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Stig Jarle Hansen

Adherence to the Geneva Conventions by the United States of America during the War on Terror

Kow Egyir Quansah

International Relations - LANDSAM

DECLARATION

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kow_q@yahoo.com

Noragric

Department of International Environment and Development Studies

The Faculty of Landscape and Society

P.O. Box 5003

N-1432 Ås

Norway

Tel.: +47 67 23 00 00

Internet: <https://www.nmbu.no/fakultet/landsam/institutt/noragric>

Declaration

I, Kow Egyir Quansah, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature.....

Date.....

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Abstract

Between 2001 and 2009 the United States was engaged in a War on Terror. This was a result of the terror attacks on USA mainland on September 11, 2001. As the war progressed, it became known through various reports and findings that the USA was disregarding some provisions in the Geneva Conventions with regards to its treatment of captured suspected terrorists. The USA however disagreed that it had disregarded any rules. President Bush posited that the USA had acted within the laws, and where it came under serious challenges about flouting these international laws, it questioned the meaning of these laws and the ambiguous form in which these laws were presented, subject to different interpretations. Even though several actors in the international community concluded that the USA had flouted some provisions of the Geneva Conventions the USA viewed its application of these laws differently. This study provides alternative ways of viewing the issue of adherence to international laws which has mostly been binary, i.e., states either adhere to or flout international laws. It provides a trend analysis of the different ways in which the USA reacted to the provisions of the Geneva Conventions during the War on Terror by analysing the speeches of President Bush. Critical realists view international laws as a moving target which are subject to reinterpretation. They stray from the conventional views of international laws as objective and apolitical. They posit that political, social and moral considerations embedded in the decision-making stage in the formulation of international laws makes them instruments of rule for dominant actors. Dominant actors therefore do not view the law as it is, but as it should be.

The art of war is either a breach of international law or an enforcement of same. In addition to the justification of protecting USA citizens from further attacks, President Bush mentioned the enforcement of international laws as justification for the war. This study analyses the use of the War on Terror to enforce international laws and concludes that even though the USA sometimes stated enforcement as justification, the war was in breach of some of the international laws the USA wanted enforced.

Keywords: International laws, adherence, terrorism, war, critical realism.

Abbreviations

CCR Center for Constitutional Rights

CIA Central Intelligence Agency

ICRC International Committee of the Red Cross

IR International Relations

POW Prisoner of War

SOTU State of the Union

UN United Nations

UNGA United Nations General Assembly

UNSC United Nations Security Council

USA United States of America

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CHAPTER ONE: INTRODUCTION

1.0 Introduction

The Geneva Conventions were established to provide a standard of humanitarian treatment in conflict situations backed by international law (American Red Cross 2011). Signatories to these conventions, comprising four treaties and three protocols, commit to the observance of these laws of war to reduce the level of atrocities that occur in war, especially in relation to prisoners of war, wounded soldiers, and civilian populations in a war zone (American Red Cross 2011).

Countries are expected to adhere to the provisions of international laws. As Bull (2002) stipulates, there may be different motivations that cause countries to react to international laws like they do. It may be through habit, enforcement by a powerful country or through benefits arising because of adherence to international laws. Whatever the motivations may be, countries who have disregarded international laws have sometimes suffered dire consequences for such acts. These consequences include various forms of sanctions (economic, diplomatic, etc.) with the worst-case scenarios involving war against flouting countries to punish them and serve as a deterrent to other countries about the effects of flouting international laws. Countries like Iraq, Russia and Libya have suffered this fate in the past because of their disregard for international laws.

The War on Terror initiated by President Bush between 2001 and 2009 resulted in some breaches to the provisions of the Geneva Conventions by the USA, especially with regards to the treatment of captured suspected terrorists. Several reports like the Report on Torture and Cruel, Inhumane, and Degrading Treatment of Prisoners at Guantanamo Bay by the Center for Constitutional Rights (CCR 2006) provide evidence of the treatment of these captured suspected terrorists at Guantanamo Bay by USA officials in direct contravention of the provisions of the Geneva Conventions. Yet, unlike the fate of other countries receiving sanctions, the USA did not receive any sanctions for disregarding the provisions of Geneva Conventions.

This paper aims at looking at how dominant actors adhere to international laws. It examines ways in which the Geneva Conventions were adhered to by the USA government between 2001 and 2009 when the War on Terror was declared by President Bush following the

September 11 attacks on the USA. Even though several reports and findings point to flouting the provisions of the Geneva Conventions with regards to the treatment of captured suspected terrorists (CCR 2006; Lowenthal 2017), the USA redefined certain aspects of the existing laws to legitimize its' actions. For instance, it classified captured al Qaeda terrorists as enemy combatants. This classification was used to declare these suspected terrorists as exempt from the privileges guaranteed under the Geneva Conventions for prisoners of war. But as Bull (2002) put it, non-state actors are subjects of international laws rather than objects because they are bound by certain responsibilities and rights. This therefore affects their actions just as much as states are affected. Going against international laws has repercussions for them just as it does for states. The USA however redefined this assumption and disregarded some provisions of the Geneva Conventions by subjecting these suspected terrorists to inhumane treatment. This paper seeks to explain the various ways in which the Geneva Conventions were treated by the USA during the war.

Justifying the war is important to legitimizing the war. Bull (2002) stipulates that wars are waged either as a breach of law or an enforcement of laws. The thesis looks at the War on Terror's impact on the Geneva Conventions by analyzing whether the war served its purpose by enforcing the law or caused a weakening of the laws by breaching it.

1.1 Research Objectives

To achieve the purpose of this thesis, the following objectives have been identified and appropriate research questions generated.

Objective 1: Show the different ways in which the USA adhered to the Geneva Conventions in the treatment of captured suspected terrorists during the War on Terror between 2001 and 2009 through the speeches of President Bush

1.2 Research Questions (RQ)

- How did the USA adhere to the Geneva Conventions during the War on Terror era between 2001 and 2009?

Sub-research questions

1. Is disregard for the Geneva Conventions articulated in the speeches of President Bush?
2. Did the USA adhere to or flout the Geneva Conventions?
3. Did the USA enforce the provisions of the Geneva Conventions when it started the war?

1.3 Outline of the Thesis

The thesis is divided into six chapters which are sub-divided into subsections where applicable. It begins with an introduction to the topic and an overview of what the thesis aims to achieve at the end of the work. It presents the research objectives for the thesis and the research questions which aid and focus the direction of the study. The next five chapters making up the thesis are outlined below.

Chapter two provides a background on the Geneva Conventions. It provides a brief history and how these conventions have developed to attain the status of international law.

Chapter three deals with the literature review for the topic. The study relies on the theories of critical realists in its analysis. Critical realists question the nature of international laws (Sinclair 2010). They differ significantly from constructivists in their conclusion of the objectivity of laws. Whereas constructivists like Kratochwil (2000; 1989; 1987) and Onuf (1989; 1985) have written extensively about international laws and conclude on their objectivity and neutrality, critical realists differ from this stance. Critical realists allude to the subjective nature of international laws which favour dominant actors over others. They posit that decision-making when formulating laws goes beyond legal considerations of pre-existing rules (Bull 2002, p. 123). In addition, social, political and moral considerations have a bearing on the choices that actors make with regards to laws.

These considerations ensure that individual interests are embedded in laws. In a world where power rules, dominant countries usually benefit the most from having their interests formulated into law. Onuf (1985; 1989) posits that laws are nothing more than norms which have been codified. It is this fact which critical realists focus on to conclude that the law is “neither neutral or apolitical and no amount of technical taxonomy is going to change it.” (Sinclair 2010, p. 18). If norms form order within the society by distinguishing the ruler from the ruled, then whoever advocates a particular set of norms to become laws takes the position of the ruler. Berman (1983, p. 556) presents the law as an instrument of the ruling class and “an ideological reflection of the ruling class’s interests”. This theory best explains the nature of international laws, especially with regards to dominant actors because it is designed to favour them over others. The political and subjective nature of laws serve as a framework on which dominant actors gain their status of dominance over others. This assumption perhaps helps answer the question of why some actors disregard rules without receiving the

appropriate sanctions for the offences committed. Laws are less likely to punish those for whose interest they exist.

Critical realists further posit the ways in which dominant actors treat international laws. Dominant actors view international laws as they should be, not as they are (Sinclair 2010). This makes the law a moving target, always prone to reinterpretation and adjustments, especially for dominant actors. If existing international laws do not address the needs of actors satisfactorily, there is the likelihood of reinterpreting these laws to accommodate and solve the problems. This critical realist assumption will be useful in examining the different ways in which the Geneva Conventions were adhered to by the USA during the War on Terror between 2001 and 2009.

Adherence to international laws have increasingly become the subject of study in International Relations for several reasons. Bull (2002) shows the ways in which international laws, war and balance of power relate. He posits for instance how the balance of power framework ensures the survival of international institutions like international laws. An international society of fairly distributed power ensures that there are checks and balances within the society. These checks and balances may be carried out through international laws which prescribe the legitimate actions within the society. War serves as one medium for maintaining this order and is legitimized through international laws. This leads Bull (2002, p. 126) to describe the act of war either as a breach of international laws or an enforcement of same. His position on the dual nature of war with regards to international laws presents alternative ways of addressing the issue of how the war was presented as adhering to and enforcing international laws. This viewpoint presents insights into the justification for the war whether it was to enforce international laws, or it did the opposite by breaching international laws.

The fourth chapter discusses the research methodology employed for the study. It addresses issues on data selection, the methods used for the selection and motivations for selection in relation to the thesis topic. This thesis uses the qualitative method for conducting the research. This work is interested in the experiences of the USA when dealing with the Geneva Conventions for addressing the issue of terrorism. Qualitative method for engaging this topic is appropriate because the work deals primarily with the speeches of an individual's depiction of the war and how he relates to the War on Terror while dealing with the provisions of the Geneva Conventions. Speeches do not necessarily constitute action so that

the utterances of an actor cannot be misconstrued as action taking place. Post-structuralists however, allude to the power of language as a reflection of reality and that “it is possible to know of reality through linguistic construction only” (Diez 1999, p. 599). Therefore, the utterances of President Bush do not only provide rhetoric but are actions as well that can show disregard or otherwise for the Geneva Conventions. The focus is on words rather than on quantification of a phenomenon or issue. Qualitative research also provides more room for inductive analysis in which new findings can be realized rather than a quantitative or deductive analysis method where the focus is on testing existing theories (Bryman 2014).

In the findings and discussions chapter the thesis addresses two categories which are closely related to the research question and formulated through qualitative content analysis of the selected speeches. The discussions on these categories provides insights in to the varied ways in which laws were adhered to during the War on Terror by the USA.

The thesis concludes by providing insights in to the reality of international law adherence based on the analysed speeches of President Bush. When faced with difficult issues for instance, as was the case when dealing with captured suspected terrorists, the USA sometimes reinterpreted the provisions of the Geneva Conventions by prioritizing national security concerns over the provisions of any international laws. This proves the stand of critical theorists on the use of reinterpretation of the laws by the USA to accommodate the needs of the time by for instance, inventing terminologies to circumvent the provisions of the Geneva Conventions. The law was applied not as it was, but as it should be. In terms of the justification, several reasons were provided by President Bush for the war. One of the main justifications was to enforce international laws which were under threat through by other members in the international society. However, the very act of enforcing one international law resulted in breaching some laws through in adherence. The findings of this in adherence thesis provide opportunities for researchers and policy-makers to be critical of issues dealing with adherence to international laws. The duality of the rhetoric, i.e., states either obey or disobey international laws, needs to be revisited through further research by international law jurists and IR theorists on the subjective nature of international laws and ways to improve objectivity of international laws. Issues of enforcement of international laws by dominant actors need refining because of the subjective nature of the motivations for enforcement. Alternative means of enforcing international laws without an over-reliance on dominant actors requires further research to ensure international laws do not become tools for advancing parochial national interests.

CHAPTER TWO: BACKGROUND

The Geneva Conventions and Protocols

The Geneva Conventions were created in reaction to the high level of atrocities that occurred in war times (ICRC 2018). Through the efforts of the International Committee of the Red Cross (ICRC), which had been involved in humanitarian activities to alleviate human suffering because of war and knew firsthand how war affected human life, it began the discussion and sensitization about how to bring some sanity to the gory nature of war (ibid.).

It all started when Henry Durant, a Swiss businessman after seeing firsthand the devastating effects of war especially on the wounded in 1859 in Italy. He began to advocate a series of measures to care for victims of war. In 1862 he published a book entitled ‘A Souvenir of Solferino’ in which he gave a vivid account of his experiences catering to the wounded in Italy. In 1863, the antecedent of the ICRC met for the first time in Geneva consisting of five individuals including Durant (ICRC 2018). The vision of Durant culminated in 1864 when the first Geneva Convention was adopted by governments (ibid). This treaty enjoined armies to support injured soldiers in war irrespective of their differences. It also introduced the red cross on a white background as the official symbol for medical services be it medical personnel or infrastructure.

The second Geneva Convention came into force in 1906 (ibid). Sea warfare was an integral aspect of international warfare which the first convention had been silent on therefore enabling belligerents to commit all forms of atrocities against wounded soldiers without recourse to any international law. The second convention captured the needs of victims of maritime war as envisioned in the first which was restricted to land.

Not only the wounded was prone to the dangers of war. The ICRC realized that prisoners of war were subject to all forms of abuse not only during war but in many cases long after wars had officially ended. All forms of physical and mental abuse were carried out for various reasons from the extraction of intelligence to intimidating the opposing side to accept certain terms. The third Geneva Convention in 1929 captured the needs of prisoners of war (POWs) in terms of ‘greater protection’(ibid.). This came in the form of prisoner exchanges in which the ICRC was to be the neutral party and the facilitation of processes to enable families get access to their loved ones in prison camps (ibid.).

Following the massive failure of the three conventions to avert the catastrophe of the Second World War (WWII) in which six million Jews were persecuted by a Nazi agenda of ethnic cleansing in addition to the combatant casualties, the ICRC realized that changes had to be made (ibid). This culminated in the formation and adoption of the 1949 Geneva Convention, the most comprehensive conventions to date. These conventions primarily reformulated the existing three conventions to encompass a broader meaning and cover all the bases as far as the protection of war combatants were concerned. A fourth convention was added to ensure the protection of civilian populations in enemy territories. The 1949 Conventions are listed below:

1. Convention I – This convention ensures the safety and protection of the wounded and the sick from harm in war times. It is the fourth updated version after it saw changes in 1864, 1906 and 1929. It ensures the protection of non-combatants like aid workers, medical and religious workers and medical infrastructure in general. Any person or structure with the Red Cross emblem is not to be harmed or damaged under this convention. It is made up of 64 articles (ibid.).
2. Convention II – Known as the convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, this convention is framed along the same lines as the first convention except that this focuses on warfare at sea. It has 63 articles (ibid.).
3. Convention III – This convention is an updated version of the 1929 Prisoners of War Convention (ibid.). It specifies the categories of persons who qualify to be referred to as POWs and under which conditions and areas as relating to conventions I and II (ibid.). It stipulates the treatment of such persons like the prohibition of their use as a source of labor and for financial gain. The judicial processes leading to their incarceration or release is also clearly specified. More importantly, it states unequivocally the immediate release of such persons when wars end (ibid.). It has 143 articles.
Many reports (CCR 2006; Lowenthal 2017) refer to this convention when describing the USA's disregard for the Geneva Conventions in its treatment of POWs.
4. Convention IV – This relates to the treatment of civilians in warzones. The first three conventions were silent on the treatment of civilians (ibid.). However, the decimation of civilian populations, especially the Jews, led the ICRC to formulate this convention to ensure that no matter where they may be, or irrespective of who is in power, civilian populations are immune to the brutalities of war (ibid.). It comprises 159 articles.

In addition to these four conventions, the ICRC formulated the Common Article 3, which incorporated the provisions of all the four conventions to be applicable to non-international armed conflicts (ibid.). These included civil wars, internal armed conflicts that affect other countries and internal conflicts in which external parties (national or/and multinational) join to the government (ibid.). This was deemed as a major success at the time as states were reluctant to meddle in the internal affairs of other states at the time (ibid.). The USA relied on this provision as adherence to the conventions when it sought to bring freedom and liberty to civilians in Afghanistan and Iraq.

The Geneva Protocols were formulated in 1977, further enriching the dictates of humanitarian international law (ibid.). These protocols were a direct reaction to the increased level of internal armed conflicts that occurred in the 1950s and 1960s in the national liberation and decolonization drive that swept across the globe from Africa to Latin America (ibid.). Protocol I relate to international conflicts and the need to protect victims caught up in such conflicts. Protocol II deals with non-international conflicts and admonishes the international community to reach out to the victims of such conflicts and to facilitate the expeditious cessation of such conflicts.

Protocol III was adopted in 2005 essentially to add the Red Crescent to the Red Cross as the official emblems of the ICRC (ibid.).

The Geneva Conventions have universal appeal and applicability due to the number of states that have signed and ratified it (ibid.). 194 countries currently have accented to complying with the dictates of the Geneva Conventions and Protocols (ibid.).

CHAPTER THREE: LITERATURE REVIEW

The reaction to international laws by states is becoming more complicated especially in the wave of nationalism that has engulfed the global North (Lowry 2016; Aspaker et al. 2016). Countries like the United States of America and the United Kingdom have taken stands that tend to increase the difference between the ‘Self’ and the ‘Other’. The UK is currently implementing Brexit, a policy necessitated by a referendum to exit the EU while the USA has tightened its borders in recent years. The entry ban for citizens from certain Islamic countries since Trump became president is a case in point (Siddiqui & Gambino 2017). These moves have been in reaction to international laws that seem to contravene national interests.

USA reaction to some international laws have seen several phases since the war on terror was declared in 2001 by George Bush, the then president. The Geneva Conventions, for the purposes of this thesis are the specific international laws to which I refer. Its applicability was sometimes questioned by the Bush administration in an attempt to wage the war on terror (Archaya 2014, p. 461; Bush 2008, p. 420-421). How did the USA adhere to the Geneva Conventions? What do scholars posit in terms of international laws and adherence to them by states? And what were the justifications for the war, based on Bull’s (2002) notion of the purposes of war and international relations? These questions will be analyzed in this section.

3.0 International Laws

The Geneva Conventions is an example of international laws. It is important to discuss the trends of international laws as it relates to IR and what purpose they serve for states in an increasingly cosmopolitan global legal system. International laws as defined by Christian Reus-Smit are “a core international institution, a set of norms, rules and practices created by states and other actors to facilitate diverse social goals, from order and coexistence to justice and human development” (Reus-Smit 2014, p. 275). International laws are an alternative form of solving international conflicts which had for centuries, and still prevails, been resolved through war. A realist point of view however as expounded by Morgenthau (1985, p. 52) about the nature of international struggles for power and dominance, states are “continuously preparing for, actively involved in, or recovering from organized violence in the form of war”. Institutions are therefore important to achieve these liberal ideals. The

Geneva Conventions are therefore an example of an international institution facilitated by an international organization (ICRC).

According to Bull (2002), international laws are tools for creating order in an anarchical society. He defines international laws as a “body of rules which binds states and other agents in world politics in their relations with one another and is considered to have the status of laws” (ibid., p. 122). The status of international laws as laws is highly controversial amongst international lawyers as Bull alludes (ibid.). John Austin in Bull (2002, p. 124) refers to international laws as “positive international morality”. Legal realists¹ of the American school version dispute that international laws are made up of a body of rules. Being made up of a body of rules would mean that they emanate from preexisting laws but that is not the case for international laws. They come about because of social, moral, and political interactions and considerations amongst states to arrive at specific decisions. This decision-making process solves specific problems in the international community. Therefore, legal realists posit that social, moral, and political considerations are key to legal decision-making process in international law formulation whereas legality is the main focus of other laws like municipal or domestic laws. This position about the nature of laws and international laws in particular is similar to the position of critical realists who posit that international laws solve specific problems and their applicability differs from case to case and is dependent on the actors involved (Sinclair 2010). Their focus is on how the law creates hierarchies. Therefore, the way the law will treat A will be different from B.

There are three types of institutions (Reus-Smit 2014, p. 275). These are constitutional, fundamental, and issue-specific institutions (ibid, p. 276). Issue-specific institutions are the most common and obvious institutions because the others now have an almost reified status as defined by Berger and Luckmann (1991, p. 89). These institutions address specific problems that come up through interaction by defining “who constitute legitimate actors and what constitute legitimate action” in specific areas of international interaction (Reus-Smit 2014, p. 276). The Geneva Conventions are an example of a fundamental institution because

¹ Legal realism views the law as a creation of human beings. American legal realists view the law as a tool capable of creating specific social goals (Sinclair 2010, p. 39). The law can be changed even if it efficiently determines cases presently. The aim is social engineering using the law. Scandinavian legal realists simply view the law as an avenue to create hierarchies, separating the ruler from the ruled. The emphasis is on the social nature of laws. As such these laws like every human institution is imperfect. Critical realism on the other hand while admitting the law is a creation of man, postulates that the law is deliberately imperfect to create hierarchies and dominance of one over the other (Sinclair 2010).

it is an international law which clearly defines the actors and their treatment of war victims in the most humane way possible as the legitimate action to take under the specified issue of warfare. Some international lawyers posit that it is possible for non-state actors like individuals and organizations to be legitimate actors in international laws even though they may not necessarily be signatories (Bull 2002). Once the laws assign duties and rights to these groups, they become subjects of the laws. This notion therefore makes an organization like al Qaeda a party to the Geneva Conventions, subject to rights and responsibilities.

Reus-Smit (2014, p.278-280) identifies four characteristics of international law. The first is the feature of multilateral legislation, simply meaning that international laws are the result of negotiations amongst states to derive laws that represent the mutual will of the nations involved. This is debatable as certain laws do not benefit all states equally. Also, some states do not take part in the negotiations that lead to the formation of laws, either because they were not consulted, or they did not exist at the time the negotiations were taking place. Excessive pressure of being ostracized from the international community may lead states to sign on to laws that do not serve their best interests (Little 2000), especially states from the global South. More so, in an international system where balance of power counts due to the constant need to survive (Waltz 1979, p. 117-123), states will more likely take advantage of the naivety of other states. Bull (2002, p. 134) terms this as 'international law of power' where superior countries serve as enforcers of the law to ensure adherence either through war or sanctions. There is the assumption that because states belong to an international community with shared values and practices rather than an international system where only interaction is required (Bull 2002), laws that are formulated will be based on these shared values and practices. But that is not necessarily the case because usually the power dynamics of an anarchical system become clear as dominant states often ensure through various means that their values and practices become the standard in the international community. If these standards which emanate from dominant states become codified in international law, they mostly benefit the dominant states.

There seems to be a symbiotic relationship between international laws and the balance of power. Bull (2002, p. 102) in listing the functions of balance of power states that it serves as a platform on which other institutions that provide order in the international system like diplomacy and international laws rely. This means that in the situation of global dominance by a single actor, there would be no credible opponent to ensure that this dominant actor

obeys the law. Similarly, it is possible that the presence of international laws is what prevents global dominance and ensures a balance of power. First, it curtails the aspirations of countries to wage war just to create a global empire because laid down laws are against war without provocation. Secondly, it places a duty on other countries to come to the aid of distressed countries to prevent stronger countries dominating weaker ones without a cause other done for expansionist purposes. In this way, balance of power and international laws maintain each other.

The second characteristic of international laws is the feature of consent and legal obligation. After the laws are formulated states show their consent by signing these laws and by implication, agree to obey these laws. As Reus-Smit (2003) posits, we most often erroneously assume that by giving consent, obedience to the law is inherent at the consent stage. There is no correlation or guarantee that once a state gives its consent to a law, it will always obey that law. This characteristic of international laws aligns closely with the assumptions of legal realists. Legal realists posit that international laws are just tools for solving specific problems. These laws become weakened or lose their relevance when the problem it is meant to solve is achieved or states find other means of solving that problem. And since international laws lack the 'coercive force' (unless with the backing of a hegemon for national interests), they can be easily flouted without fear of sanctions (Bull 2002, p. 124).

The third characteristic of international law is the feature of language use and practice of justification. Laws are presented in a unique way that is distinct in form and practice. This distinction comes in two forms. First, laws are rhetorical, meaning that they are "strictly logical" and deal with the "straightforward, objective application of a rule to a situation" (Reus-Smit 2014, p.279). Secondly, laws are analogical, usually resorting to analogies/precedence to conclude or decide cases. Reus-Smit (ibid.) shows three ways in which analogies are used: they are used to "interpret a given rule (rule A was interpreted in a particular way, and given the logic applied, rule B should be interpreted the same way)"; secondly they are used to "draw similarities between one class of action and another to claim that the former is, or is not, rule-governed (case C was rule-governed, and given the similarities with case D, case D should be rule-governed as well)"; finally they are used to "establish the status of one rule with reference to other rules (rule E has customary status, and since the same levels of assent and dissent are evident in the case of rule F, rule F should be accorded customary status as well)".

The fourth characteristic is the discourse of institutional autonomy. A clear delineation of functions exists between the legal and political realms of international relations. Cutting politics away from the law provides a semblance of order in an otherwise anarchical system. There is the assumption that once international law takes on a positivist form with no hints of partiality as politics is likely to exude, all parties accept the law and work with it. This separation was not always the case, especially in monarchical Europe where political considerations and the law both emanated from and resided with the monarchy (ibid.). Modern trends lead me to posit however that this distinction between the law and politics are blurred at best, with powerful states taking the place of the monarchs and diluting the law with self-serving political considerations. While legal realists will conclude that this will create an imperfect law, critical realists will view this as a deliberate move to create hierarchies and dominance.

Bull (2002, p. 126) posits that international laws are tools for creating balance of power and thus order in an anarchical system. International laws are enforced by members within the international society either through war or reprisals. This is carried out by the principle of self-help where a member that is a victim of a flouted rule either goes to war or initiates some other form of sanction (economic) to restore the status quo. It also serves as a warning to other members within the society who may want to alter the balance of power by breaching it that there are repercussions for doing so. The process of delegating the enforcement of international laws to members in the international society is usually problematic as there is usually no consensus amongst members in terms of law breakers and law enforcers when they use war to settle issues. This leads Bull to conclude that “the idea of international law as a coercive order based on a system of sanctions which are decentralized is a fiction which, when applied in reality, strains against the facts” (ibid., p. 127). In the same way that laws are breached through war, laws are restored through war as well (ibid., p. 126). When al Qaeda attacked the USA in 2001, it was construed as a war act. The USA responded in like manner, stating that al Qaeda had flouted the rules of international laws by attacking citizens and noncombatants in war, and declared war against al Qaeda.

In terms of adherence to international laws, Bull admits that there is little motivation to obey them. This is because they lack an essential feature of rule of law which is that disobeying the law must lead to punishment (ibid.). This is however not a certainty in the international society as there is no higher legitimate authority above the states to carry out these punishments. He posits three conditions or motivations for adherence to laws though (ibid., p.

134). He refers to the first motivation as “international law of community” in which members obey laws because it has been ingrained in them to be “mandatory or obligatory” to the status of habit so that they obey them without even being aware that they are doing so. The second condition refers to the “international law of power” which is done through coercion usually by a powerful country determined to enforce the law. These kinds of laws usually come up in the aftermath of war where the defeated country is forced to adhere to certain rules usually influenced by the victorious country for as long as the defeated country remains weak. An example of such an international law is the Treaty of Versailles in 1919 after Germany was defeated by the Allied Forces and made to carry out certain provisions like ceding land to other countries, disarmament, reparations, and reduction in military personnel (Shirer 1977, p. 57-58). Germany agreed to these conditions until it became powerful enough to offset any threats that the Allied Forces would mount against it. The third condition for obedience is through “international laws of reciprocity” in which mutual benefits accrue to members within the international society who adhere to these laws (Bull 2002, p. 134).

Critical realism takes a critical look at the general assumption as posited by other theorists that the law is neutral, fixed and without bias (Sinclair 2010). The message that critical realists seek to convey is that “law is neither neutral nor apolitical and no amount of technical taxonomy is going to change it” (ibid., p. 18). That is exactly the point at which constructivists refuse to conclude on the irrefutable fact about laws (ibid., p.18). Critical realist, Adriana Sinclair focuses on this fact about the law in her landmark book ‘International Relations Theory and International Law: A Critical Approach’ and relies on the works of Onuf and Kratochwil to make her distinctive points about the nature and role of international laws (ibid. p. 7-36). Her choice of these scholars is two- fold: they were instrumental in the creation and development of constructivism and it is constructivism that has studied most extensively the relationship between law and IR; second, is that these two theorists have written copiously about law (ibid. p. 7-8). She does her analysis by first tracing the works of these two scholars.

About rules, which are essentially laws, he defines them as “general prescriptive statements” (Onuf 1997, p.7) which undergo the transformative process from speech acts to rules through iteration and acceptance (Sinclair 2010, p. 9). Once accepted, these rules can only be changed after they have been practiced. By Bull (2002, p. 123), some international lawyers view international laws as nothing more than rules. To them, international laws do not have the status of laws. Austin (in Bull 2002, p. 124) describes international laws as ‘positive

international morality'. The practicalization of rules brings about the flaws that exist in the rule, thereby triggering the need to change it to suit or remedy its shortfalls. Onuf posits the power that rules have on the society by providing guidance on dos and don'ts but are unable to determine behavior. That is because they only provide guidance. There is no assurance that a laid down rule will be obeyed. Bull (2002, p. 134) however posits that depending on the motivation, rules will be obeyed. This can be ensured through habit, enforcement by a dominant actor, and mutual benefits of reciprocity due to adherence of laws. Critical realists however contend that dominant actors are more likely to disregard laws because of their position of power. This position affords them the luxury of interpreting laws to suit their purposes because no greater power exists to compel them to obey the law. This notion is what compels the USA to sometimes reinterpret the Geneva Conventions as not benefitting terrorists.

The agency of rules is critical to social cohesion. Rules are tools that produce rule or control and Onuf points out the possibility of exploiting rules to one's advantage (Sinclair 2010, p. 10). If rules produce rule, then they can classify, i.e. treat people differently by providing privileges. Rules therefore only guide our actions, but we are not bound by them. Rules have therefore become tools with which those at the top of the society create stability by maintaining the status quo which places them at the top. Rules therefore do not serve us all equally through fairness. They only create the order or legalize the unfairness that exists. Rules therefore create a hierarchical social system of the ruler and the ruled all done through rules (ibid., p. 11) or through international laws as posited by Bull (2002).

Onuf admits that formulators of rules are subjective in their approach and make them to serve their interest and not to objectively correct flaws that may exist because of which the rules are made in the first place (Sinclair 2010, p. 17). As a result, rules unconsciously create rule and a hierarchical system. In hierarchical legal regime of the ruler and the ruled, can these rules be said to be neutral and apolitical? Even though Onuf admits that rules are hierarchical, he strays off the fact that this may make rules unneutral and biased, rather focusing on the technical nature of rules (ibid. p. 18). Critical realists state the obvious that these rules emanating from the ruler are not neutral. They serve a purpose, and that is to ensure the dominance of the ruler. This theory best explains why the USA can go disregard some international laws sometimes and legitimize it whereas non-dominant groups like al Qaeda receive sanctions for flouting the same laws.

Regarding international laws, Onuf agrees that they are legitimate so far as they go through the same process as national laws of iteration and acceptance and have a high level of backing from all actors involved (in Sinclair 2010, p.16). According to him, the lawfulness of international laws depends on the degree of formalization and institutionalization as well as the presence of officers to enforce the laws. If an order has a high degree of formalization, a high degree of institutionalization from the external dimensions that give support to the institutions and there are officers mandated with the task to enforce these laws, then the international laws are lawful (ibid.). The degree of lawfulness of the law is further enhanced when the actors and beneficiaries to the law accept all other actors as equal partners. Bull (2002) however posits a major problem with international law enforcement. Law enforcement can only be carried out by members within the international society. There is no higher or external authority to enforce these laws. This enforcement mostly becomes the function of dominant actors in the international society using coercive force to achieve this goal. The problem with dominant actors enforcing laws is there is sometimes the element of subjectivity and a politicization of the strict enforcement of laws. Dominant actors are likely to be passive when an ally flouts the law than when an adversary does the same. Osama bin Laden alludes to this in his speech about the 9/11 attacks by stating that the USA did not sanction Israel for the bombing of Lebanon and Palestine in 1982 but attacked Iraq in 1991 when Kuwait was invaded (Aljazeera 2004).

Kratochwil's view of the law is quite unique in that he views it as a moving target in terms of justice delivery, constantly being remade in every legal decision depending on who are the plaintiff and defendant to the case (Sinclair, p. 25). Going by his logic, law is a fluid concept since no two cases are the same. If legal institutions emanate from a sociological context, how can their values be completely unaffected by that context? Legal institutions cannot be neutral because he admits that justice delivery is dependent on the parties to the claim and not the strictest application of the law to those cases.

Domestic laws and international laws share the same assumptions in Kratochwil's view which Sinclair disagrees with (ibid. p. 33). Just like domestic laws, international laws inform the respective decision-makers about the nature of the interactions and determines who is an actor. It also sets the steps necessary to ensure the validity of their official acts and assigns weight and priority to different claims. Sinclair disagrees however, positing that international legal system is "still unique with unique challenges" (ibid.). A major challenge is the anarchic international regime in which international laws can be jeopardized if a resolution of a case is

unreachable by an authority of what the law is. Her views are same with Morgenthau (1985) in describing international law as primitive because it lacks the structures and apparatus of a domestic legal system. Again, there is no room for long term normative growth of solutions and structure of the international legal system because countries only look out for their short-term interests in specific cases (Sinclair, p. 33). If their interests change, countries expect the law to be interpreted to suit their current interests. A breach of international laws is often not a pure act of lawlessness but rather part of a larger bargaining game for change (ibid., p.34). Bull (2002, p. 124) shares similar thoughts with Sinclair, especially the lack of coercive force of international laws to execute appropriate sanctions on rule breakers.

Critical realists best answer the questions regarding in adherence to international laws and why it is possible for some actors to do so. They begin their notion of the law by questioning the assumptions of the law (Sinclair 2010). They question for instance who the law stands to serve (ibid., p. 39). Is it an avenue for the rich and elite to rule through the order provided by the law? Is it surprising, they ask, that most judges tend to be white, old, middle-upper class and men? Across gender, racial, and economic lines, the opposites of the typical character of a judge have not fared well against the law. Law has not been able to thus far provide “significant resistance” to social differentiators like racism, capitalism and patriarchy (ibid.).

Perhaps a major factor relating to neutrality of law from the viewpoint of critical realists is the adaptation of Western assumptions of the law across the globe (ibid., p. 41). The law is presented as a natural science rather than a social science (ibid., p.42). It is therefore “, clear, predictable and politically neutral”. A law is formal because decision makers in applying the law must “follow the law as it is, not as it should be” (ibid., p. 43). However, that is not the case as actors sometimes use the law not as it is, but how it should be from their perspective.

Critical realists’ relevance to the thesis topic is their view that ‘law is neither neutral nor apolitical and no amount of technical taxonomy is going to change it’ (Sinclair 2010, p. 18). Sinclair looks at jurisprudence in general before positing critical jurisprudence as an alternative to viewing the nature of the law (ibid., p. 61). She looks at the dominant jurisprudential schools of thought being natural law theory and legal positivism (ibid.). The natural law theory views the law as that which emanates from within the society and as such should be applied in a way that is desirable to that society from which it emerged (ibid., p. 63-64). Legal positivists view the law as a codified set of rules that must be applied to the letter without consideration for extenuating factors like societal and moral considerations if

they are not written down explicitly in the law (ibid., p. 65). A third school of thought exists known as the socially-influenced theories of law (ibid., p. 61). Some view it as an offshoot of natural law theory because of its link to the society (ibid., p. 65). These theories basically challenge the assumptions of both natural law theory and legal positivism. The sociological movement as Sinclair terms it views the law as a 'social phenomenon', a tool that enables 'men to be ruled by other men' (ibid.). This movement shares similar traits with legal realist ideas.

The sociological movement has two core assumptions (ibid.). The first is the rejection of formalism. Bix identifies the law as formal because the law is neutral and secondly, general principles of law can be applied to specific cases (Bix 2003, p. 180-181). The second assumption of sociological movement is to advocate a move to context.

Critical realism challenges the notion of legal fetishism (ibid.). Legal fetishism is a composite of the liberal model of society (ibid.). According to Sinclair (2010, p. 69-70), legal fetishism has three elements namely: the thesis that there cannot be order within the society without law; law is a unique institution separate from all other forms of addressing societal issues and having rules that differentiate it from using force rather; the doctrine of the rule of law which Dicey defines as 'the universal subjection of all classes to one law' (in Naffine 1990, p. 51). Critical realists reject all these elements of legal fetishism. As Naffine puts it, critical realism rejects the 'official version of law – what the legal world would have us believe about itself – is that it is an impartial, neutral, and objective system for resolving conflicts' (Naffine 1990, p. 24). It is the partiality, aligned, and subjective nature of laws, according to critical realists that permits/emboldens the USA government to disregard some provisions of the Geneva Conventions during the War on Terror, knowing that its dominant place in world politics as a hegemon insulates it from all forms of sanctions from the international community, whereas under similar conditions, a nondominant country would face international sanctions (probably led by the USA) for breaching laid down international laws.

3.1 Terrorism and the War on Terror

Before addressing the topic of the war-on-terror, it is important to address the issue of terrorism in general. The concept of terrorism has been difficult to define at the global level because of the subjective lenses that are used to view the phenomenon (Ganor 2002). This has occurred because of different notions of what constitutes the acceptable mode of

perpetuating violence or who the targets of these violent acts are (ibid.). It must be noted that terrorism can only be perpetuated by non-state actors because their actions have not been adequately defined by international laws (ibid.). According to the United Nations, when a state engages in peace time terrorism/violence, it is referred to as ‘crime against humanity’ while a similar attack during war is referred to as ‘war crime’ (ibid., p. 289).

The USA State Department’s definition clearly exemplifies the problem of subjectivity. It defines terrorism as the ‘deliberate use of violence against non-combatants’ (US State Department 2001). This implies both civilian and military personnel not engaged in war if attacked would be terrorism. This is however problematic, because that would take away the element of surprise which is legitimate both in conventional and non-conventional conflicts. Conventional conflicts here refer to inter-state conflicts while non-conventional conflicts refer to that between states and non-state organizations like terrorists and guerilla soldiers (Ganor 2002, p. 295). The USA State Department definition is therefore moot and lacking a universal agreement.

Ganor’s solution to achieving a universal definition for terrorism is to focus on the victims of these terror acts. Attacking civilians either in peace times or warfare is universally unacceptable via institutions of international law like the Geneva Conventions. Ganor therefore defines terrorism as the ‘deliberate use or the threat to use violence against civilians in order to attain political, ideological and religious aims’ including state officials not involved in counter-terrorism processes. (ibid., p. 288). This definition has universal appeal because it is conversant with available international laws about the protection of civilians.

Like Ganor, Karis (2014, p. 358) agrees that the definition of terrorism is problematic because of disagreements in the purpose of the violence and what causes it. Karis posits that the only aspect of the definition that has universal acceptance is perhaps the use of violence as the starting point of terrorism. He contends that normative approaches to defining terrorism based on international laws by organizations like the UN failed due to semantics (ibid.). Karis’ definition of terrorism is ‘the use of violence by sub-state groups to inspire fear, by attacking civilians and/or symbolic targets, for the purposes such as drawing widespread attention to a grievance, provoking a severe response, or wearing down their opponents resolve, to effect political change’ (ibid., p. 359). Karis views terrorism as a ‘weapon of the weak, conducted by a minority who promote an extremist ideology’ (ibid., p. 358). They may be in the minority and have an extremist ideology, but terrorists are not weak

in my view. Terrorist groups like Al-Qaeda, ISIS and Boko Haram have been fighting in their various domains for years with varying levels of success. State authorities have found it difficult to deal with these ‘weak’ organizations. We may disagree with their modus operandi of attacking civilians, but this does not necessarily make them weak.

Stern (2003, p. xx) defines terrorism as ‘an act or threat of violence against noncombatants with the objective of exacting revenge, intimidating or otherwise influencing an audience’. For her, terrorism is distinct from other forms of violence based on the target (noncombatants) and the dramatic form of the act to elicit as much fear from the audience as possible. She however is indecisive as to who exactly is qualified to be categorized as a noncombatant. She posits so many possibilities like a soldier not in battle (in a base) to be classified as a noncombatant, but that takes away the element of surprise, which Ganor has explained is legitimate in warfare.

Historically, terrorism became a transnational phenomenon in 1968 (Karis in Baylis et al. 2014, p. 360). Prior to 1968, terrorism was an intrastate problem. Karis attributes the following reasons to the new trend: ease of mobility with the onset of commercial air travel; enhanced communication due to televised news coverage; synergy of terrorist efforts by different terrorist groups by finding commonness in political and ideological interests (ibid.). Stern (2003) however gives evidence of the international nature of terrorism in the works of two terrorist groups. The Zealots-Sicarii existed in Jesus Christ’s time and perpetrated violence based on religious motivations in Judea, Egypt and Cyprus (ibid., p. xxi). The Assassins, or Ismailis-Nizari, another terrorist group operated in Persia and Syria between 1090 and 1275. This group had the sole purpose of promoting a “pure” form of Islam (ibid., p. xxii)

The war-on-terror was a declaration made by president George Bush in reaction to the 9/11 attacks. The term was first used in an address to the USA Congress in which the president declared war on al Qaeda and made demands on all countries and governments hosting al Qaeda group members to hand them over to the ‘appropriate authorities’ (Bush 2008, p. 68). This was mainly directed at the Taliban government of Afghanistan, which had created a haven for this group and its leaders. Osama bin Laden was the leader of this group and was thought to have close ties with the Taliban administration (ibid.).

The 9/11 attacks and the subsequent war on terror declaration was seen by some as new version of the cold war (Cox 2014, p.75). Unlike the cold war of 1947 to 1989, deterrence

and containment would be ineffective in fighting this new war. The experiences learnt in the cold war would not be of much help in this new war. For starters, all the Soviet experts would have to be replaced by experts and analysts with a background in the Middle-East and the Arabic language. USA foreign policy also changed because of the declaration. Whereas economic trade had been the dominant USA foreign policy strategy in the 1990s, the war on terror militarized USA foreign policy with wars in Afghanistan and Iraq primarily and anywhere else terrorists appeared (ibid.). It also led to strained relationships with hitherto allies of the USA particularly within NATO, who disagreed with the modus operandi of the USA. The USA also felt that even though the war had become a global one with attacks directed particularly at the West, certain countries were not contributing enough to the war against terrorism (Hallams and Shreer 2012; Mattelaer 2011). According to Crawford (2016), the USA spent an estimated \$3.6 trillion on the war between 2001 and 2016, with an average year-on-year increment of \$360 billion over the period. The EU spent €5.7 million in 2001, rising to €2.146 billion in 2015 (Sgueo 2015). Obviously, the EU, from USA perspective, was not spending enough even though it benefitted from the counterterrorism efforts of the USA.

3.2 Definitions of Torture and USA laws on the matter

The use of torture as an intelligence gathering tool in the past is not in doubt. Several news reports of secret black sites operated by the Central Intelligence Agency (CIA) point to the use of torture, which is universally unacceptable through numerous international laws on the subject. Perhaps the most significant indication of the use of torture by the USA in the war on terror era relates to the events at Guantanamo Bay. The Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantanamo Bay, Cuba by Center for Constitutional Rights (CCR 2006) provides accounts of use of torture by USA military and intelligence officials on suspected terrorists. The question arises as to what USA laws have to say on the concept of torture, its use, and its permissibility.

Torture is captured in the laws of the USA in title 18 § 2340 of the USA Code. It defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control” (Legal Information Institute, no date). It further stipulates the jurisdiction where the occurrence of

these acts may be classified as USA domain. These include USA states, territories and possessions.

The Bush administration realized it was handicapped in the use of torture based on existing domestic laws and international laws like the Third Convention of the Geneva Conventions which spoke explicitly on the treatment of prisoners of war. To overcome this challenge without falling foul of the law in its view, the Bush administration's legal team came up with the concept of the 'enemy combatant' (CCR 2006). This was a new terminology with definitions that gave the USA the right in their view to perpetuate torture that was legitimate. This term is not used explicitly in any domestic law or international law, therefore the perceived inapplicability of these laws to enemy combatants. How different is an enemy combatant from an enemy soldier? The definition kept changing over a four-year period to suit the purposes of the USA. At one point it was defined as 'a person fighting USA forces in Afghanistan' (ibid. p. 7). The term was refined via the Wolfowitz order to mean 'an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the U.S. or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces' (Wolfowitz in CCR 2006, p. 7). Enemy combatants would not enjoy the privileges that past enemies of the USA had. These were a special category of combatants that were exempt from the protection of international laws on the treatment of actors in war (ibid. p. 7). To circumvent the scrutiny of Congress on the breach of USA laws, captured prisoners were classified as enemy combatants exclusively by the Executive. These actions reflect the predictions of critical realists that dominant actors obey the laws as it should be for them and not as it is. The law becomes a moving target that goes through continuous reinterpretation until it serves the specific needs of the beneficiary actor.

CHAPTER FOUR: METHODOLOGY

In this section the research method used to conduct the research will be discussed. The reasons for the choice will be put forth as well as the benefits it holds for the research topic. The process of data selection and all activities leading up to it will also be discussed. Choosing data is critical to accomplishing the task set out in the objectives of the thesis. The decision on which data sources to use in a research like this should not be made in a vacuum. Rather, consideration must be made to ensure that there is a close link between the data source and the themes set out in the in the research questions. I end the chapter by addressing the process of data analysis.

4.0 Qualitative Research Method

The study adopted qualitative method for this research. Because this method emphasizes on words and it focuses more on interpretivism as an epistemological feature (Bryman 2016, p. 374), it is more convenient to use considering the research topic and the data sources which looked at the words of individuals as a source of analysis of a social phenomenon, i.e., international laws. Ontologically, qualitative approach to research permits for an analysis of individuals instead of a general phenomenon (ibid.). The findings made from the data source would be based on interpretation of what was said by the author. This involves looking beyond the overt text to implied meanings of text by the author set in a context. A quantitative approach would not be ideal since it focuses more on quantification in the analysis of social issues and is more positivist in nature (Bryman 2016). The theory used to approach this thesis also justifies the use of a qualitative research into findings. Critical realism objects the objectivity and neutrality of laws, i.e., law is subjective, and its' application is based on the parties involved. Analyzing such an issue goes beyond the written law. It requires looking at the *experiences* of parties that have flouted these laws and their justification for such actions. The data sources do exactly that. Qualitative research also permits an inductive analysis process which is more accommodating to new findings which generate theories. Even though the aim in this thesis is not to generate new theories, a qualitative approach to research allows for further explanation of an existing theory (ibid.). Quantitative research focuses on testing theories to prove them or otherwise (ibid.), and that is not the aim of this thesis.

The research design² used for this project is the case study design. Yin (1994, p. 6) provides the criteria that makes case studies ideal for conducting research. One criterion is using the research question to determine the kind of research design to use. Research questions that ask “how” or “why” usually lead to explanatory researches. If the issue is contemporary, then case studies are ideal ways for designing the research. Since my research question “How did the USA adhere to the Geneva Conventions during the War on Terror era between 2001 and 2009?”, using a case study approach to explain how international laws are observed by dominant actors.

4.1 Data Collection Method

Bryman posits various sources of data for research purposes (Bryman 2016). Researchers may resort to primary sources, secondary sources or both. Primary sources refer to first-hand data collected by the researcher in the field. This may be through interviews, administration of questionnaires, field observation, etc. Secondary data sources refer to data attributed to others which a research relies on to conduct their own research (ibid.). These may include internet-based documents, books, published articles, archives, memoirs, diaries, government documents, etc. This study relied on secondary data collection for conducting the research. The decision to use secondary data, i.e., written speeches accessed on the internet, instead of interview sessions is two-fold. First, geographical constraints made it difficult to get in contact with the target group, which ideally would have been the former president or high-ranking officials in the State and Defense Departments in the Bush administration because of their role in the War on Terror which became a major foreign policy agenda of the Bush administration. Since the thesis was conducted in Norway and these potential targets lived mostly in the United States, movement either way would be problematic in terms of financial costs and time constraints due to the timeline for submission of this paper. Second, securing the contact and consent of these persons has proved difficult. Establishing contacts to facilitate interviews via Skype to overcome the geographical problem proved difficult. A viable option then which would give credible data about the topic from high ranking USA officials, i.e., the president, was accessing speeches that had been put out publicly by these officials, or their surrogates through an open-source medium, in this case via the internet.

² The research design guides the “collection and analysis of data” (Bryman 2016, p. 40).

4.2 Selection of Data Source

According to Bryman (2016, p. 552), the state provides a lot of information that may be of interest to social researchers. These informations not only consist of statistical data that may be useful for quantitative research. It also includes a lot of text-based material like speeches which qualitative research approach may find useful. The objective of this thesis was to find out the different ways the Geneva Conventions had been adhered to during the War on Terror era from the USA point of view. Since the declaration and the actual fight was initiated by the United States of America under the George Bush administration in 2001, focusing on the speeches made by George Bush was relevant to the topic. Secondly, President Bush is a representation of a dominant actor in world politics. The reaction to international laws by dominant world actors is key to the thesis topic and President Bush represents and provides that reaction. Third, though speeches may not necessarily be action, Diez (1999) posits the power of linguistic construction to reflect reality. These speeches therefore represent the actions of the USA regarding adherence to international laws based on what is uttered by the president. Habermas's speech act³ theory proves further the performative act of language rather than just being descriptive (1984). Perlocutionary speech act has the effect of causing the hearer to act based on what has been said.

4.3 Selection of Speeches

This study employed the typical case sampling approach, a variant of purposive sampling for the research. (Bryman 2016, p. 409). This approach to sampling involves choosing a sample "because it exemplifies a dimension of interest" (ibid.). The USA president offers many speeches during his tenure in office on a mirage of issues depending on the occasion and the audience to which the speech is addressed. There needed to be a speech or series of speeches that touched on the War on Terror to begin with, to make it relevant. All speeches were assessed from a compilation of President Bush's speeches by the White House between 2001 and 2009 when he was in office (Bush 2008). This list comprised of 71 speeches in total, out

³ Habermas (1984) describes speech act as an action of speaking which causes the hearer to respond through action. His speech act theory has three aspects. First, locutionary act, which is the expressions of the speaker. Second, illocutionary act, describes the expressions of the speaker as an action. Third, perlocutionary act refers to the effects that the expressions of the speaker have on the hearer.

of which 17 speeches were selected for analysis. At least two speeches were selected for each year between 2001 and 2008 to allow for trend analysis of adherence to the laws as the war progressed. The decision to use a sample size of 17 speeches is because that was the point at which theoretical saturation⁴ was attained.

The decision was made then to resort to the president's addresses in the State of the Union, between 2002 and 2008 as the main data for this research. His 2001 address was excluded because the war had not started. His successor, Barack Obama changed the War on Terror strategy in 2009, and replaced it with Overseas Contingency Operations (Acharya 2014, p. 460), therefore his speeches lacked relevance for the thesis. The next session will be used to elaborate on the State of the Union addresses and assess its quality to be used for an academic exercise.

4.3.1 State of the Union (SOTU)

In most democracies, an opportunity exists for the leader of government to present their policy agenda and priorities for the year to the citizens or the citizens representatives. These addresses report on priority areas like the economy, security, social welfare, agriculture or any other issue that has captured nationwide attention which the government feels the need to comment on. In the United Kingdom, the queen addresses the House of Lords and Commons annually in the Speech from the Throne or the Gracious Speech in which she sets out the top legislative enactments to be laid before parliament in the coming year as well as present the executive's top priorities (John and Jennings 2010). In a similar vein, presidents of the USA have engaged in a similar practice before the joint session of Congress in an annual address commonly known as the State of the Union (Kerlikowski and Neale 2006).

Kerlikowski and Neale (2006) provide much details on what the SOTU is and its significance in modern politics. It is an avenue for the president to present a report on national conditions to the citizenry. It also gives the president the opportunity to seek the support of both parties when his bills from the executive come before the legislature for passage into law. The president also gets the opportunity to outline his vision for the coming year in terms of his priorities to the American people.

⁴ Theoretical saturation process involves sampling until a sample does not provide new information to that gathered so far. According to Strauss and Corbin (1998, p.212), theoretical saturation is achieved when "(a) no new or relevant data seem to be emerging regarding a category, (b) the category is well developed in terms of its properties and dimensions demonstrating variation and (c) the relationships among categories are well established and validated".

This practice of the president either addressing congress personally or sending a message to Congress started with the onset of the USA. It is a constitutional provision enjoining the president under Article II, Section 3, clause 1 of the USA Constitution to periodically “give to the Congress Information on the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient” (USA Constitution, quoted in Kolakowski and Neale 2006, p. 2). President Washington delivered the first SOTU which was at that time referred to as the President’s Annual Message to Congress in 1790. The addresses were then debated, and official replies were sent to the president by a joint delegation of senators and representatives. The practice of the president appearing personally to deliver the address before the joint session of Congress ceased when Thomas Jefferson became president. He rather opted for his private secretary to deliver copies of his speech to both houses of congress because the presidential address mimicked the British version of the Speech from the Throne addressed by the king or queen of United Kingdom which was a monarchy. He felt such a practice was uncharacteristic of a republican state. President Woodrow Wilson however ended the practice and appeared before the joint session of Congress to deliver his message in 1913. Personal deliveries were on and off between 1913 and 1934 when President Franklin Roosevelt made it a permanent fixture to make personal deliveries of the SOTU. That practice has continued to this day with a few exceptions like President Eisenhower in 1956 when he was recuperating from a heart attack and President John Kennedy in 1961.

Obviously, the whole SOTU message did not focus on terror related matters, as the economy, social welfare, immigration and healthcare, etc. were addressed in Bush’s messages. Matters relating to terrorism and the threat posed by terrorists and measures that needed to be put in place to curb another attack on the USA or its’ allies were dominant in the addresses. This makes the sampling of these sections of the addresses purposive for the research as they were picked from the total list of all speeches delivered by President Bush for their relevance to the issue at hand.

4.3.2 Additional Selected Speeches

An analysis of the seven SOTU speeches led to the realization that theoretical saturation of the categories had not been achieved. Bryman (2016) relates to the issues of saturation of issues and the challenges for qualitative researchers at the onset of a study to know the right sample size that leads to saturation. In addition to these seven speeches, there were other fora

where the president spoke on matters relating to terrorism, the War on Terror, security and international laws. Land mark policies were made with regards to the War on Terror that shaped the nature of the war. These addresses also have relevance for the thesis topic and including them in the analysis will contribute to achieving the objectives of the thesis. At least one speech delivered by President Bush between 2001 and 2008 in relation to terrorism will be analyzed. A total of nine speeches will make up this category. Two speeches were selected in 2001 because that was the beginning of the war. One speech was addressed to the American people while the other was delivered to the rest of the world at the UNGA (See appendix 1 for details).

It is important to place in context the speeches of President Bush. This was a period never seen before, at least not since the attacks on Pearl Harbor, that attacks had be carried out on USA main soil by a foreign actor (Lowenthal 2017). Stringent and decisive measures had to be taken against a known but unconventional adversary which was the terrorist group Al Qaeda. This group was led by Osama Bin Laden and he had also issued statements. To give proper grounding and contextualization to the speeches of President Bush, it is necessary to analyze some speeches made by the main adversary of the Bush administration who became a representation of everything that President Bush was fighting against. Bryman (2016, p. 561) states that due to the nature of documents written with a “distinctive purpose in mind” rather than just “reflecting reality”, researchers must be guided by this attribute of documents and “buttress an analysis of documents with other sources of data”. This is necessary to carry out because in content analysis which will be used to analyze these speeches, context is very key to data analysis.

4.4 Data Analysis

Analyzing these speeches deals with the systematic way of creating categories based on the themes that make up the documents. This process is closely linked to the research questions generated in the introductory chapter because the categories are based on the questions posed. The questions serve as pointers to specifically what to look out for in the documents.

Data analysis for this research is performed using qualitative content analysis. Unlike quantitative content analysis which requires the researcher to come up with predetermined categories (derived from the research questions) based on which the documents are analyzed for themes that conform to the predetermined categories (Bryman 2016, p. 285), qualitative

content analysis uses a different approach to achieve the same purpose. In qualitative content analysis, the researcher identifies “underlying themes in the materials being analyzed” (Bryman 2016, p. 563).

The core to qualitative content analysis lies in the process of coding. Bryman (2016, p. 573) likens the coding process to “reviewing transcripts and/or field notes and giving labels (names) to component parts that seem to be of potential theoretical significance and/or that appear to be particularly salient within the social worlds of those being studied”. It marks the first step in the “conceptualization of data” (Bryman and Burgess 2002, p. 218). Of course, this process must take into cognizance the research questions of the thesis. In coding, the documents are read repeatedly to identify words or phrases that are relevant to the research questions. Patterns are identified at this stage, as well as deviations from patterns. The researcher must be mindful of these patterns and take cognizance of deviations around issues and what accounts for those deviations. This process is ideal due to its fluid and non-static process, allowing for constant revision as documents are engaged repeatedly (ibid.). Though there are several coding methods like axial, selective, initial and focused coding, open coding will be used to carry out the data analysis of this thesis. Open coding involves the “breaking down, examining, comparing, conceptualizing and categorizing data” (ibid.).

Coding leads to the development of themes. A combination of similar themes creates concepts. Bryman defines concepts as “labels given to discrete phenomena” which are the “building blocks of theory” (2016, p. 575). The aim of open coding is the development of categories. This entails the elaboration of concepts to represent actual phenomena (ibid.). A concept may progress to become a category. Two or more concepts can be subsumed under a category if they are similar and address the same real-life phenomena.

4.5 Reliability and Validity

Reliability and validity represent the most critical means of evaluating social research (Bryman 2016, p. 41). Measuring the quality of a research and its wider implication for use based on the findings either as a springboard for other researches or for solving social issues requires that these two criteria are met (Mason 1996). Researchers must therefore be conscious of these and be guided during the design stage of the research, the analysis of data, and the data resulting from the findings of the research (Patton 1990).

Reliability of a research work relates to the ability of findings of the work to be repeated using the same data if it was conducted by a different researcher (Bryman 2016). If the findings of research are reliable, it increases the level of faith that exists for that work. It exempts all forms of bias from the researcher which can affect the outcome of the research. Kerlinger (1973) uses words like predictable, consistent, stable and dependable to describe the reliability criterion for assessing research.

Bryman (2016, p. 41) posits validity as the most important research quality criterion. Validity test to a research views the conclusions of the research to determine the level of integrity. It deals with issues such as measurement, for instance, and how this relates to the concept it denotes. Bryman (ibid.) uses the example of IQ measurement as a level of intelligence as an illustration of validity. Other types of validity include internal validity which deals with causal relationship of variables in deriving outcomes of a research and external validity which relates to the generalizability of the results of a finding beyond the context of the original research (ibid.).

Issues of reliability and validity have grounding in quantitative approach to research (ibid.). Some writers discount their relevance in qualitative research because of the lack of emphasis on quantification. Kirk and Miller (1986) have advocated using reliability and validity in qualitative research with slight modifications to these criteria to accommodate the non-quantification of qualitative methods. Lincoln and Guba (1985) however posit entirely different ways of assessing the quality of qualitative research. The main criterion they advocate is *trustworthiness*. This criterion combines some of the main characteristics of both reliability and validity. According to Bryman (2016, p. 44), trustworthiness involves four aspects. First, credibility, which deals with how believable the research is. Second, transferability, which deals with the conclusions to relate to other contexts. Third aspect is dependability which relates to the findings applicability to different times. Lastly, confirmability deals with the objectivity of the researcher to exempt his values and assumptions from the research process. This aspect is important for minimizing bias in research, which can affect the outcome of findings.

This study involved analyzing how a state related to international laws. The objective was to bring out the various aspects and the different ways in which the Geneva Conventions had been adhered to during the war on terror. The choice of data, the analysis of data and the findings thereof as much as practical considered these aspects of trustworthiness. Bias was especially kept low even though the researcher was an opposer to the War on Terror and the

treatment of suspected captured terrorists by the USA. The researcher put out findings which were a fair representation of the notions of President Bush about the treatment of prisoners in terms of the Geneva Conventions.

Satisfying research quality using trustworthiness usually leads a researcher to be ethical in the conduct of a research. Ethical considerations for a research include integrity, quality and transparency (Bryman 2016, p. 134). Being ethical involves giving a fair representation to the samples used, justification for the method used and a positive outcome of the research for society. The choice of using the internet to obtain the speeches of President Bush could have raised ethical issues as blogs, group chats and discussion groups could have given second hand information about the utterances of the president. The researcher avoided these sources and relied on first hand speeches of the president accessed from a credible source which was the White House communication unit which had made a compilation of the president's landmark speeches.

CHAPTER FIVE: FINDINGS AND DISCUSSIONS

Following this process of content analysis, the following categories were developed.

- Adherence to International Laws
- Justification for War on Terror

This section discusses the findings made, with an emphasis on trends that were identified in the speeches of president George Bush. Deviations from established trends will also be highlighted to ensure the full picture is presented. The speech by Osama bin Laden is also discussed under the categories to enhance the context within which these events occurred and provide altering views to the discussions. It must be noted that all findings made, and conclusions drawn are premised exclusively on the speeches analyzed. General statements on adherence to laws will be avoided, and where made, are premised solely on the data for the research.

5.0 Adherence to International Laws by the USA during the War on Terror

I have indicated in previous chapters how several report findings and articles concluded that the USA had flouted several regulations in its' treatment of prisoners that were captured for engaging in terrorism. From the speeches analyzed, there seemed to be a deliberate attempt in some instances on the part of the USA to use all means necessary, legal or otherwise, to apprehend as many suspected terrorists as possible and obtain as much information or intelligence from these suspects with the goal of preventing another terrorist attack on USA soil.

The first three to four years of the war represent the 'panic years' of the war. This period was characterized by some acts of breaches to the Geneva Conventions, and other international laws like the Chapter VII provisions of the UN prohibiting the war against Iraq. And of course, no forceful action could emerge from the UN since it would be vetoed by the USA as a permanent member of the UNSC. It also involved instances of threats to some organizations and countries that wanted to oppose the USA or check its modus operandi against terrorists. The USA felt the need to act timeously and strongly to send a clear message to terrorist organizations that it would do whatever it took, regardless of national or international laws to prevent another attack and to assure the USA citizens of a secured USA. This provides the

basis on which scholars like Bull (2002) have showed a strong link between international laws and the balance of power. When the USA stated that it was attacking the terrorists to enforce certain laws, the unintended effect was that it maintained the balance of power that existed at the time. Without action, the USA may have been construed as weak. This may have emboldened the terrorists to galvanize and form a coalition with both state and non-state actors that would have challenged the dominance of the USA at that time.

President Bush set the tone for confronting terrorists when he declared to other nations (not terrorists) in 2002 in his SOTU speech that “America will do what is necessary to ensure our nation’s security” (Bush 2008, p. 106). This statement in my view was a subtle reminder to the other signatories of the Geneva Conventions not to commence any form of action for sanctions against the USA for using extrajudicial means in certain cases to treat prisoners of war, in direct contravention of the Geneva Conventions. President Bush had however advocated earlier for the strengthening of global treaties like the non-proliferation treaty to help fight terrorism. He even admonished the international community on the importance of international institutions like the UN when he stated in his speech to the UNGA that “After generations of deceitful dictators and broken treaties” countries decided to change course and adhere to “a system of security defended by all” (ibid., p. 139). He however contrasts his standpoint on adherence to international treaties by stating in the same address that “...the just demands of peace and security will be met – or action will be unavoidable” from the USA (ibid., p. 146). What kind of action was he referring to? In this context I can deduce that the action meant anything possible that the USA could do to prevent another terrorist attack would be carried out like using torture to achieve those ends. That proved to be the case in the end.

There was the “Whatever it takes” trend in the initial stages of the war where President Bush sometimes showed intentions to use any means necessary to fight the terrorists. This trend is inciteful for discussing this finding about adherence to laws because the “Whatever it takes” rhetoric was made unconditionally in many instances in the early stages of the war until 2005 at least. It was only after the 2005 speeches analyzed that President Bush placed this statement in the conditional phrase of it being subject to laws. In his 2003 SOTU speech President Bush stated that “Whatever action is required..., I will defend the freedom and security of the American people” (ibid., p. 158). Defense by any means necessary was again employed in his 2004 address at the National Republic Convention where he alluded that at the premises of the terrorized World Trade Center on 14th September 2001 during rescue

efforts, workers chanted “Whatever it takes”. This had led him to “...wake up every morning thinking about how to better protect our country. I will never relent in defending America, whatever it takes” (ibid., p. 264).

The strongest indication, perhaps in the ‘panic years’ of the War on Terror, of a disregard for international laws was instances from the analyzed speeches when President Bush openly questioned the efficacy and legitimacy of laws in curbing the threat posed by terrorists.

Critical realists have predicted the use of such tactics by dominant actors to circumvent laid down laws. Laws which had been in place for decades suddenly lacked the efficacy to be used to address an issue. In his 2004 SOTU address, President Bush posited that beyond the events of 9/11 “it is not enough to serve our enemies with legal papers. The terrorists and their supporters declared war on the United States, and war is what they got” (ibid., p. 201). The USA was not treating terrorists like normal criminals who were entitled to certain legal privileges under laws, be it national or international laws. These terrorists belonged to a special category that should not be afforded the benefits of a civilized society in which the rule of law operates, and where guilt can be proffered against any individual only by a competent court of jurisdiction. To drum home his point about using any means necessary and not being hampered in its efforts by any organization or country to wage war against terrorists, President Bush in the same speech declared that “America will never seek a permission slip to defend the security of our nation” (ibid., p. 202). However, if the president expects these terrorists to behave in a certain way, i.e., respect the laws of war and the Geneva Conventions, that is an admission that these terrorists are subjects to international laws as Bull (2002, p. 125) posits. If al Qaeda was bound by duties under international laws, then under the same laws, it had rights even if it flouted the same rules. If the USA wanted to enforce the international laws like president Bush claimed in his speeches, it should not have done so while breaching some provisions of the same law it was enforcing.

The analyzed speeches started showing clear instances of an admittance of the USA’s regard for international laws in 2006. Interestingly, the CCR’s report on the treatment of captured terrorists had been released in 2006. In the 2006 Address on the Creation of Military Commissions to Try Suspected Terrorists, he directed national security officials to “do everything within their power, within our laws, to prevent another attack” (ibid., p. 410). Perhaps, the ruling of the USA Supreme Court earlier that year on the status of captured terrorists as being beneficiaries of the conventions of war made it necessary that the president provide more proof of operating within the law regarding the treatment of captured terrorists.

Or possibly, the interrogation tactics and breaches of the laws on the treatment of captured suspected terrorists had outlived its usefulness as President Bush admitted that he was divulging information on a CIA interrogation program because it was coming to an end. He admits later in that speech that the ruling of the court has “impaired our ability to prosecute terrorists through military commissions, and has put in question the future of the CIA program. In its ruling on military commissions, the Court determined that a provision of the Geneva Conventions known as “Common Article Three” applies to our war with al Qaeda. This article includes provisions that prohibit “outrages upon personal dignity” and “humiliating and degrading treatment”” (ibid., p. 420). Was President Bush feigning ignorance of the fact that USA was bound by the provisions of Common Article Three? It did not have to take the Supreme Court to remind the USA to comply with the said provisions. The ruling of the Supreme Court and the president’s reaction to it puts in doubt certain statements that he had made. In the same speech on the creation of military commissions, the president had spoken of a procedure for questioning terrorists. He stated that the procedures “were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful” and went on to speak of the procedures as “tough” but were “safe, and lawful, and necessary” (ibid., 413). If these procedures were safe, lawful, and necessary like he claimed, the Supreme Court would likely not have ruled for the procedures to conform to the Geneva Conventions. If the procedures were lawful, the Department of Justice’s interpretation of the acts would have been endorsed by the Supreme Court. If the procedures were safe and lawful, the CIA interrogation program would not be affected in anyway by the ruling of the court that the USA comply with Common Article Three provisions of the Geneva Conventions.

The USA’s commitment to act under the laws of war after the ‘panic years’ are reflected further in the president’s speeches in 2007 and 2008. In the 2007 SOTU address, President Bush elaborates the policy of the government to tackle terrorism by using “every lawful and proper tool of intelligence, diplomacy, law enforcement, and military action to do our duty...” (ibid., p. 469). This represents a deviation between regarding international laws in the early stages of the war and the latter stages. Reference to adherence for laws is clearly stated. Similarly, in his 2008 SOTU address, he commits the USA to use lawful means in its fight against terrorism. He stated that the USA will “continue to take every lawful and effective measure to protect our country” (ibid., p. 538).

In the ‘panic years’ of the war, the USA had used any means necessary in some instances to obtain information to avert another attack. When this modus operandi became known the best remedy to save the government was to feign ignorance sometimes and to question the exact meaning of certain international treaties. In the 2006 address on the creation of military commission to try suspected terrorists he posited that the Common Article Three was ambiguous by stating that “The problem is that these and other provisions of Common Article Three are vague and undefined, and each could be interpreted in different ways by American or foreign judges. And some believe our military and intelligence personnel involved in capturing and questioning terrorists could now be at risk of prosecution under the War Crimes Act – simply for doing their jobs in a thorough and professional way” (ibid., p. 420). The thought of prosecution under the War Crimes Act would not even come into question if these Intelligence officials had treated suspected terrorists in their custody humanely and with dignity. Probably to offset fears of complicity of security officials while they handled suspected terrorists, President Bush admonished the USA Congress to expeditiously amend existing laws to enable to security officials do their work in a lawful manner. He commented that Congress should “pass legislation that will clarify the rules for our personnel fighting the war on terror” by listing “specific, recognizable offenses that would be considered crimes under the War Crimes Act” so that security officials will “know clearly what is prohibited in the handling of terrorist enemies” (ibid., p. 421). This to an extent is admittance that the Department of Justice’s interpretation of the treatment of suspected terrorists as safe and lawful was subject to debate, if the same actions now needed further clarification from the USA Congress to determine what was lawful or otherwise. This is further evidence of the claims by critical and legal realists about using laws as a social reengineering tool. Congress was being asked to amend laws to legitimize some actions, which were illegal under existing laws, for use by USA intelligence officials. There was no attempt for the international community to relook at the Geneva Conventions, because with that, the USA would only need to reinterpret the provisions to suit its needs as posited by critical realists. Additionally, the absence of an enforcer greater than the USA meant disregard was possible.

All these actions also call into question once again, the utterances of the president when he declares to the world in the same speech that “The United States does not torture. It’s against our laws and it’s against our values. I have not authorized it – and I will not authorize it” (ibid., p. 417). However, action speaks louder than words and the actions of the USA as has been admitted by the president in this speech of a tough program for interrogating suspected

terrorists can be construed as using torture to achieve an end. After all, not many leaders especially in a democratic setting will admit that they are engaged in the torture of other human beings, not even authoritarian dictators. One of the reasons the Iraqi war started was to liberate the Iraqi people from the bondage of Saddam Hussein. In his 2002 address to the UNGA, he enumerated several reasons why Saddam Hussein had to be removed. Aside his claims of Saddam amassing weapons of mass destruction and aiding known terrorist groups, President Bush also bashed Iraq's human rights record and accused the Hussein government of gross human rights violations and oppression of opposition groups through "arbitrary arrest and imprisonment, summary execution, and torture by beating and burning, electric shock, starvation, mutilation, and rape" (ibid., p. 141). Again, in his address on the State of the Union in 2004, he stated that if Saddam Hussein had still been in power "Iraq's torture chambers would still be filled with victims, terrified, and innocent" (ibid., p. 202). If Saddam Hussein had been given the chance to explain how he was handling prisoners, it is likely that he would have said the prisoners were subject to a program which was tough but safe, lawful, and necessary. He would have declared that Iraq did not torture its citizens, and it would not do so. President Bush, however disagreed with Saddam's viewpoint in terms of the definition and use of torture. Under the same circumstances, I disagree with President Bush's claims of the USA not engaging in torture just because he says he does not. The proof of torture or otherwise must go beyond mere rhetoric. A dominant actor enforces the law of international human rights by declaring war on Iraq, then uses some of those tactics to achieve its objectives. These are the social and political considerations which critical realists explain as influencing decision-making and application of laws in the international community. The dominant actor found justification for abusing captured suspected terrorists but rejected the justifications of a non-dominant actor for using similar measures to suppress opposition groups that threatened the non-dominant actor.

Feigning ignorance or alluding ambiguity to the provisions of existing treaties was just one strategy for disregarding the provisions of the Geneva Conventions. Another well-orchestrated means by which the USA flouted some provisions of the Geneva Conventions in its treatment of suspected terrorists in USA custody was the use of terminologies that explicitly did not exist in the Conventions. These terminologies exist in the speeches that I analyzed. The first terminology employed by President Bush to this effect is the *enemy combatant*. This classification was assigned to captured suspected terrorists only. As has been discussed earlier in this thesis, enemy combatant was a phrase coined by the Bush

administration purposely for the war on terror. The phrase does not exist in any previous war that the USA has been engaged in to describe enemy troops. Neither does the phrase exist in any of the numerous international treaties relating to the conduct of war like the Geneva Conventions (CCR 2006). The designation of a captured suspected terrorist as an enemy combatant was made by the Executive branch of the USA. In this way, the USA could treat them how they deemed fit, because by their interpretation of existing treaties relating to war, beneficiaries of these treaties included enemy soldiers, enemy troops, belligerents, etc. but not enemy combatants. One is left wondering then what exactly is the difference between an enemy soldier and an enemy combatant. In the Korean war and the Vietnam War, was it not the aim of enemy soldiers to cause harm to USA soldiers and USA assets? In the War on Terror, did al Qaeda members not have the same desire to inflict harm to USA troops and USA assets? What then differentiates a Viet Cong soldier from an al Qaeda soldier? By employing this change-of-name move, the USA justified its treatment of the captured terrorists that they were not mentioned in the treaties, therefore they would not benefit from the provisions of same, and the USA was not in breach of the Geneva Conventions.

Referencing them in his 2006 speech on the creation of military commissions to try suspected terrorists, he said the USA had the rights under the laws of war to “detain these enemies and stop them from rejoining the battle” (Bush 2008, p. 411). He goes further to describe the rules for trying enemy combatants as different – “...the rules for trying enemy combatants in a time of conflict must be different from those for trying common criminals...” (ibid., p. 417).

Another terminology employed to escape overtly flouting the provisions of the Geneva Conventions was the use of *alternative set of procedures* for interrogating captured suspected terrorists. In the same speech on the creation of the military commissions, President Bush tells a story of how one Zubaydah, a captured suspected terrorist stopped cooperating with CIA interrogators and refused to answer questions. To overcome this uncooperativeness, “the CIA used an alternative set of procedures” and “soon he began to provide information on key al Qaeda operatives, including information that helped us find and capture more of those responsible for the attacks on September the 11th” (ibid., p. 413). President Bush was evasive on exactly what these alternative set of procedures were and how they were used to great effect to change these reticent suspected terrorists to cooperate and divulge information that was considered necessary in the war. His comments on the alternative set of procedures used was that he could not “describe the specific methods used – if I did, it would help the

terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country” (ibid., p. 413). These procedures however became widely known based on investigative reports on the treatment of captured terrorists. Commonly referred to as extreme interrogation techniques, these procedures included long periods of sleep deprivation, solitary confinements, beatings, torture, sexual harassment, threats of rendition and rape, exposure to extreme temperature, but to mention a few (CCR 2006, p. 9). These acts clearly go against the provisions of the Geneva Conventions on the treatment of war prisoners. As critical realists have explained, dominant actors are not bound by international laws as other actors are. First, they hold the enforcement right of these laws according to Bull (2002). Secondly, the law is nothing more than a tool for them to achieve specific needs. If the prevailing law prevents such an achievement, the dominant actor remakes the law to meet the problem at hand and overcome it. Non-dominant actors are however not privy to use the new version of the law that has been made by the dominant actor and may suffer sanctions of disobeying the original law if they flout it.

Based on the analyzed speeches, the Geneva Conventions were sometimes disregarded by the USA. However, this disregard was in a context of a war with al Qaeda which openly declared harm and destruction on the USA. Was al Qaeda adhering to the laws of war in its pursuit to inflict harm on the USA? In his 2004 translated speech on Aljazeera News Network, Osama bin Laden declares that even though the events of 9/11 were supposed to serve as a warning to Bush and the USA not to jeopardize the security of others, Bush was “still engaged in distortion, deception and hiding from the real causes”, therefore “the reasons are still there for a repeat of what occurred” (Aljazeera 2004). A repeat of what occurred means killing innocent civilians not directly involved in war against al Qaeda. Killing civilians is also in breach of the Geneva Conventions. If Osama bin Laden was threatening or attempting to harm civilians, then he was also not adhering to the Geneva Conventions.

Clearly both sides, per their utterances in the analyzed speeches did not, on some occasions adhere to some provisions of the Geneva Conventions. Bush was complicit in the treatment of prisoners of war, resorting to various forms of torture and inhumane actions to achieve various goals like gathering intelligence. Osama bin Laden on the other hand did not respect the rights of civilians not to be harmed as stipulated in the conventions.

5.1 Justification for War on Terror

In his speeches President Bush provided reasons that necessitated the actions that took place before and during the war. The USA is a global leader and a only superpower since the end of the cold war. Its hegemonic dominance in global politics gave it an impetus to disregard some international agreements on some occasions as critical realists posit is likely when dealing with dominant actors and international laws. As critical realists have posited, the law is not neutral. It rather favors the powerful and initiators of the same law. Usually the initiators and the powerful are the same. However, in almost all his speeches analyzed regarding the war on terror, President Bush sought to justify why USA was going to war. But he didn't need to justify himself or the USA for waging war. After all, an attack on USA mainland had happened by foreigners. This was the first of its kind in over fifty years, not since the attack on Pearl Harbor in 1941 by imperial Japan (Lowenthal 2017). This attack by a foreign non-state actor was the first in the modern era. The USA needed to respond to show its dominance.

The first and obvious justification for the war on terror posited by President Bush in the analyzed speeches was to defend and protect USA citizens. The war would capture or kill the perpetrators of the 9/11 attacks to prevent them planning further attacks against the USA and its allies. Tackling the terrorists would make USA citizens safe. He stated in his 2001 address to the UNGA that USA and its allies would “defend ourselves and our future against terror and lawless violence” (Bush 2008, p. 83). He further went on that the UN had been founded so that “the aggressions and ambitions of the wicked must be opposed early, decisively, and collectively, before they threaten us all” (ibid.). In his 2002 SOTU address he stated the intentions of the terrorists as justifications to fight them: “Our enemies have declared this very intention” to use weapons of mass destruction to “blackmail us, or to harm us... - and we will oppose them with all our power.” (ibid., p. 128).

To defend the USA from further terror attacks, President Bush continues in the same speech that the war is to prevent the spread of terrorism. The USA has therefore spread across the globe to check and defeat global terror by terror organizations like Hamas, Hezbollah, Islamic Jihad and Jaish-i-Mohammed (ibid., p. 105). This same justification for attacking terrorists to protect lives was made at the Republican National Convention. Addressing the audience, President Bush stated that the “most solemn duty of the American President is to protect the American people” and that America had to command certainty and strength in the

war or else “the whole world will drift toward tragedy” (ibid., p. 258). The USA was in the fight to prevent this world tragedy from happening.

Another justification for the war, directly related to the research question on adherence was to protect international institutions/organizations from both terrorists and outlaw regimes. According to President Bush, there was the threat of these organizations losing the power and the mandate to dictate events in the international community if laid down rules were not obeyed. In the address to the UNGA in 2002, he listed several UNSC resolutions that Iraq had flouted. According to him, Iraq had neglected the dictates of UNSC resolutions like 686 and 687 which were supposed to regulate Iraq’s conduct after the Iraqi war in 1991 and check their acquisition of military weapons. Based on these sentiments, he questioned the power of the UN. He stated that “The conduct of the Iraqi regime is a threat to the authority of the United Nations, and a threat to peace. Iraq has answered a decade of U.N. demands with a decade of defiance. All the world now faces a test, and the United Nations a difficult and defining moment. Are Security Council resolutions to be honored and enforced, or cast aside without consequences? Will the United Nations serve the purpose of its founding, or will it be irrelevant?” (ibid., p. 144). Therefore, Iraq had to be invaded, not just to curb state sponsored terrorism, but also a reminder to other states who had intentions of flouting international institutions that the USA would not allow that to happen. Confirming this point, he stated in his 2004 SOTU address that if the USA had not invaded Iraq, “Security Council resolutions on Iraq would have been revealed as empty threats, weakening the United Nations and encouraging defiance by dictators around the world” (ibid., p. 202). Critical realists posit that those who benefit the most from laws are the greatest enforcers of those laws. As these laws become less relevant because of disregard by certain actors within the system, the tool that creates order and gives dominance over others becomes weakened. This invariably weakens the power of dominant actors. So, like the USA did, they will ensure that order is maintained by making others adhere to the rules and punish those who do not. And it does not matter that in trying to enforce laws, they may end up breaking some laws as well. Inadvertently, USA also weakened some laws while seeking to uphold others by going to war without the permission of the UNSC. But that will be a legitimate disregard in the USA’s view, since they are ensuring long term chaos does not occur while guaranteeing their dominance which stems from the law.

Perhaps, the USA’s desire to spread freedom and liberate people in other countries is next to the protection and defense of USA citizens from terror attacks as a justification for the war.

This justification is present in all the analyzed speeches. The USA not only wanted to attack terrorists, but it wanted to spread its version of freedom and liberty to the countries where the war occurred. President Bush alludes that amid resentment and oppression, extreme hatred leads to terrorist ideologies (Bush 2008, p. 266). These ideologies are then exported to other countries where innocent citizens suffer from the brutalities of these terrorists. This is further claim of the protection of international laws like the Geneva Conventions. Speaking on the linkage between oppression of citizens and terrorism in his second inaugural speech in 2005, President Bush opined that “as long as whole regions of the world simmer in resentment and tyranny – prone to ideologies that feed hatred and excuse murder – violence will gather, and multiply in destructive power, and cross the most defended borders, and raise a mortal threat” (Bush 2008, p. 273). Therefore, in his view, freedom and liberty had to be extended to every dictatorial regime that had the possibility to create terrorists out of citizens. This was a major theme in all his speeches analyzed on his justification for the war. In the 2001 UNGA address, he declared that “...American and coalition forces have liberated the people – have liberated – the people of Afghanistan from a barbaric regime” (ibid 117). In his 2003 address on the military operations in Iraq, he again stated that USA will not only “defend our freedom” but also “bring freedom to others...” (ibid., p. 176). In his 2004 National Republican Convention address, he stressed on the need for the war to “...advance liberty in the broader Middle East, because freedom will bring a future of hope...” (ibid., p. 264). The need to expand USA version of freedom to counter terrorism is expressed further by President Bush in his 2007 speech at an International Conference on Democracy and Security in Prague. He states that the most effective way to protect people from terrorists is by expanding freedom and that “it is the only realistic way to protect our people in the long run” (ibid., p. 480). The USA can interfere in the affairs of other countries and so long as it says it wants to promote freedom and democracy it is acceptable. Other countries have taken the same path and the repercussions have been dire. Using the Russian-Ukrainian crisis as a pointer, Russia justified the attacks on Crimea as liberating the over 60% ethnic Russians in Crimea been marginalized by Ukrainian authorities, according to Russia (Mearsheimer 2014). Russia however suffered various forms of sanctions by the international community as well as widespread condemnation for liberating people. This is further proof of the claims made by critical realists that the law is not neutral, rather favoring the powerful actors within the system. The USA used the same justification and emerged unscathed from sanctions or serious condemnation like Russia experienced.

Osama bin Laden justified the 9/11 attacks on the oppression and tyranny that the USA and Israel had inflicted on Lebanon and Palestine. He states that “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” to attack the USA (Aljazeera 2004). His motivations for attacking the USA are similar in some ways to Bush’s justifications. Osama bin Laden wanted his people to be free of USA influence. He speaks of the events of 1982 in which Israel invaded Lebanon with USA support that left many innocent people dead and injured. These events “produced an intense feeling of rejection of tyranny, and gave birth to a strong resolve to punish the oppressors” (ibid.). One can say President Bush was motivated to start the war on terror based on the same sentiments after the 9/11 attacks. And yet according to bin Laden on the Lebanon and Palestine attacks “the whole world saw and heard but it didn’t respond” (ibid.). So, both bin Laden and Bush were justified from their own perspectives to attack each other. They had both seen terror that claimed a lot of lives. Yet, Bush had greater support from the international community whereas bin Laden had been labelled a criminal and pursued by some international actors. Dominant actors within the international law system have legitimacy and acceptance, while non-dominant actors, who may commit similar actions as dominant actors may be accused of breaking the rules or being nonconformist. Osama bin Laden recognizes this fact when he states that “Destruction is freedom and democracy, while resistance is terrorism and intolerance” (ibid.). America’s destruction and oppression of some people in the Middle East was legitimized, while bin Laden’s destruction of the USA was criminalized. This notion of legitimized war conforms with Bull’s (2002, p. 126) understanding of the use of war to either breach a law or to enforce same. He however admitted that there is usually no consensus by members within the international society about the justification of war to enforce a law. Whereas some members see the war initiator as enforcing the law, other members may think the opposite.

This analysis of the justifications of the USA and al Qaeda confirms the claims of critical realists. The differentiating variable is the actors involved. Both had motivations to secure the freedom of their people and protect them. Both resorted to destruction that led to the deaths of innocent lives. However, the dominant actor legitimized his actions on others and suffered no actions. The non-dominant actor’s actions were not legitimate, according to the dominant actor and was labelled a criminal organization. The dominant actor used the law to his advantage to legitimize his actions and criminalize similar actions.

CHAPTER SIX: CONCLUSION

The objective of this thesis was to find out how the Geneva Conventions had been adhered to in the War on Terror era between 2001 and 2009 when it was declared by President George Bush. The objective was achieved by first analyzing the general nature of international laws and relied predominantly on the works of Adriana Sinclair (2010), Hedley Bull (2002), and Christian Reus-Smit (2014). Sinclair (2010, p. 18), a critical realist, challenges the traditional notion of the law as positivist and neutral. She posits that the law is “neither neutral nor apolitical” and the perceived technical form does not rectify this anomaly. In her view, the law favors the dominant in society and the dominant can manipulate the law to favor them. The law is imperfect, but it has been so made to create hierarchies. Bull (2002, p. 122) defines international law as “a body of rules which binds states and other agents in world politics...and is considered to have the status of law”. This definition makes the Geneva Conventions international law because it exhibits all the features of Bull’s definition. He admits that the status of law for international laws is debatable because the body of rules which make up international laws do not derive from preexisting laws, which is a principal feature for a rule to be classified as law (Bull 2002, p. 123). He draws on the ideas of American legal realists who posit that social, political, and moral considerations have an impact in the formulation and implementation of laws. These considerations affect law by making it imperfect, but this imperfection is because the law is a human institution. He also draws on the linkages between international laws and war (ibid., p. 126). Wars may be viewed as a breach of international law or an enforcement of international law. There are instances of non-unanimity in the international community as to what constitutes a breach or an enforcement of international laws. This is because of the political, social and moral considerations which legal realists posit as affecting laws. The actor commencing the war is the differentiating variable between an offender and an enforcer. This notion was apt for analyzing the justification for the war in the analyzed speeches of President Bush and Osama bin Laden.

For the purposes of this thesis, reference to terrorists is made in the context of those engaged in active war, and specifically to the al Qaeda terrorist group. This group was pursued by the USA in its global War on Terror. I relied on the definition of Ganor (2002) to determine what constituted a terrorist activity to situate al Qaeda in the context of a terrorist group engaged in a non-conventional war. The uniqueness of his definition for what constitutes terrorism is in the victim of terrorist acts. Whereas other scholars and state bodies refer to victims as non-

combatants, Ganor advocates for the victims of terrorist acts to be civilians. The use of non-combatants is problematic as for instance, the USA State Department will classify an attack of a USA barracks not actively engaged in combat as a terrorist act. This however removes the element of surprise, which is allowed in warfare since the soldiers, though not in combat when in their barracks, can at a moment's notice attack their enemy. Civilians however have universal appeal since they are not involved actively in war.

Using the speeches of president Bush for answering the research questions was convenient since the War on Terror was initiated by the USA. It was relevant because the USA was a dominant actor in world politics. Testing the theory of critical realists about the nature of international laws as partial and influenced by political, moral, and social considerations required using the actions (statements) of a dominant actor in relation to international laws and war to determine if they "follow the law as it is, not as it should be" (Sinclair 2010, p. 43).

An analysis of the select speeches indicated several actions taken without recourse to the provisions of the Geneva Conventions, particularly with regards to the treatment of captured suspected terrorists. Of course, this had already been established in the Center for Constitutional Rights Report of 2006 (CCR 2006). The analysis of the selected speeches indicated a trend with the inadherence to the laws. In the first four years of the war disregard for some provisions of the Geneva Conventions were observed as the president determined to tackle terrorism by any means necessary to win the war. In several of the analyzed speeches between 2001 and 2004, the "whatever it takes" rhetoric was made. The law was perceived as inadequate or incapable of addressing the challenges which terrorists posed. The USA therefore treated the law as it should be, not as it is. Treating the law as it should be involved instances of feigning ignorance of the law, stating the law as ambiguous and using terminologies which were outside the remit of the law like "enemy combatant" and "alternative set of procedures" in interrogating captured suspected terrorists. The accounts of ex Guantanamo Bay detainees however show that these procedures were simply torture, but the USA refuted this claim at the time simply because it had renamed the acts as "alternative set of procedures" for interrogation and not torture. The law was being redefined to suit the specific needs of the USA. These findings answer the question of how the Geneva Conventions were adhered to by the USA during the War on Terror era between 2001 and 2009.

The rhetoric however saw some changes from 2005-2009 in the analyzed speeches of the president. More reference was made to the law and the importance of state officials carrying out their tasks with the law in mind. Some have posited that perhaps the worst part of the war was over after the initial stages, and the USA could now afford to comply more with laws. It was important not to stray too far and too long from the law, since it was the law which gave the USA its dominant stand in the international community. To work against the law was to work against the privileged position that the law guaranteed the USA.

The justification for the war also showed a desire not just to fight terrorism and secure the peace and security of USA citizens, but a concerted effort to spread the USA's version of freedom and liberty to all the countries it invaded, i.e., Afghanistan and Iraq. This was in consonance with Bull's (2002) notions of the reasons for war as either breaching or enforcing a law. One of the main rhetorics of President Bush in the analyzed speeches, especially in the early stages of the war between 2001 and 2004 was to enforce international laws and ensure that international organizations like the UN did not lose their relevance. He posited that this could happen if actors like Saddam Hussein continually flouted UN Security Council resolutions. This would ultimately lead other actors to disregard international organizations. The war was to serve as a reminder that non-compliance to international institutions would have dire consequences for the offenders as far as the USA was concerned. And yet in carrying out the act to enforce international laws, the USA disregarded the same international laws and went against the dictates of the same international organization it accused others of disobeying.

This research could have been further enriched by the inputs of executives of the International Committee of the Red Cross, especially with regards to the opinion on the USA as a major supporter of the ICRC, and contradictorily a main source of disregard to the Geneva Conventions during the era of the War on Terror. Faced with such a challenge, it would have been inciteful to know why beyond the rhetoric of condemning the actions of the USA, no further action was taken. Consulting with the ICRC executives would have thrown more light on the claims made by President Bush about the ambiguity of some of the Geneva Conventions like the Common Article Three. If his claim was true, was the ICRC initiating measures to solve that problem. If not, were they willing to educate state actors about the clarity of the Conventions to ensure proper adherence? Further research on the topic may consider these options.

This work calls into question the duality of judging adherence to international laws by actors. Countries either adhere or disregard international laws. But it is possible to view the adherence as a spectrum with many variants to adherence based on reinterpretation of international laws by countries. Viewing adherence to international laws accommodates for the imperfections in the law and present an alternative way to addressing the ways actors react to international laws. It is possible that an actor can treat the law in such a manner that is neither in adherence or disregard for the law. It is up to researchers and jurists to objectivize laws or accept altering interpretations from actors and the attendant consequences.

This research raises further questions about how to deal with dominant actors when they disregard international laws. There is always going to be a problem in the international society if the enforcement of laws is left to individual members within the society to carry out. As the USA has shown, it is always likely for dominant actors serving as enforcers of international laws to interpret these laws to suit their strategic interests. The USA is less likely to wage war against an ally to enforce the law than against an adversary. And with balance of power considerations to think about, law enforcers are likely to enforce the law subjectively than objectively. Going forward, researchers and theorists may work out ideas on how to enforce international laws without the direct involvement of members of the international community. Some have advocated for reformulating the operations of UNSC to remove the vetoing powers of the permanent members which prevents war being waged against them. This empowers the UN further to ensure compliance to laws by every nation through war including the permanent members of the UN.

Appendix 1

List of Speeches by President Bush Sampled for Data Analysis

1. Address to the Joint Session of the 107th Congress, delivered on 20.09.2001 at the Capitol, Washington DC.
2. Address to the United Nations General Assembly, delivered on 10.11.2001 at the UN Headquarters, New York.
3. State of the Union Address to the 107th Congress, delivered on 29.01.2002 at the Capitol, Washington DC.
4. Address to the United Nations General Assembly, delivered on 12.09.2002 at the UN Headquarters, New York.
5. State of the Union Address to the 108th Congress, delivered on 28.01.2003 at the Capitol, Washington DC.
6. Address to the Nation on Military Operations in Iraq, delivered on 19.03.2003 at the Oval Office, Washington DC.
7. State of the Union Address to the 108th Congress, Second Session, delivered on 20.01.2004 at the Capitol, Washington DC
8. Address to the Republican National Convention, delivered on 02.09.2004 at Madison Square Garden, New York.
9. The Second Inaugural Address, delivered on 20.01.2005 at the Capitol, Washington DC.
10. State of the Union Address to the 109th Congress, delivered on 02.02.2005 at the Capitol, Washington DC.
11. State of the Union Address to the 109th Congress, Second Session, delivered on 31.01.2006 at the Capitol, Washington DC.
12. Remarks on the Global War on Terror: The Enemy in Their Own Words, delivered on 05.09.2006 at Capital Hilton Hotel, Washington DC.
13. Address on the Creation of Military Commissions to Try Suspected Terrorists, delivered on 06.09.2006 at the White House, Washington DC.
14. State of the Union Address to the 110th Congress, delivered on 23.01.2007 at the Capitol, Washington DC.
15. Address to an International Conference on Democracy and Security in Prague, delivered on 05.06.2007 at Czernin Palace, Prague.
16. State of the Union Address to the 110th Congress, Second Session, delivered on 28.01.2008 at the Capitol, Washington DC.

17. Remarks at the Graduation |Ceremony for Federal Bureau of Investigation Special Agents, delivered on 30.10.2008 at FBI Academy, Virginia.

Full Transcribed Speech by Osama bin Laden to the American People about the September 11, 2001 attacks, delivered and accessible on Aljazeera News Network on 01.11.2004.

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