

Human Rights and U.S. National Security Post 9/11
A comprehensive analysis of U.S. human rights policy during the 'war on terror'

by

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HUMAN RIGHTS AND U.S. NATIONAL SECURITY POST 9/11

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Abstract:

This thesis, *Human Rights and U.S. National Security Post 9/11*, examines the changes in U.S. human rights policy post 9/11 and the impact that these changes have had within the international community. In researching this topic I found a number of policy changes that the U.S. made during the ‘war on terror’ and examined how these changes have impacted the role of the United States in the international community. Overall, I found that the changes in U.S. human rights policy during the ‘war on terror’ have had a negative impact on U.S. alliances abroad as well as other members within the international arena. I looked at statistical evidence of the chasm between the U.S. and other countries. I examined polls, which demonstrates a shift in international opinion of the U.S. post 9/11. Furthermore, I examined specific instances of human rights abuses as well as policy decisions that indicated a shift in U.S. foreign policy away from human rights. Using specific cases that shed light on the changing nature of U.S. human rights policy, I analyze where criticisms of U.S. human rights policy were stemming from. Finally, I draw together all of the information obtained about the changing nature of U.S. human rights policy in order to make recommendations about how the U.S. can put human rights at the center of U.S. foreign policy in a way that will both bolster its security as well as its reputation abroad.

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NOTES

A few notes on the sources that appear throughout the thesis. Due to the variety of different sources used in this thesis, the structure of the footnotes differs depending on the source used. The footnotes in the thesis list the last name of the author of the book used followed by the page number of the work. For sources used that do not have an author, the footnote lists the title of that piece of work instead of the author. Or in instances where there is an author but the source comes from an article or website, the author is listed without a page number. Also, for online sources that do not contain page numbers, the title is cited without a number next to it. All of the sources cited in the footnotes throughout the thesis are listed in the work cited pages at the end of the thesis. The bibliography pages which appear after the work cited sections, lists all the sources used in the writing of this thesis, including sources not cited directly in the thesis. In Chapter 4 of the thesis entitled Research on U.S. Standing in the International Community, all of the charts and polling data presented come from the Pew Global Attitudes Project unless it is noted otherwise.

PURPOSE

The purpose of this thesis, Human Rights and U.S. National Security Post 9/11, is to examine the changes in U.S. human rights policy post 9/11 and the impact that these changes have had within the international community. In researching this topic I found a number of policy changes that the U.S. made during the ‘war on terror’ and examined how these changes have impacted the role of the United States in the international community. Overall, I found that the changes in U.S. human rights policy during the ‘war on terror’ have had a negative impact on U.S. alliances abroad as well as other members within the international arena. I looked at statistical evidence of the chasm between the U.S. and other countries. I examined polls, which demonstrates a shift in international opinion of the U.S. post 9/11. Furthermore, I examined specific instances of human rights abuses as well as policy decisions that indicated a shift in U.S. foreign policy away from human rights. Using specific cases that shed light on the changing nature of U.S. human rights policy, I analyze where criticisms of U.S. human rights policy were stemming from. Finally, I draw together all of the information obtained about the changing nature of U.S. human rights policy in order to make recommendations about how the U.S. can put human rights at the center of U.S. foreign policy in a way that will both bolster its security as well as its reputation abroad.

In conducting research about the effects of U.S. human rights policy on national security post 9/11 as well as its effects on the U.S.’s reputation within the international

community I realized that these variables are impossible to isolate completely. I acknowledge that there are numerous factors which effect U.S. national security and international opinion of the U.S. and it is, therefore, impossible to completely isolate the specific effects of U.S. human rights policy. However, for the purpose of this thesis, I will focus solely on U.S. human rights policy as a catalyst for the U.S.'s changing role as a major actor in the global community. Although there are other factors that come into play when discussing the international repercussions to changes in U.S. foreign policy, human rights remains a central theme in international criticism and national security, and therefore deserves to be examined closely. Also, given the fact that the topics being discussed in this thesis are based on relatively recent changes in U.S. foreign policy, I acknowledge that the status of these policies is not stagnant. In fact, such policies are constantly being impacted by the foreign policy decisions that are being made by the U.S. government. Therefore, changes in the data and various events presented in this thesis might continue to re-shape the role of human rights in U.S. foreign policy.

In chronicling the changes in U.S. human rights policy post 9/11, I acknowledge that the changing role of human rights in U.S. foreign policy cannot be fully captured simply by looking at specific pieces of legislation and particular events that are related to human rights. In fact, there have been many scholarly works which have focused solely on one major U.S. human rights policy, chronicling the individual effect that such a policy has had on U.S. national security. Because human rights is such a broad area to research, and a difficult topic to dissect, the only way to properly analyze human rights within the context of U.S. foreign policy is to focus on specific instances and events that demonstrate the overall changes that have been made in U.S. human rights policy. Therefore, the purpose of this research is to study these key examples that display the U.S.'s changing human rights policy and analyze the overall effects

that these changes have had on U.S. national security, in addition to looking at the U.S.'s role in the international community.

OVERVIEW

This thesis presents the United States' human rights policy and its relationship to our national security post 9/11. The main focus is to look at the role that human rights plays in U.S. foreign policy and analyze the effects that this policy has had on the U.S.'s reputation within the international community. Based on this analysis, I present policy prescriptions that will improve the U.S.'s foreign policy and allow the United States to reclaim the role that it once held as the world's moral leader, championing the cause of human rights.

The paper is separated into seven different chapters which are divided by the major topics that compose the thesis. The first chapter introduces the topic of human rights in U.S. foreign policy. This chapter presents the historical bases for the role that the United States has had in the past with regard to human rights. The introduction chronicles how U.S. foreign policy has changed over time and explains how these changes have effected the reputation that the U.S. holds within the international arena. After presenting background information about the U.S.'s approach to international relations, chapter one looks at the events of 9/11, examining how the rest of the world reacted and how the U.S.'s foreign policy drastically changed as the U.S. entered the 'war on terror.'

The second chapter of the thesis looks at the U.S.'s human rights policy by focusing on three major cases that are indicative of the U.S.'s new foreign policy goals. The three cases presented in this chapter include: the International Criminal Court, Guantanamo Bay

and Abu Ghraib. Each of these specific cases signifies a shift in U.S. foreign policy away from human rights. These cases assist the reader in understanding how the ‘war on terror’ marked a new approach to international relations for the U.S.

The three individual cases presented in the second chapter provide an indicator of the shift in U.S. human rights policy. Based on this information, chapter three looks at the global response to these changes. Chapter three is split into two different sections; the first section looks at criticisms of U.S. human rights policy and the second section presents an analysis of these criticisms. This chapter serves to provide the reader with an understanding of what the specific criticisms of U.S. human rights policy are and an analysis of how these criticisms reflect a the changing role of human rights in U.S. foreign policy.

The fourth chapter provides research on the United States’ standing within the international community. This chapter is broken down into two different sections which include: a breakdown of international opinion of the U.S. and causes of declining support for the U.S. and international perception of U.S. motives with regards to foreign policy objectives. This section provides evidence of a decrease in international support for the U.S.’s policies during the ‘war on terror’. The first section of chapter four looks at the causes of declining support for the U.S. by other countries. This decrease is then analyzed by looking at major foreign policy decisions made by the U.S. during this time. Afterwards, a chart is presented illustrating the percentage of people in various countries who view U.S. presence in Iraq as a danger to world peace versus other countries and conflicts occurring today. This section also presents a survey detailing the falling support for the U.S. led ‘war on terror’ by looking at various major countries and their declining support for the U.S. The second section of this chapter presents a poll detailing international perception of U.S. motives with regards to the U.S. led ‘war on terror.’ Overall, the

data presented in this chapter serves to support the information presented in chapter three through polling data.

Chapter five looks at another national security threat that has occurred as a result of the ‘war on terror’. This chapter looks at the instability presented by failed states and the increase in terrorist recruitment levels during the ‘war on terror.’

Chapter six looks at the major component of the ‘war on terror’ which is, of course, the actual military invasions that were led by the U.S. This chapter focuses specifically on the Iraq War and how the U.S.’s Iraqi war policy has impacted the overall role of human rights in U.S. foreign policy. This chapter also looks at international law and how that comes into play with regards to the U.S.’s foreign policy. Both critics and defenders of the U.S.’s Iraq War policy are cited in this chapter to expand on the larger debate of the role of human rights in U.S. foreign policy as it is described in this thesis.

Chapter seven uses the information presented in the previous chapter to describe a central topic of debate, which looks at the balance of U.S. foreign policy between the need to protect liberty and the need to bolster security. This chapter, depicting the liberty versus security debate looks at how these two important issues relate and how the importance of both liberty and security can be resolved. This chapter looks specifically at how the events of 9/11 made this debate a central focus in relation to U.S. foreign policy.

The eighth and final chapter of the thesis ties together the major topics presented throughout the thesis. The conclusion then prescribes various policy suggestions that will improve the U.S.’s reputation in the international community with regards to human rights and the role that it plays in U.S. foreign policy.

1.0 INTRODUCTION

With the fall of the Soviet Union and the collapse of communism, the United States emerged from the Cold War victorious and established its role as the world's hegemon. America stood alone in its ability to influence countries across the globe. The end of the Cold War had profound effects on U.S. foreign policy; in particular, it removed the limitations of U.S. human rights policy. The U.S. became the world's moral leader by championing the cause of human rights. This renewed focus exemplified a commitment found in the U.S. constitution which endowed all with "certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."¹ Thus, during this time the United States was involved in many humanitarian operations abroad and was praised for its progressive human rights record. The U.S. was a major global player, working with an international alliance to put human rights on the forefront of the international agenda. The U.S.'s commitment to human rights was shared globally by many countries, as various nations around the world reformed their own government and put human rights on the forefront of the international agenda. Richard Wilson, the Director of the International Human Rights Law Clinic at the Washington College of Law, stated, "the period from the mid 1980s to 2001 witnessed a surge of human-rights optimism, as many countries made the transition from authoritarianism to democracy."² The U.S. and its allies highlighted and

¹ United States Constitution

² Wilson, 37

actively combated human rights abuses abroad. This was a time which the U.S. was well respected in the international community.

The U.S. was more or less revered around the world throughout the end of the 20th century and the U.S. certainly did not lose its respect globally overnight. In fact, international support for the U.S. seemed strongest in the aftermath of the September 11th attacks. Across the globe, nations demonstrated pro-American support and solidarity. Leaders in most Middle Eastern countries condemned the attacks. NATO council considered the attacks on the U.S. as an attack on all NATO nations. Numerous countries, including the UK, India, Australia, France, Germany, Indonesia, China, Canada, Russia, Pakistan Jordan, Mauritius, Uganda and Zimbabwe introduced anti-terrorism legislation and froze the bank of accounts of individuals and businesses which were suspected of having ties to al-Qaeda. Various countries, including Italy, Malaysia, Indonesia, and the Philippines arrested terrorist suspects for the purpose of combating global terrorism. The images of the World Trade Center and the Pentagon under attack led these countries and others across the globe to reach out to the United States and stand in solidarity against the perpetrators of such a heinous crime.

Now, looking at the attitude of the international community towards the war on terror, it is easy for one to forget the massive support that the U.S. had immediately after the events of September 11, 2001. Leaders that now criticize the U.S.'s foreign policy once stood by the U.S. in solidarity after the awful events of 9/11. The French President Jacques Chirac expressed outrage, stating that "France is deeply upset to learn of the monstrous attacks that have just struck the United States." Chirac goes on to say, "In these terrible circumstances, all French people stand by the American people. We express our friendship and solidarity in this tragedy."³

³ September 11 News

This sentiment was echoed by nearly the entire international community. Secretary General Kofi Annan of the United Nations said that “There can be no doubt that these attacks are deliberate acts of terrorism, carefully planned and coordinated and as such I condemn them utterly. Terrorism must be fought resolutely wherever it appears.”⁴ This reaction that the global arena had after 9/11 not only represents the outrage of major state actors abroad in response to these attacks but also demonstrates the expectation for a strong response by the United States. And as the U.S. responded to these attacks in a swift and steady manor with the war in Afghanistan, the international community continued to support the U.S.

Thus, the events of 9/11 led to abrupt changes in U.S. foreign policy as well as changes in general political discourse as security, terrorism, and war became the new focus of American foreign policy. There was no doubt that terrorism has represented a grave threat to western values, including that of human rights. It is also clear that the wars in Afghanistan and Iraq got rid of two regimes that were massive human-rights violators. However, the aspect of American foreign policy that is being disputed by human rights activists is how U.S. attitude towards human rights during the war on terror has been detrimental to U.S. national security, creating problems within the international community.

In response to the awful events of 9/11, the United States went to war with Afghanistan in an effort to dismantle al Qaeda and overthrow the terroristic Taliban regime that was in power. International support for the U.S. remained high during Operation Enduring Freedom which is the U.S. led war in Afghanistan that began October 7, 2001 in response to the attacks of September 11, 2001. Secretary-General Lord Robertson of NATO stated, “an attack on one is an

⁴ September 11 News

attack on all,”⁵ after the 19 ambassadors of the alliance decided to invoke Article 5 of the NATO charter for the first time in the alliance’s history. “At the moment this is an act of solidarity.” The NATO allies said in a later statement, “In the event of attacks... each ally will assist (the United States) by taking such action as it deems necessary. Accordingly, the United States’ NATO allies stand ready to provide the assistance that may be required as a consequence of these acts of barbarism.”⁶ NATO led a separate operation, International Security Assistance Force, which has run parallel to the combat mission led by the U.S. and UK. This was the first major military mission in the ‘war on terror,’ when international support for the United States was extremely high.

However, drastic shifts in U.S. foreign policy caused a dramatic shift in the international opinion of the United States. The events of 9/11 led to a show of solidarity by other nations. With a consensus in the international arena that the terrorist attack on the U.S. was an atrocious crime that called for an immediate response. However, U.S. response to these attacks exemplified by U.S. foreign policy post 9/11 fractured this period of consensus immediately following the attacks. The United States was no longer seen as a beacon of hope by other nations, rather the international community saw a very different image of the U.S. All eyes were on the U.S. when the government launched a controversial war in Iraq and enacted certain policies that drew up numerous complaints of questionable human rights practices. As a result of further military engagements and U.S. human rights policy, the U.S.’s reputation in the international community has sharply declined. Three major human rights concerns which have alienated the United States from the international community include the interrogation practices used at Guantanamo Bay, the military’s behavior at Abu Ghraib and the U.S.’s failure to join the

⁵ NATO charter

⁶ September 11 News

International Criminal Court. These practices and other policies have stirred up international controversy, alienating U.S. allies and profoundly damaging our national security.

When examining U.S.'s human rights policy during the 'war on terror' critics and defenders of this policy often point to specific examples or instances in which the U.S. took a position that either hindered or bolstered its stance on human rights. Major events, treaties, and various foreign policy decisions made post 9/11 have contributed to the overall impression that the U.S. has left with regard to its attitude towards human rights. Although defenders and critics of the U.S.'s human rights policy have a vastly different outlook on U.S. foreign policy and international reaction to such a policy, both sides can agree that the U.S. was held in high regard by most of the international community immediately following the attacks of September 11, 2001 and Operation Enduring Freedom in Afghanistan.

The fragmentation of public opinion following this rare time of relative international consensus stems from various different foreign policy decisions made by the United States during the 'war on terror'. There is major disagreement over whether or not such policy decisions were necessary to protect the U.S. from its enemies or if these policies have done more harm than good in the U.S.'s overall objectives in the 'war on terror'. To fully understand the debate as it currently exists, and the nature of disagreement about the role that human rights has played and should play in U.S. foreign policy, it is important to understand the specific policies that have contributed to controversy about the role of human right in U.S. foreign policy.

This thesis will examine post 9/11 policies implemented by the U.S. with regard to human rights and national security. Subsequent chapters will demonstrate that human rights abuses that have become a part of the U.S.'s human rights policy have hindered national security. Also, I will assert that due to this causal relationship of human rights policy and national

security, if the U.S. alters its agenda in a way that adheres to international human rights norms, the U.S. can bolster security by combating terrorism abroad with the support of the international community. This thesis suggests several policies that the U.S. can adopt, which will respect human rights and bolster national security.

2.0 U.S. HUMAN RIGHTS POLICY

2.1 THE ROME STATUTE'S INTERNATIONAL CRIMINAL COURT

The U.S.'s failure to join the International Criminal Court is one of the policy decisions that has sparked a debate over the role of human rights in U.S. foreign policy. The U.S.'s attitude towards the court demonstrates the position that the United States has on human rights and international relations. Many critics of the U.S.'s human rights policy point to the U.S.'s failure to join the ICC as an example of the hypocrisy and exceptionalism that the U.S.'s policies exhibit in its human rights practices. President Bush un-signing the U.S. from the ICC sparked debates within the U.S. in addition to causing controversy within the international community. The decision not to join the ICC was especially significant because the U.S. was seen as a moral leader and advocate of human rights in the post Cold War era; therefore the backlash was exacerbated.

The historical basis for the international criminal court can be traced back to World War II. The United Nations General Assembly felt the need to establish an international court to deal with type of atrocities committed during World War II. However, the start of the Cold War made the development of such a court politically unrealistic so the idea wasn't revisited until 1989 when examining ways to deal with illegal drug trade. After years of negotiations, in June 1998, the General Assembly convened in Rome to finalize the treaty. The Rome Statute of the

International Criminal Court was adopted on July 17, 1998. The Rome Statute became a binding treaty on April 11, 2002 when the number of countries needed to ratify the treaty was reached. The role of the court as outlined in Article 5 of the Rome Statute is to handle four groups of crimes, which it refers to as the “most serious crimes of concern to the international community as a whole”: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.⁷ These four areas of crime are the only ones in which the ICC has jurisdiction over.

Some critics would point out that the United States has a mixed record and deeply divided attitudes towards the International Criminal Court. Under President Bill Clinton, the U.S. signed the Roman Statute of the International Criminal Court in 2000. Although Clinton signed onto the ICC, he wouldn't submit it to the Senate for advice and consent for ratification until the U.S. government was able to assess the functioning of the court. Although Clinton supported the courts efforts to prosecute those who are committing human rights abuses worldwide, he recommended that his successor did not submit the treaty to the Senate for advice and consent until certain fundamental concerns of the treaty were resolved. Then his successor, President George W. Bush, sent a note to the UN Secretary General on May 6, 2002 to suspend the signature of the U.S. and inform the UN that the United States has no obligation toward the Rome Statute.

Although the U.S.'s decision not to join the ICC has been controversial, there are many people who have applauded this decision. Those who defend the United States' decision to refrain from joining the ICC provide a multitude of reasons to demonstrate why it was the right decision. Some argue that the ICC violates the U.S. Constitution and the American ideal of self-

⁷ ICC Website

government.⁸ This claim is made because under the ICC there is no appeals process so the court has the sole power to render a verdict on a particular case, even if the verdict is unjust or irrational. The ICC is, therefore, seen by some as a political tool to restrain the U.S.'s ability to protect its own interests. In addition, Casey and Rivkin point out that the ICC is inconsistent with American tradition and law especially due to the nature of the judicial process which is vastly different from the standards of the United States. They find it particularly disturbing that the defendant can't appeal the verdict beyond just the ICC. Ultimately, since the ICC has the power to make final decisions with no appeals, the court is seen as fundamentally inconsistent with the basic principles of the U.S judicial system and at odds with American ideals.

Another criticism of the ICC is that it lacks safeguards from political manipulation. Opponents cite as evidence of this criticism, the fact that the court does not answer to the UN Security Council. In addition, critics of the ICC argue that the court is set up in a way that clearly violates national sovereignty. Brett D. Schaefer says that legal precedent has been violated by the ICC because the ICC has jurisdiction over nationals and military personnel from states that haven't signed the treaty. When negotiations over the formation of this court took place, these particular concerns that the U.S. held were ignored. Some claim that the Bush Administration has been unfairly criticized for not signing onto the ICC and undermining the court when in reality they were simply protecting U.S. interests. Schaefer is a proponent of including Article 98 into the ICC which would prevent Americans from being turned over to an international legal body that doesn't have jurisdiction that's recognized by the United States. Schaefer urges the international community to simply respect the sovereign decision of the U.S. to refrain from joining the ICC.

⁸ Egenderf, 162-168

Many of the arguments made to support the U.S.'s decision to refrain from signing the ICC are based on claims that it violates U.S. sovereignty and the U.S. Constitution, it lacks safeguards and it is detrimental to the U.S.'s national interest. Such critics of the International Criminal Court present valid concerns regarding the U.S. joining the court, however there are a multitude of reasons in support of the U.S. joining the ICC.⁹

Major criticisms of the ICC and skepticism about its constitutionality have been heavily refuted and convincing arguments have been made for why the U.S. should support the ICC. The criticism that the ICC would threaten the U.S.'s sovereignty is addressed by explaining that U.S. citizens and soldiers who committed crimes abroad are under the jurisdiction of that particular state, therefore, bringing the case to the ICC would actually increase U.S. involvement with the judicial process. U.S. citizens would be granted extraterritoriality, exempting them from the jurisdiction of the local law of whichever country for which charges are placed against them. Also, efforts for U.S. exemption from ICC have greatly alienated our allies across the globe who see this court as a foreign policy priority. Joining the ICC would actually bolster U.S.'s national security for being actively engaged in the processes of the international court. Contrary to previous arguments made, the ICC doesn't pose a threat to Americans because the court can't proceed with a case that is being lawfully investigated by the state which has jurisdiction. In addition, it is already illegal for U.S. soldiers to commit the types of crimes outlined by the ICC, so the court would be functioning in accordance with existing American laws. Although some have claimed that the ICC is unconstitutional, this claim was refuted by the U.S. Department of Justice, which ruled that there aren't Constitutional barriers to joining the ICC. Finally, the ICC

⁹ Egenderf, 156-161

doesn't have independent enforcement powers so the states will be tasked with apprehending the suspects.

Briony MacPhee, a professional volunteer associate with the American Non-Governmental Organizations Coalition for the International Criminal Court, presents a similar argument as to why the United States should be a part of the International Criminal Court. She refutes claims that U.S. participation would be unconstitutional, that it would decrease American sovereignty, that it lacks safeguards, and that the court would infringe on America's sovereignty. MacPhee argues that most American values about trials and justice are implanted under the ICC and thus demonstrates its impartiality.¹⁰ Also, it is highly unlikely that the Court would prosecute Americans due to the limited types of crime it can prosecute for. Even if Americans were prosecuted in the court, due process of the law is almost identical to that provided in U.S. courts. As far as the constitutionality of an international court, the U.S. has entered into previous treaties which have allowed Americans to be brought before foreign courts; therefore, past precedent contradicts the claim that the ICC would be unconstitutional. The reasons provided above echo the sentiment felt by many proponents of the U.S. joining the ICC.

Some human rights scholars state that the decision not to join the ICC has hindered our reputation in the international community because the United States has previously been a leader in supporting human rights across the globe. Because the U.S. has been an advocate for human rights abroad, the decision not to join the ICC is seen as being hypocritical. The U.S. didn't join the ICC largely because of U.S. national interests, believing that the court could have had adverse implications on Iraq War policies. The fear was, and still is, that the court's claim to prosecute crimes of aggression contains vagueness in regard to what could be defined as an act

¹⁰ MacPhee

of aggression. Mansbach Rhodes elaborates on this point in Global Politics in a Changing World. “If it were ever defined, it could hobble the Bush administration’s endorsement of pre-emptive strikes. Some already claim that its attack on Iraq was illegal under international law.”¹¹ Mansbach clearly lays out an argument that certain Iraq War practices could have lead to the prosecution of various Americans by the ICC. However, the argument that joining the ICC would have adverse affects on U.S. Iraq War policy represents only one particular facet of the U.S.’s decision. Also, if the United States were to sign on to the ICC they would not be retrospectively prosecuted for supposed crimes committed years ago during the initial invasion of Iraq, but would rather be held accountable for any current crimes against humanity. In this case, the U.S. would largely benefit from the court for not being solely responsible for prosecuting crimes committed against the U.S. by foreign aggressors.

Many foreign policy experts claim that U.S. failure to participate in the ICC set the stage for weakening relations with the rest of the world. The lack of cooperation between the U.S. and UN member-states on such a fundamental issue like human rights demonstrates how the Iraq War has had such a grave affect on the way the United States conducts foreign policy. Introduction to Global Issues, a book by Michael and Neil Snarr, details an informed argument about the implications of the U.S. refraining from joining the ICC.

“A rift between the United States and its allies, and between the United States and much of the world, has followed its invasion of Iraq, and clashing views over the International Criminal Court have added to this frustration on both sides. This rift may quite possibly lead to diminished cooperation between the United States and its allies on issues such as human rights.”¹²

As demonstrated by the critical analysis of current events that the Snarrs make, consequences of U.S.’s failure to be a member of the International Criminal Court has caused a

¹¹ Rhodes, 255

¹² Snarr, 69

rift between the U.S. and the international community which will possibly continue even after the Iraq War is over. As the chasm between U.S. human rights policy and international human rights norms increases, there has been some changes in political opinion of the ICC. When the idea for the International Criminal Court was initially introduced, there wasn't a lot of political support for the U.S. to sign onto the treaty. President Clinton had been hesitant to make the U.S. part of the ICC. Even when signing onto the treaty he did so late into his second term in office with little expectation of the U.S. formally joining the International Criminal Court. However, international backlash to the U.S.'s human rights policy, as described by Snarr, has led to some reevaluation of the U.S.'s stance on the ICC.

Although positions in the United States with regards to the International Criminal Court still do vary widely, it remains in the spotlight of U.S. foreign policy. During the 2008 Presidential Elections in the United States, both candidates, Senator John McCain and then Senator Barack Obama, expressed their desire for U.S. participation on the court.¹³ Although the candidates expressed hesitation over whether the court, as it stands now, would be in the U.S.'s best interest they applauded the ideals of the court with hope of eventual U.S. participation. Support for U.S. participation in the ICC is also apparent in public opinion. A poll conducted in 2005 by the Chicago Council on Foreign Relations and the Program on International Policy Attitudes at the University of Maryland found that 69% of Americans favored U.S. participation in the Court."¹⁴

The consequences of the U.S. not participating in the ICC are vast, specifically with regards to the backlash within the international community, including former allies of the United States. It is for these negative effects of U.S. human rights policy that many human rights experts

¹³ Citizens for Global Solutions, Global Solutions and San Francisco Chronicle

¹⁴ Americans on the Darfur crisis and ICC

have argued that the U.S. needs to make human rights a priority, especially in the context of U.S. foreign policy. Clearly, if the U.S. wants to renew its image as a champion of human rights, policies such as the U.S.'s position on the ICC needs to be reevaluated.

2.2 GUANTANAMO BAY

Another very controversial policy employed by the U.S. in the war on terror is the treatment of prisoners in Guantanamo Bay. To be fair, there are many human rights and foreign policy experts on both sides of this issue, those who defend and those who criticize the United States for its actions. Those who criticize U.S.'s treatment of prisoners in Guantanamo Bay claim that it violates the Geneva Convention. The violation of the Geneva Convention is due to the U.S. treatment of terrorist suspects in the U.S. military outpost at Guantanamo Bay, Cuba. Because the outpost is technically foreign territory, the detainees don't have rights under the U.S. constitution, but rights under international law are also denied to the suspects.

One main violation is in the status of detainees because the former Secretary of Defense, Donald Rumsfeld, was in charge of determining whether the detainees were ordinary criminal suspects rather than prisoners of war. Once these detainees have been brought to Guantanamo Bay, the way they are treated clearly violates the Geneva Convention. The particular violations are outlined by various human rights groups such as Amnesty International and include among other things, refusal to inform people in its custody of their rights, refusal to grant people in custody legal counsel, and holding people in conditions that may amount to cruel, inhuman, or degrading treatment. Michael Byers believes that human rights needs to be upheld and says "even if the detainees were not prisoners of war, they remain human beings with human

rights.”¹⁵ Former President Jimmy Carter echoes this sentiment claiming that U.S. antiterrorist policies that condone torture are immoral and have eroded human rights worldwide.

The U.S. treatment of prisoners at Guantanamo Bay has led to the U.S. losing its esteemed reputation, held after the Cold War, as a global champion of human rights. In addition to violating the Geneva Convention, U.S. practices at Guantanamo Bay and its human rights policy during the war on terror has damaged the U.S.’s reputation within the international community and has steered the country away from its founding principles.

There are many who refute the assessment that the U.S. has violated the Geneva Convention in its treatment of terrorist suspects. It has been argued that the Geneva Convention doesn’t apply to detainees because neither the Taliban nor al Qaeda are legitimate governments so the provisions of the Geneva Convention don’t apply. In addition, al Qaeda hasn’t even signed the Geneva Convention so it is unreasonable to think that prisoners held in Cuba would be provided rights under this Convention. Many conservatives claim that the human rights violations will increase if the terrorists are not defeated; therefore the war is ultimately benefiting human rights rather than hindering it. Some who defend U.S. treatment of detainees claim that even just joining al Qaeda is a crime so there are definitely charges that could be draw up against any detainee. Charles Krauthammer, a syndicated columnist and prominent political commentator, presents a similar argument, claiming that there are certain times when torture is necessary. He believes that there are extenuating circumstances when torture needs to be used in order to save the lives of soldiers and citizens. This type of utilitarian argument asserts that it would be morally incorrect for the leaders not to use torture in order to gain information to save lives. This type of reasoning justifies the use of torture at Guantanamo Bay because of the claim

¹⁵ Byers, 67

that the public good should supersede the rights of individuals to a fair trial. The resurgence of utilitarianism as a justification for human rights abuses emphasize collective security while dismissing individual rights as a luxury that the U.S. can not afford to grant for the sake of the common good.¹⁶

Arguments on both sides of this issue refer to international treaties that have been agreed upon, as well as other pertinent governmental information that relates to the U.S.'s foreign policy. Byer and Carter claim that the U.S.'s treatment of terrorists suspects on Guantanamo Bay hinders human rights. Such arguments accurately point out that the U.S. is violating human rights and hindering its reputation in the international community. Krauthamer seems to be making utilitarian argument, claiming that violating the rights of a handful of terrorists is better for the greater good. However torture advocates fail to make the case that torture is actually an effective measure to retrieve accurate information that will potentially save lives as this utilitarian argument claims. In addition, this argument fails to take into account the repercussions that this action has among the international community. Many critics of torture, such as Wilson, acknowledge that banning extra-judicial killing and torture can have some costs in the 'war on terror.' However, there is substantial evidence that "these costs ought to be borne, because the cost of allowing such derogations would be extremely high."¹⁷ In addition, because torturing prisoners on Guantanamo Bay has not proven to be an effective method for obtaining accurate information and it is a clear human rights violation, such practices are simply alienating our allies abroad while not actually making us any safer.

Understandably, the stance that torture is not an effective method for retrieving information from foreign combatants has been criticized. Though this is an arguable stance to

¹⁶ Krauthammer

¹⁷ Wilson, 46

take, even if torture is making us perceivably safer, there are vast ramifications for this practice that need to be taken into consideration. The short term gain of making us feel safer in the present does not outweigh the long term costs of the U.S.'s shattered reputation and the unraveling of several long term alliances.

2.3 ABU GHRAIB

The prisoner abuse scandal that took place in the Abu Ghraib prison in Iraq had a big effect on the human rights debate due to the context in which the scandal occurred. In 2004 reports of physical, psychological and sexual abuse of prisoners in the Abu Ghraib prison surfaced. The abuse taking place included torture, rape, sodomy and homicide of the prisoners in custody. Also in 2004, articles describing the abuse along with pictures showing military personnel abusing prisoners came to public attention. Public and international backlash to this prisoner abuse scandal was vast, exacerbated by assertions that a large percentage of prisoners held at Abu Ghraib were actually innocent. “Janis Karpinski, the commander of Abu Ghraib, demoted for her lack of oversight regarding the abuse, estimated later that 90% of detainees in the prison were innocent.”¹⁸ The U.S. Department of Defense responded to the accounts of abuse by removing several soldiers and officers from power and charging soldiers with aggravated assault and battery. On January 16, 2004, United States Central Command informed the media

¹⁸ Rummy's Scapegoat

that an official investigation of abuse and humiliation of Iraqi inmates by U.S. soldiers had begun and on March 21st, 2004 the first charges were filed.¹⁹

United States Secretary of Defense Donald Rumsfeld responded to the prisoner abuse scandal by publically accepting responsibility for the mistreatment of prisoners at Abu Ghraib. At a speech before the Senate Armed Services Committee on May 7, 2004, Defense Secretary Rumsfeld stated:

“These events occurred on my watch. As Secretary of defense I am accountable for them. I take full responsibility. It is my obligation to evaluate what happened, to make sure those who have committed wrongdoing are brought to justice, and to make changes as needed to see that it doesn’t happen again. I feel terrible about what happened to these Iraqi detainees. They are human beings. They were in U.S. custody. Our country had an obligation to treat them right. We didn’t do that. That was wrong. To those Iraqis who were mistreated by members of U.S. armed forces, I offer my deepest apology. It was un-American. And it was inconsistent with the values of our nation.”²⁰

U.S. President George W. Bush responded to the Abu Ghraib scandal by explaining that the acts were absolutely not an example of acceptable interrogation practices used in the United States Army. Although the instance of prisoner abuse in the Abu Ghraib prison has been seen as an isolated event, this event has raised questions about U.S. interrogation practice, in particular with regards to the torture debate. When Defense Secretary Rumsfeld was answering questions asked by members of the Senate Armed Service Committee he avoided addressing the issue of torture, stating, “What has been charged so far is abuse, which I believe technically is different from torture. I’m not going to address the ‘torture’ word.”²¹ Despite the U.S. Government’s attempts to avoid addressing the torture question when discussing Abu Ghraib, the incident undoubtedly called into question the U.S.’s interrogation methods as well as the issue of torture as a component of U.S. foreign policy.

¹⁹ Getler and Shanker

²⁰ Rumsfeld: ‘I Take Full Responsibility’

²¹ Hochschild

The U.S. has taken an official stance against torture in ratifying the UN's Convention Against Torture, as well as the Third and Fourth Geneva Conventions. The UN's Convention Against Torture officially defines torture as, "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him... information or confession, punishing him for an act he... has committed or is suspected of having committed, or intimidating or coercing him."²² The Bush Administration recognized the commitment that the United States has in abiding by the standards set by the Geneva Conventions. However, the Bush Administration has claimed that prisoners taken in Afghanistan don't qualify as prisoners of war under international law. In fact, former Attorney General Alberto Gonzales as well as other legal analysts have argued that if the detainees are considered 'unlawful combatants they would not be protected by the Geneva Conventions. Such legal arguments regarding this particular legal gray area were explained in the "torture memos". Although the White House disavowed these memos, critics say that the original documents set up a legal framework which led to the abuses at Abu Ghraib as well as the use of torture at Guantanamo Bay. Gonzales believed that by denying protection of detainees under the Geneva Conventions, the U.S. reduces the threat of domestic criminal prosecution under the War Crimes Act.

The U.S. Supreme Court addressed the policy of ignoring the Geneva Conventions in *Hamdan v. Rumsfeld*²³, ruling that Common Article Three of the Geneva Conventions applies to all detainees in the 'war on terror'. Therefore, the Military Tribunals that were used to try

²² UN Convention Against Torture

²³ *Hamdan v. Rumsfeld*: Supreme Court case which held that military commissions set up by the Bush administration to try detainees at Guantanamo Bay lack "the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949." Specifically pointing to the violation of Article 3 of the Geneva Conventions. This decision was announced on June 29, 2006 and it reversed the ruling of the Court of Appeals.

suspects were in violation of both U.S. and international law.²⁴ In an attempt to legally justify the treatment of detainees, the U.S. passed the Military Commissions Act of 2006 which, in a sense, retroactively rewrote the War Crimes Act by effectively abolishing habeas corpus, making it impossible for detainees to challenge crimes committed against them.²⁵ These policies enacted by the Bush Administration demonstrate the sentiment articulated by the 9/11 Commission Report which state, “The United States and some of its allies do not accept the application of full Geneva Convention treatment of prisoners of war to captured terrorists. Those Conventions establish a minimum set of standards for prisoners in internal conflicts.”²⁶

The disregard for the Geneva Convention’s standards for the treatment of prisoners of war has isolated the U.S. from the international community. If the U.S. collaborates with its allies to develop a common policy for the detention and human treatment of captured terrorists, drawing from Article 3 of the Geneva Conventions which details the law of armed conflict. By agreeing on minimum standards that are already generally accepted throughout the international arena, the U.S. could lead the ‘war on terror’ with the support of its former allies and the international community. In doing so, the U.S. has the opportunity to reverse some of the international backlash experienced from the Iraq War.

²⁴ Isikoff and Taylor

²⁵ Military Commissions Act of 2006

²⁶ 9/11 Commission Report

3.0 RESPONSE TO U.S. HUMAN RIGHTS POLICY

3.1 CRITICISM OF U.S. HUMAN RIGHTS POLICY

A major problem with U.S. human rights policy, which has caused a great deal of strife in the international arena, is that the U.S. has consistently demonstrated exceptionalism in its human rights policy since 9/11. The United States applies one set of human rights standards to itself and another to the rest of the world. This aspect of the U.S.'s foreign policy has contributed to the chasm between the United States and the international community. This behavior exhibited by the United States has been met with continuous criticism throughout the U.S. led 'war on terror.' Human rights expert Julie Mertus points out that there seems to be a double standard that undercuts U.S. ability to have an effective human rights agenda. "For the White House, however, human rights talk is not supported by consistent human rights behavior. On the contrary, the United States applies a double standard for human rights norms: one that applies to the United States and one that applies to the rest of the world"²⁷ Although these criticisms existed before 9/11, the changes in human rights policy during the 'war on terror' intensified the human rights debate and added significantly more pressure on the U.S. to change its policies.

Although the United States insists that it is a champion of human rights, this type of talk isn't backed up consistent human rights behavior. In addition to alienating the U.S. from the

²⁷ Mertus, 209

world community, American exceptionalism has also hindered the ability of human rights norms to progress into consistent human rights behaviors. Human rights talk occurs as a tool for the sake of U.S. national interest to be applied to other nations as a matter of convenience for the U.S. human rights is not seen as an integral part of American foreign policy because the U.S.'s use of a double standard is seen as something the Americans employ out of convenience for the sake of national interest. This goes against the central tenet of human rights which is that they should be applied equally to all nations. "However, inconsistency in foreign policy may be perceived as hypocrisy, and this may undermine the legitimacy of the war on terrorism, as well as the struggle for human rights."²⁸ To the extent that the U.S. is viewed as a champion or leader in human rights, it is certainly leading the international community in the wrong direction. The only way for human rights norms to gain legitimacy in the international community is for the United States to reinforce a strong human rights culture by becoming a champion of human rights themselves.

The questionable human rights agenda held by the Bush administration received almost immediate backlash from the international community. It was reported that representatives from the U.S. would attack the human rights records of countries they dislike while shielding various regimes with poor human rights records in order to advance the American national interest. This notion of using human rights as a tool to be used in accordance with the U.S.'s national interest has not only undermined the United States but has subsequently weakened the notion of human rights in the international community.

This weak human rights agenda coerces the U.S. into defending other countries' human rights abuses, weakens any U.S. claims of being a champion for human rights and weakens the

²⁸ Wilson, 51

legitimacy of human rights in the international world. American double standard in human rights policy has caused the U.S. to lose its post Cold War claim to be a moral authority in the world and it undermines the legitimacy of international human rights norms. To advocate human rights for all other countries but not apply the same standards to your own country undermines the main doctrine of human rights which is supposed to be applied equally to all nations. Therefore, as Mertus is alluding to, the U.S. loses its ability to monitor human rights abuses across the world since its own human rights practices are questionable.

By exercising exceptionalist policies in the field of human rights, the U.S. severely weakens its ability to confront terrorism and oppressive regimes abroad with the support of the international community. The controversial treatment of prisoners at Abu Ghraib and the torturing of detainees at Guantanamo Bay has demonstrated a clear disregard for human rights and the rule of law. As Goldstone expresses:

“the United States has contravened a number of principles of the rule of law (the presumption of innocence, the right to a trial before a competent court) by keeping detainees at Guantanamo Bay and holding hearings before special ‘military commissions’, detaining illegal immigrants and conducting secret deportation hearings, denying legal representation to two U.S. citizens, and deportation hearings, denying legal representation to two U.S. citizens, and maintaining prisons in Afghanistan and Iraq where prisoners were routinely abused.”²⁹

Another example of exceptionalism in U.S. foreign policy is the treatment of detainees. Although the U.S. has agreed to the human rights guidelines set by the Geneva Conventions, they do not follow these guidelines. Bush determined that enemies in the ‘war on terror’ did not have nationality or citizenship, and the conflict lacked geographical boundaries so it was determined that the provisions of the Geneva Conventions did not apply. In addition,

²⁹ Wilson, 16

Bush's decree did not allow detainees to challenge their detentions, so the president had complete control over the status and treatment of detainees.

Criticisms was sparked when President Bush issued an executive order entitled Further Implementation of the Presidential Records Act (November 1, 2001) which gave the president ownership over presidential records, overturning a law passed by Congress which gave ownership to the U.S. government. This meant that documents relating to the 'war on terror', Guantanamo Bay, and Abu Ghraib were shielded from the public.³⁰ This executive order undoubtedly put the U.S.'s human rights record under fire for the controversial role that it plays in U.S. foreign policy. These criticisms have distanced the U.S. from its allies as a result of the weakened reputation as a moral leader in the world. Furthermore, the Bush Administration has circumvented judicial review by using the detention center outside of the U.S. in Guantanamo Bay, Cuba. This ensures that U.S. courts do not have jurisdiction over the detention center being used in Cuba because the U.S. lacks sovereign control of Guantanamo. Therefore, the right to a fair trial and other liberties granted to Americans in the U.S. are not applied to people outside of the U.S., even when under U.S. custody. This disparity demonstrates hypocrisy in U.S. human rights policy that weakens the U.S.'s influence on other nations.

³⁰ Apodaca, 172

3.2 ANALYSIS OF U.S. HUMAN RIGHTS POLICY

The specific issues of the ICC, Guantanamo Bay and Abu Ghraib present major pieces in the huge puzzle that represents the role of human right in regards to U.S. foreign policy and the ‘war on terror’. These controversial human rights topics represent the contentious nature U.S. human rights policy in the war on terror. The broader issue of U.S. human rights policy is hotly debated in this country.

The instances of prisoner abuse which occurred at Guantanamo Bay and Abu Ghraib was not viewed as random or accidental, but rather as evidence of the internal policy formulations of U.S. governmental officials. Reports of prisoner abuse has damaged the U.S.’s system of justice and has undermined U.S. national security by undermining American legitimacy abroad, as well as U.S. cooperation with other nations. By understanding the three specific international issues discussed in this chapter, one can better grasp the contentious nature of human rights and the war on terror. These cases also help to highlight the clear exceptionalism which is evident in the U.S.’s human rights policy. The exceptionalist attitude that is demonstrated in U.S. foreign policy calls into question whether the war on terrorism is in fact a war for human rights given the clear violation of human rights at Guantanamo Bay and Abu Ghraib.

4.0 RESEARCH ON U.S. STANDING IN THE INTERNATIONAL COMMUNITY

4.1 INTERNATIONAL OPINION OF THE U.S. AND CAUSES OF DECLINING SUPPORT FOR THE U.S.

The overall role that the U.S. is currently playing with regard to its human rights policy in the war on terror is extremely controversial. The specific cases of the ICC, Guantanamo Bay and Abu Ghraib were outlined to provide a basis of how the U.S.'s human rights record is viewed by the international community. In order to understand the effect that U.S. foreign policy post 9/11 has had on the international community it is important to understand the trend of international disapproval as a result of the U.S.'s mixed record on human rights. The polling data detailed below demonstrates how U.S. human rights policy during the 'war on terror' has drastically lowered the opinion that the international community has of the United States. A survey conducted in 2006 compares how major countries view U.S. presence in Iraq as a danger to world peace versus the threat posed by North Korea, Iran, and the Israeli-Palestinian conflict.

Figure 1: U.S. in Iraq Viewed as Danger to World Peace

Dangers to World Peace				
<i>% saying</i>		US in	North	Israeli-
<i>'great danger'</i>	<u>Iran</u>	<u>Iraq</u>	<u>Korea</u>	<u>Palestinian</u>
U.S.	%	%	%	%
	46	31	34	43
Great Britain	34	41	19	45
France	31	36	16	35
Germany	51	40	23	51
Spain	38	56	21	52
Russia	20	45	10	41
Indonesia	7	31	4	33
Egypt	14	56	14	68
Jordan	19	58	18	67
Turkey	16	60	6	42
Pakistan	4	28	8	22
Nigeria	15	25	11	27
Japan	29	29	46	40
India	8	15	6	13
China	22	31	11	27

What is particularly interesting about this survey is that it demonstrates how the falling opinion of the U.S. really is worldwide. This shows that disapproval for the U.S.'s occupation of Iraq is not a regional problem but rather a global phenomenon. The Pew Research Center also explains how other international polls, such as BBC and Gallup have confirmed the negative image of the U.S. world-wide.

Although the U.S. faces world-wide disapproval for its presence in Iraq, the survey also highlights how the anti-American sentiment is strongest in the Muslim world. In all five of the predominantly Muslim countries surveyed in the 2006 study, fewer than one-third of the people surveyed voiced a favorable view of the U.S; this includes former U.S. allies in the Muslim

world such as Turkey, whose favorable view of the U.S. drastically decreased from 52% in the late 1990s to 15% in 2003. The rapid increase in anti-American sentiment particularly in Muslim countries exemplifies how these countries are starting to see the U.S. as a threat to Islam since the invasion of Iraq.

As the United States continues to be heavily engaged in the Muslim world, American engagement becomes increasingly resented. A poll in 2002 found that even in Egypt, an ally of the U.S., only 15% of the population has a favorable opinion of the U.S. In Saudi Arabia, another Muslim country that has close ties with the U.S., only 12% of the population view the U.S. favorably. In addition, a 2003 poll conducted indicates that in Indonesia and Turkey (a longstanding NATO ally) two-thirds of the population was either very or somewhat fearful that the United States might attack their country.³¹ It was also in 2003 that polls began to show that the falling support for the U.S. in the Muslim world was not limited to the Middle East. Between 2002 and 2003, favorable ratings of the U.S. dropped from 61% to 15% in Indonesia, and from 71% to 38% among Muslims in Nigeria.³² Furthermore, a Pew study conducted in 2005 found that in the five majority Muslim countries surveyed above (Indonesia, Egypt, Jordan, Turkey and Pakistan) solid majorities said that they worried the United States might become a military threat to their country.

What is particularly alarming about the rise of anti-American sentiment is how rampant it is among The U.S.'s former staunch European allies. The Pew Research Center cites in the article, a 2003 European Union poll which shows that 53% of people in EU countries saw the U.S. as a threat to world peace. What was particularly alarming about this survey is that it showed how Europeans saw the U.S. as a comparable threat to world peace as Iran and North

³¹ 9/11 Commission Report, 375

³² 9/11 Commission Report, 375

Korea. The Pew's own 2006 survey showed comparable results. The survey showed that the British, French and Spanish people found that the U.S.'s presence in Iraq posed a greater threat to regional stability and world peace than the Iranian and North Korean governments.

To pinpoint a more specific cause of the declining support for the U.S. within the international community, the Pew Research Center conducted a survey displaying the falling support for the U.S.-led 'war on terror.' This survey displays declining support for the overall 'war on terror' in addition to global disapproval of specific U.S. actions in the war. Again, this survey shows more exacerbated disapproval among Muslim countries.

Figure 2: Falling Support for U.S.-led 'war on terror'

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
	%	%	%	%	%
Britain	69	63	63	51	49
France	75	60	50	51	43
Germany	70	60	55	50	47
Spain	--	63	--	26	19
Russia	73	51	73	55	52
Jordan	13	2	12	12	16
Indonesia	31	23	--	50	39
Egypt	--	--	--	--	10
Pakistan	20	16	16	22	30
Turkey	30	22	37	17	14
Nigeria	--	60	--	--	49
Japan	61	--	--	--	26
India	65	--	--	52	65
China	--	--	--	--	19

This survey produced by the Pew Research Center further illustrates how support for the U.S.-led war on terror sharply declined following the initial invasion of Iraq in 2003. Although the survey represents a broad picture of global backlash for the overall war on terror, it is important to break down specific aspects of the war on terror that have caused this backlash. It is especially significant to take into consideration how U.S. human rights policy factors into the overall war on terror. When looking at the survey above it is clear that the Iraq war is a huge contributory factor to the rift between the U.S. and the international community. The U.S. was off to a rocky start initially due to skepticism about U.S. motives for invading Iraq. As mentioned earlier, the initial invasion of Iraq and the unilateral manner in which the U.S. carried out the invasion sparked immense worldwide controversy.

Despite UN disapproval, the United States gave three main arguments to justify the invasion of Iraq, one of which has been the source of human rights accusations. The first reasoning was that Iraq possessed WMD in violation of UN resolutions and needed to be disarmed. The second argument was that Iraq had close ties to terrorists and links to Al-Qaida. The final case made by the U.S. government was that Iraq had an atrocious human rights record and overthrowing Saddam Hussein would spread democracy in the country, leading to a free, democratic Iraq.

“As the administration of George W. Bush discovered reference to ‘human rights’ could provide moral justification for new military engagements that were on questionable footing. Thus, although remaining true to his reluctance to invoke the term human rights, the administration did instrumentally use human rights ideas in both Afghanistan and Iraq.”³³

All three of the arguments stressed the need for peace and security in Iraq but the third argument in particular, harped on the morality of U.S. human rights policy. Shortly after the

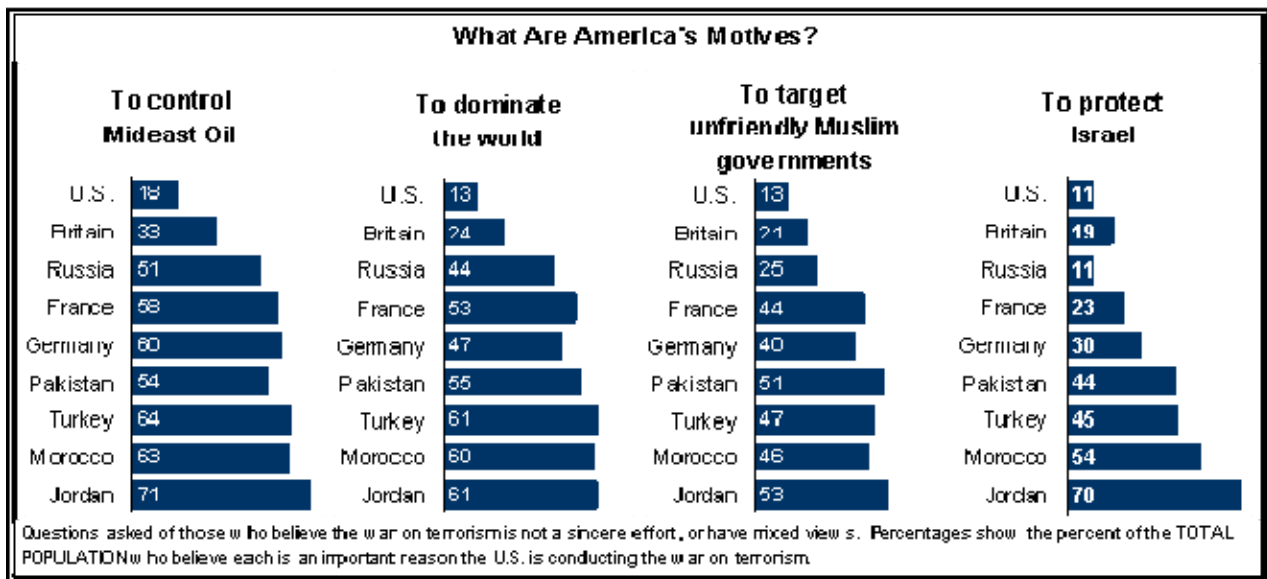
³³ Mertus, 121

initial invasion, all three of the arguments that supported this invasion turned out to be wrong. The final reasoning has been deeply criticized by the international community because of the civilian casualties, destruction of infrastructure and immense human suffering that has occurred in Iraq since the initial invasion.

4.2 INTERNATIONAL PERCEPTION OF U.S. MOTIVES

The fallacies that were in the major arguments the U.S. made for going to war in Iraq caused skepticism over U.S. motives. The Pew Research Center conducted a survey showing what various major countries around the world believe are the motives for the U.S.-led war on terror.

Figure 3: International Perception of U.S. Motives



This 2004 Pew poll shows that seven out of the nine countries surveyed believe that the U.S. has ulterior motives in fighting the war on terror and that it is not a sincere effort to reduce

international terrorism. Skepticism about U.S. motives in the war in Iraq held true for not only Muslim countries but European countries as well. As seen in the survey, Germany and France believe that the major reason for the U.S.-led war on terror is American control of oil in the Middle East.

Widespread reports of U.S. human rights abuses during the war on terror have been a major contributing factor to skepticism about U.S. motives. Images of Abu Ghraib circulating worldwide and information about Guantanamo Bay being widely reported have reversed America's image as the beacon of hope. To recapture this image of the U.S. and restore broken alliances, the U.S. will need to seriously improve its human rights policy. The polling data presented above shows how the changes in U.S. foreign policy post 9/11 correlate with a decrease in the opinion of the U.S. by the international community.

5.0 TERRORIST RECRUITMENT AND FAILED STATES

The crumbling of alliances is one major negative impact of U.S. policies during the ‘war on terror’. However, there is another important piece to the puzzle which demonstrates how U.S. policies have damaged national security. A particularly alarming national security threat posed during the ‘war on terror’ has been the increase in terrorist recruitment post 9/11. In fact, in 2004, London’s conservative International Institute for Strategic Studies concluded that the Iraq war has galvanized al-Qaeda in a way that has inspired insurgent violence in the region.³⁴ The U.S. National Intelligence Council concluded in a January 2005 report that the war in Iraq had become a breeding ground for terrorists, providing terrorists with an area to recruit and train terrorists.³⁵

Further reports of a surge in terrorism are outlined in the 2006 National Intelligence Estimate. This estimate held that the Iraq war has been breeding a deep resentment of U.S. involvement in the Muslim world.³⁶ “Since 2003, the number of suicide bombings in Iraq has surpassed all those of Hamas in Israel, Hezbollah in Lebanon, and the Tamil Tigers in Sri Lanka combined.”³⁷ Many al-Qaeda leaders have seen the Iraq war as a boon to their recruitment efforts, providing a training ground for new generations of terrorists. In fact, as a result of the

³⁴ Sengupta

³⁵ Priest

³⁶ DNI: Declassified NIE Key Judgements

³⁷ Hafez

war in Afghanistan, al-Qaeda has moved its bases and operations into territories of Pakistan, the Sudan, Kenya, Indonesia, the Philippines, and elsewhere. This evidence clearly demonstrates the need for the U.S. to deny terrorists from seeking safe havens in weak or failing states.

The National Security Strategy released in September 2002 has depicted failing states and the spread of terrorism in these turbulent regions as a top national security challenge for the 21st century. These failed states will continue to undermine regional stability as well as threaten U.S. interests largely due to their disregard for international law. In order for the U.S. to win the ‘war on terror’ the U.S. will need to lead an international effort to deny terrorist networks the tools which they require to operate and survive. An important point stated in the National Defense Strategy is that the U.S. needs to build stronger security ties with the Muslim world in order to prevent terrorists from harboring a safe haven in the region.

The issue of failed states and the surge in terrorism during the ‘war on terror’ emphasizes the need for the U.S. to work with international partners to combat these threats. The National Defense Strategy released in March of 2005 states that “international partnerships continue to be a principle source of our strength. Shared principles, a common view of threats, and commitment to cooperation provide far greater security than we could achieve on our own.”³⁸

It is important to understand the ramifications that the wars in Iraq and Afghanistan have had on U.S. National Security. It is clear that the large civilian casualties caused by these two wars, and the problem of failed states has potentially enlarged the recruitment of terrorist groups and provided a sanctuary for terrorists.

³⁸ The National Defense Strategy

6.0 THE WARS WITHIN THE ‘WAR ON TERROR’

The overall ‘war on terror’ has consisted of two major U.S.-led military operations. Although the purpose of this thesis is not to argue the merits of either the Afghanistan War or the Iraq War, it is important to discuss both as they are the two major components in the ‘war on terror.’ Specific human rights abuses during the war in Afghanistan were mentioned earlier, however it is important to delve further into these abuses to understand how the U.S.’s human rights record post 9/11 is tied closely with its military policies in the two wars. I will not make a blanket statement claiming that either of the two wars are just or unjust, rather I will examine the specific human rights cases called into question in the Iraq War. I will also examine arguments made in favor of and opposing both wars on the grounds of human rights to determine its effect on the overall ‘war on terror.’

6.1 THE IRAQ WAR

There are many aspects of U.S. foreign policy that has weakened the U.S.’s human rights record and the Iraq War is one particular U.S. policy decision that has negatively impacted this record. There are a multitude of ways in which the Iraq War has weakened U.S.’s human rights policy. The major impact that the Iraq War has had on human rights is through the trouble it has caused within the international community. The criticism of the Iraq War goes beyond the

specific instances of Abu Ghraib and the use of torture at Guantanamo bay. The discord between the U.S. and the international community dates back the initial invasion in Iraq. The reasoning given by the U.S. to justify the war has caused tremendous international disapproval. “Many believe, human rights ended shortly after September 11, 2001 when the United States retaliated with unilateralist policies in violation of international standards, under the assumption that they could establish the rule for the rest of the world”³⁹ One factor that made the Iraq War especially controversial was the nature of the U.S.-led invasion in March of 2003. The United States carried out a preemptive attack against Iraq which sparked uproar among the international community because of the implications of a preemptive attack. The upheaval was worsened due to the UN Charter’s prohibition of the use of force in situations other than self defense. The preemptive military action led by the United States was extremely controversial within the international community because the two major principles of international relations, state sovereignty and nonintervention, are being pushed aside.

In addition, the uproar caused by the initial invasion can be seen through a survey conducted which captures Iraqi sentiment about the U.S. invasion. This is particularly significant because one of the reasons that the U.S. gave for going to war in the first place was based on humanitarian principles. The humanitarian reasoning for going to war with Iraq has been questioned due to the immense human suffering and loss of lives that the war has caused. A World Public Opinion poll taken in 2006 showed that 78 % of Iraqis believe that the U.S.’s military presence in Iraq is “provoking more conflict than it is preventing. Furthermore, 79% of Iraqis say that the U.S. is having a negative influence on the situation in Iraq.”⁴⁰ It is, therefore, difficult to justify war based on humanitarian principles, claiming to be positively changing the

³⁹ Mertus, 1

⁴⁰ Most Iraqis Want U.S. Troops Out Within a Year

lives of Iraqis when the vast majority of the Iraqi population has a negative view of the United States. This contrast between how the U.S. describes the Iraq War and what the Iraqi people actually think brings up the issue of hypocrisy in U.S. human rights policy. Henry Munson conducted a similar survey to gauge the attitude of Muslims towards the Iraq War; Henry Munson explains how the Iraq War has caused a rift between the U.S. and the rest of the international community. “The Bush administration’s war on terror has been a major reason for the increased hostility toward the United States.”⁴¹ The Iraq War appeared to be based on the U.S.’s strategic interest rather than a military invasion based on humanitarian concerns or democracy building.

Of course it is not the case that all wars are conducted for humanitarian purposes. In fact, the majority of military interventions are carried out for strategic purposes, however if a politician justifies a war based on humanitarian concerns, there must be evidence of a humanitarian catastrophe and security cannot be an end in itself, but rather a means for protecting constitutional liberties. In addition, the decision to go to war should be a last resort, only exercised when all other options have failed.⁴²

The invasion of Iraq led to a surge of anti-American sentiment in which even liberalizing democratic predominantly Arab and Muslim countries began to distance themselves from the United States and U.S. policies. Human rights violations carried out by the U.S. in the treatment of terror suspects at Guantanamo Bay and Abu Ghraib prison further exacerbated this sentiment. The Iraq War sparked charges of hypocrisy and questions of whether or not the U.S. had a genuine commitment for promoting human rights and democracy abroad. In addition, the conduct of the war in Iraq was not in compliance with international human rights law with specific war policies, particularly in the bombing of civilian centers and the use of cluster bombs,

⁴¹ Munson, 1

⁴² Wilson, 28

causing immense backlash from the international community. The backlash was exacerbated by reports of abuse and torture of detainees.

There are any foreign policy experts and governmental officials who have a different outlook on the situation than Snarr and Munson. The U.S. Department of State claims that the U.S. Government considers human rights to be “a cornerstone of U.S. foreign policy.” The United States aims to promote democracy, assist new democracy and speak out against oppressive regimes. These three factors demonstrate The U.S.’s eagerness to encourage and improve human rights practices and a transition to democracy. Ruth Wedgewood is a foreign policy expert who has defended President Bush’s policies in the war on terror. She states that Congress gave President Bush wartime power, and as the commander in chief he has a responsibility to protect the United States against attacks. The current military campaign against the Taliban and al Qaeda demonstrates the commitment that the U.S. has to defeating terrorism. Wedgewood believes that in certain circumstances, the U.S. will lack criminal proof but will need to take action. She offers a chilling scenario in which on September 10, 2001, the U.S. lacks concrete proof but has evidence that al Qaeda is planning to attack the U.S. As she points out, it is obvious that the U.S. would need to act.⁴³

Wedgewood presents a convincing case, pointing to a particular case study that bolsters her argument. However, the consequences of particular counter-terror policies call into question whether the consequences of not maintaining the integrity of the rule of law have outweighed the benefits of such policies. “American exceptionalism on peacekeeping has continued to draw

⁴³ Wedgewood

intense criticism as the United States has been roundly criticized for unilateralism, undermining its relationships with allies and weakening international human rights norms.”⁴⁴

⁴⁴ Mertus, 62

7.0 THE LIBERTY VERSUS SECURITY DEBATE

Switching gears from international repercussions of U.S. foreign policy, it is important to examine the debate occurring domestically with regard to U.S. foreign policy. Although this debate is distinct in that it is confined to within the U.S., it is important to demonstrate how this domestic debate is related to the U.S.'s overall policies within the 'war on terror'. A central theme in the human rights discussion occurring within the U.S. is the security versus liberty debate. Often, the two are pitted against each other as if they are mutually exclusive variables that sit on opposing sides of a political debate. This debate has presented a huge obstacle to coming up with a comprehensive human rights policy in the United States that also preserves our national security. As long as the human rights debate is framed in a way that puts liberty as a hindrance on national security, a comprehensive U.S. human rights policy can not be achieved. Throughout the war on terror, the sacrifice of liberty for the sake of security has had vast ramifications for our country.

Undoubtedly, dealing with the issue of security and liberty is not an easy task that is easily resolved. It is a careful balancing act that democratic countries such as the U.S. must undergo to simultaneously bolster national security while preserving liberty and adhering to a sound human rights policy. However, while the U.S. protects its security, it must be careful not to impede on the moral principals of liberty and freedom that our country was founded on. To

preserve the democratic foundation of this country, it is imperative that the U.S. reevaluate its policies so that they are in accordance with American ideals.

The United States has struggled to find a balance between liberty and security during the ‘war on terror’, due to the unique challenges that have presented itself as the U.S. fights terrorism abroad. Combating terrorism requires fundamental changes in U.S. foreign policy, however, certain aspects of alterations in U.S.’s foreign policy has restricted human rights and subsequently hindered our security.

One particular implication of policy changes during the ‘war on terror’ has been the concentration of power in the executive branch. During this period of constant war, Presidential power has been expanded under legislation referencing the President’s executive authority to conduct war as Commander in Chief. The Department of Justice increased the power of the presidency as the sole arbiter of U.S. foreign policy when they released a memo which claimed that any attempts by the U.S. Congress to regulate the interrogation of detainees or any attempts to prosecute U.S. officials for torturing combatants ‘would represent an unconstitutional infringement of the President’s authority to conduct war’⁴⁵

This memo released by the Department of Justice also redefines torture to encompass only physical pain, expanding the President’s authority to authorize more austere interrogation techniques. President Bush has utilized the new parameters outlined by the memo to authorize controversial interrogation practices for terrorist suspects detained in facilities overseas. Such human rights abuses that would normally be subject to congressional oversight are now completely left in the hands of the executive branch.

⁴⁵ Wilson, 17

The issue of safety, security and protection from terrorism has recently been seen as antithetical to international human rights agreements. In order to preserve human rights while safeguarding security, the U.S. has to strengthen its security without disregarding the liberties that are essential to a democratic government. By sacrificing liberty in exchange for security, the U.S. is headed down a slippery slope. If the 'war on terror requires certain sacrifices to be made for the sake of security, the question posed is: where is the line drawn? When do the sacrifices of liberty go too far? The only response to these two questions is to highlight the importance of preserving democracy. The only way to make sure the U.S. does not trample on liberty for the sake of security is to preserve the system checks and balances and the democratic ideals that our country was founded on. New counter-terror strategies have had the unfortunate consequence of reinforcing anti-democratic political trends which weakens human rights norms. While strengthening our national security, the U.S. has to uphold the fundamental principles that this country was founded on. By bolstering security while preserving human rights, the U.S. will undoubtedly be a safer country.

For one to say that a balance should be reached between liberty and security is to claim that the cost of liberty enjoyed before 9/11 was too high. This mindset leads to the complete disregard for human rights and liberty because it asserts that such rights impede on the national security of the U.S. If a temporary decrease in liberty was to be justified by the promise of security during times in which the U.S. was being threatened, then this justification could only occur if security is actually being increased. The problem with this tradeoff is that even when it seems as though security is strengthened, the long term ramifications of such a trade off would outweigh temporary benefits. Therefore, this tradeoff couldn't possibly be morally reasonable under any circumstances.

Another criticism related to the security versus liberty debate is the concentration of power in the executive branch that has occurred during the ‘war on terror’. The Bush Administration has balanced the concern for security and protection for human rights by concluding that America’s values of civil liberties and protection of human rights has to yield to the grave security concerns that the U.S. is confronted with. In an effort to bolster U.S. national security after September 11, 2001, President Bush issued a series of executive orders and introduced legislation that hindered human rights both domestically and internationally. These new measures enacted by the Bush Administration led to military tribunals abroad that used questionable interrogation practices and led to an increase of power for the Department of Homeland Security.⁴⁶ Such measures were enacted with the acquiescence of the U.S. Congress who accepted the argument that during times of crisis, “national security requires strength, speed, and often secrecy on the part of the president.”⁴⁷

The so called “ends justify the means” approach used by the Bush Administration contended that emergency measures that would limit the rights and liberties of enemies, foreigners, and even those of American citizens were needed to protect the U.S. from terrorists. The means in which the Bush Administration has preserved U.S. national security has been through either discarding or circumventing certain provisions and the Geneva Conventions and human rights treaties which were enacted partially for the purpose of defending citizens for governmental abuses of power. In violating international law and concentrating governmental power in the executive branch, the Bush Administration was able to enact policies without judicial review and congressional interference. This guaranteed that the security measures taken by the executive branch would become the official U.S. foreign policy.

⁴⁶ Apodaca, 166

⁴⁷ Apodaca, 170

The weakened assumption that human rights are being sacrificed for national security mistakenly frames the premise of the debate. By asking the question of how much liberty should be sacrificed for security, the outcome is only being looked at in terms of short-term benefits rather than long-term solutions. When looking at the debate in terms of short-term and long term benefits it completely changes the way liberty and security are perceived, as complements of each other rather than opposites. By analyzing the short-term and long-term benefits of liberty and security during the war on terror there is a clear irony that is present. The irony of the security versus liberty debate is that the liberty which is being disregarded for the sake of security is actually making the U.S. less safe. The aspects of the counter-terror strategy which violate human rights have long-term consequences that are very detrimental to the United States' national security. By practicing policies such as torture and failing to adhere to international human rights norms, the U.S. is actually reinforcing anti-democratic political trends. This is particularly troublesome because the U.S.'s major objective with regards to the Iraq War is to make the country into a democracy. By practicing anti-democratic values, the United States weakens this objective and subsequently loses the support of much of the international community.

A central question that is asked in the security versus liberty debate is: how much liberty should be sacrificed for security? But this question is inaccurate in numerous ways because it rests on the assumption that liberty and security are at odds with one another. In addition, it rests on the idea that sacrifices of liberty for the sake of security can be quantified somehow. In fact, it is impossible to calculate loss of liberty and determine the amount of liberty that needs to be sacrificed to bolster our national security. The only way to resolve the security versus liberty debate is to reframe the central question that the debate is based on.

In order for the United States to achieve sustainable long-term security, the perceived conflict between liberty and security needs to be resolved; because the success of one helps, rather than hinders the other. To present the two as mutually exclusive, the U.S. is making dangerous false choice. The 9/11 Commission Report has noted, “our history has shown us that insecurity threatens liberty. Yet if our liberties are curtailed, we lose the values that we are struggling to defend.”⁴⁸ Although it may seem like a security hindrance, it is imperative that democracies like the United States uphold democratic values such as human rights when responding to threats. By curtailing certain liberties and freedoms for the sake of security concerns, the U.S. is destroying democratic ideals while simultaneously preserving its democracy against terrorism. It is, therefore, clear that curtailing human rights is self-defeating for the U.S. Such security measures enacted by the United States can only be justified if they are in accordance with the moral principles that make up this democratic country. The principal of preserving and protecting liberty as outlined by the constitution is undoubtedly violated by the security measures that are enacted for the purpose of protecting it.

The key to preserving human rights while bolstering our national security rests on the understanding that our security is dependent on the preservation of liberty in this country.

⁴⁸ Wilson, 28

8.0 CONCLUSION

The events of 9/11 fundamentally altered the way national security is perceived in the United States. Many of the policies enacted during the current 'war on terror' have violated human rights norms and subsequently have hindered the security of the U.S. The United States has pursued controversial policies to combat terrorism abroad, which have alienated the U.S. from its allies. Terrorism has caused vast national security challenges which the U.S. has been forced to respond to virtually unilaterally. If the U.S. alters its agenda in a way that adheres to international human rights norms, the U.S. can work with the support of the international community to combat terrorism abroad. There are several policies that the U.S. can adopt, which will respect human rights and bolster national security.

One major change in U.S. policy that will greatly improve the U.S.'s image within the international community is if the U.S. changes torture policy. By committing to put an end to torture as a means of gathering information, the U.S. can collaborate with other countries to bring terrorist suspects to justice through legal means. The U.S. would greatly reduce the burden it currently has in unilaterally bringing these suspects to power if the U.S. joined and became an active participant of the International Criminal Court. Such courts do not carry much weight in the international arena; however this is largely a result of these courts lacking the support of the world's major superpower.

If the United States wanted to employ the help of other countries in bringing these terrorist suspects to justice, the U.S. needs to take initiative in bolstering the effectiveness of an international court. By simply signing on to one of the international courts already in existence, the U.S. would already take a huge leap towards global cooperation in the war on terror. With safeguards that protect state sovereignty already in place, the U.S. wouldn't need to be fearful that they were abdicating such grave decisions into the control of the international community. The U.S. could maintain its autonomy in foreign policy decisions while still cooperating with allies on such important matters as terrorism. In fact, the system of multilateral justice would allow the United States and other democratic countries to project ideals of liberal democracy through a more defensible and effective method than military conflict.

International collaboration in monitoring and reviewing governmental counter-terror measures is one of the most crucial recommendations of the 9/11 Commission. In fact, the Commission "recommends creating system to review the exercise of executive prerogative and, if necessary, raise questions regarding any unjustified encroachments on civil liberties and human rights."⁴⁹ There are different approaches that the United States could take to safeguard that any anti-terror measures passed by the government go through a series of checks and balances before being indoctrinated as official U.S. policy. One suggestion that has been made is to set up a non-partisan congressional oversight committee that is mandated to review the U.S. government's violation of the constitution as well as its compliance with international human rights conventions which the U.S. is already a party to. By upholding democratic values through actively participating in an international court, the U.S. would promote democratic values more sustainably.

⁴⁹ Wilson, 29

Another important step that the U.S. would need to take in order to regain the trust of the international community and re-establish human rights as a central tenet of U.S. foreign policy is to punish individuals who exercise an abuse of power. An example of a blatant abuse of power was, of course, Abu Ghraib. As was the case in Abu Ghraib, there will be instances in which individuals abuse power and practice conduct that is not in accordance with the U.S.'s military policy. Allegations from Abu Ghraib as well as other reported instances of prisoner abuse make it harder for the U.S. to build the diplomatic, political and military alliances that the government needs to fight the 'war on terror.' As the 9/11 Commission recommends, "The United States should work with friends to develop mutually agreed-on principles for the detention and humane treatment of captured international terrorists who are not being held under a particular country's criminal laws."⁵⁰ By collaborating with the international community on guidelines for the treatment of detainees and by punishing the individuals responsible for prisoner abuse, the U.S. will demonstrate its commitment to upholding the rule of law and abiding by universal human rights norms. The U.S. could demonstrate a commitment to the ideals of liberty and democracy by respecting human rights in its policy towards detainees and prisoners of war. By simply adhering to the provisions outlined by the Geneva Convention in treating detainees, the U.S. will be a champion for human rights once again.

The disintegration of human rights as a central component of U.S. foreign policy post 9/11 has had an alarming effect on the role of the U.S. in the international community. Evidence of the drastic decrease in support for the U.S. by other countries was demonstrated through polling data, detailing U.S. favorability by other countries. It is clear, through this data, that the policy changes made during the 'war on terror' had a negative impact on U.S. favorability

⁵⁰ 9/11 Commission Report, 379

ratings. As is recommended by the 9/11 Commission, the U.S. needs to re-define its message and figure out the values that it wants to stand for. In order to regain its role as a moral leader in the world, the United states needs to commit to treating people humanely, abiding by the rule of law, and collaborating with allies within the international community to re-affirm the international norms that the United States is a party to.

The only way for the United States to regain its moral leadership as a champion of human rights, the U.S. needs to make human rights a central focus in the U.S. foreign policy. By making these changes, the United States will regain the international support that it once had, and will find that policy changes which are favorable to the international community will also make the U.S. more secure than ever before.

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