



The Trial of Osama Bin Laden

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LL.M. International Law

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Thank you.

A handwritten signature in black ink, appearing to read 'R. Alexander', with a long, sweeping underline that extends to the right.

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Abstract

The Trial of Osama Bin Laden

For the principles encapsulated within this work to be accepted, it will assumed throughout that the events of 2 May 2011 in Abbottabad, Pakistan resulted in the capture, arrest and subsequent detention of Osama Bin Laden by forces answering to the Government of the United States of America, and that they were acting within International Law on behalf of World Justice, and with the intention of bringing him to trial.

The object of this work is three-fold: firstly to explore the general legal issues that would have faced any international criminal court when called upon to stage such a trial. Contrary to popular belief, a trial of this nature is extremely rare, with so very few of history's political leaders ever succumbing to such scrutiny. In modern times we need only think of the despots who have, for various reasons, escaped or avoided international trial: Adolf Hitler, Benito Mussolini, Josef Stalin, Mao Tse-Tung, Muammar al-Gaddafi, Pol Pot, Kim Il-sung and his son, Kim Jong-il, Idi Amin, Augusto Pinochet, François 'Papa Doc' Duvalier and his son Jean-Claude, Nicolae Ceaușescu and Francisco Franco.

In only three cases – thus far – has a political leader been brought to trial on the international stage for the acts that they are alleged to have committed: Saddam Hussein (former President of Iraq), Radovan Karadžić (as President of Republika Srpska, even

though that Proto-State was unrecognised by the international community), and Slobodan Milošević (former President of the Socialist Republic of Serbia). At the time of writing, the international courts are still dealing with the case of Charles Taylor (former President of Liberia). In each of these cases it was absolutely vital to the outcome of the trial that the initial legal process was seen have legitimacy, and that the defendant(s) received a fair trial.

Secondly then, in the wake of so few historic examples to follow, the purpose of this work is to hopefully provide some level of enlightenment for future legal generations as to the choice of jurisdiction and thirdly, the legal mechanisms that may be employed to bear upon those political leaders who remain, thus far, outside the realms of international justice. It is not too late to consider the cases of Robert Mugabe (Zimbabwe), Bashar al-Assad (Syria), and Kim Jong-un (North Korea) for whom the future may yet hold legal ramifications for the acts that they have already committed, or will commit in years to come.

I accept that it could be argued the case of Osama Bin Laden should *not* be considered in the same vein as the list of political leaders outlined above, after all he was not the leader of any recognised State. I have carefully considered this argument, and would counter it by saying this: Osama Bin Laden *was* globally acknowledged as the leader and mastermind of the organisation known as al-Qaeda, and upon his given or inferred instructions, terrorist activities were subsequently carried out in his name by groups and individuals all over the world, much of which may have directly given rise to the formation of Islamic State (ISIS) or ‘*Daesh*’.

This work also highlights a new Human Rights issue which has until now, gone virtually unnoticed – that of the ‘*de jure statelessness*’ individual, and the Human Rights issues surrounding them.

It is therefore upon these three legal grounds, that I shall address the case of Osama Bin Laden... at trial



Introduction

The Trial of Osama Bin Laden

In the nearly six and half years that have passed since that night in Abbottabad, Khyber Pakhtunkhwa, Pakistan, when the Special Forces of the United States of America finally caught up with Osama Bin Laden, an enormous amount of speculative writing has been published into the legality or otherwise of the events of 2 May 2011. There now seems little doubt that President Barrack Obama issued a command to ‘eliminate’ the man who, for nearly two decades, openly taunted the authority of the Western powers, as the figure-head and mastermind of the terrorist organisation known as al-Qaeda. Whether that order, when given to the members of US Navy SEAL Team Six, contained within its general preamble a ‘capture or kill’ alternative, we shall most probably never know.

While the public, political and academic world will ponder for many years over the legal ramifications of the actually killing of Osama Bin Laden, the purpose of this dissertation is to explore the legal ramifications of those events had they been carried out in a altogether different manner – indeed, one in which Osama Bin Laden was captured alive with the specific intention of bringing him to trial, and to face justice in front of the court of the world.

Therefore, I shall not dwell at length upon the subject of the legality of the killing as, primarily it would serve no purpose in relation to the arguments I am about to make, and secondly, because so very much panegyric writing has already been penned about the legal issues surrounding the death of Osama Bin Laden.

It is my intention to concentrate on the three areas of law that I believe would have perplexed the legal world had Osama Bin Laden been brought to trial, namely: the legality of the indictment, the question of what jurisdiction would the trial have been brought under, and the legal mechanisms that may be used to ensure that such a trial is seen to be legitimate and fair.



Chapter One

The Law

*"The clearest way to show what the rule of law means to us in everyday life,
is to recall what has happened when there is no rule of law"*

President Dwight D Eisenhower, Law Day, 1st May 1958



1.1 International Law... but which one?

There are those among us who – for whatever reasons – find themselves disenchanted with the way that civilisation has developed. It is their belief that there should be another way, and so for them the rule of law does not work or apply as a part of their ideology. Instead, they seek to impose different rules upon others, rules that are often extremist in nature... constituting another way of looking at things. Usama ibn Mohammed ibn Awad ibn Laden – whose name was commonly westernised to: ‘Osama Bin Laden’ – was just such a disenchanted man.

But where would any of us be without the rule of law? It seems like a simple enough question, doesn't it; and of course, the basic answer is that rule of law is the very essence of our civilisation, democracy, human rights, and freedom of speech: so that just about

everything we know and hold dear is based upon some concept of the rule of law in society. Without it, access to justice, governance, economic, social and business development, all our domestic certainties – they all go out the door.

It is therefore hardly surprising that this fundamental tenet of our modern way of living is vehemently protected by those whom it serves. The laws we have laboured for centuries to introduce are there to bring about just such a level of confidence into our civilisation. We *all* have to abide by the rule of law, whether high or low born, in government or servitude, because this equality before the law provides us with an envelope of checks and balances on the use of power from those we elect to serve us in government. All persons under that umbrella have some concept of the presumption of innocence, the right to a fair trial and the independence of the jury system. With this also comes free speech and a free media, a right to assemble and to be heard, and access to justice for those who need it. It is tried and tested. It works; and despite many attempts at change, human beings have yet to find a better system than that of the rule of law.



Figure 1. Usama ibn Mohammed ibn Awad ibn Laden ('Osama Bin Laden'), 1998



Born on 10 March 1957, in Riyadh, Saudi Arabia, Osama was the seventeenth son to Mohammed bin Awad bin Laden (1908-1967), a multi-billionaire construction industrialist who would eventually father 56 children, with 22 wives¹. The Bin Laden family were of South Yemeni, Kindite tribe extraction, yet had very close ties to the Saudi Royal Family and, at the time of his death on 3 September 1967 (ironically in an aeroplane crash), Mohammed bin Awad bin Laden was one of the wealthiest men in Saudi Arabia².



Figure 2. Mohammed ibn Awad ibn Laden (1908-1967) the ‘billionaire-builder’

Using his inheritance (between \$25-30m from his father’s estate)³, Osama Bin Laden first came to prominence fighting with the US-supported Mujahideen guerrilla

¹ Jason Burke, ‘Rags to riches story of the Bin Laden family is woven with tragedy’ *The Guardian* (London, 1 August 2015) <<https://www.theguardian.com/world/2015/aug/01/rags-to-riches-story-of-the-bin-laden-family-is-woven-with-tragedy>> accessed 12 August 2017.

² Cathy Scott-Clark & Adrian Levy, ‘Osama Bin Laden’s family on the run: ‘I never stopped praying our lives might return to normal’’ *The Guardian* (London, 6 May 2017) <<https://www.theguardian.com/world/2017/may/06/osama-bin-laden-family-on-the-run-after-9-11>> accessed 13 August 2017.

³ Padraic Flanagan, ‘Osama Bin Laden: Pampered son of billionaire builder’ *The Daily Express* (London, 3 May 2011) <<http://www.express.co.uk/news/world/244397/Osama-Bin-Laden-Pampered-son-of-billionaire-builder>> accessed 20 August 2017.

fighters in the mountains of Afghanistan during the latter part of the ten-year war with the Soviet Union (1979-1989)⁴. Eloquent, educated, wealthy and outspoken, by 1991, Osama Bin Laden had become *persona non grata* in his homeland of Saudi Arabia after openly criticising the government in Riyadh during the Gulf War, predicting that if the Americans were allowed to come to the Saudi Peninsula, they would never leave: Not only did the Americans not leave Saudi Arabia at the end of the Gulf War⁵, but they remain there in great strength to this day⁶.

“*And history has shown, no matter what you think about anything else, that Bin Laden’s prediction was essentially accurate*”⁷, says John Miller, former ABC News reporter and anchor-man, who famously interviewed⁸ him in May 1998; and now Deputy Commissioner of Intelligence and Counter Terrorism for NYPD. Osama Bin Laden was by that time already on the radar of American Intelligence Services, as well as the Saudi government authorities in Riyadh; and so, while the American forces remained, Osama Bin Laden did not⁹. He was, according to him, ‘forced to flee his homeland’, travelling across the Red Sea to Sudan where a militant Islamic revolution had recently taken place¹⁰. A

⁴ Alan Taylor, ‘The Soviet war in Afghanistan 1979-1989’ *The Atlantic* (New York, 4 August 2014) <<https://www.theatlantic.com/photo/2014/08/the-soviet-war-in-afghanistan-1979-1989/100786/>> accessed 21 August 2017.

⁵ Gwyn Prins, ‘Blood and Sand’ *The Guardian* (London, 21 December 2001) <<https://www.theguardian.com/world/2001/dec/21/afghanistan.britainand911>> accessed 22 August 2017.

⁶ Christopher Dickey, ‘Where does the Saudi-Qatar Death Match leave Trumps Troops?’ *The Daily Beast* (Paris, 6 May 2017) <<http://www.thedailybeast.com/where-does-the-saudi-qatar-death-match-leave-trumps-troops>> accessed 23 August 2017.

⁷ Biography.com, ‘Osama Bin Laden’ <<https://www.biography.com/people/osama-bin-laden-37172>> accessed 21 August 2017.

⁸ See Appendix II, page 106

⁹ Emily Wax, ‘Abandoned by Bin Laden’ *The Washington Post* (Washington DC, 12 December 2004) <<http://www.washingtonpost.com/wp-dyn/articles/A58254-2004Dec11.html>> accessed 22 August 2017.

¹⁰ Millard Burr, *Revolutionary Sudan: Hasan Al-Turabi and the Islamist State, 1989-2000* (1st edn, Brill, 2003)

radicalised Islamic State automatically appealed to the path Osama had chosen from a young man, rather than traditional Islamic teachings. He watched as a disillusioned 25-year old, while the US Sixth Fleet supported the Israeli invasion of Lebanon in 1982, explaining some years later in an interview with Al-Jazeera how this had deeply affected him”

Believing fervently in a Muslim-only State where all Muslims could come and worship without prejudice or persecution¹¹, the first Islamic State in Sudan provided Bin Laden with exactly the kind of refuge he required, as well as a nearly inexhaustible supply of like-minded thinkers. Using his money and influence, he literally surrounded himself with radical religious activists – they too, yearning for a deeply devout Islamic, all-Muslim society. And from within that sanctuary, *al-Qaeda* was born¹².

Historically, criminal law in the United States has been based upon a retributive justice system¹³, under which: “...*perpetrators commit crimes against the State, not against other people*”¹⁴. But a major component of Bin Laden’s ideology, developed at this time in Sudan, was the concept that civilians from enemy countries, including women and children, were perfectly legitimate targets for jihadists to kill¹⁵. Very early on during his five-year (1991-1996) exile¹⁶, Osama Bin Laden learned from the Yemen Hotel

¹¹ Abdullahi A. Gallab, *The First Islamist Republic: Development and Disintegration of Islamism in Sudan* (1st edn, Routledge, 2007)

¹² Jason Burke, *Al-Qaeda: The True Story of Radical Islam* (2nd edn, Penguin, 2007)

¹³ Mica Estrada-Hollenbeck (Mohammed Abu-Nimer, ed.), *Reconciliation, Justice, & Coexistence: Theory & Practice: {The Attainment of Justice Through Restoration, Not Litigation}* (1st edn, Lexington, 2001)

¹⁴ *ibid*

¹⁵ Osama Bin Laden, *Messages to the World* (1st edn, Verso, 2005)

¹⁶ Edward F. Mickolus & Susan L. Simmons, *Terrorism, 1992-1995: A Chronology of Events and A Selectively Annotated Bibliography* (1st edn, Greenwood Press, 1997)

bombings¹⁷, considered the first al-Qaeda attack on Americans, that he didn't need a huge army to attack a State. Prohibitively expensive, a large army would just play into the hands of the Americans. Instead, it was much simpler and indeed far more effective to 'terrify' civilians, especially women and children, into thinking that anybody, anywhere, anytime could be a legitimate target for al-Qaeda¹⁸. His ideology of terror could be applied unknown, at any time, in any place – and there was nothing that anybody, governments included could do about it.

Osama Bin Laden story had ensured his inevitable date with justice.



1.1.1 The power to indict: the trial of Saddam Hussein

If an individual chooses to live outside of the rule of law, and acts in a manner which is unacceptable to society in general, and, as a result of those actions certain crimes are committed, how should society then deal with that person when they inevitably come before the court of world justice?

This question becomes particularly pertinent when that individual is the political leader of a State (or, perhaps in the case of Osama Bin Laden, the leader of an ideology). More importantly perhaps, is the question of *where* does the power come from to indict

¹⁷ Ali Soufan, *The Black Banners: Inside the Hunt for Al-Qaeda* (1st edn, Penguin, 2012)

¹⁸ Jason Burke, *Al-Qaeda: The True Story of Radical Islam* (2nd edn, Penguin, 2007)

such a person and bring them to trial? If history has shown us anything, it is that leaders of State rarely if ever actually commit the crimes themselves; instead, they get others to commit them in their name or in the name of an ideology. If we accept that, thereafter comes the question of legitimacy – can the accusers legitimately try the political leader of a State for crimes that he may have been responsible for, but instigated other to commit?

Rarely have we been allowed us to ask such questions, as the fate of many a despotic leader over the last hundred years has ended in a premature death, long before such powers could be brought to bear. The list of those who have avoided justice is long: Adolf Hitler in Nazi Germany, Benito Mussolini in Fascist Italy, Josef Stalin in Communist Russia, Mao Tse-Tung in China, Muammar al-Gaddafi in Libya, Pol Pot in Cambodia, Kim Il-sung and his son, Kim Jong-il in North Korea, Idi Amin in Uganda, Augusto Pinochet in Chile, François ‘Papa Doc’ Duvalier and his son Jean-Claude in Haiti, Nicolae Ceaușescu in Communist Romania and Francisco Franco in Fascist Spain.

Most recently however, these were exactly the questions that faced the accusers of Saddam Hussein in Iraq when, on 13 December 2003, after nearly eight months on the run, hiding out from village to village, the occupying US forces found him, filthy, tired and half-starving, secreted in a small bunker on the outskirts of the town of ad-Dawr, near Tikrit¹⁹. Having captured him alive, the question now turned as to what to do with him?

¹⁹ Amy McConnell Schaarsmith, ‘Former soldier who found Saddam tells how he did it’ *The Pittsburgh Press* (Pittsburgh, 23 April 2015) <<http://www.post-gazette.com/local/city/2015/04/22/Former-soldier-who-found-Saddam-Hussein-tells-how-he-did-it/stories/201504220208>> accessed 2 September 2017.

Until he was forcibly removed from power on 9 April 2003, by the United States of America, the United Kingdom and their Allies during the Iraq War, Saddam Hussein Abd al-Majid al-Tikriti had held legitimate office as the fifth President of Iraq, incumbent since 16 July 1979²⁰. There had been earlier opportunities to remove him, not the least of which was at the end of the First Gulf War (1990-1991)²¹, but a combination of unwillingness to go beyond the UN mandate to remove him from Kuwait (from both the George H. W. Bush and John Major administrations)²², a general belief that his own people would soon overthrow him²³ and apathy towards the growing number of reports of Human Rights atrocities²⁴, all ensured that Saddam was given a free-range to continue his activities, and that he personally had a renewed sense of invincibility – at least for the next twelve years²⁵.

The Iraqi military's withdrawal from Northern Iraq in October 1991, coupled with the imposition of a no-fly-zone eventually allowed outsiders to inspect the area for the first time in many years. As had been suspected for a long time, and indeed reported²⁶ by Human

²⁰ Jane Arraf, 'Iraq still dreaming of peace thirteen years after Saddam' *The Financial Times* (London, 4 July 2016) <<https://www.ft.com/content/ca44f2ba-41d8-11e6-9b66-0712b3873ae1>> accessed 12 August 2017.

²¹ Stephen Zunes, 'Why the U.S. Did Not Overthrow Saddam Hussein' (Foreign Policy In Focus, 1 November 2001) <http://fpif.org/why_the_us_did_not_overthrow_saddam_hussein/> accessed 15 August 2017.

²² William Greider, 'No More Years: Why George Must Go' *Rolling Stone* (New York, 1 October 1992) <<http://www.rollingstone.com/politics/news/no-more-years-why-george-must-go-19921001>> accessed 16 August 2017.

²³ Geoffrey Wawro, 'First Gulf War's Mistakes Explains US Presence In Iraq' *The Daily Beast* (Paris, 22 January 2011) <<http://www.thedailybeast.com/first-gulf-wars-mistakes-explain-us-presence-in-iraq>> accessed 22 August 2017.

²⁴ Office of the White House Press Secretary, 'Life under Saddam Hussein: Past Repression and Atrocities by Saddam Hussein's Regime' (US Department of State, Washington DC, 4 April 2003) <<https://2001-2009.state.gov/p/nea/rls/19675.htm>> accessed 16 August 2017.

²⁵ Douglas Kellner, *From 9/11 to terror war* (1st edn, Rowman & Littlefield, Maryland, 2003)

²⁶ Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign against the Kurds* (1st edn, Yale University Press, 1995)

Rights Watch more than 300,000 Iraqi and Kurdish people had been killed under the Saddam Regime²⁷.



Figure 3. Saddam Hussein at the moment of his capture in ad-Dawr, Iraq, 13 December 2003

After the 2003, Invasion of Iraq, the power to indict Saddam could have come from the inevitable ‘To the victors go the spoils’, but even as far back as 1999, the Clinton administration had recognised, and indeed argued at the United Nations, that any indictment against Saddam “...*must be by a credible court*”²⁸. But what constitutes a ‘credible court’? The international military tribunals at Nuremberg and Tokyo, the former of which was constituted solely by victorious allies after World War II, were innovative enough for their time, providing the foundation for the creation of the ICTR²⁹, ICTY³⁰, and the International Criminal Court; but nobody would deny that the field of international

²⁷ Simon Jeffery & Charlotte Moore, ‘Q&A: The trial of Saddam Hussein’ *The Guardian* (London, 4 April 2006) <<https://www.theguardian.com/world/2006/apr/04/qanda.iraq>> accessed 12 August 2017.

²⁸ *ibid*

²⁹ United Nations, ‘International Criminal Tribunal for Rwanda’ (un.org, 2017) <<http://unictr.unmict.org/en/tribunal>> accessed 3 September 2017.

³⁰ United Nations, ‘International Criminal Tribunal for the Former Yugoslavia’ (un.org, 2017) <<http://www.icty.org/>> accessed 3 September 2017.

justice has evolved considerably since 1945-46. Hence, any modern tribunal must be impartial and indeed *appear* to be impartial, so that such a mechanism does not simply dispense, or appear to dispense, ‘victor’s justice’. That term is particularly frequently used by critics of international military tribunals, and so any court acting in the name of the people of Iraq needed to avoid those earlier models, if at all possible³¹.

Just as at Nuremberg, half a century earlier³², there were immediate cries for the summary execution³³ of Saddam and his co-accused: why waste time and money on a trial when it was known that these men were guilty and a few simple bullets would end all the bother and expense?³⁴ Certainly, there were many in the US and Iraq, not to mention among the Kurdish peoples, who would have welcomed a quick firing squad³⁵. But the newly formed government in Iraq insisted that the world be shown that a new era had begun in their country – that the time of trial-less executions and persecution was over³⁶, and that yes, under the rule of law, even a despot like Saddam *was* entitled to a fair trial – even if

³¹ Human Rights Watch, ‘Justice for Iraq’ (hrw.org December 2002)

<https://www.hrw.org/legacy/background/mena/iraq1217bg.htm#_ftnref2> accessed 18 August 2017.

³² Guénaël Mettraux (ed.), *Imperfect Justice at Nuremberg and Tokyo* (1st edn, Oxford University Press, 2008)

³³ Amy McConnell Schaarsmith, ‘Former soldier who found Saddam Hussein tells how he did it’ *The Pittsburgh Post-Gazette* (Pittsburgh, 23 April 2015) <<http://www.post-gazette.com/local/city/2015/04/22/Former-soldier-who-found-Saddam-Hussein-tells-how-he-did-it/stories/201504220208>> accessed 30 August 2017.

³⁴ John F Burns, ‘Iraqi Tribunal Details Plan to Prosecute Saddam Hussein’ *The New York Times* (New York, 5 June 2005) <<http://www.nytimes.com/2005/06/05/international/middleeast/iraqi-tribunal-details-plan-to-prosecute-saddam.html>> accessed 29 August 2017.

³⁵ Edward Wong, ‘Saddam charged with genocide of Kurds’ *The New York Times* (New York, 5 April 2006) <<http://www.nytimes.com/2006/04/05/world/05iht-saddam.html>> accessed 29 August 2017.

³⁶ Alex Johnson, ‘NBC News: Iraqi leaders create tribunal to try Saddam – 21 April 2004’ (nbcnews.com, 2017) <http://www.nbcnews.com/id/4789450/ns/world_news-mideast_n_africa/t/iraqi-leaders-create-tribunal-try-saddam/> accessed 29 August 2017.

they never once hid the fact that a ‘guilty’ verdict was always going to be the likely outcome³⁷.

On 13 December 2003, the same day Saddam was captured in ad-Dawr, under Order Number 48 of the Iraqi Governing Council (IGC)³⁸ and the Coalition Provisional Authority (CPA) (the official authority in Iraq at the time, set up by the US and its allies to govern Iraq during its occupation), convened an ‘Iraqi Special Tribunal’ with what they thought would be a legal and legitimate power to indict those responsible for the crimes of the 1968-2003 Ba’athist Regime³⁹.

However, pre-Ba’athist Iraqi law was complex, and unlike any criminal procedure rules in other countries; but the Iraqi’s insisted this system be the legal authority over the proceedings, and the American legal ‘advisors’ to the court yielded to their demands. Essentially, Iraqi law requires a judge to indict the accused *prior* to the beginning of any trial, without which no trial process in Iraq can even begin, much less be considered fair and legitimate⁴⁰. This must then be followed by a re-assertion of that indictment by the investigating judge, *certifying* the ‘validity’ of the original indictment, halfway through the trial process.

³⁷ Chris Stephen, ‘Saddam: Guilty – and quickly, 24 October 2005’ (newstatesman.com, 2017) <<http://www.newstatesman.com/node/195410>> accessed 25 August 2017.

³⁸ Established by the US-led Coalition Provision Authority (CPA), the Iraqi Governing Council (IGC) took office from 13 July 2003, to 1 June 2004. The Iraqi Interim Government (IIG) took office from 28 June 2004 until 3 May 2005, when the Iraqi Transitional Government (ITG) took office from 3 May 2005 until 20 May 2006, bringing in the new Constitution of Iraq on 9 October 2005. On 20 May 2006, the first permanent government of Iraq took office under Prime Minister, Nouri Kamil Mohammed Hasan al-Maliki

³⁹ Simon Jeffery & Charlotte Moore, ‘Q&A: The trial of Saddam Hussein’ *The Guardian* (London, 4 April 2006) <<https://www.theguardian.com/world/2006/apr/04/qanda.iraq>> accessed 12 August 2017.

⁴⁰ Issam Michael Saliba, ‘Comments on the Indictment of Saddam Hussein Mid-Trial’ (loc.gov May 2006) <<https://www.loc.gov/law/help/hussein/comments.php#role>> accessed 21 August 2017.

With parallels to those of the trial of Adolf Eichmann in Israel in 1961⁴¹, the IGC also insisted that everything was to be done in the open – that the legal powers they now wielded to bring an indictment, should be fully acknowledged by all sides including the accused. Therefore, it was agreed that the entire process would be broadcast live to the population of Iraq, and indeed the watching world⁴² who could see that it was a fair trial. Here was a new nation – just as Israel had been in 1961⁴³ – wanting to show to the world that its legal system, and the government to which it answered, were once again adopting the rule of law. That ‘new Iraq’ had all the certainties which we take for granted, and that they were being re-established in the embryonic new Iraqi State.

The perception of legal legitimacy however, is a fickle one, and by the time the Iraqi Transitional Government (ITG) had established what it believed to be a proper process of law, nearly two years had passed. By then, questions were being asked in higher legal circles in respect of the legitimacy (and therefore the validity of any verdict reached), of *any* tribunal that had been created under the authority of an occupying power. Knowing full-well that the entire world was looking in on everything they did, and now desperate to

⁴¹ Zad Leavy, ‘The Eichmann Trial and the Role of Law’ (1962) *American Bar Association Journal* 48(9) September 1962 820-825

<https://books.google.co.uk/books?id=gymQ6vWfA3QC&pg=PA820&lpg=PA820&dq=The+Eichmann+Trial+and+the+Role+of+Law+zad+leavy&source=bl&ots=8IF1j6ZKBw&sig=NO8Ggj6P2nOyZLrLVvAnSp_hhlc&hl=en&sa=X&ved=0ahUKEwj53Z-iwZDWAhWnAMAKHRCOBtkQ6AEILTAB#v=onepage&q=The%20Eichmann%20Trial%20and%20the%20Role%20of%20Law%20zad%20leavy&f=false> accessed 29 August 2017.

⁴² BBC News, ‘Saddam’s trial may be Televised – BBC News 13 October 2005’ (bbc.co.uk, 2017) <http://news.bbc.co.uk/1/hi/world/middle_east/4338646.stm> accessed 30 August 2017.

⁴³ Hans W Baade, ‘The Eichmann Trial: Some Legal Aspects’ (1961) *Duke Law Journal* 10(3) Summer 1961 400-420 <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1766&context=dj>> accessed 29 August 2017.

distance themselves from the mistakes of Nuremberg, the fledgling ITG, took the extraordinary and daring step of abolishing the statute of 2003, (Order Number 48). In so doing, the interim government in Baghdad issued Law 10⁴⁴ of the new Iraq Constitution of 9 October 2005, finally establishing an unquestionable legal validity of the ‘Supreme Iraqi Criminal Tribunal’ (SICT). They even renamed it the ‘Iraqi Higher Criminal Court’ (IHCC)⁴⁵, to distance it further still from any comparison to a military tribunal. The ITG felt that they needed to appear to be doing things in a correct and proper manner, and thus it was before the IHCC that Saddam and his co-accused would be tried⁴⁶.

Having established that they had the legitimate power to prosecute was one thing. Using that power however, would be quite something else. The ITG felt that by bringing Saddam to justice before a sovereign court of his own people would have the dual effect of both appearing to be a demonstration to the citizens of Iraq that their country once again had a functioning judiciary which followed the rule of law, and, perhaps even more importantly that by insisting the court be held in Iraq, it was thought to be a way of keeping the events close to the people who had been the principal victims of the Ba'athist regime. Justice needed to be seen to be done.

Under Iraqi law it is the investigating judge, and not the prosecutor, who (initially at least) conducts a pre-trial gathering of all the evidence, including the reception of witness

⁴⁴ Iraq Constitution 2005, Law 10 <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf> accessed 2 September 2017.

⁴⁵ The Iraqi Special Tribunal (IST) (Order No. 48 of 2003); renamed the Supreme Iraqi Criminal Tribunal (SICT) (Article 19, Law 10 of the Iraq Constitution of 2005); finally renamed the Iraqi Higher Criminal Court in April 2006.

⁴⁶ Iraq Constitution 2005, Article 19 <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf> accessed 2 September 2017.

testimony to decide if the accused should stand trial. Article 18 of the Iraq Constitution of 2005, provided the process for the investigating judge to determine whether there was enough evidence to support a finding that the accused has committed a crime within the jurisdiction of the ICHH. Having done so, he can then issue an indictment called a '*Qarar ihalat*'⁴⁷ (referral decision), in which he summarises the facts and the crimes attributed to the accused, and therefore determines the special section of Iraqi law under which the accused shall be held responsible.

To western legal observers, all of this appeared to be very fussy and confusing. To the Iraqi's of course, it was all proper and a required part of Iraqi law. Paragraph 4.1 of Law Number 10 provided that whenever a defendant is charged pursuant to that law, he shall be entitled to a fair trial with certain minimum guarantees⁴⁸. The ITG had taken upon itself the enormously heavy burden of accepting, in accordance with both pre-Ba'athist Iraqi law⁴⁹ and international law, the right of the accused to be properly informed of the charges to be brought against him: "*...anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him*"⁵⁰.

The issue then turned to the problem of finding five competent judges in Iraq who could legitimately sit at the IHCC, and perhaps more pertinently be willing to hear the trial

⁴⁷ Iraq Constitution 2005, Article 18 <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf> accessed 2 September 2017.

⁴⁸ *ibid* paragraph 4.1

⁴⁹ ICCPR art 9.2; Ratified by Iraq, 25 January 1971

⁵⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (un.org, 2017) <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 28 August 2017.

– not an easy thing in a country where the previously judiciary had been decimated by the Ba’ath regime. Judges had done as they were told by Saddam, or they didn’t live very long. Finding Iraqi judges who were willing to risk their lives and the lives of their family in order to sit, was a huge problem in a country where terrorism, murder and assassination were all daily events.

The first investigative hearing was held in Baghdad on 1 July 2004⁵¹; however for the trial proper both the American military and legal advisors, as well as the Iraqi authorities – both of whom were very conscious of potential armed attacks by Ba’ath Party supporters – decided to put Saddam and seven other former officials on trial in Al-Dujail, a small town 35km outside of Baghdad. The United States spent more than US\$140m (£74m) preparing for the trial, fortifying the court and training the Iraqi officials: “*We hoped it would set a new standard for justice, not just in Iraq but across the Middle East, showing citizens that their leaders could be held to account*”, a senior US legal advisor to the IHCC said⁵². Such was their confidence in the case that lawyers predicted it would all be over within a month⁵³.

Saddam and his co-defendants could have found themselves being charged with everything from premeditated murder and torture, to illegal expulsion, war crimes and even genocide, all of which fall under the category of crimes against humanity in international

⁵¹ The first hearing of the IHCC was before Investigating Judge, Rizgar Mohammed Amin, held in the State courtroom, Baghdad 1 July 2004.

⁵² Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

⁵³ *ibid*

law⁵⁴. The Iraqi prosecuting team allegedly had: “...over 500 ‘baskets of documented crimes’ during the Hussein regime”⁵⁵, yet in spite of this, they were only actually indicted with the one count of the killing of 148 Shiites from Al-Dujail, in retaliation for the failed assassination attempt of 8 July 1982⁵⁶.

The Trial started in Dujail⁵⁷ on 19 October 2005, just four days after the referendum on the new Iraq Constitution, and almost immediately, Chief Judge, Rizgar Mohammed Amin⁵⁸, an ethnic Kurd and former lawyer, found himself on the end of a vicious tirade of accusations from Saddam Hussein in the dock, questioning the legitimacy of the court to try him. “*Those who fought in God’s cause will be victorious...*” Saddam declared, clutching a copy of the *Qur’an*. “*I am at the mercy of God, the most powerful*”. The judge calmly asked him to identify himself to the court. “*Who are you? What does this court want?*” Saddam said. “*I don’t answer to this so-called court, with all due respect, and I reserve my constitutional right as the president of the country of Iraq. I don’t acknowledge either the entity that authorises you, nor the aggression, because everything based on falsehood, is falsehood*”.

⁵⁴ Kenneth Roth, ‘Indict Saddam’ *The Wall Street Journal* (New York, 22 March 2002) <<http://pantheon.hrw.org/legacy/english/docs/2002/03/22/iraq12900.htm>> accessed 12 August 2017.

⁵⁵ Aneesh Raman, Arwa Damon, Ryan Chilcote, Sam Dagher, Jomana Karadsheh & Ed Henry, ‘Hussein executed with ‘fear on his face – 30 December 2006’ (cnn.com, 2017) <<http://edition.cnn.com/2006/WORLD/meast/12/29/hussein/>> accessed 22 August 2017.

⁵⁶ John F. Burns, ‘A Town That Bled Under Hussein Hails His Trial’ *The New York Times* (New York, 3 July 2005) <<http://www.nytimes.com/2005/07/03/world/middleeast/a-town-that-bleed-under-hussein-hails-his-trial.html>> accessed 30 August 2017.

⁵⁷ James Menendez, ‘Seeking justice in Dujail – BBC News – 25 November 2005’ (bbc.co.uk, 2017) <http://news.bbc.co.uk/1/hi/world/middle_east/4350104.stm> accessed 23 August 2017.

⁵⁸ Regional judge during the presidency of Saddam Hussein, on 14 January 2006, he resigned as chief judge of the trials of Saddam Hussein, citing government interference and harsh public criticism. He was urged by colleagues, as well as by the Iraqi and US governments, to reconsider his position, but declined. He was replaced by Rauf Rashid Abd al-Rahman.

The judge then told Saddam to ‘*relax*’, pointed out to him that he was, in fact, the ‘*former-president*’ of Iraq, and said that the court could hear his testimony later; but he still needed his name. Saddam glared at him, evidently irked by the ‘*former*’ president remark: “*You know me*”, came the response. “*You are an Iraqi, and you know that I don’t get tired*”⁵⁹. Despite Saddam’s complete refusal to recognise the legitimacy of the court, he would later mutter that he was “*not guilty*”, his plea echoed by his co-defendants⁶⁰ emphatically denying all the charges against them⁶¹.

Between listening to and gesturing at the judge, Saddam, who was obviously well-read in the law, and who had used his time in captivity to construct a strong self-defence, accused the IHCC of being a ‘*play thing*’ simply there to increase the chances of President Bush being re-elected. He stated that: “*...this is all theatre. The real criminal is Bush*”⁶². Most of the accused in the dock vented their anger and indignity at being treated in a way they considered to be criminal, by stifling the judicial process wherever they could. At times, Saddam – ably supported by his cast of former cronies sitting behind him – brought the proceedings to the verge of anarchy, setting the tone for most of the next nine months. Barzan, his half-brother took, to wearing his pyjamas in court, sitting defiantly with his back to the judges, while Tariq Aziz, Saddam’s well-known former international envoy, delivered his courtroom encomium to his ex-boss in what appeared to be a hospital gown⁶³.

⁵⁹ Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

⁶⁰ *ibid*

⁶¹ Edward Wong, ‘Saddam charged with genocide of Kurds’ *The New York Times* (New York, 5 April 2006) <<http://www.nytimes.com/2006/04/05/world/05iht-saddam.html>> accessed 29 August 2017.

⁶² Saddam Hussein to Investigating Judge, Rizgar Mohammed Amin, Baghdad, 1 July 2004

⁶³ Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

As the chaos spread, the international community rapidly lost confidence. The proceedings were repeatedly criticised by prominent human rights groups and the UN describing them as “...incompatible with standards of international justice”⁶⁴.



Figure 4. Investigating Judge, Rizgar Mohammed Amin soon found himself in a war of words with former president of Iraq, Saddam Hussein, 19 October 2005

The Trial of Saddam Hussein, and perhaps more pertinently the long process of bringing Saddam Hussein to trial, clearly demonstrated the need for unquestionable legal, legitimate powers for the court to bring any form of indictment against individuals who felt they were beyond the rule of law. However, as the ITG quickly discovered to its horror, in concentrating so much effort and time on the creation of that legal and legitimate power, they had inadvertently designed a pulpit from which the defendants could preach their innocence, mock the law, argue their politics... and flaunt the accusers.

In particular Saddam, with his clear knowledge of the law, understanding of Iraqi legal procedure, and a well thought-out defence, all of which was coupled to his strong,

⁶⁴ Michael Howard, ‘Open and shut case that came close to anarchy’ *The Guardian* (London, 6 November 2006) <<https://www.theguardian.com/world/2006/nov/06/iraq.michaelhoward1>> accessed 30 August 2017.

convincing and powerful character, meant that he – and not the judge(s) – totally commanded the platform where the accused stood. Inevitably, the longer the proceedings went on, those watching on television began to question the legitimacy of the power being wielded in front of their eyes. It was exactly what the American legal advisors to the IHCC, and the new ITC had feared the worst.



1.1.2 The power to indict: the trial of Osama Bin Laden

Let us now move forward in time to the trial of Osama Bin Laden. The trial of Saddam Hussein clearly showed the need for a legal, legitimate indictment of to be brought against Osama Bin Laden before any lawful trial process could even begin. Invariably, there would be considerable legal issues that would surround the legitimacy of the power to bring such an indictment, thereby raising the same perplexing legal questions facing his accusers of where would that power come from?

While there is no generally accepted definition of ‘acts of terrorism’, a distinction can be made between international crimes which are based on international customary law (i.e. laws referring to international obligations such as those derived from established state practice)⁶⁵, and crimes resulting from specific treaties which criminalise certain conduct

⁶⁵ According to Article 38(1)(b) of the ICJ Statute (established by UN Charter), customary international law is one of the sources of international law. Customary international law can be shown by (1) state practice, and (2) *opinio juris* {Latin: ‘*opinio juris sive necessitatis*’, meaning: ‘*an opinion of law or necessity*’}

and therefore require the contracting states to implement legislation for the criminal prosecution of that conduct within their domestic legal system. By definition, international customary law is usually applied to States, and not to individuals, and therefore would not be applicable to indict Osama Bin Laden.

That leaves us with just two options: laws existent within the domestic legal systems States, or international humanitarian law – neither of which are a ‘good fit’ for the indictment of an individual such as Bin Laden. While most countries have laws within their domestic legal system that will allow them to prosecute individuals for crimes they may commit, these are usually restricted to crimes committed within their national boundaries. There is not – in most respects – a set of domestic laws for example, that allows a State to prosecute an individual who acts from outside their national boundaries without the cooperation of the nation in which the individual is residing. This is the process of extradition – and a jolly complicated one it can be.

The Code of Laws of the United States of America (US Code) is the official compilation and codification of the general and permanent federal statutes of the United States, and came into force on 30 July 1947⁶⁶. It contains 53 titles⁶⁷. Title 18 of the US Code is the main criminal code of the federal government of the United States, dealing with federal crimes and criminal procedure. US Code 18, Chapter 51 (Homicide), Section

⁶⁶ The Code of Laws of the United States of America, as enacted 30 July 1947 ch.388, Title 1, 61 Stat. 633 <<https://www.gpo.gov/fdsys/pkg/USCODE-2010-title1/pdf/USCODE-2010-title1.pdf>> accessed 28 August 2017.

⁶⁷ United States of America, Office of the Law Revision Counsel, United States Code <<http://uscode.house.gov/download/annualhistoricalarchives/downloadPDF.shtml>> accessed 28 August 2017.

1114 deals with ‘*Protection of Officers and Employees of the United States*’⁶⁸. US Code Title 18, Chapter 113B (Terrorism) has multiple sections which deal with crimes deemed to be terrorist acts⁶⁹, but it worthy of note that this was only introduced into law in 2003.

What is extraordinary about US Code Title 18, Chapter 113B is that Section 2331 *does* have a very specific definition of what terrorism actually is⁷⁰. Needless to say, US Code Title 18 is therefore *the* favoured legal tool, granting the power to the judicial system of the United States to indict persons who have committed acts of terrorism. When Timothy McVeigh was indicted⁷¹ for the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995⁷², he was charged under US Code Title 18 Section 2332a (a)(2) & (4) ‘Use of weapons of mass destruction’⁷³. Of course McVeigh was a US Citizen, whereas Bin Laden is not, and McVeigh’s agenda was white supremacy which is not strictly

⁶⁸ The Code of Laws of the United States of America – Title 18, Part I Crimes & Criminal Procedure, Chapter 51 Homicide, Section 1114 Protection of Officers and Employees of the United States <<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section1114&num=0&edition=prelim>> accessed 28 August 2017.

⁶⁹ Section 2332a ‘*Use of weapons of mass destruction*’; Section 2332b ‘*Acts of terrorism transcending national boundaries*’; Section 2332f ‘*Bombing of places of public use, government facilities, public transportation systems and infrastructure facilities*’; Section 2332i ‘*Acts of nuclear terrorism*’ {thankfully never used}. Other sections with in the same Chapter deal with: ‘*Harboring or concealing terrorists*’ [2339]; ‘*Providing material support to terrorists*’ [2339A]; ‘*Providing material support or resources to designated foreign terrorist organizations*’ [2339B]; ‘*Prohibitions against the financing of terrorists*’ [2339C]; and ‘*Receiving military-type training from a foreign terrorist organization*’ The Code of Laws of the United States of America – Title 18, Part I Crimes & Criminal Procedure, Chapter 113B Terrorism, Section(s) 2339{A-D} <<http://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter113B&edition=prelim>> accessed 28 August 2017.

⁷⁰ The Code of Laws of the United States of America – Title 18, Part I Crimes & Criminal Procedure, Chapter 113B Terrorism, Section(s) 2331: Definitions – see Appendix IX, page 144

⁷¹ The indictment by the Grand Jury in the United States District Court for the Western District of Oklahoma cited violations of: US Code 18 Sections 2332a ‘Use of weapons of mass destruction’; Section 844(f); Section 1114; Section 1111; Section 2(a) & (b); US Code 28 Section 64.2(h) – 11 August 1995

⁷² Ryan Gorman, ‘22 years after the Oklahoma City bombing, Timothy McVeigh remains the only terrorist executed by US’ *Washington Examiner* (Washington DC, 19 April 2017) <<http://www.washingtonexaminer.com/22-years-after-the-oklahoma-city-bombing-timothy-mcveigh-remains-the-only-terrorist-executed-by-the-us/article/2620658>> accessed 15 September 2017.

⁷³ The Code of Laws of the United States of America – Title 18, Part I Crimes & Criminal Procedure, Chapter 113B Terrorism, Section(s) 2332a: ‘*Use of weapons of mass destruction*’ – see Appendix IX, page 144

considered a terrorist cause (although evidently terrorist acts in the name of white supremacy have been carried out).



Figure 5. Oklahoma City bomber, Timothy McVeigh in custody
and what remained of the Alfred P. Murrah Federal Building, 19 April 1995

And there are now other guidelines that the legal authorities can look to for the power to indict terrorists in the United States and beyond. In the wake of the tragedy of 9/11, the administration of President George W. Bush – once it had woken up from the magnitude of what had happened – began to spring into action. One of the very first acts signed by the President was an ‘Executive Order’⁷⁴ on 13 November 2001, which allowed non-citizens to be tried for international terrorism before a military tribunal. Top of their ‘wanted list’ was of course Osama Bin Laden.

While the Presidents’ Executive Order was ‘silent’ on many details of how commission of the law would function, the Americans have a curious way of turning everything that they do – no matter how serious it may be – into a combination of Hollywood, Coca-Cola and some bizarre competition run by Mickey Mouse! During the

⁷⁴ Military Order of 13 November 2001, 66 Fed. Reg. 57,833 (16 Nov. 2001) – see Appendix V, page 131

2003, invasion of Iraq for example, the US military developed a set of playing cards⁷⁵ issued in their thousands to help the troops identify the most-wanted members of President Saddam Hussein's government.



Figure 6. Iraqi 'Most Wanted' cards issued in their thousands; but they did serve a real purpose in identifying who to capture?

On one level the playing cards were a piece of genius thinking – to a US soldier, all Iraqis looked the same: how were they to know who was who? On another level however, the cards were an almost comical reduction of the seriousness of the situation in occupied Iraq, and inevitably the ‘bagging’ of a ‘card’ by military units soon became something of a sport⁷⁶.

The worldwide hunt for Osama Bin Laden would take another seven years, during which time the FBI liberally distributed a somewhat bizarre wild-west type ‘Wanted’

⁷⁵ Joel Christie, ‘Dead Hand: Deck of 52-most wanted Iraqi playing cards given to given to soldiers at the start of the war shows the fall of Saddam ‘The Ace of Spades’ Hussein’s army’ *The Daily Mail* (London, 18 October 2014) <<http://www.dailymail.co.uk/news/article-2798050/dead-hand-deck-52-wanted-iraqi-playing-cards-given-soldiers-start-war-shows-fall-saddam-ace-spades-hussein-s-army.html>> accessed 3 September 2017.

⁷⁶ Lisa Burgess, ‘Buyers Beware: The real Iraq ‘most wanted’ cards are still awaiting distribution’ *Stars & Stripes* (Washington DC, 17 April 2003) <<https://www.stripes.com/news/buyers-beware-the-real-iraqi-most-wanted-cards-are-still-awaiting-distribution-1.4525#.Wb5Im8h9670>> accessed 2 September 2017.

poster, offering sums of up to US\$25m for information leading to his capture⁷⁷. There was however some purpose to their comedy approach, for in the wake of 9/11 the administration of President George W. Bush had been much criticised for not taking the terrorist threat to the United States seriously.

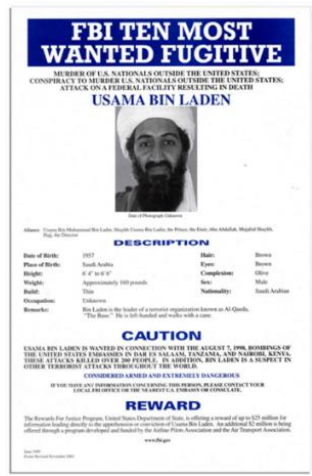


Figure 7. FBI Most Wanted poster featuring Osama Bin Laden offering a reward of up to US\$25m for his capture, but strangely there is no mention of 9/11

United States home soil had never been violated to that extent by an enemy before 9/11, and the Homeland Security Act 2002⁷⁸ – an enormous document running to some 187 pages – was brought in to give the President executive authority to act freely to prevent further terrorist attacks within the United States. All Americans, both abroad, and now at

⁷⁷ Dan Egan, 'Bin Laden, Most Wanted For Embassy Bombings?' *The Washington Post* (Washington DC, 22 August 2006) <<http://www.washingtonpost.com/wp-dyn/content/article/2006/08/27/AR2006082700687.html>> accessed 6 September 2017.

⁷⁸ The Homeland Security Act of 2002 (HAS) (Pub.L. 107-296, 116 Stat. 2135 enacted 25 November 2002) <https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf> accessed 6 September 2017.

home, were legitimate targets for al-Qaeda. Perhaps for the first time in their history, all Americas felt vulnerable to terrorism⁷⁹. It was exactly as Osama Bin Laden had planned.

Bin Laden however, as we have already seen, had been on the radar of US Intelligence Services since the late 1980s, and 9/11 was *not* the first attack on US home soil or indeed the New York World Trade Center attributed to him. On 26 February 1993, a huge bomb (some 610kg), exploded in the underground car park of the World Trade Centre⁸⁰. It was intended to send the North Tower (Tower 1), crashing into the South Tower (Tower 2), bringing both towers down and killing tens of thousands of people. Thankfully, the vast majority of the explosive force was contained within the car park⁸¹ and although six people were killed and thousands injured, the towers did not fall⁸². Almost immediately the newly inaugurated Clinton administration pointed the finger of blame at al-Qaeda, which in turn meant Osama Bin Laden.

For his part, Bin Laden never admitted to having any association to the NYC bombing in 1993. However, there is more than just strong circumstantial evidence through the connection of his brother-in-law, Mohammed Jamal Khalifa and his connections with

⁷⁹ Andrew McGill, 'Americans are more worried about terrorism that then were after 9/11' *The Atlantic* (Boston, 8 September 2016) <<https://www.theatlantic.com/politics/archive/2016/09/american-terrorism-fears-september-11/499004/>> accessed 11 September 2017.

⁸⁰ Patrice O'Shaughnessy & Gen Mustain, 'New York's Day Of Terror' *New York Daily News* (New York, 27 February 1993) <<http://www.nydailynews.com/new-york/terrorist-bomb-shakes-world-trade-center-1993-article-1.2118361>> accessed 9 September 2017.

⁸¹ Robert D. McFadden, 'Explosion at the Twin Towers: The Overview; Blast hits Trade Center, Bomb Suspected, 5 Killed, Thousands Flee Smoke in Towers' *The New York Times* (New York, 27 February 1993) <<http://www.nytimes.com/1993/02/27/nyregion/explosion-twin-towers-overview-blast-hits-trade-center-bomb-suspected-5-killed.html?pagewanted=all&mcubz=0>> accessed 9 September 2017.

⁸² Scott Stewart, 'A Look Back At The 1993 World Trade Center Bombing – 26 February 2005)' (worldview.stratfor.com, 2017) <<https://worldview.stratfor.com/article/look-back-1993-world-trade-center-bombing>> accessed 7 September 2017.

the man eventually accused of the bombing itself, Ramzi Yousef all of which point in the direction of Bin Laden⁸³. Khalifa met Bin Laden while they both studied at Jeddah University in 1976⁸⁴. In 1985, they both travelled to Afghanistan (separately), where they joined up with and were trained by the Mujahideen during the Soviet War. Khalifa married Bin Laden's sister in 1986, and in 1995, when he caught by the FBI, he was found to have bomb-making manuals in his luggage as well as contact phone numbers for Bin Laden⁸⁵.



Figure 8. L-R Ramzi Yousef; Mohammed Jamal Khalifa and the 1993 World Trade Center bombing

As a direct result of the New York bombings in March 1993, four members of al-Qaeda were eventually brought to justice in the United States: Mohammed A. Salameh, Nidal A. Ayyad, Mahmud Abouhalima and Ahmad M. Ajaj⁸⁶. Most were indicted for

⁸³ Judith Miller, 'Bin Laden Relative Linked to '93 Trade Center Bombers, Affidavit says' *The New York Times* (New York, 2 May 2002) <<http://www.nytimes.com/2002/05/02/us/bin-laden-relative-linked-to-93-trade-center-bombers-affidavit-says.html?mcubz=0>> accessed 10 September 2017.

⁸⁴ Catherine Taylor, 'Former Bin Laden Friend Denies Terror Ties' *The Christian Science Monitor* (Boston, 21 January 2003) <<https://www.csmonitor.com/2003/0121/p07s01-wome.html>> accessed 18 September 2017.

⁸⁵ Nick Fielding, 'Gems, al-Qaeda and murder, Mystery over killing of Osama Bin Laden's friend' *The Guardian* (London, 2 March 2007) <<https://www.theguardian.com/world/2007/mar/02/alqaida.saudiarabia>> accessed 8 September 2017.

⁸⁶ Richard Bernstein, 'Trade Center Bombers Get Prison Terms Of 240 Years' *The New York Times* (New York, 25 May 1994) <<http://www.nytimes.com/1994/05/25/nyregion/trade-center-bombers-get-prison-terms-of-240-years.html?pagewanted=all&mcubz=0>> accessed 30 August 2017.

numerous violations under US Code 18⁸⁷ the new terrorism laws being brought in to protect US citizens both at home and abroad; and in May 1994, each was sentenced to 240 years in a federal penitentiary⁸⁸. Ramzi Yousef the actual bomber, and mastermind behind the plot, was indicted⁸⁹ under US Code 18 for similar violations as early as 31 March 1993, but he evaded capture for another two and a half years until he was caught (in Pakistan), and deported to the United States.

Yousef was tried in the US District Court for the Southern District of New York. During his trial, although he mostly refused to co-operate taking the usual stance that the court had no legal or legitimate authority to try him, and that he would only answer to a court of ‘my own people’ (by which it was assumed he meant Muslim lawyers heard under Sharia law)⁹⁰, Yousef did eventually put up quite a strong legal defence, a large part of which was a clever attempt to overturn the indictment against him⁹¹; but it did him no good.

⁸⁷ The Code of Laws of the United States of America – Title 18, Part I Crimes & Criminal Procedure, Chapter 113B Terrorism – see Appendix IX, page 144

⁸⁸ Anemona Hartocollis, ‘Port Authority held negligent in 1993 bombing’ *The New York Times* (New York, 27 October 2005) <<http://www.nytimes.com/2005/10/27/nyregion/port-authority-found-negligent-in-1993-bombing.html?mcubz=0>> accessed 29 August 2017.

⁸⁹ The indictment included violations of US Code 18 Section 371; Section 844(i)(2), (f), (d)(2); Section 33; Section 34; Section 924(c)(2) and violation of The Travel Act US Code 18 Section 1952.

⁹⁰ Javaid Rehman, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the ‘Clash of Civilisations’ in the New World Order* (1st edn, Hart, 2005)

⁹¹ Yousef alleged that he and some of his family members were tortured until he agreed to put his fingerprints on various documents and books, that he was then forced by the Pakistani’s to write out letters in his own handwriting, and make telephone calls to associates of Bin Laden. Yousef argued that his torture by the Pakistanis was directly attributable to the United States because the Pakistanis who captured and tortured him were acting as agents to the United States or, in the alternative, because the United States and Pakistan were engaged in a joint venture to “track and trap” him. Consequently, Yousef argued, the District Court was required to dismiss the indictment against him or, in the alternative, to suppress his post-arrest statements as involuntary and coerced. Yousef’s motion to dismiss the indictment was pursuant to US Code Title 8 Section 1326 ‘Re-entry of Removed Aliens’, which involves mixed questions of law and fact. He was in fact questioning the legitimacy of the court to indict him without first contemplating that his human rights had been violated because he was tortured while under arrest in Pakistan, before his deportation to the United States had taken place. Had his human rights been violated, and, as a direct result of that violation his deportation had brought him before the District Court, that may well have constituted a deprivation of due process, and he may have had a case to answer to. In support of this claim, Yousef relied on case law for the

Ramzi Yousef was the first high-profile member of al-Qaeda to be caught, legally and legitimately indicted, tried and on 5 September 1996, he was found guilty and sentenced to two life sentences. On 12 November 1997, Ramzi Yousef was further found guilty of masterminding the bombing in 1993, and of ‘plotting a serious conspiracy against the World Trade Center’; he was sentenced⁹² on 8 January 1998, to an increase of 240 years, plus the two original life sentences⁹³. He is now held at the high-security Supermax

proposition that when the United States engages in conduct that “shocks the conscience” in order to bring a defendant within the jurisdiction of the United States, a district court must divest itself of jurisdiction over the case and dismiss the indictment: *United States v. Toscanino*, 500 F.2d 267, 272-73 (2d Cir. 1974). However the court refused to accept this motion on the grounds that it was without proper legal grounding and therefore there was no case to answer. United States law enforcement officers are not required to “monitor the conduct of representatives of each foreign government to assure that a request for extradition or expulsion is carried out in accordance with American constitutional standards” *United States v. Lira*, 515 F.2d 68, 71 (2d Cir. 1975). Thus, the District Court properly concluded that “...any request Yousef made of the Pakistani government prior to his surrender to United States officials cannot be extended to require the United States officials to proceed as if that request was made of them. The court cited many examples from US case law: *United States v. Fernandez-Antonia*, 278 F.3d 150, 156 (2d Cir. 2002); *United States v. Leyland*, 277 F.3d 628, 631 (2d Cir. 2002) (denial of a motion to dismiss on double jeopardy grounds reviewed *de novo* because it presents a question of law); *United States v. Cuervelo*, 949 F.2d 559, 567 (2d Cir. 1991) (motion to dismiss based on allegations of outrageous governmental conduct reviewed *de novo*).

⁹² Ramzi Yousef to US District Court Judge Kevin Duffy, (speech given in court: US District Court for the Southern New York District, 8 January 1998) *The New York Times* (New York, 9 January 1998) <<http://www.nytimes.com/1998/01/09/nyregion/excerpts-from-statements-in-court.html?mcubz=0>> accessed 14 September 2017. “*You keep talking also about collective punishment and killing innocent people to force governments to change their policies; you call this terrorism when someone would kill innocent people or civilians in order to force the government to change its policies. Well, when you were the first one who invented this terrorism. You were the first one who killed innocent people, and you are the first one who introduced this type of terrorism to the history of mankind when you dropped an atomic bomb which killed tens of thousands of women and children in Japan and when you killed over a hundred thousand people, most of them civilians, in Tokyo with fire bombings. You killed them by burning them to death. And you killed civilians in Vietnam with chemicals as with the so-called Orange agent. You killed civilians and innocent people, not soldiers, innocent people every single war you went. You went to wars more than any other country in this century, and then you have the nerve to talk about killing innocent people. And now you have invented new ways to kill innocent people. You have so-called economic embargo which kills nobody other than children and elderly people, and which other than Iraq you have been placing the economic embargo on Cuba and other countries for over 35 years. The Government in its summations and opening statement said that I was a terrorist. Yes, I am a terrorist and I am proud of it. And I support terrorism so long as it was against the United States Government and against Israel, because you are more than terrorists; you are the one who invented terrorism and using it every day. You are liars, butchers, and hypocrites*”.

⁹³ Benjamin Weiser, ‘The Trade Center Verdict: The Overview: ‘Mastermind’ And Driver Found Guilty In 1993 Plot To Blow Up Trade Center’ *The New York Times* (New York, 13 November 1997) <<http://www.nytimes.com/1997/11/13/nyregion/trade-center-verdict-overview-mastermind-driver-found-guilty-1993-plot-blow-up.html?mcubz=0>> accessed 12 September 2017.

prison ADX Florence in Florence, Colorado, where he will remain for the rest of his life⁹⁴. Using exactly the same combination of legal and legitimate powers, on 4 November 1998, an indictment⁹⁵ against Osama Bin Laden *was issued* through the United States District Court, Southern District of New York on the charge⁹⁶ that he, along with others⁹⁷ were responsible for the 1998 bombings of various United States Embassies⁹⁸. There was to be no escape: Osama Bin Laden would be the next to be brought to trial.



1.2 *The need for legitimacy*

One of the fundamental principles of the rule of law is: ‘*nova constitutio futuris formam imponere debet, non præteritis*’⁹⁹; that is, ‘unless there be clear words to the contrary, statutes do not apply to a past, but to a future, state or

⁹⁴ Federal Bureau of Prisons. ‘Find an Inmate’ (bop.gov,2017) <<https://www.bop.gov/inmateloc/>> accessed 2 September 2017.

⁹⁵ United States v. Usama Bin Laden et al., *S(9) 98 Cr. 1023 (LBS)*, 4 November 1998 – see Annex VI page 137

⁹⁶ Osama Bin Laden and his co-defendants were charged with crimes contrary to US Code Title 18, Sections 1101, 1001, 844, 924(c), 924(2), 1623, 2332(b), 2332(a)(1), 2332(a)(3), 956(a)(1), 956(a)(2)(A), 1114, 1116, 1117, 844(f)(3), 844(f)(1), 844(f)(2), 844(n), 2155(a), 2155(b), 930(c) and 1111.

⁹⁷ The other defendants were: Muhammad Atef, Ayman Al Zawahiri, Saif Al Adel, Mamdouh Mahmud Salim, Abdullah Ahmed Abdullah, Muhsin Musa Matwalli Atwah, Khalid Al Fawwaz. Wadih El Hage, Anas Al Liby and Ibrahim Eida.

⁹⁸ The 1998 United States embassy bombings were attacks that occurred on August 7, 1998, in which over 200 people were killed in nearly simultaneous truck bomb explosions in two East African cities, one at the United States Embassy in Dar es Salaam, Tanzania, the other at the United States Embassy in Nairobi, Kenya. The attacks, which were linked to local members of the Egyptian Islamic Jihad, brought Osama bin Laden, Ayman al-Zawahiri, and their terrorist organization, al-Qaeda, to the attention of the American public for the first time, and resulted in the FBI placing bin Laden on its ten most-wanted fugitives list.

⁹⁹ Latin: ‘*nova constitutio futuris formam imponere debet, non præteritis*’, meaning: ‘a new law ought to impose government for the future and not for the past’ *Black’s Law Dictionary* (2nd edn, West Publishing, 1910)

circumstance'¹⁰⁰. If a nation chooses to prosecute perpetrators, it must take caution not to run counter to *any* principles implicit in a democratic legal order¹⁰¹, regardless of the moral reasons for doing so. This principle against retroactivity in the operation of criminal justice requires that as a matter of fairness, persons ought not to be held accountable for offenses not known to be unlawful at the time they were committed.

If we are to accept that argument – on face value alone – then how can *any* legitimacy be attributed to an indictment against a person such as Osama Bin Laden when the crimes that he committed (if indeed they can be ‘defined’ as such), were committed *before* parliament (or the Federal legislature), had passed specific statutes/laws outlawing them?

Another such principle of the rule of law is that of: ‘*nulla poena sine lege*’¹⁰², basically that there should be ‘no punishment without a law authorising it’¹⁰³, something which has been enshrined within the International Criminal Court through the Rome Statute¹⁰⁴. How then, can we punish such a man, when no law exists to authorise that punishment? Certainly a keen mind such as that of Osama Bin Laden, or indeed that of his

¹⁰⁰ Daniel Greenberg & Alexandra Millbrook eds., *Stroud’s Judicial Dictionary of Words and Phrases* (6th edn, Sweet & Maxwell, 2000)

¹⁰¹ M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability* (1996) *Duke Law & Contemporary Problems* 59(4) 9-28 (Autumn 1996) <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1013&context=lcp>> accessed 3 September 2017.

¹⁰² Latin: ‘*Nulla poena sine lege*’, meaning ‘no punishment without a law authorising it’

¹⁰³ *Black’s Law Dictionary* (10th edn, Thomson West, 2014)

¹⁰⁴ United Nations, ‘Rome Statute of the International Criminal Court, Article XXIII, 17 July 1998’ 2187 UNTS 90 (37) ILM (un.org, 2017)

defence team, would immediately question the legitimacy of any indictment based upon principles of the rule of law that were being enacted retrospectively.

It is only when examining deeply complex legal arguments such as these that we can begin to see the importance of the need for legitimacy when determining the question of whether or not an individual such as Osama Bin Laden can be indicted. If the process is, in any way flawed or improper, or even seen to be unfair – then a mistrial could be called, and the opportunity to indict may be lost forever. The mechanism of justice has to get these things correct – first time, every time.



1.2.1 The case for retrospective legislation

However rare it may be, retrospective legislation *does* in fact exist, although generally defined as legislation which: “...takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past”¹⁰⁵. According to the Oxford Dictionary of Law, retrospective (or retroactive) legislation is: “*Legislation that operates on matters taking place before its enactment, e.g. by penalising conduct that was lawful when it occurred. There is a presumption that statutes are not intended to have retroactive effect unless they merely change legal procedure*”¹⁰⁶. In the United States,

¹⁰⁵ *Craies on Legislation* (9th edn, Sweet & Maxwell, 2008)

¹⁰⁶ Elizabeth A. Martin ed., *Oxford Dictionary of Law* (7th edn, Oxford University Press, 2008)

Congress is prohibited from passing *ex post facto*¹⁰⁷ laws by clause 3 of Article I, Section 9 of the United States Constitution¹⁰⁸¹⁰⁹. The individual states are prohibited from passing *ex post facto* laws by clause 1 of Article I, Section 10¹¹⁰. Over the years, however, when deciding *ex post facto* cases, the United States Supreme Court has referred¹¹¹ repeatedly to its ruling¹¹² in *Calder v. Bull*¹¹³, in which Justice Samuel Chase held that the prohibition applied *only* to criminal matters, and not to civil matters. As all matters pertaining to Osama Bin Laden would be criminal in nature, it is hard to see any way for Congress to enact retrospective legislation – no matter what the moral motive for doing so.

On the other hand, legislation in the United Kingdom has – on very rare occasions – been subject to retrospective action where it has been deemed that a statute was required to be applied in that way¹¹⁴. One such example (which created retrospective criminal

¹⁰⁷ Latin: ‘*ex postfacto*’, meaning ‘*out of the aftermath*’; is a law that retroactively changes the legal consequences (or status) of actions that were committed, or relationships that existed, before the enactment of the law. In criminal law, it may criminalise actions that were legal when committed; it may aggravate a crime by bringing it into a more severe category than it was in when it was committed; it may change the punishment prescribed for a crime, as by adding new penalties or extending sentences; or it may alter the rules of evidence in order to make conviction for a crime likelier than it would have been when the deed was committed.

¹⁰⁸ United States Constitution, Article I, Section 9, clause 3 (usconstitution.net, 2017)

<https://www.usconstitution.net/xconst_A1Sec9.html> accessed 7 Sept 2017.

¹⁰⁹ Letter from Thomas Jefferson to Isaac McPherson (13 August 1813): “*The sentiment the ex post facto laws are against natural right is so strong in the United States that few, if any, of the State constitutions have failed to proscribe them. The federal constitution indeed interdicts them in criminal cases only; but they are equally unjust in civil as in criminal cases, and the omission of a caution which would have been right, does not justify the doing what is wrong. Nor ought it to be presumed that the legislature meant to use a phrase in an unjustifiable sense, if by rules of construction it can be ever strained to what is just*”.

¹¹⁰ United States Constitution, Article I, Section 10, clause 1 (usconstitution.net, 2017)

<https://www.usconstitution.net/xconst_A1Sec10.html> accessed 8 September 2017.

¹¹¹ Eric C, Zoldan, ‘The Civil Ex Post Facto Clause’ (2015) *Wisconsin Law Review* 2915(2) 727-784

<<http://wisconsinlawreview.org/wp-content/uploads/2015/11/6-Zoldan-Final.pdf>> accessed 8 September 2017.

¹¹² The court expressly stated that a law that “mollifies” a criminal act was merely retrospective, and was not an *ex post facto* law. Scholars have argued that, as a historical matter, the phrase *ex post facto* referred to civil as well as criminal laws.

¹¹³ *Calder v Bull* 3 U.S. 386 (1798)

¹¹⁴ *Statutory Instruments (Production and Sale) Act 1996* which amended the *Statutory Instruments Act 1946* to validate retrospectively and authorise prospectively the printing of statutory instruments by contractors

liability), was the *War Crimes Act 1991*, allowing proceedings for murder, manslaughter or culpable homicide to be brought against anyone, regardless of nationality at the time, who had committed a war crime in Nazi Germany, or territory it occupied, during the Second World War (subject to their being a British citizen or resident from 1990 onwards)¹¹⁵. So, even if no mechanism exists whereby the Federal Legislature could enact a retrospective criminal law, is it feasible that parliament in the UK would do so? Such a law *would* determine that the acts of Osama Bin Laden *were* crimes at the time they were committed, even though at that time no such laws prohibiting them were extant.

As you can see, these are complex legal questions; and bear even further scrutiny if we consider the fact that the ‘crimes’ within the indictment were almost certainly not committed by Osama Bin Laden personally, but at best were carried out in his name or in the name of an ideology he promoted. What laws therefore do we have that empowers our judiciary, and authorises them to punish a non-citizen, a person who is effectively a ‘state-less’ individual, and whose doctrine – by virtue of his own ideology – is outside the rule of law?

working for the HMSO; The *Caravans (Standard Community Charge & Ratings) Act 1991* which, among other provisions, excluded caravans from the definition of ‘domestic subjects’ in the *Abolition of Domestic Rates Etc., (Scotland) Act 1987* and deemed the amendment to have effect since 1 April 1990; Amendments were made in the late stage of the passage of the *Compensation Act 2006* to reverse the effect of a House of Lords decision on mesothelioma cases; The *Scotland Act 2012* provided that the regulation of activities in Antarctica should be treated as having been reserved to the UK government from the beginning of devolution, even though it had not been reserved in the *Scotland Act 1998*. This had been an oversight and deprived the Secretary of State of a legal basis for any permits s/he had issued for scientific missions; The *Wireless Telegraphy (Variation of Charges) Act 1954* provided a statutory basis for the wireless licence fees which the Postmaster-General had been collecting for around 50 years, after it was found that the presumed legal passage was defective

¹¹⁵ House of Commons Parliament & Constitution Centre, ‘Retrospective Legislation: Standard Note – SN/PC/06454, 14 June 2013’

It is of interest to note that Article 15 of the Arab Charter on Human Rights provides that: “...no crime, and no penalty can be established, without a prior provision of the law. In all circumstances, the law most favourable to the defendant shall be applied”¹¹⁶.

It is therefore of *paramount* importance that any indictment be based upon the legal and legitimate power to enact it. The burden for getting this correct, lies with the legal minds who advise the governments of States how to determine the question of such legitimacy. The potential for disaster is enormous, should they get things wrong; so, from a legal perspective, it is always at the forethought of everything they subsequently do.



1.3 The determination and application of the relevant law

If, after enormous scrutiny, everything has been checked and the huge numbers of advisors to the international court have finally determined that all the documentation is legal and legitimate, we can finally move forward to the first day of the preliminary hearing in the trial of Osama Bin Laden.

The accused stands alone in the dock, surrounded by bullet-proof glass, tall, arrogant and resplendent in his family robes, crisply clean white, and edged with gold – they are the mark of his position as a Sheikh of the Bin Laden clan. He looks anything but

¹¹⁶ The Arab Charter on Human Rights 2004 (humanrights.se, 2017) <<http://www.humanrights.se/wp-content/uploads/2012/01/Arab-Charter-on-Human-Rights.pdf>> accessed 10 September 2017.

the ragged hill-fighter of the Mujahideen, the survivor of the Battle of Tora Bora. Deliberately defiant, he has been silent in the dock having finally succumbed to all the pressure from the prosecution to get his trial going. The Chief Judge has before him an indictment which, after months of argument and wrangling has finally been approved as both legal and legitimate by counsel for the defence, and the prosecution.

As the Chief Judge begins his first words, all eyes are on Osama Bin Laden, who slowly raises his hand to the sky and in a soft Arabic voice, says: “*Praise be to God, the ‘Cherisher’ and ‘Sustainer’ of the worlds*”... he goes on to state that he will not be heard, that he will not assist in any way, that he shall not recognise or be subjected to *any* international criminal court, unless it is conducted under Sharia law.



1.3.1 What is Sharia law?

Since Babylonian times¹¹⁷, nearly every society in the world has had a legal system – a system of laws – originally based on the idea that rules were handed down to man by God¹¹⁸. Certainly English law, which has been the model system adopted (and then

¹¹⁷ By the 22nd century BC, the ancient Sumerian ruler Ur-Nammu had formulated the first law code, which consisted of casuistic statements (“if ... then ...”). Around 1760 BC, King Hammurabi further developed Babylonian law, by codifying and inscribing it in stone.

¹¹⁸ *Romans 8:4*: The righteousness of the law is to be fulfilled in us. This is the law of God that transcends the written Law of Moses. This is the righteousness of God as seen throughout the Bible and especially in the New Testament epistles. It is higher than the Ten Commandments. It is the law to which we are still subject; *Romans 13:9*: For this, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, namely, Thou shalt love thy neighbour as thyself.

adapted), by many nations, had until only very recently several types of law running in parallel – the civil & common law (the laws of the people), and Canon law (the law of the Church of England). Just as the Bible teaches Christians certain rules from which laws are derived, so the ‘*Torah*’ has the same effect for the Jews¹¹⁹, the Hindus, Buddhists, Sikhs and Jainists follow the concept of ‘*Dharma*’¹²⁰, and Muslim’s have ‘*Sharia*’¹²¹, enshrined within the ‘*Qur’an*’¹²².

For most Muslim’s the word *Shar’ia*, simply means ‘*justice*’. In the simplest of terms, Sharia law is a series of religious principles set out in the *Qur’an* which help Muslims understand how to lead their daily lives as part of the Islamic tradition¹²³. Sharia law covers everything that a Muslim could want to know, from the mundane such as how to dress and his/her personal hygiene, to more important laws including those surrounding marriage (the number of wives that a man can, or should take), to culture (a third-generation Pakistani questioning whether it is allowed for him to like his British heritage and culture

¹¹⁹ Judaism classically draws no distinction in its laws between religious and non-religious life. Halakha is the collective body of Jewish religious laws derived from the written and oral Torah. The Torah sets out a list of 613 Mitzvot (commandments), each one of which has a citation leading to a specific biblical passage from which it is derived. The Mitzvot are from a list that was compiled in mediaeval times from the Mishneh Torah by the great Jewish scholar, Rabbi Moshe ben Maimon, known in the west as ‘Maimonides’.

¹²⁰ *Dharma* is a key concept within the Hindu, Buddhist, Sikh and Jainism religions

¹²¹ Arabic: *Shar’ia*; literal meaning: ‘*the way to water*’; this has been interpreted also as ‘*the path to follow*’; in most Arabic speaking cultures the word *Shar’ia* is used to designate a prophetic religion in its totality, so that *Shar’ia Musa* would mean ‘*the law or religion of Moses*’, while *Shar’ia atu-na* can mean ‘*our religion*’ in reference to any monotheistic faith. For many Muslim’s however, the word *Sharia* simply means ‘*justice*’.

¹²² In Hinduism, *dharma* signifies behaviours that are considered to be in accord with *rta*, the order that makes life and the universe possible, and includes duties, rights, laws, conduct, virtues and the “right way of living”. In Buddhism, *dharma* means “cosmic law and order”, but is also applied to the teachings of the Buddha. *Dharma* in Jainism refers to the teachings of *tirthankara (Jina)*, and the body of doctrine pertaining to the purification and moral transformation of human beings. For Sikhs, the word *dharm* means the path of righteousness and proper religious practice.

¹²³ Gemma Mullin, ‘The Muslim Rulebook: What is Sharia law, how is the Islamic system applied in Britain and what are the punishments?’ *The Sun* (London, 31 March 2017) <<https://www.thesun.co.uk/news/3001087/sharia-law-uk-muslims-islamic-legal-system/>> accessed 6 September 2017.

more than that of his father and grandfather), to more deeply held traditional beliefs (such as female emancipation, and the right for a woman to choose for herself the life she wants to lead). Sharia law is however, interpreted in vastly different ways by Islam's many sects.

Followers of Islam are under more scrutiny today in western society than they have been at any time in the recent past – and for very good reason: westerners do not (in general), understand the laws of Islam. Nor, in most cases *do they want to*. Very few westerners will have read the *Qur'an*; fewer still will have much understanding or even tolerance of it. There is every likelihood that they will not be as devoutly religious under their faith (if they have one), as the average Muslim; and because western society is predominantly Christian, all of these 'unknowns' that constitute the Islamic faith, add up. And, western society – which has always been frightened of or dismissive to or openly aggressive towards that which it does not understand – reacts in fear at something which is little understood, or ever explained. Ignorance breeds contempt; and through contempt we have insurrection. Sharia law, for most westerners, exemplifies that fear.



1.3.2 Would the international criminal legal system allow a Sharia law trial?

Would an international criminal legal system so stipulate in favour of Sharia law? Well, yes I think it most probably would. It would certainly contemplate the arguments, both for and against. Let us look at the considerations: If Sharia law were denied to Bin Laden, whatever outcome and verdict *any* court arrived at thereafter would always be

subject to the question of was it a ‘fair trial’? On the other hand, there is no legal precedent at the international criminal court for the procedure to be altered from standard practice law to Sharia law. Most countries have their own individual take on the practice and application of Sharia law, and it’s legitimacy alongside secular law. In the UK, as of 2014, there were reported to be around 85 ‘Sharia courts’, with examples including the Islamic Sharia Council¹²⁴ and the newer, smaller, less strict Muslim Arbitration Tribunal¹²⁵. These councils/tribunals provide arbitration that is voluntary, but it is legally binding; and while they may be ‘officially mandated’, they are set up *outside* the standard court system.

Prime Minister, Theresa May, recently said: “...*there is only one rule of law in the UK providing security for all citizens. There will be an independent review¹²⁶ of whether Sharia law discriminates against women, and whether, and to what extent, the application of Sharia law may be incompatible with the laws in England and Wales*”¹²⁷. The question of denial of Sharia law to a defendant who specifically requests it has, thus far, not been an issue that the UK government, or for that matter the courts, have had to deal with¹²⁸.

¹²⁴ Islamic Sharia Council (Islamic-sharia.org, 2017) <<http://www.islamic-sharia.org/>> accessed 11 September 2017.

¹²⁵ Muslim Arbitration Tribunal (matribunal.org) <<http://www.matribunal.com/>> accessed 11 September 2017.

¹²⁶ United Kingdom Home Office & The Rt. Hon, Teresa May MP, ‘Independent Review into Sharia law launched’ (gov.uk/government/news, 2017) <<https://www.gov.uk/government/news/independent-review-into-sharia-law-launched>> accessed 9 September 2017.

¹²⁷ John Bingham, ‘Theresa May hails ‘benefits’ of Sharia as inquiry is set up into ‘misuse’ of Islamic law’ *The Telegraph* (London, 26 May 2016) <<http://www.telegraph.co.uk/news/2016/05/26/may-hails-benefits-of-sharia-as-inquiry-set-up-into-misuse-of-is/>> accessed 10 September 2017.

¹²⁸ Senay Boztas, ‘Sharia in the UK: The courts in the shadow of British law offering rough justice for Muslim women’ *The Independent* (London, 4 December 2015) <<http://www.independent.co.uk/news/uk/home-news/sharia-in-the-uk-the-courts-in-the-shadow-of-british-law-offering-rough-justice-for-muslim-women-a6761221.html>> accessed 9 September 2017.

In the United States however, things are very different indeed. In complete disregard of the First Amendment to the United States Constitution¹²⁹ (adopted on 15 December 1791), and one of the ten amendments that constitute the US Bill of Rights¹³⁰ prohibiting the making of *any* law respecting an establishment of religion¹³¹, various individual states have now ‘banned Sharia law’¹³². They have passed some form of ballot measure that: “...*prohibits the states courts from considering foreign, international or religious law*”¹³³. As of 2014, these include Alabama, Arizona, Kansas, Louisiana, North Carolina, South Dakota and Tennessee¹³⁴.

Would the United States deny a trial based on Sharia Law to Osama Bin Laden? Absolutely they would. It is my opinion that if the US judicial system were to have jurisdiction over the trial of Bin Laden, they would insist on the proceedings being carried out under the auspices of the state law where the trial was heard – most probably New York state law – and that any question of Sharia law would immediately be denied to the accused

¹²⁹ Unites States Congress, ‘First Amendment to the Unites States Constitution – 15 December 1791’ (congress.gov, 2017) <<https://www.congress.gov/content/conan/pdf/GPO-CONAN-REV-2016-10-2.pdf>> accessed 7 September 2017.

¹³⁰ United States Bill Of Rights Institute, ‘The Bill Of Rights – 15 December 1791’ (billofrightsinstitute.org, 2017) <<https://www.billofrightsinstitute.org/founding-documents/bill-of-rights/>> accessed 7 September 2017.

¹³¹ Bobby Caina Calvan, ‘Montana Governor Rejects Bill Banning Sharia Law In Courts – 6 April 2017’ (usnews.com, 2017) <<https://www.usnews.com/news/best-states/montana/articles/2017-04-06/montana-governor-rejects-bill-banning-shariah-law-in-courts>> accessed 8 September 2017.

¹³² Kimberley Railey, ‘More states move to ban foreign law in courts’ *USA Today* (McLean, Virginia, 4 August 2014) <<https://www.usatoday.com/story/news/nation/2013/08/04/states-ban-foreign-law/2602511/>> accessed 8 September 2017.

¹³³ Greg Garrison, ‘Amendment banning ‘foreign law’ in Alabama courts passes: will be added to Alabama Constitution – 5 November 2014’ (counterjihadreport.com, 2017) <<https://counterjihadreport.com/2014/11/05/amendment-banning-foreign-law-in-alabama-courts-passes-will-be-added-to-alabama-constitution/>> accessed 8 September 2017.

¹³⁴ Liz Farmer, ‘Alabama Joins Wave of States Banning Foreign Laws – 4 November 2014’ (governing.com, 2017) <<http://www.governing.com/topics/elections/gov-alabama-foreign-law-courts-amendment.html>> accessed 8 September 2017.

on the grounds that it would prejudice the trial in favour of his defence¹³⁵. All of which leads to the inevitable: would Osama Bin Laden be denied a trial based on Sharia law if it were held elsewhere – i.e. other than the United States?

That issue leads nicely into the next most important question that the accusers of Osama Bin Laden would have to face, once the issue of the indictment was determined: what jurisdiction would the trial be held under?



¹³⁵ Apart from anything else the American public would never be able to understand why a man being tried in New York for crimes committed in New York State should be allowed to be tried under what is to them a ‘foreign’ law.

Chapter Two

Jurisdiction & Mechanism

*"THERE CAN BE NO PEACE WITHOUT JUSTICE, NO JUSTICE WITHOUT LAW
AND NO MEANINGFUL LAW WITHOUT A COURT TO DECIDE WHAT IS JUST & LAWFUL
UNDER ANY GIVEN CIRCUMSTANCE"*

BENJAMIN BERELL FERENCZ, NUREMBERG PROSECUTOR, 1947



2.1. *What is jurisdiction?*

Just as important as where does the power come from to indict, is the question of what *jurisdiction*¹³⁶ would that person be tried under? The power of a court to adjudicate cases and issue orders, along with in what territory a court or government may exercise that power, is one of the most fundamental questions of law. As I have shown, the question of where the power comes from to indict an individual acting outside the rule of law, is a legally complicated, but a vital step in the process of bringing an individual such as Osama Bin Laden to trial. However, in resolving that issue, further, problematic legal matters are immediately brought to light which require very careful scrutiny, in order to legitimise the power of the court.

¹³⁶ Latin: ‘*iuris*’ meaning ‘law’, and ‘*dicere*’ meaning ‘to speak’; it is the practical authority granted to a legal body to administer justice within a defined field of responsibility; colloquially, it is used to refer to the geographical area to which such authority applies.

Any court *only* possesses jurisdiction over matters to the extent granted to it by its constitution, and/or the legislation of the sovereignty on behalf of which it functions. For nearly half a century – almost as long as it had been in existence – the United Nations openly recognised the need for a permanent international criminal court, and yet it laboured under mountains of bureaucracy in an effort to determine what jurisdiction such a court would have. Until the Rome Statute of 1998¹³⁷, this procrastination prevented the creation of the ICC; but even today, fundamental questions remain unanswered as to the extent of the jurisdiction of the ICC.



Figure 9. The International Criminal Court in The Hague

¹³⁷ United Nations General Assembly resolution: Rome Statute establishing the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2178 UNTS 90 (un.org, 2017) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en> accessed 2 September 2017.

When the Rome Statute establishing the International Criminal Court (ICC Statute)¹³⁸ was originally drafted¹³⁹, it embraced within its preamble those five crimes which were supposed to be crimes of last resort – the ‘*ultima ratio*’¹⁴⁰ of human nature – and *included* ‘acts of terrorism’, along with ‘war crimes’, ‘crimes against humanity’, ‘aggression as a crime’ and ‘genocide’. To the layperson, the addition of ‘acts of terrorism’ would appear to be an obvious and sensible inclusion within the jurisdiction of the ICC. From a legal perspective however, this requires much closer examination of the relationship between terrorism and international criminal law.

One of the main problems of the international ad hoc-tribunals in The Hague (ICTY¹⁴¹), and Arusha (ICTR¹⁴²), as well as that of the permanent International Criminal Court, concerns the conflict between national security and the secrecy interests of sovereign States. These concerns arise particularly in matters pertaining to terrorism, not only in the legal proceedings as a result of evidential interests, but also in the necessary transparency required by the court hearing the case¹⁴³. While *any* international criminal

¹³⁸ *ibid*

¹³⁹ United Nations Press Release, ‘UN Diplomatic Conference Concludes in Rome With Decision to Establish Permanent International Criminal Court 20 July 1998 (citing statements by representatives concerning the inclusion of terrorism within the jurisdiction of the ICC)’ UN Doc L/2889 20 July 1998 (un.org, 2017) <<http://www.un.org/press/en/1998/19980720.l2889.html>> accessed 2 September 2017.

¹⁴⁰ Latin: meaning ‘The last resort’; short form for the metaphor: “*The Last Resort of Kings and Common Men*”, referring to the act of declaring war.

¹⁴¹ United Nations, ‘International Criminal Tribunal for the Former Yugoslavia’ (un.org, 2017) <<http://www.icty.org/>> accessed 3 September 2017.

¹⁴² United Nations, ‘International Criminal Tribunal for Rwanda’ (un.org, 2017) <<http://unictr.unmict.org/en/tribunal>> accessed 3 September 2017.

¹⁴³ Victor V. Rama, Michael Hor, Kent Roach & George Williams (eds.), *Global Anti-Terrorism Law and Policy* (2nd edn, Cambridge University Press, 2012)

court cannot succeed without necessitous competence for gathering evidence, it also cannot succeed if it fails to take account of legitimate national security interests¹⁴⁴.

Customary international law¹⁴⁵ of course embodies: “...*the inherent values and interests of the community of nations*”¹⁴⁶. It dictates that conduct violating basic human rights in ways that: “...*deeply shock the conscience of humanity*”¹⁴⁷ constitute international crimes “...*of concern to the ‘international community as a whole’*”¹⁴⁸. In such events, the international community is sanctioned with power given to it through the United Nations Security Council¹⁴⁹, thus it acquires a legitimate¹⁵⁰ right to intrude upon the sovereignty of any nation¹⁵¹, and may take such punitive steps such as use of force, economic sanctions, establishing an ad-hoc tribunal or authorising a national or international force to arrest an

¹⁴⁴ Herwig Roggemann and Petar Šarčević (eds.), *National Security and International Criminal Justice* (1st edn, Brill, 2002)

¹⁴⁵ Jordan J. Paust, The Importance of Customary International Law during Armed Conflict (2005-2006) *International Law Students Association Journal of International and Comparative Law* 12(2) Spring 2006 {601-602: noting that customary international law is based in general on dynamic patterns of *opinio juris* and practice, but when a customary norm comes into existence it is universally accepted} <<http://heinonline.org.proxy.library.lincoln.ac.uk/HOL/Page?handle=hein.journals/ilsaic12&id=1&size=2&collection=journals&index=journals/ilsaic>> accessed 7 September 2017.

¹⁴⁶ Otto Triffterer, (Herwig Roggemann and Petar Šarčević, eds.), ‘Security Interests of the Community of States, Basis and Justification of an International Criminal Jurisdiction versus ‘Protection of National Security Information’, Article 72 Rome Statute’ (2002) *National Security & International Criminal Justice* 63 (2002)

¹⁴⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2178 UNTS 90 (un.org, 2017)

¹⁴⁸ Otto Triffterer, (Herwig Roggemann and Petar Šarčević, eds.), ‘Security Interests of the Community of States, Basis and Justification of an International Criminal Jurisdiction versus ‘Protection of National Security Information’, Article 72 Rome Statute’ (2002) *National Security & International Criminal Justice* 63 (2002)

¹⁴⁹ United Nations, ‘Charter of the United Nations, Chapter V – The Security Council, Article 24, 24 October 1945’, 1 UNTS XVI, V(24) <<http://legal.un.org/repertory/art24.shtml>> accessed 7 September 2017

¹⁵⁰ Anne-Marie Slaughter, ‘Pre-emptive justice: use courts, not combat, to get the bad guys’ *The New York Times* (New York, 20 November 2003) <<http://www.nytimes.com/2003/11/20/opinion/preemptive-justice-use-courts-not-combat-to-get-the-bad-guys.html?mcubz=0>> accessed 30 August 2017.

¹⁵¹ Adherence to operative international law, two bodies of public international law directly regulate a state’s use of armed force: the ‘*jus ad bellum*’ and ‘*jus ad bello*’, which govern the right to use force and the type and degree of force used in an armed conflict; the UN Charter dictates that Article 2(4)’s use of force prohibition is an obligation ‘*erga omnes*’ – although the threat of international terrorism has given rise to security imperatives that strain the classic ‘*jus ad bellum*’.

indicted suspect¹⁵². The use of the Security Council therefore would appear, at least initially, to give Bin Laden's accusers the power to bring a legal and legitimate indictment against him, and the jurisdiction to act upon it.

However, Osama Bin Laden, or any one of his legal team worth their salt would quickly argue that terrorism itself is not a crime against international law, for the simple reason that it has proved politically impossible to formulate a satisfactory 'definition of terrorism'¹⁵³. With no such definition, you cannot have jurisdiction. That said, the absence of jurisdiction over 'terrorist acts' under the universality principle of customary international law, does not preclude Bin Laden's prosecution under United States laws implemented through obligations under the 1999 Montreal Convention¹⁵⁴.

In his seminal presentation given in New York in May 1978, Brian Jenkins pointed out: "*The difficulty of defining terrorism has led to the cliché that one man's terrorist is another man's freedom fighter*"¹⁵⁵; and, despite numerous efforts undertaken by academic

¹⁵² Luz E. Nagle, 'Should Terrorism Be Subject to Universal Jurisdiction?' (2010) *Santa Clara Journal of International Law* 8(1) 87-100 2010

¹⁵³ Anne-Marie Slaughter, 'Pre-emptive justice: use courts, not combat, to get the bad guys' *The New York Times* (New York, 20 November 2003) <<http://www.nytimes.com/2003/11/20/opinion/preemptive-justice-use-courts-not-combat-to-get-the-bad-guys.html?mcubz=0>> accessed 30 August 2017.

¹⁵⁴ Montreal Convention 1999 (formerly, The Convention for the Unification of Certain Rules for International Carriage by Air) <https://www.iata.org/policy/Documents/MC99_en.pdf> accessed 22 September 2017.

¹⁵⁵ "*The term terrorism has no precise or widely-accepted definition. The problem of defining terrorism is compounded by the fact that terrorism has recently become a 'fad' word, used promiscuously and often applied to a variety of acts of violence which are not strictly terrorism by definition. It is generally pejorative. What is called 'terrorism' thus seems to depend on one's point of view. The difficulty of defining terrorism has led to the cliché that one man's terrorist is another man's freedom fighter. That phrase implies that there can be no objective definition of terrorism, that there are no universal standards of conduct in peace and war. That, of course, is simply not true*" Brian Michael Jenkins (The Rand Corporation), 'The Study of Terrorism: Definitional Problems' (1978) {Presented at the 1978 Annual Meeting of the Institute of Management Sciences and Operations Research Society of America, New York, 3 May 1978} <<https://www.rand.org/content/dam/rand/pubs/papers/2006/P6563.pdf>> accessed 29 August 2017.

circles, advisors and consultative bodies, as well as by individual States, international organisations and their various legal counsel, some forty years after that speech was given, we *still* do not have a universally agreed definition of ‘what is terrorism’?¹⁵⁶.

Why is this such a problem? The Swiss-born, Dutch scholar in Terrorism Studies and former Officer in Charge of the Terrorism Prevention Branch of the United Nations, Doctor Alex P. Schmidt argues that terrorism *can* be ‘defined’ (I use the word loosely), but in four different ways, depending upon which social group you are a part of: academics, authorities, societies and the terrorists themselves¹⁵⁷. The academics try (but usually fail), to maintain as objective an attitude as possible towards terrorism. The authorities frequently fall victim to terrorist attacks on the one hand, while combatting terrorists and terrorism on the other. Society (as a generalisation), will always either support or condemn terrorism and terrorist acts (depending upon where you live). While the terrorists themselves habitually perceive ‘terror’ as the only possible way to either defend their rights and interests, or publicise their cause and demands¹⁵⁸.

Depending upon which of these four groups you find yourself in, the legality – or otherwise – and the legitimacy – or otherwise – of any indictment brought against an individual such as Osama Bin Laden has very significant, and indeed very different legal consequences in terms of jurisdiction.

¹⁵⁶ Sebastian Wojchiewski, ‘Why is it so difficult to define terrorism?’ (2009) *Polish Political Science Yearbook* 38(1) 58-72, 2009 <<http://www.marszalek.com.pl/yearbook/docs/38/psy2009005.pdf>> accessed 30 August 2017.

¹⁵⁷ Alex P. Schmidt & Albert J. Longman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature* (1st edn, Transaction Publishers, 2005)

¹⁵⁸ *ibid*

Having said that, most terrorist acts would of course constitute crimes against humanity – particularly if they were committed as part of a widespread or systematic attack directed against any civilian population like 9/11, and the many other acts attributed to al-Qaeda. Over the past fifty years, two developments have made it possible to focus international attention specifically on leaders who perpetrate atrocious crimes against their own people and others. The most prominent has been the rise of Human Rights laws in countries where international humanitarian law has traditionally been absent, and the bringing of the government and individuals of that country who break international human rights laws to accountability¹⁵⁹.

The second development has been the rise in the number of civilians, including women and children, who have been deliberately killed by jihadists as legitimate targets¹⁶⁰. It is this second development which has been the most disturbing, causing elected governments all over the world to rapidly re-think their laws on terrorism – and indeed the definition or otherwise of ‘what is terrorism’, if only in the wake of the growing numbers of their citizens who are being slaughtered. And yet, both the UN and the ICC still struggle with a definition for ‘what is terrorism’? As a result, when the Rome Statute was finally agreed, the fifth *ultima ratio* crime, ‘acts of terrorism’ was *removed* from its jurisdiction¹⁶¹.

¹⁵⁹ Anne-Marie Slaughter, ‘Pre-emptive justice: use courts, not combat, to get the bad guys’ *The New York Times* (New York, 20 November 2003) <<http://www.nytimes.com/2003/11/20/opinion/preemptive-justice-use-courts-not-combat-to-get-the-bad-guys.html?mcubz=0>> accessed 30 August 2017.

¹⁶⁰ *ibid*

¹⁶¹ In 1994 the United Nations General Assembly recognised that the terrorism was ‘criminal and unjustifiable’. The Convention for the Suppression of the Financing of Terrorism was signed in 1999, provide the first common definition of terrorism. Article 2 (1) (b) refers to ‘terrorism’ as an act intended to cause death or serious bodily injury to a civilian, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do

This is why the issue of jurisdiction is so critical to the legitimacy of – and therefore any verdict reached – by that court.



2.1.1 Where should such trials be heard?

International co-operation promoting a collective security for Europe originated in the years following the French Revolutionary¹⁶² and Napoleonic Wars¹⁶³. The ‘Congress of Vienna’, held between November 1814, and June 1815¹⁶⁴ was a meeting of the Four Great Powers of Europe (Great Britain, Austria, Russia and Prussia: the French represented by ministers of the newly restored¹⁶⁵ Bourbons), in an attempt to maintain the *status quo* between European states, and so avoid war. The stated goal of the congress was to: “...provide a long-term peace plan through the early settlement of critical issues”¹⁶⁶, and

or to abstain from doing any act. However, United Nations Security Council resolution (UNSC) 1368 (2001) categorised terrorism as a threat to international peace and security. Thus, UNSC in its resolution 1624 (2005) calls upon every state to adopt such measures in accordance with their obligations under international law to (a) prohibit by law encouragement to carry out a terrorist act; (b) prevent such conduct; (c) refuse safe haven for that very purpose. The majority states have their personal, domestic definitions; the UNSC has adopted resolutions to explain terrorism but do not present an obvious meaning of it. The ICC jurisdiction simply over natural persons, hence any claims against states in the respect of terrorism cannot be brought before the ICC. One more part of the clash, as it touches the sensitive issue of right to self-determination.

¹⁶² The French Revolutionary Wars (1789-1799)

¹⁶³ The Napoleonic Wars (1803-1815)

¹⁶⁴ The Congress of Vienna was held in Vienna between November 1814 (following the restoration of the Bourbons to power), and June 1815, when Napoleon was finally defeated at the Battle of Waterloo.

¹⁶⁵ Treaty of Paris, 30 May 1814

¹⁶⁶ Acte de Congres de Vienne, le 9 Juin 1815, Annex II <<https://www.dipublico.org/100513/final-act-of-the-congress-of-viennageneral-treaty-1815/>> accessed 3 September 2017.

succeeded over the following decades because it did not simply restore the old boundaries, but resized the main powers, so they could balance each other and remain at peace¹⁶⁷.

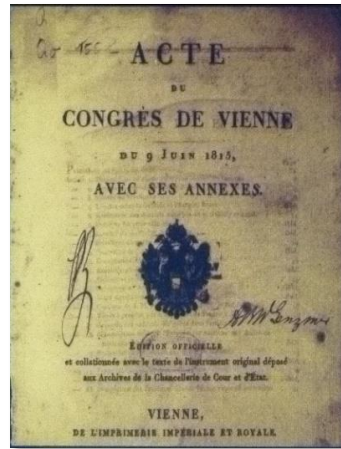


Figure 10. Frontispiece of the Congress of Vienna, 1815

Lasting nearly forty years, the ‘*Concert of Europe*’ as it was known, was a period that saw the rapid development of international law as we understand it today. In 1864, the first Geneva Convention¹⁶⁸ established laws dealing with humanitarian relief during wartime; and the international Hague Conventions of 1899¹⁶⁹, and 1907¹⁷⁰, governed the rules of war, and the peaceful settlement of international disputes.

Proposed as far back as 1937, The League of Nations wanted a purpose-built and permanent International Criminal Court with the power to indict and prosecute individuals,

¹⁶⁷ Acte de Congrès de Vienne, le 9 Juin 1815, Annex XXII <<https://www.dipublico.org/100513/final-act-of-the-congress-of-viennageneral-treaty-1815/>> accessed 3 September 2017.

¹⁶⁸ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, adopted 22 August 1864 (entered into force, 22 June 1865).

¹⁶⁹ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899 (entered into force, 4 September 1900).

¹⁷⁰ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (entered into force, 26 January 1910).

and a remit to deal specifically with acts of terrorism¹⁷¹. The Convention for the Prevention and Punishment of Terrorism¹⁷², held in Geneva in November 1937, goes as far as listing a whole series of ‘acts of terrorism’¹⁷³, and describing them as: “...*criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public*”¹⁷⁴.

However, while it may have been conceived with the best of intentions – post-Versailles – the League of Nations soon discovered that it was utterly toothless as an international legal peacekeeper without an army of its own to enforce its resolutions or economic sanctions. The League depended completely upon the armed forces of the victorious Great Powers of World War One (France, the British Empire, Italy and Japan: the permanent members of the Executive Council, whose role, in theory, was to guarantee the protocols of the League, through force if necessary). However, the Great Powers were (quite naturally), more than reluctant to commit to further armed conflict, simply in order to enforce League of Nations dictums.

¹⁷¹ From the French ‘*Terreur*’, derived from the Latin verb ‘*Terrere*’ meaning ‘*To frighten*’. During the French Revolution, ‘*La terreur*’ (‘*Reign of Terror*’) was used to describe the period between June 1793, and July 1794, when some 16,000 citizens were officially executed.

¹⁷² League of Nations, ‘Convention for the Prevention and Punishment of Terrorism – Geneva, 16 November 1937’ <<https://www.wdl.org/en/item/11579/view/1/1/>> accessed 3 September 2017.

¹⁷³ (1) Any wilful act causing death or grievous bodily harm or loss of liberty to: (a) Heads of States, persons exercising the prerogatives of the head of State, their hereditary or designed successors; (b) The wives or husbands of the above-mentioned persons; (c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity; (2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party; (3) Any wilful act calculated to endanger the lives of members of the public; (4) Any attempt to commit an offence falling with the foregoing provisions of the present article; (5) The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article. League of Nations, ‘Convention on the Prevention and Punishment of Terrorism – Article 2 – Geneva, 16 November 1937’ <<https://www.wdl.org/en/item/11579/view/1/7/>> accessed 3 September 2017.

¹⁷⁴ League of Nations, ‘Convention on the Prevention and Punishment of Terrorism – Article 1.2 – Geneva, 16 November 1937’ <<https://www.wdl.org/en/item/11579/view/1/7/>> accessed 3 September 2017.

Of the 42 founder members of the League in 1920, seven withdrew during the 1930s including Germany, Italy and Japan, so that by the time the Geneva convention took place at the end of 1937, acts of terrorism were being committed – un-checked – all over the world: in Spain¹⁷⁵, China¹⁷⁶, Abyssinia¹⁷⁷, the Greater Empire of Manchuria¹⁷⁸ and Manchukuo¹⁷⁹, Imperial Japan¹⁸⁰ and in the Soviet Union¹⁸¹. Nazi Germany had already implemented the Nuremberg Laws¹⁸², and within a few more years the Second World War would begin, effectively bringing an end to the League of Nations as a viable body.

International law as we now know it, is enshrined in the Charter of the United Nations, formed in 1945. Article 2, paragraph 4 of that Charter states: “...*all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”¹⁸³. These laws, and those from Articles 35¹⁸⁴, 51¹⁸⁵

¹⁷⁵ The Spanish Civil War (1936-1939)

¹⁷⁶ Second Sino-Japanese Wars (1937-1945)

¹⁷⁷ Second Italo-Abyssinian War (1935-1936)

¹⁷⁸ The Greater Empire of Manchuria (1934-1945), Japanese Invasion of Manchuria (1931-1932)

¹⁷⁹ Manchukuo (Late Showa 1931-1945)

¹⁸⁰ Empire of Japan expansion into Asia (1923-1945)

¹⁸¹ Union of Soviet Socialist Republics (CCCP) (1917-1945), the Winter War with Finland (1939)

¹⁸² Nazi Germany (1933-1945) ‘*Nürnberger Gesetze*’, German, meaning ‘*Nuremberg Laws*’ 15 September 1935

¹⁸³ United Nations, Charter of the United Nations (adopted, 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (un.org, 2017) <<http://www.un.org/en/charter-united-nations/>> accessed 23 August 2017.

¹⁸⁴ ‘Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977: Part III, Methods and Means of Warfare Combatant and Prisoner-Of-War Status, Section I, Methods and Means of Warfare: Article 35 ‘Basic Rules’ (un.org 2017) <<https://treaties.un.org/doc/publication/unts/volume%201125/volume-1125-i-17512-english.pdf>> accessed 21 August 2017.

¹⁸⁵ ‘Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977: Part IV, Civilian Population, Chapter II, Civilians and Civilian Population: Article 51 ‘Protection of the civilian population’ (un.org 2017)

and 57¹⁸⁶ of the 1949, Geneva Convention Relative to the Protection of Civilians in time of war¹⁸⁷, form what we now call International Humanitarian Law (IHL). Combined, they provide us with prohibitions which irrefutably reflect customary international law, that: “...embodies inherent values and interests of the community of nations”¹⁸⁸, even binding those States not signed up to the Geneva Convention (such as The United States of America).

After World War Two, the UN Charter established the International Court of Justice (ICJ), in The Hague, Netherlands, to continue the work of the Permanent Court of Justice set up in 1920, by The League of Nations; but, like its predecessor, the jurisdiction of the ICJ only allows it to resolve controversies arising between countries that are members of the UN, whereupon it can impose sanctions. The ICJ cannot prosecute individuals¹⁸⁹.

The victorious powers established the concept of the military tribunal at Nuremberg for that purpose, but cautious not to make the same mistakes that its predecessor had, the

<<https://treaties.un.org/doc/publication/unts/volume%201125/volume-1125-i-17512-english.pdf>> accessed 21 August 2017.

¹⁸⁶ ‘Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977: Part IV, Civilian Population, Chapter IV, Precautionary Measures: Article 57 ‘Precautions in attack’ (un.org 2017)

<<https://treaties.un.org/doc/publication/unts/volume%201125/volume-1125-i-17512-english.pdf>> accessed 21 August 2017.

¹⁸⁷ ‘Geneva Convention Relative to the Protection of Civilians in time of war, 12 August 1949’ (un.org 2017) <http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf> accessed 21 August 2017.

¹⁸⁸ Otto Triffterer, (Herwig Roggemann and Petar Šarčević, eds.), ‘Security Interests of the Community of States, Basis and Justification of an International Criminal Jurisdiction versus ‘Protection of National Security Information’, Article 72 Rome Statute’ (2002) *National Security & International Criminal Justice* 63 (2002)

¹⁸⁹ Richard J. Goldstone, ‘The Role of the United Nations in the Prosecution of International War Criminals’ (2001) *Washington University School of Law: Journal of Law & Policy* 5(2001) 119-127 <https://law.wustl.edu/harris/documents/p119_Goldstone.pdf> accessed 18 September 2017.

newly formed UN stopped short of actually creating a permanent international criminal court. Instead, it adopted the Convention on the Prevention and Punishment of the Crime of Genocide¹⁹⁰, agreed in Paris in 1948¹⁹¹, with article VI providing that persons charged with genocide: “...shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction”¹⁹². The word ‘competent’ however, was not elaborated on any further.

In that same resolution, the General Assembly invited the International Law Commission “...to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide”¹⁹³, and in 1951 that committee prepared a draft statute¹⁹⁴, and a revised draft statute in 1953¹⁹⁵. The intention was to set up: ‘...a competent tribunal’, dedicated to ‘ultima ratio’ crimes such as genocide. However, due to the absence of an overarching agreement being reached in respect of the definition of aggression, the UN General Assembly postponed examining the

¹⁹⁰ United Nations, ‘Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948’ UNGA Res/260 A (III); UN Treaty Series Vol.78, p277 (un.org, 2017) <<https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>> accessed 4 September 2017.

¹⁹¹ United Nations, ‘Convention on the Prevention and Punishment of the Crime of Genocide, Article 1: “Genocide is a crime under international law”, Paris, 9 December 1948’ UNGA Res/260 A (III); UN Treaty Series Vol.78, p277 (un.org, 2017) <<https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>> accessed 4 September 2017.

¹⁹² United Nations, ‘Convention on the Prevention and Punishment of the Crime of Genocide Article 6: “Persons charged with genocide shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction”, Paris, 9 December 1948’ UNGA Res/260 A (III); UN Treaty Series Vol.78, p277 (un.org, 2017) <<https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>> accessed 4 September 2017.

¹⁹³ ibid

¹⁹⁴ UNGA, International Court of Justice, ‘Advisory Opinion:- Reservations to the Genocide Convention – 28 May 1951’ I.C.J. Reports, 1951 ICJ 15, 1951 WL3 (ICJ) <<https://www.law.umich.edu/facultyhome/drwcabook/Documents/Documents/ICJ%20Advisory%20Opinion%20on%20Reservations%20to%20the%20Genocide%20Convention.pdf>> accessed 8 September 2017.

¹⁹⁵ Report of the 1953 Committee on International Criminal Jurisdiction, 27 July-20 August 1953

draft statute pending the adoption of an agreed definition. Since that time, the question of the establishment of a permanent international criminal court had only been considered periodically, until the outbreak of war in the former Yugoslavia in 1992. Even then, the UN stopped short of a permanent court, preferring to fall back on the old, but tried and tested military ‘tribunal’ model for the ICTY and ICTR.

Following its creation in 1998, President Bill Clinton had serious concerns about the possibilities of exposing and subjecting the US military and US citizens to the jurisdiction of the ICC. Not until 31 December 2000, did the US become a member by signing the Rome Treaty¹⁹⁶; but even before the statutes were fully adopted in July 2002, President George W. Bush, echoing the reserved sentiments of his predecessor, ‘unsigned’ the document¹⁹⁷. The New York Times called his action ‘bizarre’ and ‘dangerous’, with the President ‘teetering on the edge of brinkmanship’¹⁹⁸. The febrile atmosphere during the congressional debates¹⁹⁹ that had rumbled on for two and a half years leading to this withdrawal, were rooted in the fear that Americans might one day face prosecution and judgment by foreigners in The Hague, coupled with insecurity about their own legal and political systems being strong enough to prevent that from happening²⁰⁰. Simply put, they

¹⁹⁶ Mathew G. Ituma, ‘The Intersection of Law and Politics: The Case of the United States and the International Criminal Court – 8 May 2012’ (monitor.upeace.org, 2017)

<http://www.monitor.upeace.org/innerpg.cfm?id_article=905> accessed 14 September 2017.

¹⁹⁷ David J. Scheffer, ‘A Treaty Bush Shouldn’t ‘Unsign’’ *The New York Times* (New York, 6 April 2002) <<http://www.nytimes.com/2002/04/06/opinion/a-treaty-bush-shouldn-t-unsig.html?mcubz=0>> accessed 15 September 2017.

¹⁹⁸ *ibid*

¹⁹⁹ Bartram S. Brown, ‘U.S. Objections to the Statute of the International Criminal Court: A Brief Response’ (1999) *New York University Journal of International Law & Politics* 31(4) 857-891 1999 <http://www.pict-pecti.org/publications/PICT_articles/JILP/Brown.pdf> accessed 17 September 2017.

²⁰⁰ ‘Judging the ICC’ *The Los Angeles Times* (Los Angeles, 16 March 2009)

<<http://www.latimes.com/opinion/la-ed-icc16-2009mar16-story.html>> accessed 17 September 2017.

wanted the US to be able to investigate and try its own people, rather than subjecting them to an international criminal justice system that they had little control over²⁰¹.



2.2 History teaches us... so very little

As I have previously mentioned, historically, criminal law in the United States has been based upon a retributive justice system²⁰², under which: “...perpetrators commit crimes against the state, not against other people”²⁰³. Central to the retributive justice system is the concept of ‘just deserts’²⁰⁴ – essentially, the system makes sure that: “...offenders get what they deserve”²⁰⁵. Certainly that was the view taken by Juan E. Méndez, President of the International Center for Transitional Justice (ICTJ), who argued²⁰⁶ that: “...post-conflict nations with a heritage of human rights violations owe their victims four distinct duties: an obligation to justice; an

²⁰¹ Mazharul Islam, ‘Bringing terrorism under the ICC Jurisdiction’ *The Daily Star* (Dhaka, 6 September 2016) <<http://www.thedailystar.net/law-our-rights/law-vision/bringing-terrorism-under-the-icc-jurisdiction-1281304>> accessed 18 September 2017.

²⁰² Mica Estrada-Hollenbeck (Mohammed Abu-Nimer, ed.), *Reconciliation, Justice, And Coexistence: Theory And Practice: {The Attainment of Justice Through Restoration, Not Litigation}* (1st edn, Lexington, 2001)

²⁰³ *ibid*

²⁰⁴ Adil Ahmad Haque, ‘Group Violence and Group Vengeance: Toward a Retributivist Theory of International Criminal Law’ (2005) *Buffalo Criminal Law Review* 9(1) 273-328 <<http://nclr.ucpress.edu/content/9/1/273.full.pdf+html>> accessed 8 September 2017.

²⁰⁵ Howard Zehr, *The Little Book of Restorative Justice* (2nd edn, Good Books, 2014)

²⁰⁶ “The first of these is an obligation to do justice, that is, to prosecute and punish the perpetrators of abuses when those abuses can be determined to have been criminal in nature. The second obligation is to grant victims the right to know the truth. The third obligation is to grant reparations to victims in a manner that recognises their worth and their dignity as human beings. Finally, States are obliged to see that those who have committed the crimes while serving in any capacity in the armed or security forces of the State should not be allowed to continue on the rolls of reconstituted, democratic law-enforcement or security-related bodies”. Juan E. Méndez (A. James McAdams ed.), *Transitional Justice And The Rule Of Law In New Democracies {In Defense of Transitional Justice}* (1st edn, Notre Dame Press, 1997)

obligation to the victims to know the truth; an obligation to grant reparations to the victims; and, finally an obligation to ensure that those who served in any capacity when the crimes were committed, be forbidden from ever serving in a reconstituted nation”.

Regrettably, these ‘four duties’ are often viewed as antagonistic rather than complementary, and therefore the debate is equally often framed in terms of: “*truth versus justice*”²⁰⁷. The ‘truth versus justice’ argument is a complicated one²⁰⁸ and I don’t intend to explore it in any great depths here. Suffice to say that when applied to *any* justice system – particularly one intent on bringing despots like Adolf Hitler, Saddam Hussein and yes, Osama Bin Laden to trial – then the prosecution *must* at least be seen to be weighing up the ‘truth versus justice’ question, as one of the paramount purposes of the trial process.

Any State whose system is retributive in nature will, as a matter of course require that system to provide nothing more than the ‘justice’ element – i.e. ‘justice must be served’. The victims however, usually only require to be shown the simple truth, and therefore see ‘justice’ almost as an inevitable ‘by-product’ of the truth being found. However, as we have seen at the ICTY, and ICTR, as well as the on-going trial of Charles Taylor in Liberia, the elaborate criminal justice process that is a ‘show trial’ can often find that ‘the truth’ is lost or foregone, in the pursuit of blind justice.

²⁰⁷ Mô Bleeker & Jonathan Sisson ed., ‘Swiss Peace: Dealing with the Past – Critical Issues, Lessons Learned and Challenges for Future Swiss Policy’ (swisspeace.ch, 2004)
<http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP2_2004.pdf> accessed 22 August 2017.

²⁰⁸ Liesbeth Huppel-Cluysenaer & Nuno M. M. S. Coelho eds., *Aristotle and the Philosophy of Law: Theory, Practice and Justice* (1st edn, Springer, 2013)

At the trial of Saddam Hussein in Iraq, the subject matter of jurisdiction (in this case of the IHCC), was resolved through the adoption of the new Iraqi Constitution. In accordance with Article 1 of Iraqi Law 10²⁰⁹, the jurisdiction of the court was limited to certain types of crimes that were committed between 17 July 1968 (the date the Baath Party seized power in Iraq), and 1 May 2003 (the date the US declared a cessation of combat operations and therefore the cease of power of the Baath Party under Saddam Hussein). As the trial was essentially put together – initially at least – according to a military tribunal, the search for the ‘truth’ was not seen to be as important as that of justice being served.



2.2.1 Under what jurisdiction would Osama Bin Laden have been tried?

The question of what jurisdiction would Osama Bin Laden be tried under, would be one of the most fundamental for his accusers. Undoubtedly the Americans would have wanted him to appear in New York – which, considering that was where the tragedy of 9/11 had taken place, would seem the obvious place. The problem with any court sat in New York would be that a ‘fair trial’ would be out of the question. While it *might* be possible to indict Osama Bin Laden, and the US District Court Southern District of New York *might* have the jurisdiction to try him, there is no way that either Bin Laden or his defence team would allow his appearance there. It would be resisted vehemently, and any trial held in New York would soon degenerate into a kangaroo court.

²⁰⁹ Iraq Constitution 2005, Article 1, Law 10
<http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf> accessed 2 September 2017.

Just as likely however, would be very strong US resistance to *any* hearing held at the ICC or anywhere in The Hague... unless there were concessions that it be conducted under New York State law. There is precedent for such a trial²¹⁰: in the aftermath of the bombing of Pan Am Flight 103, the ‘Lockerbie bombers’ – Abdelbaset al-Megrahi and Lamin Khalifah Fhimah – were tried²¹¹ by a specially convened Scottish Court²¹², acting under the jurisdiction of Scottish Law, but sitting at The Hague²¹³.



Figure 11. ‘Lockerbie bomber’, Abdelbaset al-Megrahi, and the remains of Pan-Am Flight 103 in a Scottish field, 21 December 1988

²¹⁰ Upon the indictment of the two Libyan suspects in November 1991, the Libyan government was called upon to extradite them for trial in either the United Kingdom or the United States. Since no bilateral extradition treaty was in force between any of the three countries, Libya refused to hand the men over but did offer to detain them for trial in Libya, as long as all the incriminating evidence was provided. The offer was unacceptable to the US and UK. Libya eventually agreed to the demands to hand the two men over to Scottish Police over for trial, but made three stipulations: that they would not be interviewed by the police; no one else in Libya would be sought for the bombing; and, that the trial should be before three Scottish judges, sitting without a jury. The two accused denied all charges against them. There were three outline charges made: murder; conspiracy to murder; and, a breach of the Aviation Security Act 1982. The full charges included the names of all the murdered 259 passengers and crew of Pan Am Flight 103, and the eleven residents killed at Lockerbie in Scotland.

²¹¹ (between May 2000, and January 2001)

²¹² Derek Brown, ‘Lockerbie Trial: What Happened When?’ *The Guardian* (London, 31 January 2001) <<https://www.theguardian.com/uk/2001/jan/31/lockerbie.derekbrown>> accessed 16 September 2017.

²¹³ Cathy Comerford, ‘Lockerbie Trial Plan Agreed By Gaddafi’ *The Independent* (London, 26 August 1998) <<https://www.independent.co.uk/news/lockerbie-trial-plan-agreed-by-gaddafi-1174249.html>> accessed 18 September 2017.

The US-ICC relationship has been historically tumultuous²¹⁴. In the first two years following 9/11, the relationship between the ICC and the Bush administration was openly acrimonious as a result of what the Americans saw as a ‘soft approach’ by the international criminal system towards terrorism, and terrorists. Bush wanted to adopt the old system of military tribunals, if for no other reason than it would justify – in his eyes at least – what the rest of the world perceived as the tacitly illegal detention of terrorist suspects at Guantanamo Bay, who were being held without due process²¹⁵.



Figure 12. Images such as this from Guantanamo Bay do little to help the United States on the international stage

While the often uncomfortable, and at times hostile approach of the United States appeared to hinder prospects for ICC’s success in the early years of the Court’s existence, there is significant evidence that the ICC has weathered the challenge, and the attitude in

²¹⁴ Mark Kersten, ‘The US and the ICC: Towards A Closer Relationship?’ – 10 April 2011’ (justiceinconflict.org, 2017) <<https://justiceinconflict.org/2011/04/10/the-us-and-the-icc-towards-a-closer-relationship/>> accessed 13 September 2017.

²¹⁵ David Leigh, ‘Guantanamo Bay Files: Torture Gets Results, US Military Insists’ *The Guardian* (London, 25 April 2011) <<https://www.theguardian.com/world/2011/apr/25/guantanamo-files-qahtani-salahi-torture>> accessed 18 September 2017.

Washington under President Obama held promise for the future²¹⁶. That said, President Trump has yet to set his sights upon the ICC specifically²¹⁷, although his recent attacks upon the United Nations²¹⁸ and NATO²¹⁹ hardly bode well for future co-operation²²⁰.



2.3 *An absence of trial procedure & the marvel of mechanisms*

The independence²²¹ of any international tribunal or criminal court implies the ability of its members to maintain an objective, neutral and impartial stance towards both the parties, and the outcome of the dispute²²². There are those in the international legal justice system who would argue that criminal trials serve a very

²¹⁶ Mark Kersten, ‘The US and the ICC: Towards A Closer Relationship? – 10 April 2011’ (justiceinconflict.org, 2017) <<https://justiceinconflict.org/2011/04/10/the-us-and-the-icc-towards-a-closer-relationship/>> accessed 13 September 2017.

²¹⁷ David J. Lynch, ‘Trump sets sights on chance to reshape judiciary’ *The Financial Times* (London, 23 March 2017) <<https://www.ft.com/content/e21a45da-0f45-11e7-b030-768954394623>> accessed 19 September 2017.

²¹⁸ Clark Mindock, ‘Trump attacks UN human rights council for including human rights abusers – like US ally Saudi Arabia’ *The Independent* (London, 19 September 2017) <<http://www.independent.co.uk/news/world/americas/us-politics/trump-saudi-arabia-un-human-rights-council-attack-a7955996.html>> accessed 21 September 2017.

²¹⁹ Justin Huggler, ‘Trump demands Europe pay more toward NATO in excoriating speech at Brussels summit’ *The Telegraph* (London, 25 May 2017) <<http://www.telegraph.co.uk/news/2017/05/25/trump-demands-europe-pay-toward-nato-excoriating-speech-brussels/>> accessed 20 September 2017.

²²⁰ Mark Kersten, ‘The US and the ICC: Towards A Closer Relationship? – 10 April 2011’ (justiceinconflict.org, 2017) <<https://justiceinconflict.org/2011/04/10/the-us-and-the-icc-towards-a-closer-relationship/>> accessed 13 September 2017.

²²¹ “One of the most prominent questions raised in relation to the functioning of the ICTY and ICTR in the 1990s was whether or not those tribunals were free from political interference with their work? The question has, it must be said, a different dimension in relation to the ICC, because these two ad hoc tribunals were both ‘created’ by the UN Security Council, and therefore some loss of their independence was inevitable. This was clearly reflected in the ICTY’s response to the challenges on its supposedly independent functioning: the tribunal explicitly admitting that it was ‘wholly dependent’ upon the UN Security Council”.

²²² Miroslav Baros, The Establishment of the International Criminal Court: Institutionalising Expedience? (2003) *Hertfordshire Law Journal* 1(1) 58-72 <https://www.herts.ac.uk/_data/assets/pdf_file/0007/38626/HLJ_VIII_Baros.pdf> accessed 22 August 2017.

distinct function relative to non-judicial mechanisms, and that they are therefore the best solution for developing the rule of law in post-conflict societies such as the former Yugoslavia – which has proved to be an outstanding success story²²³.



Figure 13. The ICC has often been accused by the United States of being a Kangaroo Court

Just as pertinent however, is the detractors' argument that the same approach has been significantly less successful in Iraq; but, that could be offset by the obvious answer that Iraq was always going to be a 'longer-term-project'. The lessons learned during the trial of Saddam Hussein, and the subsequent development of the Iraqi legal system, today serve as the primary prosecutor of Islamic State terrorists²²⁴, and may yet provide the model for sustaining peace in post-conflict Syria²²⁵ – as, and when, that time comes²²⁶. The view

²²³ Jonathan I. Charney, 'The Impact On The International Legal System Of The Growth Of International Courts And Tribunals' (1999) *New York University Journal of International Law & Politics* 31(4) 857-891 1999 <http://www.pict-pecti.org/publications/PICT_articles/JILP/Charney.pdf> accessed 17 September 2017.

²²⁴ Yolande Knell, 'Inside the Iraqi courts sentencing IS suspects to death – BBC News, 2 September 2017' <<http://www.bbc.co.uk/news/world-middle-east-41110412>> accessed 12 September 2017.

²²⁵ Imad Salamey, 'Forecasting a sustainable model for post-conflict Syria – 13 September 2017' (lau.edu.lb, 2017) <http://www.lau.edu.lb/news-events/news/archive/forecasting_a_sustainable_mode/> accessed 22 September 2017.

²²⁶ M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability* (1996) *Duke Law & Contemporary Problems* 59(4) 9-28 (Autumn 1996)

also exists that punishment for gross human rights violations is not only preferable to non-judicial mechanisms, but may be mandatory under international treaties to which a State is a signatory²²⁷.

All of this however, must be weighed against the constant accusation that if there was a prize for the world's most ineffective institution, the International Criminal Court would win hands down. Consider this: The court has been in operation for fifteen years, it has spent over a billion Euros, and yet thus far has only convicted four war criminals²²⁸. Of course the paradox at the heart of the ICC's existence is that it *only* has jurisdiction over the 124 member States who have signed the Rome Treaty – the irony being that most States likely to commit war crimes, don't join the ICC! The 'big three' – Russia, China and the United States – have all refused to join, concerned – they say – about 'accountability'²²⁹.

That said, the relevance of these four prosecutions and other accountability measures to the pursuit of peace, is that through their effective application they do serve as a deterrence, and thus prevent future victimisation. The costs may well be high. The process may well be slow. And it may be that in the beginning there was a distinct absence of trial procedure; but, through 'trial and error' {*no pun intended*}, the ICC has learned what works and what does not. And, along the way, the ICC has discovered that its relevance to justice

<<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1013&context=lcp>> accessed 3 September 2017.

²²⁷ Francisco Forrest Martin, Stephen J. Schnably, Richard Wilson, Jonathan Simon and Mark Tushnet, *International Human Rights and Humanitarian Law: Treaties, Cases & Analysis* (1st edn, Oxford University Press, 2011)

²²⁸ Richard Galustian, 'The International Criminal Court is the Antithesis of Justice – 22 August 2017' (ronpaulinstitute.org, 2017) <<http://www.ronpaulinstitute.org/archives/featured-articles/2017/august/22/the-international-criminal-court-is-the-antithesis-of-justice/>> accessed 22 September 2017.

²²⁹ *ibid*

is self-evident. How? Simply imagine a world where the four war criminals who have been jailed by the ICC, were still running about the planet, free!



Chapter Three

The State-less Individual

*"The end of law is not to abolish or restrain,
but to preserve and enlarge freedom.
For in all the states of created beings capable of law,
where there is no law, there is no freedom"*

John Locke, *Second Treatise of Government*, 1689



3.1 *Creating a human rights model for the stateless individual*

This research brought about the realisation that a relatively unknown, and little investigated area of human rights law has been uncovered – that of the ‘State-less Individual’. Despite in-depth online study, there is very little²³⁰ that has been written about – for obvious reasons I accept – persons whose human rights are affected as a direct result of them being of ‘State-less’ status. For the purpose of clarification: I am *not* talking about refugees here – their human rights are well

²³⁰ The vast majority of what has been written dwells on the subject of definition, as opposed to their expectation of and application to their human rights: i.e.

documented²³¹ and remain intact²³². No, this is a different individual altogether: one like Osama Bin Laden who, for whatever reasons, has foregone the umbrella of protection of his human rights by way of birth (in his case Saudi Arabia), and has adopted a persona operating outside the commonly accepted norms of the rule of law.

According to the UNHCR, the international legal definition of a ‘stateless person’ is: “...*a person who is not considered as a national by any State under the operation of its law*”²³³. In simple terms, this means that a stateless person does not have a nationality of any country. Some people are born stateless, yet others become stateless²³⁴; and, for various reasons, some people *choose* to become stateless. It is these people – in this last category – which I am concerned with. Osama Bin Laden, was one such stateless person – by choice... or was he? The word ‘choice’ implies a conscious decision, and Bin Laden never made such a decision. Yes, he chose to leave his native Saudi Arabia and to live outside the rule of law initially in Sudan and later in Afghanistan and Pakistan, but I am quite certain that his argument would be that his ideology offered no alternative. Is he therefore a ‘stateless person through choice’, a ‘freedom fighter’ or just another political refugee?

The UNHCR *has* had a mandate for stateless persons ever since the office was established in 1950. Originally, that mandate only extended to stateless persons who were

²³¹ UNHCR, ‘1951 Convention Relating to the Status of Refugees, adopted 1 January 1951, entered force 22 April 1954’ United Nations, Treaty Series, vol.189, p.137

<<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>> accessed 21 September 2017.

²³² UNHCR, ‘1967 Convention Relating to the Status of Refugees, adopted 31 January 1967, entered into force 4 October 1967’ United Nations, Treaty Series, vol.606, p.267

<<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>> accessed 21 September 2017.

²³³ UNHCR, ‘Ending Statelessness’ <<http://www.unhcr.org/uk/stateless-people.html>> accessed 21 September 2017.

²³⁴ *ibid*

refugees but who *did have* a nationality, known as: ‘*de facto stateless*’²³⁵; they differ from refugees who do not have a nationality at all; they are: ‘*de jure stateless*’. It is an important distinction to make that, whereas *all* refugees are stateless, many stateless persons are *not* refugees²³⁶. The ‘protection’ afforded to nationals while abroad is based upon international law, and the principle of reciprocity. In many cases there exist bilateral treaties between two States regulating the legal status of their nationals residing in the territory of the other. But even where no such specific treaties exist, a national residing abroad enjoys – according to the general principles of international law – the protection of the consular and diplomatic representatives of the country of his nationality. *De jure stateless* persons are deprived of this ‘protection’; although their sojourn *may* come under the general provisions

²³⁵ This definition of a *de facto stateless* persons is slightly self-contradictory, since it refers at one and the same time to persons who have left the country of which they were nationals, and to those persons amongst them who renounce the protection of the country of which they are nationals. However, it is clear from the context that all *de facto stateless* persons are by definition outside the country of which they are nationals, whereas persons who are not nationals of any State, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one are defined by the Study as *de jure stateless*.

²³⁶ In 1930, the Hague Conference for the Codification of International Law convened by the League of Nations adopted the Convention on Certain Questions relating to the Conflict of Nationality Laws. The Convention included a number of provisions aimed at reducing some of the causes of statelessness. These provisions were supplemented by the 1930 Protocol relating to a Certain Case of Statelessness, also adopted by the Hague Conference, Article 1 of which provided: In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State. With a view to determining certain relations of stateless persons to the State whose nationality they last possessed, the Hague Conference also adopted a Special Protocol concerning Statelessness, which provided in Article 1 that: If a person, after entering a foreign country, loses his nationality without acquiring another nationality, the State whose nationality they last possessed is bound to admit them, at the request of the State in whose territory they are: (i) if they are permanently indigent either as a result of an incurable disease or for any other reason; or (ii) if they have been sentenced, in the State where they are, to not less than one month’s imprisonment and has either served their sentence or obtained total or partial remission thereof. In the first case the State whose nationality such person last possessed may refuse to receive them, if it undertakes to meet the cost of relief in the country where they are as from the thirtieth day from the date on which the request was made. In the second case the cost of sending them back shall be borne by the country making the request. This latter Protocol never entered into force because it did not receive the required minimum ten ratifications. It was not until after the Second World War that international action was taken to establish a protection regime specifically for *de jure stateless* persons. Until then, action had been taken only to address the protection needs of certain categories of refugees.

made by a sovereign State in respect of ‘aliens residing on its territory’²³⁷. Therefore, in respect of their human rights, the question to be asked of a *de jure stateless* individual, is: “...should there be any expectation of human rights by that individual?”.

If we accept that *the* fundamental tenet of *all* human rights issues, is that *all* human beings – regardless of their actions and crimes (or status) – are entitled to human rights of some kind, then that answers the question. Or does it? What expectation in respect of his human rights would a man such as Osama Bin Laden have had from those who would be his accusers? He must have seen the pictures of detainees at Guantanamo Bay, held for years by the United States, with no sign of due process, and in many cases subjected to torture and other deprivation processes. We must therefore consider the possibility that: if a *de jure stateless* person living outside of the rule of law has no expectations of their human rights from their accusers, then why should we as human beings grant them any human rights at all?²³⁸

²³⁷ Such a person is generally under a so-called ‘*régime de tolérance*. They can be expelled by administrative measure or by Court decree, in some countries even if they are not in possession of a valid entry permit into another country. They are unable to get a national passport as a valid travel document enabling them to move from one country to the other. Frequently they are unable to move freely from one part of the country to the other (*résidence assignée*, internment, etc.). Very often they are refused access to the labour market, and thus deprived of the possibility of earning a livelihood. Even civil acts like marriage and divorce, conclusion of contracts, and acquisition and possession of real estate may be impossible for *de jure stateless* persons, or cause them great inconvenience and expense. Besides *de jure stateless* persons there are also at present an increasing number of *de facto stateless* persons. These, too, are ‘unprotected persons’, as they do not enjoy in fact the ‘protection’ of any Government, although they may not have been formally denationalised by the State of their nationality.

²³⁸ The, UNHCR’s refugee mandate covers *de facto stateless* persons who fall within the 1951 Convention/1967 Protocol refugee protection regime, as well as the vast majority of *de facto stateless* persons who are covered by regional complementary protection regimes. If UNHCR does indeed have a general mandate for addressing *de facto statelessness*, then the only persons falling within that mandate who do not already come within the Office’s refugee mandate are: (1). Persons outside the State of their nationality – who do not qualify for refugee status; and – who in the State of their nationality face a real risk of serious harm not resulting from generalized violence or events seriously disturbing public order; and – who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that State; or (2). Persons outside the State of their nationality – who do not qualify for refugee status; and – who are unable avail themselves of protection owing to, at a minimum, being unable to return to the State of their nationality.

By their own admission, the UNHCR needs to do far more work in the area of expectation of human rights for *de jure stateless* persons, and that is a matter for another time and not this study; but it is a fascinating prospect that as well as choosing to live outside of the rule of law, Osama Bin Laden might also have foregone any expectation of human rights, from his fellow human beings²³⁹.



3.1.1 ‘Show Trials’: a pulpit for terrorists?

As I have stated, history, sadly, provides us with very little in example when it comes to ‘show trials’. Hitler, Mussolini, Stalin *et al.*, all would have provided the legal minds of today with ample study-material had they succumbed to court and world justice. Even where opportunity knocked, as in the recent cases surrounding the possible arrest and detention (or otherwise), of Pinochet, Amin, and perhaps even Gaddafi, the legal process was denied for one reason or another. We must therefore take, as our lesson, from those rare events which have offered us an insight into how a ‘show trial’ should be conducted, and hopefully learn from the pitfalls encountered by the ICTY, ICTR, ICC and of course the IHCC.

²³⁹ UNHCR, ‘Ending Statelessness’ <<http://www.unhcr.org/uk/stateless-people.html>> accessed 21 September 2017.

What then constitutes a ‘show trial’? Well, first there is the accepted notion that such a trial will have an ‘element of expectation’ in respect of its outcome. There was never really any doubt of conviction at the trial of Saddam Hussein. The same could be said of the trial of Osama Bin Laden, or, for that matter, any of the despots that I have thus far listed. The second element that constitutes the definition for a ‘show trial’ is however much more controversial and, from a legal perspective, far more contentious – that of the focus upon the audience *outside* of the courtroom, rather than on the accused standing in it²⁴⁰.

If we imagine for one moment that the first element can be considered as a ‘reduction in risk to the authorities’, then the second element is surely the “show” in ‘show-trial’. Not to put too fine a point on it, it is: “...*the extent to which the trial is designed (or managed), for the benefit of external observers, rather than securing justice for the defendant*”²⁴¹. This is not in any way to be confused with the aforementioned issue of ‘*truth versus justice*’; this is a ‘different beast’ altogether. The “show” element here, is undoubtedly self-serving, unpredictable and possibly even detrimental to the eventual outcome of the trial – which was exactly what happened in the case of Saddam Hussein, and to some extent the trial of Adolf Eichmann. The law becomes immaterial to the audience who, over time, are drawn-in by the drama of the ‘show’, so that they lose all track of the purpose of the trial. If this ‘show’ element is so unpredictable, why do we risk all by allowing it in the first place?

²⁴⁰ Jeremy Peterson, ‘Unpacking Show Trials: Situating the Trial of Saddam Hussein’ (2007) *Harvard International Law Journal* 48(1) Winter 2007 <http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_48-1_Peterson.pdf> accessed 4 September 2017.

²⁴¹ *ibid*

One of the greatest paradoxes of human nature is that while mankind is essentially good, when given the opportunity we cannot resist the urge to confront the demons within us. In the trial of Osama Bin Laden, there is little doubt that the drama effect of the ‘show’ element’ would, very quickly, I would postulate, overtake over *all* but the keenest and sharpest of legal minds. This would force the court to either suppress the defendant and his views – which is a downward spiral leading to questions of a fair trial and legitimacy – or, allowing the farce element to take over, which once again begs the question of whether or not the trial is legitimate, and is justice being seen to be done? It is ‘*Catch 22*’. Even though, given the opportunity, defendants may ‘play up’ to an outside audience – just as prosecutors do – in the end, the ultimately responsible for how much “show” will be tolerated remains with the authorities who ‘design’ and ‘manage’ the trial²⁴².

This was a lesson quickly learned by the three judges: Moshe Landau, Benjamin Halevy and Yitzhak Raveh sitting in the courtroom at the *Beit Ha'am* in central Jerusalem during the Eichmann Trial in 1961²⁴³. When your government arranges for the trial to have prominent media coverage, it serves more than just the initial purpose that was originally intended: yes, it provides a window on justice and the legal process being administered so that those who cannot attend, can still see and hopefully understand what is going on. But, as a parallel, it also provides the accused with a ‘soap-box’ for their ideology, watched by an enormous audience – something they may well revel in.

²⁴² Asli Ü. Bâli, Justice Under Occupation: Rule of Law and the Ethics of Nation-Building in Iraq (2005) *Yale International Law Journal* 30(1) 431-460 Spring 2005

²⁴³ Margalit Fox, ‘Moshe Landau Dies at 99, Oversaw Eichmann Trial’ *The New York Times* (New York, 2 May 2011) <<http://www.nytimes.com/2011/05/03/world/middleeast/03landau.html?mcubz=0>> accessed 15 September 2017.



Figure 14. Adolf Eichmann pleads his case before seemingly bored judges, Jerusalem 1961

Certainly at the Eichmann trial, with the defence lasting for 56 days, hundreds of documents introduced, 112 witnesses deposed (many of them holocaust survivors), it mostly made for very dull viewing, only interspersed with moments of drama. The only respite from this was, ironically, Eichmann himself: how articulate he actually was, and how well he conducted his defence. What the TV audience saw, and what could not have been anticipated, was that Eichmann, instead of being the Nazi monster of the holocaust that the State of Israel wanted him to be seen as – he was actually a rather ordinary little man, boring, a self-effacing servant of the Nazi Reich, and dutifully following orders from a higher command. Or at least that’s how Eichmann wanted to appear²⁴⁴. It was precisely the role he wanted to play: that of his own storyteller, researcher, historian, and philosopher. He wanted to survive, and he trusted in his ability to lie his way out of death²⁴⁵. There was never any doubt of a ‘guilty’ verdict of course – as with Saddam Hussein forty-

²⁴⁴ Bettina Stangneth, ‘The Lies of Eichmann’ *The Atlantic* (Boston, 8 October 2014) <<https://www.theatlantic.com/international/archive/2014/10/the-lies-adolf-eichmann-told/381222/>> accessed 23 September 2017.

²⁴⁵ *ibid*

five years later — how could either case be anything else? But, strangely, surprisingly, fascinatingly, the audience found more empathy with the accused Nazi and his utterly flawed defence, than they did with the sterile, boring, drawn-out process of the trial itself.

Many people might argue that the legal process is, by its very nature a somewhat dull and boring process if viewed from the laypersons perspective²⁴⁶. Certainly, while some headway has been made in recent years to allow television cameras to broadcast hearings from The Supreme Court in London, rarely do we hear audiences talk about the ‘great trial’ they watched on TV last night, or quiz their fellow workers in the pub about the legal intricacies of the prosecutors case. While the UK government repealed the ban on cameras in courtrooms as long ago as 2013²⁴⁷, at present there are still very few broadcasts or even recordings of courtroom events, other than those in the high courts of the land²⁴⁸.

There have been exceptions: in Australia, much of the country was divided for eighty days in 1982, over the guilt or otherwise of Lindy Chamberlain, the mother of a nine-week old baby girl supposedly taken from her cot and killed by a Dingo (a wild

²⁴⁶ John Shammas, ‘LA Law, it ain’t: Twitter slams ‘boring’ coverage of Supreme Court Brexit showdown as users pray Christmas TV is better’ *The Sun* (London, 5 December 2016) <<https://www.thesun.co.uk/news/2332730/twitter-slams-boring-coverage-of-supreme-court-brex-it-showdown-as-users-pray-christmas-tv-is-better/>> accessed 19 August 2017.

²⁴⁷ Martin Evans, ‘Cameras to be allowed into English courts for the first time’ *The Guardian* (London, 12 September 2013) <<http://www.telegraph.co.uk/news/uknews/law-and-order/10304437/Cameras-to-be-allowed-in-English-courts-for-the-first-time.html>> accessed 27 August 2017.

²⁴⁸ Helena Kennedy, ‘TV cameras to be allowed in English and Welsh crown courts’ *The Guardian* (London, 20 March 2016) <<https://www.theguardian.com/law/2016/mar/20/tv-cameras-to-be-allowed-in-english-and-welsh-crown-courts-for-first-time>> accessed 23 August 2017.

Australian dog)²⁴⁹, at a campsite at Uluru (Ayers Rock)²⁵⁰. Australian television created a sensation when live broadcasts from the courtroom were transmitted daily. It wasn't the legal process that held the interest of the viewing public, but the innuendo and accusations of ritual killings by the family (who were devout Jehovah's Witnesses), coupled with Aboriginal witchcraft, and the awe-inspiring location of the rock itself. Twelve years later in Los Angeles, live TV audiences were once again captivated by the day-to-day revelations surrounding the O.J. Simpson case. Simpson, a national sporting hero, broadcaster and actor was loved by fans across America; his personal life however was dogged with controversy and when his ex-wife Nicole Brown-Simpson and her boyfriend, Ron Goldman were found brutally murdered, the finger of suspicion slowly but surely pointed at O.J. The Simpson case split the country into two camps: African Americans who thought he was innocent, and White Americans who were sure he was guilty. It was the ultimate 'soap opera', and it didn't help his case when the former NFL star fled from the Police embarking on a slow-speed chase in Los Angeles with dozens of police vehicles following him for miles, until he finally gave himself up²⁵¹ – all of which was broadcast live on national and international television.

Dramatic courtroom scenes may provide respite for a bored television audience, but they engender nothing but danger for the authorities who sanction these broadcasts.

²⁴⁹ Malcolm Brown, 'Dingo baby ruling ends 32 years of torment for Lindy Chamberlain' *The Guardian* (London, 12 June 2012) <<https://www.theguardian.com/world/2012/jun/12/dingo-baby-azaria-lindy-chamberlain>> accessed 23 August 2017.

²⁵⁰ Andy Lines, 'Lifelong agony of Ayers Rock tragedy dad whose baby was killed by a dingo, dies at 72' *The Mirror* (London, 10 January 2017) <<http://www.mirror.co.uk/news/world-news/heartache-dad-whose-baby-snatched-9598866>> accessed 22 August 2017.

²⁵¹ Jason Wells, '20 years ago today: O.J. Simpson's slow-speed chase stopped L.A.' *The Los Angeles Times* (Los Angeles, 17 June 2014) <<http://www.latimes.com/local/lanow/la-me-ln-20-years-ago-oj-simpson-chase-20140617-story.html>> accessed 22 August 2017.

Surely the maxim must be: ‘*Cave quid vis (ut unum hoc modo)*’ – be careful what you wish for (you might just get it). At the trial of Saddam Hussein, the unwarranted and overbearing government interference undermining the court’s neutrality and objectivity eventually became too much for Chief Judge, Rizgar Mohammed Amin, and he resigned his position on live TV on 22 January 2006, leaving the entire process bordering on farce and the real threat of a mistrial.

Despite pleas to reconsider from both his government and the American legal advisors to the court, Judge Amin would not be moved on his decision²⁵² (It was later discovered that both he and his family had been subject to continual threats upon their lives and eventually that level of pressure simply told)²⁵³. On 23 January 2006, Chief Judge, Rauf Rashid Abd al-Rahman, also an ethnic Kurd and a lawyer, replaced him. Born in Halabja, the site of the massacre, he was thought at first to be ideal for the position, but he only lasted until 14 August 2006, resigning, he said, before he was forcibly removed by his own government, who stated that he was “...*too soft*” on the defendants, and “...*had lost his neutrality*”, spending far too much time tolerating their outbursts and political statements²⁵⁴²⁵⁵.

²⁵² Colin Freeman, ‘Saddam trial in disarray as judge quits’ *The Telegraph* (London, 23 January 2006) <<http://www.telegraph.co.uk/news/1507893/Saddam-trial-in-disarray-as-judge-quits.html>> accessed 2 September 2017.

²⁵³ Sonya Sceats, ‘The Trial of Saddam Hussein’ (2005) *Chatham House International Law* IL BP 02/05 <<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/bptrialhussein.pdf>> accessed 2 September 2017.

²⁵⁴ Peter Beaumont, ‘Saddam’s trial farce stumbles to climax’ *The Guardian* (London, 29 October 2006) <<https://www.theguardian.com/world/2006/oct/29/iraq.peterbeaumont>> accessed 3 September 2017.

²⁵⁵ On 22 June 2014, it was reported that Raul Rashid Abd al-Rahman had been captured by IS and executed for sentencing Saddam Hussein to death {Lucy Crossley, ‘Judge who sentenced Saddam Hussein to death ‘is captured and executed by IS’ *The Daily Mail* (London, 22 June 2014) <<http://www.dailymail.co.uk/news/article-2665360/Judge-sentenced-Saddam-Hussein-death-captured-executed-ISIS.html>> accessed 6 September 2017.}, it was subsequently reported on 26 June 2014, by a spokesperson for the Kurdistan Regional Government, Ministry for Justice in Erbil, that Judge Rahman was

A third Chief Judge was found in the figure of Abdullah Al-Amari, this time a Shia Muslim, like Saddam and many of the Ba’athist accused, but his tenure over the court would last barely a month until 19 September 2006, when he too was removed by the government claiming bias, and that he had been heard to say Saddam was not a dictator²⁵⁶.



Figure 15. L-R: IHCC Chief Judge, Rauf Rashid Abd al-Rahman (23/1/06 - 14/8/06);
Abdullah al-Amiri (21/8/06 - 19/9/06); Mohammed al-Oriebe al-Khalifah (20/9/06 - 29/12/06)

Throughout all of this time, and despite the best efforts of the US military (who had been charged with the security of the court and its personnel), the proceedings were

in fact alive and well {Raed Asad Ahmed, ‘Kurdish Judge who ordered Saddam Hanged is alive and well – 26 June 2014’ (rudaw.net, 2017) <<http://www.rudaw.net/english/kurdistan/260620143>> accessed 19 September 2017.}; and this was confirmed on 28 June 2014, when it was reported that Iraqi insurgents had circulated the lie in an attempt to destabilise the Iraqi justice system engaged in prosecuting IS jihadists {Michael Newton, ‘Iraqi Insurgents Circulate the Lie That They Killed the Judge in Saddam’s Trial’ *The Daily Beast* (Paris, 28 June 2014) <<http://www.thedailybeast.com/iraqi-insurgents-circulate-the-lie-that-they-killed-the-judge-in-saddams-trial>> accessed 19 September 2017.}

²⁵⁶ Brian Whitaker, ‘Saddam no dictator, says judge’ *The Guardian* (London, 15 September 2006) <<https://www.theguardian.com/world/2006/sep/15/iraq.brianwhitaker>> accessed 4 September 2017.

subject²⁵⁷ to constant terrorist threat and attack²⁵⁸. During the trial, three defence lawyers were killed²⁵⁹ and another fled abroad²⁶⁰. More than thirty witnesses were too intimidated to come to court, and of those who did, many gave evidence from behind screens or had their voices disguised electronically²⁶¹. Dogged by procedural wrangling and technical faults, the trial was repeatedly disrupted by anti-American tirades, hunger strikes, walkouts and boycotts from an obstreperous Saddam and his defence team (who frequently complained that they were not being given access to vital documents). Saddam the performer took this last chance to redeem himself in the eyes of his dwindling band of loyalists – ably supported by a cast of his former cronies. Barzan, his half-brother, took to wearing his pyjamas in court sitting defiantly with his back to the judges, while Tariq Aziz, Saddam’s well-known former international envoy, delivered his courtroom encomium to his ex-boss in what appeared to be a hospital gown.

As the chaos continued, the international community rapidly lost confidence. The proceedings were repeatedly criticised by prominent human rights groups and the UN, who described them as: “...*incompatible with standards of international justice*”²⁶². The fourth,

²⁵⁷ Jeremy Peterson, ‘Unpacking Show Trials: Situating the Trial of Saddam Hussein’ (2007) *Harvard International Law Journal* 48(1) Winter 2007 <http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_48-1_Peterson.pdf> accessed 4 September 2017.

²⁵⁸ Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

²⁵⁹ John F. Burns & Christine Hauser, ‘Third Lawyer in Hussein Trial is Killed’ *The New York Times* (New York, 21 June 2006) <<http://www.nytimes.com/2006/06/21/world/middleeast/21cnd-lawyer.html?mcubz=0>> accessed 4 September 2017.

²⁶⁰ Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

²⁶¹ Dana M. Hollywood, ‘The Search for Post-Conflict Justice in Iraq: A Comparative Study of Transitional Justice Mechanisms and Their Applicability to Post-Saddam Iraq’ (2007) *Brooklyn Journal of International Law* 33(1) <<http://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1221&context=bjil>> accessed 2 September 2017.

²⁶² Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

and final Chief Judge was appointed on 20 September 2006, and despite gunmen wounding his sister and nephew and killing his brother-in-law just days after he took office²⁶³, Chief Judge Mohammed al-Oriebe al-Khalifah, also a Shia Muslim like Saddam, remained in his post until the end of the trial on 29 December 2006.

Chief Judge, al-Khalifah was much more of a ‘hard-liner’ than his predecessor had been, and at one point ejected Saddam from the courtroom because of his outbursts²⁶⁴. In protest, the entire defence team also walked out, and once again the great show-trial of which so much had been hoped for by the Iraqi government, disintegrated into farce, accusation and counter-accusation²⁶⁵, and eventually stalemate²⁶⁶. With at least four killings closely connected to the court, inevitable questions were being asked about the ability to conduct fair trials in a nation on the verge of sectarian civil war.

Saddam knew this, and certainly played-up to his audience who, while they might not have understood all the intricacies of Iraqi law, could see the drama unfolding as this 69-year old man tried every trick in the legal book (and the *Qur’an*), to save his own life. This was no longer the despot who before sat them – the ‘new Hitler’ – as the hysterical

²⁶³ Alastair Macdonald & Ahmed Rasheed, ‘Saddam trial judge brother-in-law killed’ *The Star* (London, 30 September 2006) <<http://www.thestar.com.my/news/world/2006/09/30/saddam-trial-judge-brotherinlaw-killed/>> accessed 4 September 2017.

²⁶⁴ Michael Howard, ‘A court on the verge of anarchy’ *The Guardian* (London, 5 November 2006) <<https://www.theguardian.com/world/2006/nov/05/iraq.michaelhoward>> accessed 30 August 2017.

²⁶⁵ Kim Sengupta, ‘The Big Question: Is Saddam Hussein getting a fair trial?’ *The Independent* (London, 26 September 2006) <<http://www.independent.co.uk/news/world/middle-east/the-big-question-is-saddam-hussein-getting-a-fair-trial-in-baghdad-417657.html>> accessed 4 September 2017.

²⁶⁶ Peter Beaumont, ‘Saddam’s trial farce stumbles to climax’ *The Guardian* (London, 29 October 2006) <<https://www.theguardian.com/world/2006/oct/29/iraq.peterbeaumont>> accessed 3 September 2017.

American press had dubbed him²⁶⁷. This was a rather sad, and somehow desperate-looking old man, putting up a rather good legal fight in the face of overwhelming odds. At the end of the trial, despite his tough approach and intolerance of the lack of respect and protocol shown to the court, Chief Judge al-Khalifah could not be persuaded to pass sentence on Saddam Hussein (in spite of enormous pressure from his own government)²⁶⁸.

It was therefore left to his predecessor, Chief Judge, al-Rahman who agreed to record the sentence. The guilty verdict – when it came – was no surprise. The sentence: death by hanging²⁶⁹. Saddam had requested a firing squad²⁷⁰; however, the Iraqi government were never going to allow him what might seem an honourable soldier's death. Saddam was no soldier, and he would be denied any chance of an honourable death²⁷¹. Hanging was for common criminals. Everything had been stacked against Saddam long before the trial had even begun.

²⁶⁷ Matthew Engel, 'Only one Adolf Hitler' *The Guardian* (London, 8 October 2002)

<<https://www.theguardian.com/world/2002/oct/08/usa.comment>> accessed 5 September 2017.

²⁶⁸ John F. Burns and Kirk Semple, 'Hussein Is Sentenced to Death by Hanging' *The New York Times* (New York, 6 November 2006)

<<http://www.nytimes.com/2006/11/06/world/middleeast/06saddam.html?mcubz=0>> accessed 3 September 2017.

²⁶⁹ Kirk Semple, 'Saddam Hussein is sentenced to Death' *The New York Times* (New York, 5 November 2006) <<http://www.nytimes.com/2006/11/05/world/middleeast/05cnd-saddam.html?mcubz=0>> accessed 1 September 2017.

²⁷⁰ Jenny Booth, 'Saddam requests death by firing squad in chaotic hearing' *The Times* (London, 26 July 2006) <<https://www.thetimes.co.uk/article/saddam-requests-death-by-firing-squad-in-chaotic-hearing-lb0htjxp0vz>> accessed 3 September 2017.

²⁷¹ Oliver Poole, 'Saddam's death wish: give me a firing squad' *The Telegraph* (London, 27 July 2006) <<http://www.telegraph.co.uk/news/1524951/Saddams-death-wish-give-me-a-firing-squad.html>> accessed 3 September 2017.

What did surprise many of the world's watching millions was Saddam's valiant attempt – albeit in vain – to save his own life. It would be the ultimate drama if, under the same circumstances, Osama Bin Laden were to attempt the same – at his trial.



Conclusion

“Democracy must be built through open societies that share information.

When there is information, there is enlightenment.

When there is debate, there are solutions.

When there is no sharing of power, no rule of law, no accountability,

there is abuse, corruption, subjugation and indignation.

Where there is no democracy, there is dictatorship and conflict

— especially in our globalized, wired age”

Kosovar President, Atifete Jahjaga, 2012



The object of this research was to explore the ‘three-fold’ legal question of how to bring a man such as Osama Bin Laden to trial. The first question looked at which international law grants the power to indict; the second, what jurisdiction would the trial be heard under; and the third, what legal mechanisms could be used to ensure that such a trial is seen to be legal, legitimate and fair? I have explored all of these questions, looking at the positive and negative aspects of all three, and then applied them to the trial of Osama Bin Laden; but of course the outcome is applicable to any individual who chooses to live outside the rule of law. The overall purpose of the research was to provide future legal generations with a study from which they may determine the best process of bringing future despots to justice, and in this I believe I have succeeded.



Figure 16. The ICC will need to show the world its true worth in the coming years

In conclusion therefore, I have determined, first: that the use of the ‘old style’ military tribunal would place the legality and legitimacy of any indictment at serious risk for several reasons: (a) there is no precedent for such a trial because past military tribunals have been held in the context of a war; (b) the President’s ‘Executive Order’ of 2001 was a ‘broad-brush’ reaction to a number of terrorist attacks not just those of 9/11, but a pathway for the wars in Iraq and Afghanistan which followed; (c) the initial military tribunal convened for the trial of Saddam Hussein did not sit well with the Iraqi government who were keen to show a fair trial; (d) there are serious questions about the practice procedures of military tribunals – they are not usually open to the public, they do afford the accused a jury trial, they are not governed by the usual rules of evidence, and they do not permit appellate review to an independent court; (e) the use of military commissioners in place of a standard jury may give the appearance of ‘victor’s justice’, while possibly legitimising the defendants argument that he is ‘a soldier of war’. On the whole, I find the likelihood of trying Osama Bin Laden through military tribunal the least favourable option.

I have therefore determined secondly, that: while there is precedent for a trial in a US Federal District Court (*Yousef et al*), and consequently the usual Federal Rules of Criminal Procedure and Evidence would regulate the practice conduct, it would, in my opinion be almost impossible to find an impartial jury or indeed judicial bench, following the media frenzy that any such trial would undoubtedly engender. I have balanced this against the merits of having a jury, and no need for elaborate procedural alterations, and legitimacy compared to a military tribunal; but, I have concluded and believe that any such trial based *anywhere* on the mainland United States is not capable of being considered ‘fair’, and I have therefore dismissed this option also.

That leaves just three possible options. The obvious one would be a trial before an international criminal court/tribunal such as the ICC, ICTY or ICTR. It has been a quarter of a century now since the conflicts in former Yugoslavia and Rwanda forced the hand of the UN to create the ad-hoc tribunals to try the perpetrators of *ultimo ratio* crimes against humanity, but there remains the lack of a universal definition for ‘acts of terrorism’, and therefore the question of retroactive jurisdiction hangs over any trial at the ICC. In addition, I have serious concerns whether an international court would have the power to impose the death penalty – which would be an expected outcome from the Americans, and victims of al-Qaeda; whereas a military tribunal and a trial in US Federal Court may impose a capital sentence. For these reasons, I have therefore discounted the option of a trial before an international criminal court such as the ICC, or an ad-hoc tribunal such as the ICTY or ICTR.

The second possibility would be a new terrorism tribunal: a specially convened international court specifically set up by the United Nations with the jurisdiction to try terrorists and crimes of terrorism under a universally defined and agreed definition of ‘acts of terrorism’. There would remain the ‘sticky issue’ of retrospective legislation, but, as I have shown, provided the procedural mechanism was not governed by Federal law, there is precedent for such a set of laws being enacted. While I believe this court *would* find favour with most legal observers, critics would be quick to question its legitimacy wherever possible, and again such a court would be unlikely to have the power to call for the death sentence. For these reasons, and the practicality and cost of setting up such a specifically convened international court, I have dismissed this option as well, with the caveat that such a permanent international terrorism court may well be convened... one day.

Which leaves us with just one final option: I believe that a specially commissioned international court could be convened – perhaps in The Hague – along the same lines as that which sat to hear the case of the Lockerbie bombers. The procedural mechanisms of such a court would be an amalgamation of common and civil law rules, and I believe that such a court could, and indeed would grant the accused the right to be heard under Sharia law – if he so wished. In this way, such a court would be seen trying to be as fair as possible, and could go further by ensuring the judges panel be as diverse as achievable by having judges from Muslim countries (if they could found willing to sit). The judge’s panel could even be selected by both the UN, the Security Council, and possibly the defendants counsel – thus avoiding any potential allegations of fairness, ‘victor’s justice and ‘anti-Muslim

justice'²⁷². I believe that this option is this one providing the best 'fit' for all the requirements of a trial of Osama Bin Laden.

In Chapter three I explored the law pertaining to *de jure statelessness*: the 'stateless' individual – a tiny number of persons who choose statelessness and avoid the rule of law. Osama Bin Laden was one such individual and, by admission of the UNHCR these people have human rights needs that remain to be properly defined. It is a complex subject of the law, and while I draw attention to it, is not something for this piece of research.



Osama Bin Laden will undoubtedly go down in history as the instigator of some of the worst terrorist atrocities the world has ever known – and quite rightly so. The British Orthodox rabbi, philosopher, theologian and politician, Jonathan Sacks²⁷³ said: “*Freedom is not won by merely overthrowing a tyrannical ruler or an oppressive regime. That is usually only the prelude to a new tyranny, a new oppression. The faces change, but not the script. True freedom requires the rule of law and justice, and a judicial system in which the rights of some are not secured by the denial of rights to others*”²⁷⁴.

²⁷² In arriving at my conclusion to this study I was grateful to read the work done by Jennifer Trahan, ‘Trying a Bin Laden and others: Evaluating the Options for Terrorist Trials’ (2002) *Houston Journal of International Law* 24(3) 477-508

²⁷³ Jonathan Henry Sacks (8 March 1948 –) is a London-born Orthodox rabbi, philosopher, theologian and politician.

²⁷⁴ Chief Rabbi of the United Kingdom & Commonwealth, Jonathan Sacks, Passover 2011.

I cannot help wondering how Osama Bin Laden actually felt on 11 September 2001, watching the harvest of his hatred. I am reminded of the quote given by Admiral Yamamoto after hearing of the success of the attack on Pearl Harbor sixty years earlier: *“I fear all we have done is to awaken a sleeping giant, and fill him with a terrible resolve”*²⁷⁵.

In finishing then, I hope Osama Bin Laden might understand this from the American writer, Richard Bach:

*“The mark of your ignorance, is the depth of your belief in injustice and tragedy. What the caterpillar calls the end of the world, the Master calls the butterfly”*²⁷⁶.



²⁷⁵ Quote: Japanese Naval Admiral Isoroku Yamamoto, after hearing of the successful attack on Pearl Harbor, 7 December 1941

²⁷⁶ Richard David Bach, *Illusions: The adventures of a reluctant Messiah* (1st edn, Delacorte, 1977)

Appendix I

Transcript Of Osama Bin Laden Interview By Peter Arnett

The first-ever television interview with Osama Bin Laden was conducted by Peter Arnett in eastern Afghanistan in late March 1997. Questions were submitted in advance. Bin Laden responded to almost all of the questions. CNN was not allowed to ask follow up questions. The interview lasted just over an hour.

ARNETT: Mr. Bin Laden, could you give us your main criticism of the Saudi royal Family that is ruling Saudi Arabia today?

MR. BIN LADEN: Regarding the criticisms of the ruling regime in Saudi Arabia and the Arabian Peninsula, the first one is their subordination to the US. So, our main problem is the US government while the Saudi regime is but a branch or an agent of the US. By being loyal to the US regime, the Saudi regime has committed an act against Islam. And this, based on the ruling of Shari'a (Islamic jurisprudence), casts the regime outside the religious community. Subsequently, the regime has stopped ruling people according to what God revealed, praise and glory be to Him, not to mention many other contradictory acts. When this main foundation was violated, other corrupt acts followed in every aspect of the country, the economic, the social, government services and so on.

REPORTER: Mr. Bin Laden, if the Islamic movement takes over Arabia, what kind of society will be created and will Saudi Arabia, for example, return to the laws of the *Qur'an* at the time of the Prophet?

BIN LADEN: We are confident, with the permission of God, Praise and Glory be to Him, that Muslims will be victorious in the Arabian peninsula and that God's religion, praise and glory be to Him, will prevail in this peninsula. It is a great pride and a big hope that the revelation unto Muhammad, Peace be upon him, will be resorted to for ruling. When we used to follow Muhammad's revelation, Peace be upon him, we were in great happiness and in great dignity, to God belong credit and praise.

REPORTER: Mr. Bin Laden, if the Islamic movement takes over Saudi Arabia, what would your attitude to the West be and will the price of oil be higher?

BIN LADEN: We are a nation and have a long history, with the grace of God, Praise and Glory be to Him. We are now in the 15th century of this great religion, the complete and comprehensive methodology, has clarified the dealing between an individual and another, the duties of the believer towards God, Praise and Glory be to Him, and the relationship between the Muslim country and other countries in time of peace and in time of war. If we look back at our history, we will find there were many types of dealings between the Muslim nation and the other nations in time of peace and in time of war, including treaties and matters to do with commerce. So it is not a new thing that we need to come up with. Rather, it already, by the grace of God, exists. As for oil, it is a commodity that will be

subject to the price of the market according to supply and demand. We believe that the current prices are not realistic due to the Saudi regime playing the role of a US agent and the pressures exercised by the US on the Saudi regime to increase production and flooding the market that caused a sharp decrease in oil prices.

REPORTER: Mr. Bin Laden, you've declared a jihad against the United States. Can you tell us why? And is the jihad directed against the US government or the United States' troops in Arabia? What about US civilians in Arabia or the people of the United States?

BIN LADEN: We declared jihad against the US government, because the US government is unjust, criminal and tyrannical. It has committed acts that are extremely unjust, hideous and criminal whether directly or through its support of the Israeli occupation of the Prophet's Night Travel Land (Palestine). And we believe the US is directly responsible for those who were killed in Palestine, Lebanon and Iraq. The mention of the US reminds us before everything else of those innocent children who were dismembered, their heads and arms cut off in the recent explosion that took place in Qana (in Lebanon). This US government abandoned even humanitarian feelings by these hideous crimes. It transgressed all bounds and behaved in a way not witnessed before by any power or any imperialist power in the world. They should have been considerate that the qibla (Mecca) of the Muslims upheaves the emotion of the entire Muslim World. Due to its subordination to the Jews the arrogance and haughtiness of the US regime has reached, to the extent that they occupied the qibla of the Muslims (Arabia) who are more than a billion in the world today. For this and other acts of aggression and injustice, we have declared jihad against the US, because in our religion it is our duty to make jihad so that God's word is the one exalted to the heights and so that we drive the Americans away from all Muslim countries. As for what you asked whether jihad is directed against US soldiers, the civilians in the land of the Two Holy Places (Saudi Arabia, Mecca and Medina) or against the civilians in America, we have focused our declaration on striking at the soldiers in the country of The Two Holy Places. The country of the Two Holy Places has in our religion a peculiarity of its own over the other Muslim countries. In our religion, it is not permissible for any non-Muslim to stay in our country. Therefore, even though American civilians are not targeted in our plan, they must leave. We do not guarantee their safety, because we are in a society of more than a billion Muslims. A reaction might take place as a result of US government's hitting Muslim civilians and executing more than 600 thousand Muslim children in Iraq by preventing food and medicine from reaching them. So, the US is responsible for any reaction, because it extended its war against troops to civilians. This is what we say. As for what you asked regarding the American people, they are not exonerated from responsibility, because they chose this government and voted for it despite their knowledge of its crimes in Palestine, Lebanon, Iraq and in other places and its support of its agent regimes who filled our prisons with our best children and scholars. We ask that may God release them.

REPORTER: Mr. Bin Laden, will the end of the United States' presence in Saudi Arabia, their withdrawal, will that end your call for jihad against the United States and against the US?

BIN LADEN: The cause of the reaction must be sought and the act that has triggered this reaction must be eliminated. The reaction came as a result of the US aggressive policy towards the entire Muslim world and not just towards the Arabian Peninsula. So if the cause that has called for this act comes to an end, this act, in turn, will come to an end. So, the driving-away jihad against the US does not stop with its withdrawal from the Arabian Peninsula, but rather it must desist from aggressive intervention against Muslims in the whole world.

REPORTER: Mr. Bin Laden, tell us about your experience during the Afghan war and what did you do during that jihad?

BIN LADEN: Praise be to God, the ‘Cherisher’ and ‘Sustainer’ of the worlds, that He made it possible for us to aid the Mujahidin in Afghanistan without any declaration for jihad. It was rather the news that was broadcast by radio stations that the Soviet Union invaded a Muslim country. This was a sufficient motivation for me to start to aid our brothers in Afghanistan. I have benefited so greatly from the jihad in Afghanistan that it would have been impossible for me to gain such a benefit from any other chance and this cannot be measured by tens of years but rather more than that, Praise and Gratitude be to God. In spite of the Soviet power, we used to move with confidence and God conferred favours on us so that we transported heavy equipment from the country of the Two Holy Places (Arabia) estimated at hundreds of tons altogether that included bulldozers, loaders, dump trucks and equipment for digging trenches. When we saw the brutality of the Russians bombing Mujahedeens’ positions, by the grace of God, we dug a good number of huge tunnels and built in them some storage places and in some others we built a hospital. We also dug some roads, by the grace of God, Praise and glory be to Him, one of which you came by to us tonight. So our experience in this jihad was great, by the grace of God, praise and glory be to Him, and the most of what we benefited from was that the myth of the super power was destroyed not only in my mind but also in the minds of all Muslims. Slumber and fatigue vanished and so was the terror which the US would use in its media by attributing itself super power status or which the Soviet Union used by attributing itself as a super power. Today, the entire Muslim world, by the grace of God, has imbibed the faithful spirit of strength and started to interact in a good manner in order to bring an end to occupation and the Western and American influence on our countries.

REPORTER: Mr. Bin Laden, what was the significance of the Afghan war for the Islamic movement? Veterans of that war are fighting for Islamic movements and conflicts from the former Soviet republics such as Chechnya to Bosnia to Algeria. Can you explain that phenomenon to us?

BIN LADEN: As I mentioned in my answer to the previous question, the effect of jihad has been great not only at the level of the Islamic movement but rather at the level of the Muslim nation in the whole world. The spirit of power, dignity and confidence has grown in our sons and brothers for this religion and the power of God, Praise and Glory be to Him. And it has become apparent even to the Islamic movement that there is no choice but return to the original spring, to this religion, to God’s Book, Praise and Glory be to Him, and to the Sunna of His Prophet, Peace be upon him, as understood by our predecessors, may God

be pleased with them. Of this, the acme of this religion is jihad. The nation has had a strong conviction that there is no way to obtain faithful strength but by returning to this jihad. The influence of the Afghan jihad on the Islamic world was so great and it necessitates that people should rise above many of their differences and unite their efforts against their enemy. Today, the nation is interacting well by uniting its efforts through jihad against the US which has in collaboration with the Israeli government led the ferocious campaign against the Islamic World in occupying the holy sites of the Muslims. As for the young men who participated in jihad here, their number, by the grace of God, was quite big, Praise and Gratitude be to Him, and they spread in every place in which non-believers' injustice is perpetuated against Muslims. They're going to Bosnia, Chechnya, Tajikistan and other countries is but a fulfilment of a duty, and because we believe that these states are part of the Islamic World. Therefore, any act of aggression against any of this land of a span of hand measure makes it a duty for Muslims to send a sufficient number of their sons to fight off that aggression.

REPORTER: Can you tell us now about your expulsion from Saudi Arabia and your time you spent in Sudan and your arrival here in Afghanistan?

BIN LADEN: I was, by the grace of God, Praise and Glory be to Him, in the great spot that is dear to God, Praise and Glory be to Him, al-hijaz, especially Venerable Mecca, where is God's Ancient House. However, the Saudi regime imposed on the people a life that does not appeal to the free believer. They wanted the people to eat and drink and celebrate the praise of God, but if the people wanted to encourage what is right and forbid what is wrong, they can't. Rather, the regime dismisses them from their jobs and in the event they continued to do so, they are detained in prisons. I have rejected to live this submissive life, by God's favour, Praise and Gratitude be to Him that is not befitting of man let alone a believer. So, I waited for the chance until, God, Praise and Glory be to Him, has made it possible for me to leave the country of the Two Holy Places. I hope God, Praise and Glory be to Him, would confer upon me His favour to return one day when God's law rules in that country. I went to the Sudan and stayed there for about five years during which I visited Afghanistan and Pakistan to work against the Communist government in Kabul. When the Saudi government transgressed in oppressing all voices of the scholars and the voices of those who call for Islam, I found myself forced, especially after the government prevented Sheikh Salman al-Awdah and Sheikh Safar al-Hawali and some other scholars, to carry out a small part of my duty of enjoining what is right and forbidding what is wrong. So, I collaborated with some brothers and established a committee for offering advice and we started to publish some declarations. (The Advice and Reformation Committee). However, the Saudi regime did not like this and started to exercise pressure on the Sudanese regime. The US government, the Egyptian government and the Yemeni government also helped in doing so. They requested me explicitly from the Sudanese regime and the pressure continued. Saudi Arabia dropped all of its conditions put to the Sudanese regime in return that I be driven out of the Sudan. The US government had already taken the same stance and pulled out its diplomatic mission from Khartoum and put forth their condition to return only after I have left. Unfortunately, the Sudanese government was in some difficult circumstances and there was a tendency inside the government that was inclined to reconciliation or surrender. Then, when they insisted initially that I should keep my mouth

shut, I decided to look for a land in which I can breathe a pure, free air to perform my duty in enjoining what is right and forbidding what is wrong. I ask God, Praise and Glory be to Him, for increase in prosperity for this great land, the Land of Khorasan (Afghanistan) in order to carry on this duty. So, we implore God, Praise and Glory be to Him, that He accept (our deeds) from us and the Muslims.

Now, the United States government says that you are still funding military training camps here in Afghanistan for militant, Islamic fighters and that you are a sponsor of international terrorism; but others describe you as the new hero of the Arab-Islamic world. Are these accusations true? How do you describe yourself?

BIN LADEN: After the collapse of the Soviet Union in which the US has no mentionable role, but rather the credit goes to God, Praise and Glory be to Him, and the Mujahidin in Afghanistan, this collapse made the US more haughty and arrogant and it has started to look at itself as a Master of this world and established what it calls the new world order. It wanted to delude people that it can do whatever it wants, but it can't do this. It levelled against me and others as many accusations as it desired and wished. It is these (accusations) that you mentioned. The US today as a result of the arrogant atmosphere has set a double standard, calling whoever goes against its injustice a terrorist. It wants to occupy our countries, steal our resources, impose on us agents to rule us based not on what God has revealed and wants us to agree on all these. If we refuse to do so, it will say you are terrorists. With a simple look at the US behaviours, we find that it judges the behaviour of the poor Palestinian children whose country was occupied: if they throw stones against the Israeli occupation, it says they are terrorists whereas when the Israeli pilots bombed the United Nations building in Qana, Lebanon while was full of children and women, the US stopped any plan to condemn Israel. At the time that they condemn any Muslim who calls for his right, they receive the highest top official of the Irish Republican Army (Gerry Adams) at the White House as a political leader, while woe, all woe is the Muslims if they cry out for their rights. Wherever we look, we find the US as the leader of terrorism and crime in the world. The US does not consider it a terrorist act to throw atomic bombs at nations thousands of miles away, when it would not be possible for those bombs to hit military troops only. These bombs were rather thrown at entire nations, including women, children and elderly people and up to this day the traces of those bombs remain in Japan. The US does not consider it terrorism when hundreds of thousands of our sons and brothers in Iraq died for lack of food or medicine. So, there is no base for what the US says and this saying does not affect us, because we, by the grace of God, are dependent on Him, Praise and Glory be to Him, getting help from Him against the US. As for the last part of your question, we are fulfilling a duty which God, Praise and Glory be to Him, decreed for us. We look upon those heroes, those men who undertook to kill the American occupiers in Riyadh and Khobar (Dhahran). We describe those as heroes and describe them as men. They have pulled down the disgrace and submissiveness off the forehead of their nation. We ask Allah, Praise and Glory be to Him, to accept them as martyrs.

REPORTER: Let's go to the bombings of United States troops in Riyadh and Dhahran. Why did they happen and were you and your supporters involved in these attacks?

BIN LADEN: We ask about the main reason that called for this explosion. This explosion was a reaction to a US provocation of the Muslim peoples, in which the US transgressed in its aggression until it reached the qibla of the Muslims in the whole world. So, the purpose of the two explosions is to get the American occupation out (of Arabia). So if the U.S. does not want to kill its sons who are in the army, then it has to get out.

Q: On the same issue of the American troops in Saudi Arabia, do you think will be more bombing attacks on them? Or attacks on U.S. civilians in Arabia? Or assassination attempts for example, on the Saudi royal families?

BIN LADEN: As for the previous question, the explosion of Riyadh and the one in Al-Khobar (Dhahran). It is no secret that during the two explosions, I was not in Saudi Arabia, but I have great respect for the people who did this action. I say, as I said before, they are heroes. We look upon them as men who wanted to raise the flag of "There is no God but Allah", and to put an end the non-believers and the state of injustice that the U.S. brought. I also say that what they did is a great job and a big honour that I missed participating in.

Q. Do you think there will be more bombing attacks on American troops in Saudi Arabia? Or attacks on American civilians in Saudi Arabia? Or will there be assassination attempts on the Saudi Arabian ruling family?

BIN LADEN: It is known that every action has its reaction. If the American presence continues, and that is an action, then it is natural for reactions to continue against this presence. In other words, explosions and killings of the American soldiers would continue. These are the troops who left their country and their families and came here with all arrogance to steal our oil and disgrace us, and attack our religion. As for what was mentioned about the ruling (Saudi) family those in charge, do bear the full responsibility of everything that may happen. They are the shadow of the American presence. The people and the young men are concentrating their efforts on the sponsor and not on the sponsored. The concentration at this point of Jihad is against the American occupiers.

Q. What are your views about Sheik Omar Abdul Rahman and have you ever met him? Do you know him?

BIN LADEN: Sheik Omar Abdul Rahman is a Muslim scholar well-known all over the Muslim world. He represents the kind of injustice that is adopted by the U.S. A baseless case was fabricated against him even though he is a blind old man. We ask Allah, The Almighty, to relieve him. The U.S. sentenced him to hundreds of years just to please its caprice and the whims of the Egyptian regime. He is now very badly treated and in no way fit for an old man like him or any Muslim scholar.

Q. The U.S. State Department quoting a Pakistani official says that Ramzi Yousef, a convicted bomber in the World Trade Center in New York City stayed in the house you funded in Peshawar, Pakistan for those receiving training during the Afghan conflict after the Trade Center bombing, is that true? Did Ramzi Yousef stay in your house in Peshawar?

BIN LADEN: I do not know Ramzi Yousef. What the American government and Pakistani intelligence has been reporting is not true at all. But I say if the American government is serious about avoiding the explosions inside the U.S., then let it stop provoking the feelings of 1,250 million Muslims. Those hundreds of thousands who have been killed or displaced in Iraq, Palestine, Lebanon, do have brothers and relatives. They would make of Ramzi Yousef a symbol and a teacher. The U.S. will drive them to transfer the battle into the United States. Everything is made possible to protect the blood of the American citizen while the bloodshed of Muslims is allowed in every place. With this kind of behaviour, the U.S. government is hurting itself, hurting Muslims and hurting the American people.

Q. Mr. Bin Laden, were you involved in financing the bombing of the World Trade Center in New York City?

BIN LADEN: I have no connection or relation with this explosion.

Q. Mr. Bin Laden, in a recent interview with an Arabic newspaper, you said that Arabs who fought in the Afghan war killed U.S. troops in Mogadishu, Somalia. Can you tell us about that?

BIN LADEN: The U.S. government went there with great pride and stayed there for some time with a strong media presence wanting to frighten people that it is the greatest power on earth. It went there with pride and with over 28,000 soldiers, to a poor unarmed people in Somalia. The goal of this was to scare the Muslim world and the whole world saying that it is able to do whatever it desires. As soon as the troops reached the Mogadishu beaches, they found no one but children. The CNN and other media cameras started photographing them (the soldiers) with their camouflage and heavy arms, entering with a parade crawling (on the ground) and showing themselves to the world as the “greatest power on earth”. Resistance started against the American invasion, because Muslims do not believe the U.S. allegations that they came to save the Somalis. A man with human feelings in his heart does not distinguish between a child killed in Palestine or in Lebanon, in Iraq or in Bosnia. So how can we believe your claims that you came to save our children in Somalia while you kill our children in all of those places?

With Allah’s grace, Muslims over there, cooperated with some Arab “Mujahideen” who were in Afghanistan. They participated with their brothers in Somalia against the American occupation troops and killed large numbers of them. The American administration was aware of that. After a little resistance, The American troops left after achieving nothing. They left after claiming that they were the largest power on earth. They left after some resistance from powerless, poor, unarmed people whose only weapon is the belief in Allah the Almighty, and who do not fear the fabricated American media lies. We learned from those who fought there, that they were surprised to see the low spiritual morale of the American fighters in comparison with the experience they had with the Russian fighters. The Americans ran away from those fighters who fought and killed them, while the latter were still there. If the U.S. still thinks and brags that it still has this kind of power even after all these successive defeats in Vietnam, Beirut, Aden, and Somalia, then let them go back to those who are awaiting its return.

Q. Mr. Bin Laden, your family is a rich powerful family in Saudi Arabia. Have they, or the Saudi Arabian government asked you to stop your activities?

BIN LADEN: They have done that a lot. They have pressured us a lot, especially since a lot of our money is still in the hands of the Saudi ruling family due to activities of the our family and company (Saudi construction giant, the Bin Laden Group). They sent me my mother, my uncle, and my brothers in almost nine visits to Khartoum (Sudan) asking me to stop and return to Arabia to apologise to King Fahd. I apologised to my family kindly because I know that they were driven by force to come to talk to me. This regime wants to create a problem between me and my family and in order to take some measures against them. But, with Allah's grace, this regime did not get its wish fulfilled. I refused to go back. They (my family) conveyed the Saudi government's message that if I did not go back, they'll freeze all my assets, deprive me of my citizenship, my passport, and my Saudi I.D. and distort my picture in the Saudi and foreign media. They think that a Muslim may bargain on his religion. I said to them do whatever you may wish. It is with Allah's bounty, we refused to go back. We are living in dignity and honour for whom we thank Allah. It is much better for us to live under a tree here on these mountains than to live in palaces in the most sacred land to Allah, while being subjected to disgrace not worshipping Allah even in the most sacred land on earth, where injustice is so widespread. There is no strength except with Allah.

Q. Mr. Bin Laden, have Saudi agents attempted to assassinate you? Are you targeted by the U.S. government? Are you in fact in fear of your life?

BIN LADEN: The U.S. pressures are no secret to you. The Saudi pressures are also in response to American pressures. There were several attempts to arrest me or to assassinate me. This has been going on for more than seven years. With Allah's grace, none of these attempts succeeded. This is a proof in itself to Muslims and to the world that the U.S. is incapable and weaker than the picture it wants to draw in people's mind. A believer must rest assured that life is only in the hands of Allah, and sustenance is also in the hands of Allah, the Almighty. As for fearing for one's life, it is difficult to explain to you how we think of ourselves, unless you have full belief. We believe that no one could take out one breath of our written life as ordained by Allah. We see that we see that getting killed in the cause of Allah is a great honour wished for by our Prophet (PBUH). He said in his Hadith: "I swear to Allah, I wish to fight for Allah's cause and be killed, I'll do it again and be killed, and I'll do it again and be killed". Being killed for Allah's cause is a great honour achieved by only those who are the elite of the nation. We love this kind of death for Allah's cause as much as you like to live. We have nothing to fear for. It is something we wish for.

Q. What are your future plans?

BIN LADEN: You'll see them and hear about them in the media, God willing.

Q. Mr. Bin Laden, if you had an opportunity to give a message to President Clinton, what would that message be?

BIN LADEN: Mentioning the name of Clinton or that of the American government provokes disgust and revulsion. This is because the name of the American government and the name of Clinton and Bush directly reflect in our minds the picture of children with their heads cut off before even reaching one year of age. It reflects the picture of children with their hands cut off, the picture of the children who died in Iraq, the picture of the hands of the Israelis with weapons destroying our children. The hearts of Muslims are filled with hatred towards the United States of America and the American president. The President has a heart that knows no words. A heart that kills hundreds of children definitely, knows no words. Our people in the Arabian Peninsula will send him messages with no words because he does not know any words. If there is a message that I may send through you, then it is a message I address to the mothers of the American troops who came here with their military uniform walking proudly up and down our land while the scholars of our country are thrown in prisons. I say that this represents a blatant provocation to 1,250 million Muslims. To these mothers I say if they are concerned for their sons, then let them object to the American government's policy and to the American president. Do not let themselves be cheated by his standing before the bodies of the killed soldiers describing the freedom fighters in Saudi Arabia as terrorists. It is he who is a terrorist who pushed their sons into this for the sake of the Israeli interest. We believe that the American army in Saudi Arabia came to separate between the Muslims and the people for not ruling in accordance with Allah's wish. They came to be in support of the Israeli forces in occupied Palestine, the land of the "Israa" of our Prophet (PBUH).

End of Interview

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Appendix II

Transcript Of Osama Bin Laden Interview By John Miller

In the first part of this interview which occurred in May 1998, a little over two months before the U.S. embassy bombings in Kenya and Tanzania, Osama Bin Laden answers questions posed to him by some of his followers at his mountaintop camp in southern Afghanistan. In the latter part of the interview, ABC reporter John Miller is asking the questions.

What is the meaning of your call for Muslims to take arms against America in particular, and what is the message that you wish to send to the West in general?

The call to wage war against America was made because America has spear-headed the crusade against the Islamic nation, sending tens of thousands of its troops to the land of the two Holy Mosques over and above its meddling in its affairs and its politics, and its support of the oppressive, corrupt and tyrannical regime that is in control. These are the reasons behind the singling out of America as a target. And not exempt of responsibility are those Western regimes whose presence in the region offers support to the American troops there. We know at least one reason behind the symbolic participation of the Western forces and that is to support the Jewish and Zionist plans for expansion of what is called the Great Israel. Surely, their presence is not out of concern over their interests in the region. ... Their presence has no meaning save one and that is to offer support to the Jews in Palestine who are in need of their Christian brothers to achieve full control over the Arab Peninsula which they intend to make an important part of the so called Greater Israel.

Many of the Arabic as well as the Western mass media accuse you of terrorism and of supporting terrorism. What do you have to say to that?

There is an Arabic proverb that says "she accused me of having her malady, then snuck away." Besides, terrorism can be commendable and it can be reprehensible. Terrifying an innocent person and terrorizing him is objectionable and unjust, also unjustly terrorizing people is not right.

Whereas, terrorizing oppressors and criminals and thieves and robbers is necessary for the safety of people and for the protection of their property. There is no doubt in this. Every state and every civilization and culture has to resort to terrorism under certain circumstances for the purpose of abolishing tyranny and corruption. Every country in the world has its own security system and its own security forces, its own police and its own army. They are all designed to terrorize whoever even contemplates to attack that country or its citizens. The terrorism we practice is of the commendable kind for it is directed at the tyrants and the aggressors and the enemies of Allah, the tyrants, the traitors who commit acts of treason against their own countries and their own faith and their own prophet and their own nation. Terrorizing those and punishing them are necessary measures to straighten things and to make them right. Tyrants and oppressors who subject the Arab nation to aggression ought to be punished. The wrongs and the crimes committed against

the Muslim nation are far greater than can be covered by this interview. America heads the list of aggressors against Muslims. The recurrence of aggression against Muslims everywhere is proof enough. For over half a century, Muslims in Palestine have been slaughtered and assaulted and robbed of their honour and of their property. Their houses have been blasted, their crops destroyed. And the strange thing is that any act on their part to avenge themselves or to lift the injustice befalling them causes great agitation in the United Nations which hastens to call for an emergency meeting only to convict the victim and to censure the wronged and the tyrannized whose children have been killed and whose crops have been destroyed and whose farms have been pulverized. In today's wars, there are no morals, and it is clear that mankind has descended to the lowest degrees of decadence and oppression. They rip us of our wealth and of our resources and of our oil. Our religion is under attack. They kill and murder our brothers. They compromise our honor and our dignity and dare we utter a single word of protest against the injustice, we are called terrorists. This is compounded injustice. And the United Nations insistence to convict the victims and support the aggressors constitutes a serious precedence which shows the extent of injustice that has been allowed to take root in this land.

What is your relationship with the Islamic movements in various regions of the world like Chechnya and Kashmir and other Arab countries?

Cooperation for the sake of truth and righteousness is demanded from Muslims. A Muslim should do his utmost to cooperate with his fellow Muslims. But Allah says of cooperation that it is not absolute for there is cooperation to do good, and there is cooperation to commit aggression and act unjustly. A Muslim is supposed to give his fellow Muslim guidance and support. He (Allah) said "Stand by your brother be he oppressor or oppressed." When asked how were they to stand by him if he were the oppressor, He answered them, saying "by giving him guidance and counsel." It all goes to say that Muslims should cooperate with one another and should be supportive of one another, and they should promote righteousness and mercy. They should all unite in the fight against polytheism and they should pool all their resources and their energy to fight the Americans and the Zionists and those with them. They should, however, avoid side fronts and rise over the small problems for these are less detrimental. Their fight should be directed against unbelief and unbelievers.

We heard your message to the American government and later your message to the European governments who participated in the occupation of the Gulf. Is it possible for you to address the people of these countries?

As we have already said, our call is the call of Islam that was revealed to Mohammed. It is a call to all mankind. We have been entrusted with good cause to follow in the footsteps of the Messenger and to communicate his message to all nations. It is an invitation that we extend to all the nations to embrace Islam, the religion that calls for justice, mercy and fraternity among all nations, not differentiating between black and white or between red and yellow except with respect to their devotedness. All people who worship Allah, not each other, are equal before Him. We are entrusted to spread this message and to extend that call to all the people. We, nonetheless, fight against their governments and all those who approve of the injustice they practice against us. We fight the governments that are

bent on attacking our religion and on stealing our wealth and on hurting our feelings. And as I have mentioned before, we fight them, and those who are part of their rule are judged in the same manner.

Tell the Muslims everywhere that the vanguards of the warriors who are fighting the enemies of Islam belong to them and the young fighters are their sons. Tell them that the nation is bent on fighting the enemies of Islam. Once again, I have to stress the necessity of focusing on the Americans and the Jews for they represent the spearhead with which the members of our religion have been slaughtered. Any effort directed against America and the Jews yields positive and direct results - Allah willing. It is far better for anyone to kill a single American soldier than to squander his efforts on other activities.

You come from a background of wealth and comfort to end up fighting on the front lines. Many Americans find that unusual.

This is difficult to understand, especially for him who does not understand the religion of Islam. In our religion, we believe that Allah has created us for the purpose of worshipping him. He is the one who has created us and who has favored us with this religion. Allah has ordered us to make holy wars and to fight to see to it that His word is the highest and the uppermost and that of the unbelievers the lowermost. We believe that this is the call we have to answer regardless of our financial capabilities.

In your last statement, there was a strong message to the American government in particular. What message do you have for the European governments and the West in general?

Praise be Allah and prayers and peace upon Mohammed. With respect to the Western governments that participated in the attack on the land of the two Holy Mosques regarding it as ownerless, and in the siege against the Muslim people of Iraq, we have nothing new to add to the previous message. What prompted us to address the American government in particular is the fact that it is on the head of the Western and the crusading forces in their fight against Islam and against Muslims. The two explosions that took place in Riyadh and in Khobar recently were but a clear and powerful signal to the governments of the countries which willingly participated in the aggression against our countries and our lives and our sacrosanct symbols. It might be beneficial to mention that some of those countries have begun to move towards independence from the American government with respect to the enmity that it continues to show towards the Muslim people. We only hope that they will continue to move in that direction, away from the oppressive forces that are fighting against our countries.

We however, differentiate between the western government and the people of the West. If the people have elected those governments in the latest elections, it is because they have fallen prey to the Western media which portray things contrary to what they really are. And while the slogans raised by those regimes call for humanity, justice, and peace, the behavior of their governments is completely the opposite. It is not enough for their people to show pain when they see our children being killed in Israeli raids launched by American planes, nor does this serve the purpose. What they ought to do is change their governments which

attack our countries. The hostility that America continues to express against the Muslim people has given rise to feelings of animosity on the part of Muslims against America and against the West in general. Those feelings of animosity have produced a change in the behavior of some crushed and subdued groups who, instead of fighting the Americans inside the Muslim countries, went on to fight them inside the United States of America itself.

The Western regimes and the government of the United States of America bear the blame for what might happen. If their people do not wish to be harmed inside their very own countries, they should seek to elect governments that are truly representative of them and that can protect their interests. The enmity between us and the Jews goes far back in time and is deep rooted. There is no question that war between the two of us is inevitable. For this reason it is not in the interest of Western governments to expose the interests of their people to all kinds of retaliation for almost nothing. It is hoped that people of those countries will initiate a positive move and force their governments not to act on behalf of other states and other sects. This is what we have to say and we pray to Allah to preserve the nation of Islam and to help them drive their enemies out of their land.

American politicians have painted a distorted picture of Islam, of Muslims and of Islamic fighters. We would like you to give us the true picture that clarifies your viewpoint.

The leaders in America and in other countries as well have fallen victim to Jewish Zionist blackmail. They have mobilized their people against Islam and against Muslims. These are portrayed in such a manner as to drive people to rally against them. The truth is that the whole Muslim world is the victim of international terrorism, engineered by America at the United Nations. We are a nation whose sacred symbols have been looted and whose wealth and resources have been plundered. It is normal for us to react against the forces that invade our land and occupy it.

Quite a number of Muslim countries have seen the rise of militant movements whose purpose is to stand up in the face of the pressure exerted on the people by their own governments and other governments. Such as is the case in Egypt and Libya and North Africa and Algiers and such as was the case in Syria and in Yemen. There are also other militant groups currently engaged in the fight against the unbelievers and the crusaders as is the case in Kashmir and Chechnya and Bosnia and the African horn. Is there any message you wish to convey to our brothers who are fighting in various parts of the Islamic World?

This too answers the claims of the West and of the secular people in the Arab world. They claim that this blessed awakening and the people reverting to Islam are due to economic factors. This is not so. It is rather a grace from Allah, a desire to embrace the religion of Allah. And this is not surprising. When the holy war called, thousands of young men from the Arab Peninsula and other countries answered the call and they came from wealthy backgrounds. Hundreds of them were killed in Afghanistan and in Bosnia and in Chechnya.

You have been described as the world's most wanted man, and there is word that the American government intends to put a price on your head - in the millions - when you are captured. Do you think they will do that? And does it bother you?

We do not care what the Americans believe. What we care for is to please Allah. Americans heap accusations on whoever stands for his religion or his rights or his wealth. ... It does not scare us that they have put a price on my head. We as Muslims believe that our years on this earth are finite and predetermined. If the whole world gets together to kill us before it is our time to go, they will not succeed. We also believe that livelihoods are preordained. So no matter how much pressure American puts on the regime in Riyadh to freeze our assets and to forbid people from contributing to this great cause, we shall still have Allah to take care of us; livelihood is sent by Allah; we shall not want.

Mr. bin Laden, you have issued a fatwah calling on Muslims to kill Americans where they can, when they can. Is that directed at all Americans, just the American military, just the Americans in Saudi Arabia?

Allah has ordered us to glorify the truth and to defend Muslim land, especially the Arab peninsula ... against the unbelievers. After World War II, the Americans grew more unfair and more oppressive towards people in general and Muslims in particular. ... The Americans started it and retaliation and punishment should be carried out following the principle of reciprocity, especially when women and children are involved. Through history, American has not been known to differentiate between the military and the civilians or between men and women or adults and children. Those who threw atomic bombs and used the weapons of mass destruction against Nagasaki and Hiroshima were the Americans. Can the bombs differentiate between military and women and infants and children? America has no religion that can deter her from exterminating whole peoples. Your position against Muslims in Palestine is despicable and disgraceful. America has no shame. We believe that the worst thieves in the world today and the worst terrorists are the Americans. Nothing could stop you except perhaps retaliation in kind. We do not have to differentiate between military or civilian. As far as we are concerned, they are all targets, and this is what the fatwah says. The fatwah is general (comprehensive) and it includes all those who participate in, or help the Jewish occupiers in killing Muslims.

Ramzi Yousef was a follower of yours. Do you remember him and did you know him?

After the explosion that took place in the World Trade Center, Ramzi Yousef became a well-known Muslim figure. Muslims have come to know him. Unfortunately, I did not know him before this incident. I of course remember who he is. He is a Muslim who wanted to protect his religion jealously from the oppression practiced by America against Islam. He acted with zeal to make the Americans understand that their government was attacking Muslims in order to safeguard the American-Jewish interests.

Wali Khan Amin Shah was captured in Manila. American authorities believe he was working for you, funded by you, setting up training camps there and part of his plan was to plan out the assassination or the attempted assassination of President Clinton during his trip to Manila.

Wali Khan is a Muslim young man; his nickname in Afghanistan was the Lion. He was among the most courageous Muslim young men. He was a close friend and we used to fight from the same trenches in Afghanistan. We fought many battles against the Russians until they were defeated and put to shame and had to leave the country in disgrace. As to what you said about him working for me, I have nothing to say. We are all together in this; we all work for Allah and our reward comes from him. As to what you said about the attempt to assassinate President Clinton, it is not surprising. What do you expect from people attacked by Clinton, whose sons and mothers have been killed by Clinton? Do you expect anything but treatment by reciprocity?

The federal government in the US. is still investigating their suspicions that you ordered and funded the attack on the US military in Al Khobar and Riyadh.

We have roused the nation and the Muslim people and we have communicated to them the fatwabs of our learned scholars who the Saudi government has thrown in jail in order to please the American government for which they are agents. ... We have communicated their fatwabs and stirred the nation to drive out the enemy who has occupied our land and usurped our country and suppressed our people and to rid the land of the two Holy Mosques from their presence. Among the young men who responded to our call are Khalid Al Said and Abdul Azeez Al... and Mahmud Al Hadi and Muslih Al Shamrani. We hope Allah receives them as holy martyrs. They have raised the nation's head high and washed away a great part of the shame that has enveloped us as a result of the weakness of the Saudi government and its complicity with the American government. Yes, we have instigated and they have responded. We hope Allah grants their families solace.

You've been painted in America as a terrorist leader. To your followers, you are a hero. How do you see yourself?

As I have said, we are not interested in what America says. We do not care. We view ourselves and our brothers like everyone else. Allah created us to worship Him and to follow in his footsteps and to be guided by His Book. I am one of the servants of Allah and I obey his orders. Among those is the order to fight for the word of Allah ... and to fight until the Americans are driven out of all the Islamic countries.

No one expected the mujahedeen to beat the Russians in Afghanistan. It came as a surprise to everyone. What do you see as the future of American involvement in the Middle East, in taking on groups like this?

Allah has granted the Muslim people and the Afghani mujahedeen, and those with them, the opportunity to fight the Russians and the Soviet Union. ... They were defeated by Allah and were wiped out. There is a lesson here. The Soviet Union entered Afghanistan late in December of '79. The flag of the Soviet Union was folded once and for all on the 25th of December just 10 years later. It was thrown in the waste basket. Gone was the Soviet Union forever. We are certain that we shall - with the grace of Allah - prevail over the Americans and over the Jews, as the Messenger of Allah promised us in an authentic prophetic tradition when He said the Hour of Resurrection shall not come before Muslims fight Jews and before Jews hide behind trees and behind rocks.

We are certain - with the grace of Allah - that we shall prevail over the Jews and over those fighting with them. Today however, our battle against the Americans is far greater than our battle was against the Russians. Americans have committed unprecedented stupidity. They have attacked Islam and its most significant sacrosanct symbols. We anticipate a black future for America. Instead of remaining United States, it shall end up separated states and shall have to carry the bodies of its sons back to America.

What do you see as the future of the Saudi royal family and their involvement with America and the US military?

History has the answer to your question. The fate of any government which sells the interests of its own people and, betrays the nation and commits offenses which furnish grounds for expulsion from Islam, is known. We expect for the ruler of Riyadh the same fate as the Shah of Iran. We anticipate this to happen to him and to the influential people who stand by him and who have sided with the Jews and the Christians giving them free reign over the land of the two Holy Mosques. These are grave offenses that are grounds for expulsion from the faith. They shall all be wiped out.

Describe the situation when your men took down the American forces in Somalia.

After our victory in Afghanistan and the defeat of the oppressors who had killed millions of Muslims, the legend about the invincibility of the superpowers vanished. Our boys no longer viewed America as a superpower. So, when they left Afghanistan, they went to Somalia and prepared themselves carefully for a long war. They had thought that the Americans were like the Russians, so they trained and prepared. They were stunned when they discovered how low the morale of the American soldier was. America had entered with 30,000 soldiers in addition to thousands of soldiers from different countries in the world. ... As I said, our boys were shocked by the low morale of the American soldier and they realized that the American soldier was just a paper tiger. He was unable to endure the strikes that were dealt to his army, so he fled, and America had to stop all its bragging and all that noise it was making in the press after the Gulf War in which it destroyed the infrastructure and the milk and dairy industry that was vital for the infants and the children and the civilians and blew up dams which were necessary for the crops people grew to feed their families. Proud of this destruction, America assumed the titles of world leader and master of the new world order. After a few blows, it forgot all about those titles and rushed out of Somalia in shame and disgrace, dragging the bodies of its soldiers. America stopped calling itself world leader and master of the new world order, and its politicians realized that those titles were too big for them and that they were unworthy of them. I was in Sudan when this happened. I was very happy to learn of that great defeat that America suffered, so was every Muslim.

Many Americans believe that fighting army to army like what happened in Afghanistan is heroic for either army. But sending off bombs, killing civilians like in the World Trade Center is terrorism.

After our victory over the Russians in Afghanistan, the international and the American mass media conducted fierce campaigns against us. They called us terrorists even before

the mujahedeen had committed any act of terrorism against the real terrorists who are the Americans. On the other hand, we say that American politics and their religion do not believe in differentiating between civilians and military, between infants and animals, or among any human groups. Our mothers and daughters and sons are slaughtered every day with the approval of America and its support. And, while America blocks the entry of weapons into Islamic countries, it provides the Israelis with a continuous supply of arms allowing them thus to kill and massacre more Muslims. Your religion does not forbid you from committing such acts, so you have no right to object to any response or retaliation that reciprocates your own actions. But, and in spite of this, our retaliation is directed primarily against the soldiers only and against those standing by them. Our religion forbids us from killing innocent people such as women and children. This, however, does not apply to women fighters. A woman who puts herself in the same trench with men, gets what they get.

The American people, by and large, do not know the name bin Laden, but they soon likely will. Do you have a message for the American people?

I say to them that they have put themselves at the mercy of a disloyal government, and this is most evident in Clinton's administration. We believe that this administration represents Israel inside America. Take the sensitive ministries such as the Ministry of Exterior and the Ministry of Defense and the CIA, you will find that the Jews have the upper hand in them. They make use of America to further their plans for the world, especially the Islamic world. American presence in the Gulf provides support to the Jews and protects their rear. And while millions of Americans are homeless and destitute and live in abject poverty, their government is busy occupying our land and building new settlements and helping Israel build new settlements in the point of departure for our Prophet's midnight journey to the seven heavens. America throws her own sons in the land of the two Holy Mosques for the sake of protecting Jewish interests. The American government is leading the country towards hell. ... We say to the Americans as people and to American mothers, if they cherish their lives and if they cherish their sons, they must elect an American patriotic government that caters to their interests not the interests of the Jews. If the present injustice continues with the wave of national consciousness, it will inevitably move the battle to American soil, just as Ramzi Yousef and others have done. This is my message to the American people. I urge them to find a serious administration that acts in their interest and does not attack people and violate their honor and pilfer their wealth.

In America, we have a figure from history from 1897 named Teddy Roosevelt. He was a wealthy man, who grew up in a privileged situation and who fought on the front lines. He put together his own men - hand chose them - and went to battle. You are like the Middle East version of Teddy Roosevelt.

I am one of the servants of Allah. We do our duty of fighting for the sake of the religion of Allah. It is also our duty to send a call to all the people of the world to enjoy this great light and to embrace Islam and experience the happiness in Islam. Our primary mission is nothing but the furthering of this religion. ... Let not the West be taken in by those who say that Muslims choose nothing but slaughtering. Their brothers in East Europe, in Turkey and in Albania have been guided by Allah to submit to Islam and to experience the bliss of

Islam. Unlike those, the European and the American people and some of the Arabs are under the influence of Jewish media.

End of Interview

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Appendix III

Transcript Of Osama Bin Laden Interview By Tayseer Alouni

The following interview between Al-Jazeera television correspondent Tayseer Alouni and Osama Bin Laden took place in October 2001. The following transcript of the interview, which was done in Arabic, is by a translator hired by CNN.

TAYSEER ALOUNI: Dear viewers, welcome to this much-anticipated interview with the leader of the al Qaeda organization, Sheikh Osama Bin Laden.

Sheikh, the question that's on the mind of many people around the world: America claims that it has convincing evidence of your collusion in the events in New York and Washington. What's your answer?

OSAMA BIN LADEN: America has made many accusations against us and many other Muslims around the world. Its charge that we are carrying out acts of terrorism is an unwarranted description.

We never heard in our lives a court decision to convict someone based on a "secret" proof it has. The logical thing to do is to present a proof to a court of law. What many leaders have said so far is that America has an indication only, and not a tangible proof. They describe those brave guys who took the battle to the heart of America and destroyed its most famous economic and military landmarks.

They did this, as we understand it, and this is something we have agitated for before, as a matter of self-defence, in defence of our brothers and sons in Palestine, and to liberate our sacred religious sites/things. If inciting people to do that is terrorism, and if killing those who kill our sons is terrorism, then let history be witness that we are terrorists.

Q: Sheikh, those who follow your statements and speeches may link your threats to what happened in America. To quote one of your latest statements: "I swear that America won't enjoy security before we live it for real in Palestine." It is easy for anyone following developments to link the acts to your threats.

BIN LADEN: It is easy to link them.

We have agitated for this for years and we have issued statements and fatwas to that effect. This appeared in the investigations into the four young men who destroyed the American center in Ulayya in Riyadh, as disclosed and published by the Saudi government. The [Saudis] reported that they were influenced by some of the fatwas and statements that we issued. Also, apart from that, incitement continues in many meetings and has been published in the media. If they mean, or if you mean, that there is a link as a result of our incitement, then it is true. We incite because incitement is our [unintelligible] today. God

assigned incitement to the best of all mankind, Mohammed, who said, "Fight for the sake of God. Assign this to no one but yourself, and incite the faithful."

[Bin Laden recites verses from the Quran.]

This is a true response. We have incited battle against Americans and Jews. This is true.

Q: Al Qaeda is facing now a country that leads the world militarily, politically, technologically. Surely, the al Qaeda organization does not have the economic means that the United States has. How can al Qaeda defeat America militarily?

BIN LADEN: This battle is not between al Qaeda and the U.S. This is a battle of Muslims against the global crusaders. In the past when al Qaeda fought with the mujahedeen, we were told, "Wow, can you defeat the Soviet Union?" The Soviet Union scared the whole world then. NATO used to tremble of fear of the Soviet Union. Where is that power now? We barely remember it. It broke down into many small states and Russia remained.

God, who provided us with his support and kept us steadfast until the Soviet Union was defeated, is able to provide us once more with his support to defeat America on the same land and with the same people. We believe that the defeat of America is possible, with the help of God, and is even easier for us, God permitting, than the defeat of the Soviet Union was before.

Q: How can you explain that?

BIN LADEN: We experienced the Americans through our brothers who went into combat against them in Somalia, for example. We found they had no power worthy of mention. There was a huge aura over America -- the United States -- that terrified people even before they entered combat. Our brothers who were here in Afghanistan tested them, and together with some of the mujahedeen in Somalia, God granted them victory. America exited dragging its tails in failure, defeat, and ruin, caring for nothing.

America left faster than anyone expected. It forgot all that tremendous media fanfare about the new world order, that it is the master of that order, and that it does whatever it wants. It forgot all of these propositions, gathered up its army, and withdrew in defeat, thanks be to God. We experienced combat against the Russians for 10 years, from 1979 to 1989, thanks be to God. Then we continued against the communists in Afghanistan. Today, we're at the end of our second week. There is no comparison between the two battles, between this group and that. We pray to God to give us his support and to make America ever more reluctant. God is capable of that.

Q: You said you want to defeat America on this land. Don't you think that the presence of al Qaeda on Afghanistan soil is costing the Afghan people a high price?

BIN LADEN: This is a partial point of view. When we came to Afghanistan to support the mujahedeen in 1979, against the Russians, the Saudi government asked me officially not

to enter Afghanistan due to how close my family is to the Saudi leadership. They ordered me to stay in Peshawar, because in the event the Russians arrested me that will be a proof of our support of the mujahedeen against the Soviet Union. At that time, the whole world was scared of the Soviet Union. I didn't obey their order. They thought my entry into Afghanistan was damning to them. I didn't listen to them and I went into Afghanistan for the first time.

We sacrificed a lot in order to keep the Muslim faith alive and save the children. This is a duty for every Muslim, in general, not the Afghans especially. If I run to the rescue of my brothers in Palestine, it doesn't mean it's Osama's duty alone. This is a duty of all Muslims. The jihad is a duty for everyone, not just for the Afghans. The Afghans are suffering, that's true, but this is their Islamic duty. As far as the bombing of Afghanistan, this is not a personal vendetta. America didn't take my money or hurt me in any way. The bombing is a direct effect of our inciting against the Jews and the Americans.

America is against the establishment of any Islamic government. The prophet has said, "They will be target because of their religion." Not because Osama bin Laden is there. When I came here the first time it was because of a desire to revive the Muslim spirit and an attempt at rescuing the children and the powerless. The British attacked Afghanistan before Osama bin Laden was here, Russians came here before me and now the Americans. We pray that God will defeat them just like he did their allies before them. We ask God to give us the power to defeat them as we did others before.

Q: Let's get back to what happened in New York and Washington. What is your assessment of the attacks on America? What's their effect on America and the Muslim world?

BIN LADEN: The events of Tuesday, September the 11th, in New York and Washington are great on all levels. Their repercussions are not over. Although the collapse of the twin towers is huge, but the events that followed, and I'm not just talking about the economic repercussions, those are continuing, the events that followed are dangerous and more enormous than the collapse of the towers.

The values of this Western civilization under the leadership of America have been destroyed. Those awesome symbolic towers that speak of liberty, human rights, and humanity have been destroyed. They have gone up in smoke.

The proof came when the U.S. government pressured the media not to run our statements that are not longer than very few minutes. They felt that the truth started to reach the American people, the truth that we are not terrorists as they understand it but because we are being attacked in Palestine, Iraq, Lebanon, Sudan, Somalia, Kashmir, the Philippines and everywhere else. They understood the truth that this is a reaction from the youth of the Muslim nation against the British government. They forgot all about fair and objective reporting and reporting the other side of the issue. I tell you freedom and human rights in America are doomed. The U.S. government will lead the American people and the West in general will enter an unbearable hell and a choking life because the Western leadership

acts under the Zionist lobby's influence for the purpose of serving Israel, which kills our sons unlawfully in order for them to remain in their leadership positions.

Q: What is your assessment of the Arabic reaction and the effects on the Islamic world? Some were joyous. Others said, "We can't accept this. This is terrorism, not Islam."

BIN LADEN: The events proved the extent of terrorism that America exercises in the world. Bush stated that the world has to be divided in two: Bush and his supporters, and any country that doesn't get into the global crusade is with the terrorists. What terrorism is clearer than this? Many governments were forced to support this "new terrorism." They had to go along with this although they knew that we are defending our brothers and defending our sacred values. Many Western and Eastern leaders have said that the true roots of terrorism should be dealt with; they meant the Palestinian cause. Then we have a righteous cause, but they couldn't admit this out loud of fear of America. They say we are terrorists but solve the Palestinian cause. All of a sudden, Bush and Blair declared, "The time has come to establish an independent state for Palestine." Throughout the past years the time hasn't come, until after these attacks, for the establishment of the Palestinian state. They only understand the language of attacks and killings.

Just as they're killing us, we have to kill them so that there will be a balance of terror. This is the first time the balance of terror has been close between the two parties, between Muslims and Americans, in the modern age. American politicians used to do whatever they wanted with us. The victim was forbidden to scream or to moan. [Unintelligible]

Clinton has said, "Israel has the right to defend itself," after the massacres of Qana. He didn't even reprimand Israel. When the new President Bush and Colin Powell declared in the first few months of their taking office that they will move the American embassy to Jerusalem. They said Jerusalem will be the eternal capital of Israel. They got a standing ovation in Congress and the Senate. This is the biggest bigotry, and this is tyranny loud and clear.

The battle has moved to inside America. We will work to continue this battle, God permitting, until victory or until we meet God before that occurs.

Q: Sheikh, I see that most of your answers are about Palestine and the Palestinian cause. In the beginning, your focus on killing the unfaithful and the Jews ... and you specified then that the Americans should be sent out of the Arabian Peninsula. Now you're turning your attention to Palestine first and the Arabian Peninsula second. What's your comment?

BIN LADEN: Jihad is a duty to liberate Al-Aqsa, and to help the powerless in Palestine, Iraq and Lebanon and in every Muslim country. There is no doubt that the liberation of the Arabian Peninsula from infidels is a duty as well. But it is not right to say that Osama put the Palestinian issue first. I have given speeches in which I encourage Muslims to boycott America economically. I said Americans take our money and give it to Israel to kill our children in Palestine. I established a front a few years ago named The Islamic Front for Jihad against the Jews and the Crusaders. Sometimes we find the right elements to push for

one cause more than the other. Last year's blessed intifada helped us to push more for the Palestinian issue. This push helps the other cause. Attacking America helps the cause of Palestine and vice versa. No conflict between the two; on the contrary, one serves the other.

Q: Sheikh, now let's talk about Christians and Jews. You issued a fatwa for jihad against the Christians and the Jews. As we can see, some other clerics also issued fatwas. There might be some who share your views, and some who oppose them and said this is against the teachings of Islam. They ask how can you kill a Jew or a Christian or a Catholic just because of his religion? They say that your statements contradict what Muslim clerics teach.

BIN LADEN: God bless Allah, many fatwas have been declared on these issues, especially in Pakistan. Sami Zai in Pakistan is a very well-known authority on this. He has written many times on the subject. So did the famous Abdullah bin Ohkmah Al-Shehebi of Saudi Arabia. I read a book titled "The Truth About The New Crusades." They all wrote about and allowed the fighting of Americans and Israelis in Palestine and allowing their killings and destroying their economies and properties.

Q [interrupting]: How about the killing of innocent civilians?

BIN LADEN: The killing of innocent civilians, as America and some intellectuals claim, is really very strange talk. Who said that our children and civilians are not innocent and that shedding their blood is justified? That it is lesser in degree? When we kill their innocents, the entire world from east to west screams at us, and America rallies its allies, agents, and the sons of its agents. Who said that our blood is not blood, but theirs is? Who made this pronouncement? Who has been getting killed in our countries for decades? More than 1 million children, more than 1 million children died in Iraq and others are still dying. Why do we not hear someone screaming or condemning, or even someone's words of consolation or condolence?

How come millions of Muslims are being killed? Where are the experts, the writers, the scholars and the freedom fighters, where are the ones who have an ounce of faith in them? They react only if we kill American civilians, and every day we are being killed, children are being killed in Palestine. We should review the books. Human nature makes people stand with the powerful without noticing it. When they talk about us, they know we won't respond to them. In the past, an Arab king once killed an ordinary Arab man. The people started wondering how come kings have the right to kill people just like that. Then the victim's brother went and killed the king in revenge. People were disappointed with the young man and asked him, "How could you kill a king for your brother?" The man said, "My brother is my king." We consider all our children in Palestine to be kings.

We kill the kings of the infidels, kings of the crusaders, and civilian infidels in exchange for those of our children they kill. This is permissible in law and intellectually.

Q: So what you are saying is that this is a type of reciprocal treatment. They kill our innocents, so we kill their innocents.

BIN LADEN: So we kill their innocents, and I say it is permissible in law and intellectually, because those who spoke on this matter spoke from a juridical perspective.

Q: What is their position?

BIN LADEN: That it is not permissible. They spoke of evidence that the Messenger of God forbade the killing of women and children. This is true.

[Break in tape.]

Q: This is exactly what I'm asking about.

BIN LADEN: However, this prohibition of the killing of children and innocents is not absolute. It is not absolute. There are other texts that restrict it.

I agree that the Prophet Mohammed forbade the killing of babies and women. That is true, but this is not absolute. There is a saying, "If the infidels killed women and children on purpose, we shouldn't shy away from treating them in the same way to stop them from doing it again." The men that God helped [attack, on September 11] did not intend to kill babies; they intended to destroy the strongest military power in the world, to attack the Pentagon that houses more than 64,000 employees, a military center that houses the strength and the military intelligence.

Q: How about the twin towers?

BIN LADEN: The towers are an economic power and not a children's school. Those that were there are men that supported the biggest economic power in the world. They have to review their books. We will do as they do. If they kill our women and our innocent people, we will kill their women and their innocent people until they stop.

Q: Media organizations as well as intelligence information says that you run a big network in some 40 to 50 countries. There is information that al Qaeda is very influential and powerful and it is behind attacks and Islamic foundations and terrorist organizations. How much is al Qaeda dependent on Osama Bin Laden?

BIN LADEN: This has nothing to do with this poor servant of God, nor with the al Qaeda organization. We are the children of an Islamic nation whose leader is Mohammed.

We have one religion, one God, one book, one prophet, one nation. Our book teaches us to be brothers of a faith. All the Muslims are brothers. The name "al Qaeda" was established a long time ago by mere chance. The late Abu Ebeida El-Banashiri established the training camps for our mujahedeen against Russia's terrorism. We used to call the training camp al Qaeda [meaning "the base" in English]. And the name stayed. We speak about the conscience of the nation; we are the sons of the nation. We brothers in Islam from the Middle East, Philippines, Malaysia, India, Pakistan and as far as Mauritania.

Those men who sacrificed themselves in New York and Washington, they are the spokesmen of the nation's conscience. They are the nation's conscience that saw they have to avenge against the oppression.

Not all terrorism is cursed; some terrorism is blessed. A thief, a criminal, for example feels terrorized by the police. So, do we say to the policeman, "You are a terrorist"? No. Police terrorism against criminals is a blessed terrorism because it will prevent the criminal from repeating his deed. America and Israel exercise the condemned terrorism. We practice the good terrorism which stops them from killing our children in Palestine and elsewhere.

Q: What's al Qaeda's strategic plan in the Arab world. Some countries had commented about what's going on while others supported the Americans in their position toward you. The Saudi interior minister warned people against you, and against what you say, and against what you do and the path you follow. What's your reaction to his statement?

BIN LADEN: We are a part of that nation. We work hard to lift it out of oppression, and to stop those who want to manipulate its book and its God. I heard some of what the Saudi interior minister said when he said that we are turning Muslims to atheists, God forbid. Our goal is for our nation to unite in the face of the Christian crusade. This is the fiercest battle. Muslims have never faced anything bigger than this. Bush said it in his own words: "crusade." When Bush says that, they try to cover up for him, then he said he didn't mean it. He said "crusade." Bush divided the world into two: "either with us or with terrorism." Bush is the leader; he carries the big cross and walks. I swear that everyone who follows Bush in his scheme has given up Islam and the word of the prophet. This is very clear. The prophet has said, "Believers don't follow Jews or Christians." Our wise people have said that those who follow the unfaithful have become unfaithful themselves. Those who follow Bush in his crusade against Muslims have denounced God.

[Bin Laden recites verses from the Quran on same subject.]

Those who support Bush, even with one word, have fallen.

Q: Even with one word: You are putting a big group of Muslims in the circle.

BIN LADEN: Know the truth and its roots. The book of God is our guide. Either Islam or atheism.

Q: Can small countries like Qatar, or Bahrain or Kuwait, which don't have much control, be excused? The Qatari foreign minister said, "I am surrounded by superpowers that will very easily wipe me off the map. That's why I have to ally myself with Americans and others."

BIN LADEN: In the subject of Islam and the killing of the faithful, what those people are doing cannot be excused. If the emir of Qatar orders someone to kill your child, and you ask this person why he did it, he'll say, "Look, brother Tayseer, I like you very much, but I was forced to do it." Nothing will excuse him for aiding the tyrant to kill your child. Your

child's blood goes to waste like this. They claim that they don't have much control. Their claim that they were forced into it is not considered righteous in Islam. People's blood is being wasted in this case.

Q: What do you think of the so-called "war of civilizations"? You always keep repeating "crusaders" and words like that all the time. Does that mean you support the war of civilizations?

BIN LADEN: No doubt about that: The book mentions this clearly. The Jews and the Americans made up this call for peace in the world. The peace they're calling for is a big fairy tale. They're just drugging the Muslims as they lead them to slaughter. And the slaughter is still going on. If we defend ourselves, they call us terrorists. The prophet has said, "The end won't come before the Muslims and the Jews fight each other till the Jew hides between a tree and a stone. Then the tree and stone say, "Oh, you Muslim, this is a Jew hiding behind me. Come and kill him." He who claims there will be a lasting peace between us and the Jews is an infidel. He'll be denouncing the book and what's in it. Begin, the leader of the massacre of Kfar Yassin, and the traitor, Anwar Sadat, who sold the land and the blood of the mujahedeen both were given the Nobel Peace Prize. There will come some deceiving times where the liars will be believed and the truthful won't be believed. That's the situation in the Arabic world with its great leadership. They are lying to people. But god's relief and victory is coming soon.

Q: As you call it, this is a war between the crusaders and Muslims. How do you see the way out of this crisis?

BIN LADEN: We are in a decisive battle with the Jews and those who support them from the crusaders and the Zionists. We won't hesitate to kill the Israelis who occupied our land and kill our children and women day and night. And every person who will side with them should blame themselves only. Now how we will get out of the tunnel, that is the [unintelligible] of the other side. We were attacked, and our duty is to remove this attack. As far as the Jews are concerned, the prophet has announced that we will fight them under this name, on this land. America forced itself and its people in this [unintelligible] more than 53 years ago. It recognized Israel and supported its creation financially. In 1973, under Nixon, it supported Israel with men, weapons and ammunition from Washington all the way to Tel Aviv. This support helped change the course of history. It is the Muslim's duty to fight. ...

[America] made hilarious claims. They said that Osama's messages have codes in them to the terrorists. It's as if we were living in the time of mail by carrier pigeon, when there are no phones, no travellers, no Internet, no regular mail, no express mail, and no electronic mail. I mean, these are very humorous things. They discount people's intellects.

We swore that America wouldn't live in security until we live it truly in Palestine. This showed the reality of America, which puts Israel's interest above its own people's interest. America won't get out of this crisis until it gets out of the Arabian Peninsula, and until it stops its support of Israel. This equation can be understood by any American child, but

Bush, because he's an Israeli agent, cannot understand this equation unless the swords threatened him above his head.

Q: Do you have anything to do with anthrax that is spreading around the world?

BIN LADEN: These diseases are a punishment from God and a response to oppressed mothers' prayers in Lebanon, Iraq and Palestine. There is no wall between the prayer of the oppressed and God. This is God's response to these prayers.

Q: Do you have a message for the viewers of Al-Jazeera? You know Al-Jazeera is now translated into so many languages and transmitted around the world.

BIN LADEN: In this fighting between Islam and the crusaders, we will continue our jihad. We will incite the nation for Jihad until we meet God and get his blessing. Any country that supports the Jews can only blame itself. If Sheik Suleiman Abu Gheith spoke specifically about America and Britain, this is only an example to give other countries the chance to review their books.

What do Japan or Australia or Germany have to do with this war? They just support the infidels and the crusaders.

This is a recurring war. The original crusade brought Richard [the Lionhearted] from Britain, Louis from France, and Barbarus from Germany. Today the crusading countries rushed as soon as Bush raised the cross. They accepted the rule of the cross.

What do the Arab countries have to do with this crusade? Everyone that supports Bush, even with one word, is an act of great treason. You change your name and you help the enemy to kill our children, and you are telling me we are facilitating things between us and the Americans. What are they talking about? Those who talk about the loss of innocent people didn't yet taste how it feels when you lose a child, don't know how it feels when you look in your child's eyes and all you see is fear, don't know how it feels when, in Palestine, our brothers are being hunted by army helicopters in the middle of their own homes with their families and children. Everyday. They show you the injured and the dead, and they shed tears, but no tears are shed for our women and children killed in Palestine. Are they not afraid that one day they get the same treatment?

[Bin Laden recites verses from the Quran on same subject.]

The Europeans are free, but when they side with the Jews, that their [unintelligible]. I tell Muslims to believe in the victory of God and in Jihad against the infidels of the world. The killing of Jews and Americans is one of the greatest duties.

[More Quranic verses.]

Remember the saying, “If they want to exile you, they can’t exile you unless it is written by God.” Don’t ask anyone’s opinion when it comes to the killing of Americans, and remember your appointment with God and the best of the prophets.

[More Quranic verses.]

As far as Pakistan siding with the crusaders, our brothers in Pakistan and their actions will facilitate our attack on the coalition of crusaders. Everyone supporting America, even medically, is considered renouncing Islam. Our brother in Pakistan should react pretty quick and strong in order to praise God and his prophet. Today, Islam is calling on you to act quickly.

[Quoting the farewell speech of Mohammed] “Oh, Islam, oh, Islam, there is no other god than God, and Mohammed is the prophet of God.”

End of Interview

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Appendix IV

Transcript Of Osama Bin Laden's Speech Sent To Al-Jazeera

The following is the full English transcript of Usama bin Laden's speech in a videotape sent to Aljazeera in October 2004. In the interests of authenticity, the content of the transcript, which appeared as subtitles at the foot of the screen, has been left unedited.

Praise be to Allah who created the creation for his worship and commanded them to be just and permitted the wronged one to retaliate against the oppressor in kind. To proceed:

Peace be upon he who follows the guidance: People of America this talk of mine is for you and concerns the ideal way to prevent another Manhattan, and deals with the war and its causes and results.

Before I begin, I say to you that security is an indispensable pillar of human life and that free men do not forfeit their security, contrary to Bush's claim that we hate freedom.

If so, then let him explain to us why we don't strike for example - Sweden? And we know that freedom-haters don't possess defiant spirits like those of the 19 – may Allah have mercy on them.

No, we fight because we are free men who don't sleep under oppression. We want to restore freedom to our nation, just as you lay waste to our nation. So shall we lay waste to yours.

No one except a dumb thief plays with the security of others and then makes himself believe he will be secure. Whereas thinking people, when disaster strikes, make it their priority to look for its causes, in order to prevent it happening again.

But I am amazed at you. Even though we are in the fourth year after the events of September 11th, Bush is still engaged in distortion, deception and hiding from you the real causes. And thus, the reasons are still there for a repeat of what occurred.

So I shall talk to you about the story behind those events and shall tell you truthfully about the moments in which the decision was taken, for you to consider.

I say to you, Allah knows that it had never occurred to us to strike the towers. But after it became unbearable and we witnessed the oppression and tyranny of the American/Israeli coalition against our people in Palestine and Lebanon, it came to my mind.

The events that affected my soul in a direct way started in 1982 when America permitted the Israelis to invade Lebanon and the American Sixth Fleet helped them in that. This

bombardment began and many were killed and injured and others were terrorised and displaced.

I couldn't forget those moving scenes, blood and severed limbs, women and children sprawled everywhere. Houses destroyed along with their occupants and high rises demolished over their residents, rockets raining down on our home without mercy.

The situation was like a crocodile meeting a helpless child, powerless except for his screams. Does the crocodile understand a conversation that doesn't include a weapon? And the whole world saw and heard but it didn't respond.

In those difficult moments many hard-to-describe ideas bubbled in my soul, but in the end they produced an intense feeling of rejection of tyranny, and gave birth to a strong resolve to punish the oppressors

And as I looked at those demolished towers in Lebanon, it entered my mind that we should punish the oppressor in kind and that we should destroy towers in America in order that they taste some of what we tasted and so that they be deterred from killing our women and children.

And that day, it was confirmed to me that oppression and the intentional killing of innocent women and children is a deliberate American policy. Destruction is freedom and democracy, while resistance is terrorism and intolerance.

This means the oppressing and embargoing to death of millions as Bush Sr. did in Iraq in the greatest mass slaughter of children mankind has ever known, and it means the throwing of millions of pounds of bombs and explosives at millions of children - also in Iraq - as Bush Jr did, in order to remove an old agent and replace him with a new puppet to assist in the pilfering of Iraq's oil and other outrages.

So with these images and their like as their background, the events of September 11th came as a reply to those great wrongs, should a man be blamed for defending his sanctuary?

Is defending oneself and punishing the aggressor in kind, objectionable terrorism? If it is such, then it is unavoidable for us.

This is the message which I sought to communicate to you in word and deed, repeatedly, for years before September 11th.

And you can read this, if you wish, in my interview with Scott in Time Magazine in 1996, or with Peter Arnett on CNN in 1997, or my meeting with John Weiner in 1998.

You can observe it practically, if you wish, in Kenya and Tanzania and in Aden. And you can read it in my interview with Abdul Bari Atwan, as well as my interviews with Robert Fisk.

The latter is one of your compatriots and co-religionists and I consider him to be neutral. So are the pretenders of freedom at the White House and the channels controlled by them able to run an interview with him? So that he may relay to the American people what he has understood from us to be the reasons for our fight against you?

If you were to avoid these reasons, you will have taken the correct path that will lead America to the security that it was in before September 11th. This concerned the causes of the war.

As for its results, they have been, by the grace of Allah, positive and enormous, and have, by all standards, exceeded all expectations. This is due to many factors, chief among them, that we have found it difficult to deal with the Bush administration in light of the resemblance it bears to the regimes in our countries, half of which are ruled by the military and the other half which are ruled by the sons of kings and presidents.

Our experience with them is lengthy, and both types are replete with those who are characterised by pride, arrogance, greed and misappropriation of wealth. This resemblance began after the visits of Bush Sr. to the region.

At a time when some of our compatriots were dazzled by America and hoping that these visits would have an effect on our countries, all of a sudden he was affected by those monarchies and military regimes, and became envious of their remaining decades in their positions, to embezzle the public wealth of the nation without supervision or accounting.

So he took dictatorship and suppression of freedoms to his son and they named it the Patriot Act, under the pretence of fighting terrorism. In addition, Bush sanctioned the installing of sons as state governors, and didn't forget to import expertise in election fraud from the region's presidents to Florida to be made use of in moments of difficulty.

All that we have mentioned has made it easy for us to provoke and bait this administration. All that we have to do is to send two mujahidin to the furthest point east to raise a piece of cloth on which is written al-Qaida, in order to make the generals race there to cause America to suffer human, economic, and political losses without their achieving for it anything of note other than some benefits for their private companies.

This is in addition to our having experience in using guerrilla warfare and the war of attrition to fight tyrannical superpowers, as we, alongside the mujahidin, bled Russia for 10 years, until it went bankrupt and was forced to withdraw in defeat.

All Praise is due to Allah.

So we are continuing this policy in bleeding America to the point of bankruptcy. Allah willing, and nothing is too great for Allah.

That being said, those who say that al-Qaida has won against the administration in the White House or that the administration has lost in this war have not been precise, because

when one scrutinises the results, one cannot say that al-Qaida is the sole factor in achieving those spectacular gains.

Rather, the policy of the White House that demands the opening of war fronts to keep busy their various corporations - whether they be working in the field of arms or oil or reconstruction - has helped al-Qaida to achieve these enormous results.

And so it has appeared to some analysts and diplomats that the White House and us are playing as one team towards the economic goals of the United States, even if the intentions differ.

And it was to these sorts of notions and their like that the British diplomat and others were referring in their lectures at the Royal Institute of International Affairs. [When they pointed out that] for example, al-Qaida spent \$500,000 on the event, while America, in the incident and its aftermath, lost - according to the lowest estimate - more than \$500 billion.

Meaning that every dollar of al-Qaida defeated a million dollars by the permission of Allah, besides the loss of a huge number of jobs.

As for the size of the economic deficit, it has reached record astronomical numbers estimated to total more than a trillion dollars.

And even more dangerous and bitter for America is that the mujahidin recently forced Bush to resort to emergency funds to continue the fight in Afghanistan and Iraq, which is evidence of the success of the bleed-until-bankruptcy plan - with Allah's permission.

It is true that this shows that al-Qaida has gained, but on the other hand, it shows that the Bush administration has also gained, something of which anyone who looks at the size of the contracts acquired by the shady Bush administration-linked mega-corporations, like Halliburton and its kind, will be convinced. And it all shows that the real loser is ... you.

It is the American people and their economy. And for the record, we had agreed with the Commander-General Muhammad Ataa, Allah have mercy on him, that all the operations should be carried out within 20 minutes, before Bush and his administration notice.

It never occurred to us that the commander-in-chief of the American armed forces would abandon 50,000 of his citizens in the twin towers to face those great horrors alone, the time when they most needed him.

But because it seemed to him that occupying himself by talking to the little girl about the goat and its butting was more important than occupying himself with the planes and their butting of the skyscrapers, we were given three times the period required to execute the operations - all praise is due to Allah.

And it's no secret to you that the thinkers and perceptive ones from among the Americans warned Bush before the war and told him: "All that you want for securing America and

removing the weapons of mass destruction - assuming they exist - is available to you, and the nations of the world are with you in the inspections, and it is in the interest of America that it not be thrust into an unjustified war with an unknown outcome”.

But the darkness of the black gold blurred his vision and insight, and he gave priority to private interests over the public interests of America.

So the war went ahead, the death toll rose, the American economy bled, and Bush became embroiled in the swamps of Iraq that threaten his future. He fits the saying “like the naughty she-goat who used her hoof to dig up a knife from under the earth”.

So I say to you, over 15,000 of our people have been killed and tens of thousands injured, while more than a thousand of you have been killed and more than 10,000 injured. And Bush’s hands are stained with the blood of all those killed from both sides, all for the sake of oil and keeping their private companies in business.

Be aware that it is the nation who punishes the weak man when he causes the killing of one of its citizens for money, while letting the powerful one get off, when he causes the killing of more than 1000 of its sons, also for money.

And the same goes for your allies in Palestine. They terrorise the women and children, and kill and capture the men as they lie sleeping with their families on the mattresses, that you may recall that for every action, there is a reaction.

Finally, it behoves you to reflect on the last wills and testaments of the thousands who left you on the 11th as they gestured in despair. They are important testaments, which should be studied and researched.

Among the most important of what I read in them was some prose in their gestures before the collapse, where they say: “How mistaken we were to have allowed the White House to implement its aggressive foreign policies against the weak without supervision”.

It is as if they were telling you, the people of America: “Hold to account those who have caused us to be killed, and happy is he who learns from others’ mistakes”.

And among that which I read in their gestures is a verse of poetry. “Injustice chases its people, and how unhealthy the bed of tyranny”.

As has been said: “An ounce of prevention is better than a pound of cure”.

And know that: “It is better to return to the truth than persist in error”. And that the wise man doesn’t squander his security, wealth and children for the sake of the liar in the White House.

In conclusion, I tell you in truth, that your security is not in the hands of Kerry, nor Bush, nor al-Qaida. No.

Your security is in your own hands. And every state that doesn't play with our security has automatically guaranteed its own security.

And Allah is our Guardian and Helper, while you have no Guardian or Helper. All peace be upon he who follows the Guidance.

End of Speech

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Appendix V

Federal Register: November 16, 2001 (Volume 66, Number 222)
Presidential Documents
Page 57831-57836

Military Order of November 13, 2001

Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, 115 Stat. 224) and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

Section 1. Findings.

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to

be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

Sec. 2. Definition and Policy.

(a) The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,
(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State

shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

Sec. 3. Detention Authority of the Secretary of Defense.

Any individual subject to this order shall be --

- (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;
- (b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;
- (c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;
- (d) allowed the free exercise of religion consistent with the requirements of such detention; and
- (e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

Sec. 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

- (a) Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.
- (b) As a military function and in light of the findings in section 1, including subsection (f) thereof, the Secretary of Defense shall issue such orders and regulations, including orders for the appointment of one or more military commissions, as may be necessary to carry out subsection (a) of this section.
- (c) Orders and regulations issued under subsection (b) of this section shall include, but not be limited to, rules for the conduct of the proceedings of military commissions, including pre-trial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys, which shall at a minimum provide for--
 - (1) military commissions to sit at any time and any place, consistent with such guidance regarding time and place as the Secretary of Defense may provide;
 - (2) a full and fair trial, with the military commission sitting as the triers of both fact and law;

(3) admission of such evidence as would, in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person;

(4) in a manner consistent with the protection of information classified or classifiable under Executive Order 12958 of April 17, 1995, as amended, or any successor Executive Order, protected by statute or rule from unauthorized disclosure, or otherwise protected by law,

(A) the handling of, admission into evidence of, and access to materials and information, and

(B) the conduct, closure of, and access to proceedings;

(5) conduct of the prosecution by one or more attorneys designated by the Secretary of Defense and conduct of the defense by attorneys for the individual subject to this order;

(6) conviction only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present;

(7) sentencing only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present; and

(8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.

Sec. 5. Obligation of Other Agencies to Assist the Secretary of Defense.

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

Sec. 6. Additional Authorities of the Secretary of Defense.

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

Sec. 7. Relationship to Other Law and Forums.

(a) Nothing in this order shall be construed to--

(1) Authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) Limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) Limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order--

(1) Military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) The individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in:

(i) Any court of the United States, or any State thereof,

(ii) Any court of any foreign nation, or

(iii) Any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term "State" includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

Sec. 8. Publication.

This order shall be published in the Federal Register.

GEORGE W. BUSH

THE WHITE HOUSE,
November 13, 2001.

Appendix VI

*United States District Court
Southern District Of New York*

UNITED STATES OF AMERICA

- V -

USAMA BIN LADEN,
a/k/a “Usamah Bin-Muhammad Bin-Laden,”
a/k/a “Shaykh Usamah Bin-Laden,”
a/k/a “Mujahid Shaykh,”
a/k/a “Abu Abdallah,”
a/k/a “Qa Qa,”

Defendant

COUNT ONE

Conspiracy to Attack Defense Utilities of the United States

The Grand Jury charges:

Background: Al Qaeda

- 1) At all relevant times from in or about 1989 until the date of the filing of this Indictment, an international terrorist group existed which was dedicated to opposing non-Islamic governments with force and violence. This organization grew out of the “mekhtab al Khidemat” (the “Services Office”) organization which had maintained (and continues to maintain) offices in various parts of the world, including Afghanistan, Pakistan (particularly in Peshawar) and the United States, particularly at the Alkifah Refugee Center - in Brooklyn. From in or about 1989 until the present, the group called itself “Al Qaeda” (“the Base”). From 1989 until in or about 1991, the group was headquartered in Afghanistan and Peshawar, Pakistan. In or about 1992, the leadership of Al Qaeda, including its “emir” (or prince) USAMA BIN LADEN the defendant, and its military command relocated to the Sudan. From in or about 1991 until the present, the group also called itself the “Islamic Army.” The international terrorist group (hereafter referred to as “Al Qaeda”) was headquartered in the Sudan from approximately 1992 until approximately 1996 but still maintained offices in various parts of the world. In 1996, USAMA BIN LADEN and Al Qaeda relocated to Afghanistan. At all relevant times, Al Qaeda was led by its “emir,” USAMA BIN LADEN. Members of Al Qaeda pledged an oath of allegiance to USAMA BIN LADEN and Al Qaeda.

2) Al Qaeda opposed the United States for several reasons.

First, the United States was regarded as “infidel” because it was not governed in a manner consistent with the group’s extremist interpretation of Islam.

Second, the United States was viewed as providing essential support for other “infidel” governments and institutions, particularly the governments of Saudi Arabia and Egypt, the nation of Israel and the United Nations, which were regarded as enemies of the group.

Third, Al Qaeda opposed the involvement of the United States armed forces in the Gulf War in 1991 and in Operation Restore Hope in Somalia in 1992 and 1993. In particular, Al Qaeda opposed the continued presence of American military forces in Saudi Arabia (and elsewhere on the Saudi Arabian peninsula) following the Gulf war.

Fourth, Al Qaeda opposed the United States Government because of the arrest, conviction and imprisonment of persons belonging to Al Qaeda or its affiliated terrorist groups, including Sheik Omar Abdel Rahman.

- 3) Al Qaeda has functioned both on its own and through some of the terrorist organizations that have operated under its umbrella, including: the Islamic Group (also known as “al Gamaa Islamia” or simply “Gamaa’t”), led by co-conspirator Sheik Oxar Abdal Rahman; the al Jihad group based in Egypt; the “Talah e Fatah” (“Vanguards of conquest”) faction of al Jibad, which was also based in Egypt, Which faction was led by co-conspirator Ayman al Zawahiri (“al Jibad”);Palestinian Islamic Jihad and a number of Jihad groups in other countries, including Egypt, the Sudan, Saudi Arabia, Yemen, Somalia, Eritrea, Kenya, Pakistan, Bosnia, Croatia, Algeria, Tunisia, Lebanon, the Philippines, Tajikistan, Chechnya, Bangladesh, Kashmir and Azerbaijan. In February 1998, Al Qaeda joined forces with Gamaa't, Al Jihad, the Jihad Movement in Bangladesh and the “Jamaat ul Ulema e Pakistan” to issue a fatwah (an Islamic religious ruling) declaring war against American civilians worldwide under the banner of the ”International Islamic Front for Jibad on the Jews and Crusaders.”
- 4) Al Qaeda also forged alliances with the National Islamic Front in the Sudan and with the government of Iran and its associated terrorist group Hezbollah for the purpose of working together against their perceived common enemies in the West, particularly the United States. In addition, al Qaeda reached an understanding with the government of Iraq that al Qaeda would not work against that government and that on particular projects, specifically including weapons development, al Qaeda would work cooperatively with the Government of Iraq.

- 5) Al Qaeda had a command and control structure which included a majlis al shura (or consultation council) which discussed and approved major undertakings, including terrorist operations.
- 6) Al Qaeda also conducted internal investigations of its members and their associates in an effort to detect informants and killed those suspected of collaborating with enemies of Al Qaeda.
- 7) From at least 1991 until the date of the filing of this Indictment, in the Sudan, Afghanistan and elsewhere out of the jurisdiction of any particular state or district, USAMA BIN LADEN, a/k/a "Usamah Bin-Muhammad Bin-Laden," a/k/a "Shaykh Usamah Bin-Laden," a/k/a "Mujahid Shaykh," a/k/a "Abu Abdallah," a/k/a "Qa Qa," the defendant, and a co-conspirator not named as a defendant herein (hereafter "Co-conspirator") who was first brought to and arrested in the Southern District of New York, and others known and unknown to the grand jury, unlawfully, wilfully and knowingly combined conspired, confederated and agreed together and with each other to injure and destroy, and attempt to injure and destroy, national-defense material, national-defense premises and national-defense utilities of the United States with the intent to injure, interfere with and obstruct the national defense of the United States.

Overt Acts

- 8) In furtherance of the said conspiracy, and to effect the illegal object thereof, the following overt acts, among others, were committed:
 - a) At various times from at least as early as 1991 until at least in or about February 1998, USAMA BIN LADEN, the defendant, met with Co-conspirator and other members of Al Qaeda in the Sudan, Afghanistan and elsewhere;
 - b) At various times from at least as early as 1991, USAMA BIN LADEN, and others known and unknown, made efforts to obtain weapons, including firearms and explosives, for Al Qaeda and its affiliated terrorist groups;
 - c) At various times from at least as early as 1991 USAMA BIN LADEN, and others known and unknown, provided training camps and guest houses in various areas, including Afghanistan and the Sudan, for the use of Al Qaeda and its affiliated terrorist groups;
 - d) At various times from at least as early as 1991, USAMA BIN LADEN, and others known and unknown, made efforts to produce counterfeit passports purporting to be issued by various countries and also obtained official passports from the Government of the Sudan for use by Al Qaeda and its affiliated groups;

- e) At various times from at least as early as 1991, USAMA BIN LADEN, and others known and unknown, made efforts to recruit United States citizens to Al Qaeda in order to utilize the American citizens for travel throughout the Western world to deliver messages and engage in financial transactions for the benefit of Al Qaeda and its affiliated groups;
- f) At various times from at least as early as 1991, USAMA BIN LADEN, and others known and unknown, made efforts to utilize non-Government organizations which purported to be engaged in humanitarian work as conduits for transmitting funds for the benefit of Al Qaeda and its affiliated groups;
- g) At various times from at least as early as 1991, Co-conspirator and others known and unknown to the grand jury engaged in financial and business transactions on behalf of defendant USAMA BIN LADEN and Al Qaeda, including, but not limited to: purchasing land for training camps; purchasing warehouses for storage of items, including explosives; transferring funds between bank accounts opened in various names, obtaining various communications equipment, including satellite telephones and transporting currency and weapons to members of Al Qaeda and its associated terrorist organizations in various countries throughout the world;
- h) At various times from in or about 1992 until the date of the filing of this Indictment, USAMA BIN LADEN and other ranking members of Al Qaeda stated privately to other members of Al Qaeda that Al Qaeda should put aside its differences with Shia Muslim terrorist organizations, including the Government of Iran and its affiliated terrorist group Hezbollah, to cooperate against the perceived common enemy, the United States and its allies;
- i) At various times from in or about 1992 until the date of the filing of this Indictment, USAMA BIN LADEN and other ranking members of Al Qaeda stated privately to other members of Al Qaeda that the United States forces stationed on the Saudi Arabian peninsula, including both Saudi Arabia and Yemen, should be Attacked;
- j) At various times from in or about 1992 until the date of the filing of this Indictment, USAMA BIN LADEN and other ranking members of Al Qaeda stated privately to other members of Al Qaeda that the United States forces stationed in the Horn of Africa, including Somalia, should be attacked;
- k) Beginning in or about early spring 1993, Al Qaeda members began to provide training and assistance to Somali tribes opposed to the United Nations intervention in Somalia;

- l) On October 3 and 4, 1993, members of Al Qaeda participated with Somali tribesmen in an attack on United States military personnel serving in Somalia as part of Operation Restore Hope, which attack killed a total of 18 United States soldiers and wounded 73 others in Mogadishu;
- m) On two occasions in the period from in or about 1992 until in or about 1995, Co-conspirator helped transport weapons and explosives from Khartoum to Port Sudan for transshipment to the Saudi Arabian peninsula;
- n) At various times from at least as early as 1993, USAMA BIN LADEN and others known and unknown, made efforts to obtain the components of nuclear weapons;
- o) At various times from at least as early as 1993 USAMA BIN LADEN and others known and unknown, made efforts to produce chemical weapons;
- p) On or about August 23, 1996, USAMA BIN LADEN signed and issued a declaration of Jihad entitled “Message from Usamah Bin-Muhammad Bin-Laden to His Muslim Brothers in the Whole World and Especially in the Arabian Peninsula: Declaration of Jihad Against the Americans Occupying the Land of the Two Holy Mosques; Expel the Heretics from the Arabian Peninsula” (hereafter the “Declaration of Jihad) from the Hindu Kush mountains in Afghanistan. The Declaration of Jihad included statements that efforts should be pooled to kill Americans and encouraged other persons to join the jihad against the American enemy”;
- q) In or about late August 1996, USAMA BIN LADEN read aloud the Declaration of Jihad and made an audiotape recording of such reading for worldwide distribution; and
- r) In February 1998, USAMA BIN LADEN issued a joint declaration in the name of Gamaa't, Al Jihad, the Jihad movement in Bangladesh and the “Jamaat ul Ulema e Pakistan” under the banner of the “International Islamic Front for Jihad on the Jews and Crusaders,” which stated that Muslims should kill Americans including civilians – anywhere in the world where they can be found.

(Title 18, United States code, Section 2155(b).)

6 November 1998

Appendix VII

United Kingdom Parliament: Early Day Motion 396

INDICTMENT OF SADDAM HUSSEIN

Session: 1996-97; Date tabled: 14.01.1997; Primary sponsor: Clwyd, Ann (Lab.)

That this House welcomes the launch in the House on 15th January 1997, of IDICT an international campaign to bring Saddam Hussein and others in the current regime in Iraq before an international tribunal to face charges of war crimes, crimes against humanity, crimes against peace and the crime of genocide;

...notes that since 1979, the Baathist regime in Iraq has committed repeated acts of brutality against the people of Iraq and the citizens of other countries; believes that charges against Saddam Hussein and his associates include the invasion of Iran and Kuwait, the occupation and destruction of Kuwait, the use of chemical weapons against the Kurds and against Iran, the genocidal campaign against the Kurds, the continued and systematic repression of Iraqi civilians, the systematic destruction of the land inhabited by the Marsh Arabs, politically motivated assassinations inside and outside Iraq, the abduction and continued detention of Kuwaiti and Iraqi citizens and the continued violation of Security Council resolutions;

...maintains that these well-documented acts violate international law as well as the basic norms of behaviour recognised by civilised laws; calls on the United Nations Security Council to set up an international tribunal to try the members of the Baathist regime in Iraq on the above-mentioned charges;

...and emphasises the most important reason for prosecuting those responsible is the need for justice, especially for the victims and their surviving relatives.

Appendix VIII

US Code, Title 18, Chapter 51 (Homicide), Section 1114: Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

- (1) in the case of murder, as provided under section 1111;
- (2) in the case of manslaughter, as provided under section 1112; or
- (3) in the case of attempted murder or manslaughter, as provided in section 1113.

(June 25, 1948, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, § 402(c), 66 Stat. 276; Pub. L. 85–568, title III, § 304(d), July 29, 1958, 72 Stat. 434; Pub. L. 87–518, § 10, July 2, 1962, 76 Stat. 132; Pub. L. 88–493, § 3, Aug. 27, 1964, 78 Stat. 610; Pub. L. 89–74, § 8(b), July 15, 1965, 79 Stat. 234; Pub. L. 90–449, § 2, Aug. 2, 1968, 82 Stat. 611; Pub. L. 91–375, § 6(j)(9), Aug. 12, 1970, 84 Stat. 777; Pub. L. 91–513, title II, § 701(i)(1), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 91–596, § 17(h)(1), Dec. 29, 1970, 84 Stat. 1607; Pub. L. 93–481, § 5, Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–284, § 18, May 11, 1976, 90 Stat. 514; Pub. L. 94–582, § 16, Oct. 21, 1976, 90 Stat. 2883; Pub. L. 95–87, title VII, § 704, Aug. 3, 1977, 91 Stat. 520; Pub. L. 95–616, § 3(j)(2), Nov. 8, 1978, 92 Stat. 3112; Pub. L. 95–630, title III, § 307, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 96–296, § 26(c), July 1, 1980, 94 Stat. 819; Pub. L. 96–466, title VII, § 704, Oct. 17, 1980, 94 Stat. 2216; Pub. L. 97–143, § 1(b), Dec. 29, 1981, 95 Stat. 1724; Pub. L. 97–259, title I, § 128, Sept. 13, 1982, 96 Stat. 1099; Pub. L. 97–365, § 6, Oct. 25, 1982, 96 Stat. 1752; Pub. L. 97–452, § 2(b), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–63, title I, July 30, 1983, 97 Stat. 313; Pub. L. 98–473, title II, § 1012, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 98–557, § 17(c), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 100–690, title VII, § 7026, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101–73, title IX, § 962(a)(6), Aug. 9, 1989, 103 Stat. 502; Pub. L. 101–647, title XII, § 1205(h), title XVI, § 1606, title XXXV, § 3535, Nov. 29, 1990, 104 Stat. 4831, 4843, 4925; Pub. L. 102–54, § 13(f)(2), June 13, 1991, 105 Stat. 275; Pub. L. 102–365, § 6, Sept. 3, 1992, 106 Stat. 975; Pub. L. 103–322, title VI, § 60007, title XXXIII, §§ 330009(c), 330011(g), Sept. 13, 1994, 108 Stat. 1971, 2143, 2145; Pub. L. 104–132, title VII, § 727(a), Apr. 24, 1996, 110 Stat. 1302; Pub. L. 104–294, title VI, § 601(f)(2), Oct. 11, 1996, 110 Stat. 3499; Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808.)

Appendix IX

US Code, Title 18, Chapter 113B - Terrorism, Section 2331: Definitions

As used in this chapter—

- (1) the term “international terrorism” means activities that—
 - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;
- (2) the term “national of the United States” has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;
- (3) the term “person” means any individual or entity capable of holding a legal or beneficial interest in property;
- (4) the term “act of war” means any act occurring in the course of—
 - (A) declared war;
 - (B) armed conflict, whether or not war has been declared, between two or more nations; or
 - (C) armed conflict between military forces of any origin; and
- (5) the term “domestic terrorism” means activities that—
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily within the territorial jurisdiction of the United States.

(Added Pub. L. 102–572, title X, §1003(a)(3), Oct. 29, 1992, 106 Stat. 4521; amended Pub. L. 107–56, title VIII, §802(a), Oct. 26, 2001, 115 Stat. 376.)

Appendix X

Public Law 107-40, 107th Congress: Joint Resolution To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States. NOTE: Sept. 18, 2001 [S.J. Res. 23]

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, <<Note: Authorization for Use of Military Force. 50 USC 1541 note.>>

Section 1. Short Title.

This joint resolution may be cited as the ``Authorisation for Use of Military Force''.

Sec. 2. Authorization For Use Of United States Armed Forces.

(a) <<Note: President.>> In General.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harboured such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements.--

(1) Specific statutory authorization.--Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) Applicability of other requirements.--Nothing in this resolution supersedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

Legislative History--S.J. Res. 23 (H.J. Res. 64)

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Eldin Mohamed Adam” Wadih El Hage, a/k/a "Abdus Sabbur” a/k/a "Abd al Sabbur” a/k/a "Wadia” a/k/a "Abu Abdullah al Lubnani” a/k/a "Norman” a/k/a "Wa'da Norman” a/k/a "the Manager” a/k/a "Tanzanite” Ibrahim Eidarous, a/k/a "Ibrahim Hussein Abdelhadi Eidarous” a/k/a "Daoud” a/k/a "Abu Abdullah” a/k/a "Ibrahim” Adel Abdel Bary, a/k/a "Adel Mohammed Abdul Almagid Abdel Bary” a/k/a "Abbas” a/k/a "Abu Dia” a/k/a "Adel” Fazul Abdullah Mohammed, a/k/a "Harun” a/k/a "Harun Fazhl” a/k/a "Fazhl Abdullah” a/k/a “Fazhl Khan” Mohamed Sadeek Odeh, a/k/a “Abu Moath” a/k/a “Noureldine” a/k/a “Marwan” a/k/a “Hydar” a/k/a “Abdullbast Awadah” a/k/a “Abdulbasit Awadh Mbarak Assayid” Mohamed Rashed Daoud Al-Owhali, a/k/a “Khalid Salim Saleh Bin Rashed” a/k/a “Moath” a/k/a “Abdul Jabbar Ali Abdel-Latif” Mustafa Mohamed Fadhil, a/k/a “Mustafa Ali Elbishy” a/k/a “Hussein” a/k/a “Hussein Ali” a/k/a “Khalid” a/k/a “Abu Jihad” Khalfan Khamis Mohamed, a/k/a “Khalfan Khamis” Ahmed Khalfan Ghailani, a/k/a “Fupi” a/k/a “Abubakary Khalfan Ahmed Ghailani” a/k/a “Abubakar Khalfan Ahmed” Fahid Mohammed Ally Msalam, a/k/a “Fahad M. Ally” Sheikh Ahmed Salim Swedan, a/k/a “Sheikh Bahamadi” a/k/a “Ahmed Ally” Defendants, *132 F. Supp. 2d 168 (S.D.N.Y.) (2001)*

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