan v. Rumsfeld* while recognising one of the Guantanamo detainees as a prisoner of war, by referring to Article 102 of the Third Geneva Convention stresses that the established military commissions (President's military directive of 13, November 2001) which were set up to solely deal with the war on terror detainees, clearly deemed that enough conditions were lacking for the prosecution of Afghan war captives. Also Article 118 of the same Convention makes the detaining state to immediately release prisoners of war after the end of conflicts, and return them to their countries, and Article 85b of the First Additional Protocol deems the unjustifiable delay in the returning of prisoners of war back to their countries as one of serious violations.

But in rejecting prisoner of war status towards Afghan

detainees America has kept them in detention indefinitely and despite the end of active conflict and lack of charges with regards to specific crimes having been committed. The important point here is that by ignoring Article 5 of the Third Geneva Convention which states when there is doubt about prisoners' status, and until a competent court's ruling they should be treated like prisoners of war, the United States interrogates the detainees regularly without them having the right to a lawyer or legal council or a competent court. Furthermore the provision of Article 19 of the Fourth Geneva Convention must be noted where the forced transfer from an occupied state to the occupation power's state or any other state is prohibited, and deems such measures as one of the gravest violations of the Geneva Conventions. Also the United States violates the right to have information of the fates of individuals that it has in detention. By refusing to disclose the names and conditions of the detainees, in a way the United States is committing the crime of enforced disappearances of individuals, and this is while Articles 120 and 125 of the Third Geneva Convention regarding prisoners of war, Article 136 of the Fourth Geneva Convention regarding civilians, and Article 33 of the First Additional Protocol, obliges states involved in armed conflicts and also occupation powers to take measure in collecting, registering and keeping information on prisoners of war and civilians in international armed conflicts.

Furthermore the declared US policy with regards to the war on terror would be justifiable only if it was pursued by a complete self-defence framework and also its conditions. Unlike accepted international law principles, the war on terror policy not only does not see a foreseeable end to the

war against terrorist groups in other countries, but it also does not restrict the resorting to force against states that terror attacks are associated to them. The achievement of the crackdown on terrorism requires a number of points which are as follows:

1 – The existence of a common definition of terrorism among UN Security Council member states, to avoid the prescription of double standard decisions.

2 – The codification of identical standards and mechanisms and effective for the avoidance of exploitation of the association of terror acts specific groups organizations or countries.

3 – Observation of the necessity and proportionate conditions and the application of the overall international humanitarian law principles in armed conflicts and Security Council measures in the war on terror.

4 – The response to terrorism cannot be regardless of its roots and the tendency towards terror methods that are resulted from the excessive demands of states, such as the United States, who by interfering in other countries internal matters, tries to dictate its values to other societies, and the people's hatred of the west roots of these countries must be searched in these cases.