

## Reporting about Iraq: International Law in the Media during Armed Conflict

RIGMOR ARGREN\*

### Abstract

This article applies Critical Discourse Analysis to the Swedish print media's portrayal of international law during the war in Iraq: The author focused on if and how standards of international law were represented in the Swedish media discourse between 20 March and 10 June 2003. The material that has been analysed consists of articles from four Swedish newspapers, the morning papers *Svenska Dagbladet* and *Dagens Nyheter* and the evening papers *Expressen* and *Aftonbladet*, all being the leading national papers in Sweden. At the initial stage forty-five articles were schematically analysed for the purpose of defining the problem area. At the second stage, the fifteen identified news articles were analysed in depth. This paper will argue that 'human rights' appear in the media discourse abstractly, and thus often misrepresent the human rights obligations of states. In contrast, in the few instances where humanitarian law is indeed presented in the articles, it is, to a large extent, done concretely and with explicit reference to the relevant legal provisions.

### 1. Introduction

The intervention in Iraq in 2003 raised concerns with regards to several areas of public international law. As in the context of this conflict issues became politically charged, with different stakeholders pursuing different aims, political actors used legal arguments to support their claims and their own cause. This also resulted in the media disseminating both propaganda and counter-propaganda whilst reporting on legal issues.

The purpose of this article is to analyse how the media discourse portrayed international law during an international conflict. In other words, the focus is on if and how international legal standards were represented in the Swedish media discourse at a particular time: 20 March to 10 June 2003. The analysed material consisted of articles from four Swedish newspapers, the morning papers *Svenska Dagbladet* and *Dagens Nyheter*, and the evening papers *Expressen* and *Aftonbladet*. These papers are the leading national papers in Sweden. At the initial stage forty-five articles were schematically analysed for the purpose of defining the problem area. At the second stage, the fifteen identified news articles were analysed in depth.

#### 1.1 Critical Discourse Analysis and Law

In the field of media- and communication studies, the qualitative method of Critical Discourse Analysis (CDA) is commonly used to analyse text. The field of law, a highly verbal area, is a 'fertile field for discourse analysts'<sup>1</sup> with all the written materials that are available. It ranges from legal documents, such as laws and conventions, to court cases and judicial decisions. The general public learns about legal materials as well as human rights issues mainly through the media. The main international human rights institutions have recognised that the media plays a significant

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\* The author obtained an LLM in International Human Rights Law at the University of Essex, UK, in 2003. This article is based on the author's dissertation in Media and Communications at the University of Örebro, Sweden, entitled 'Mediations of International Law: How the Swedish Press Handled Some Legal Issues in the Reporting about Iraq 2003'.

<sup>1</sup> R. Shuy, 'Discourse Analysis in the Legal Context', in D. Schiffrin, D. Tannen, and H.E. Hamilton., *The Handbook of Discourse Analysis* (Oxford: Blackwell, 2001), at 437.

role in a democratic society.<sup>2</sup> However, the media is not an objective and impartial entity. On the contrary, media research has repeatedly shown that media representations can be biased and contain flaws. For instance, in his analysis of the 1991 Gulf War, Mathiesen noted that the television reporting of the war showed an extraordinary lack of context. He points out that the editing undertaken by television producers often passes without notice, since the impression overshadowing the whole programme is the strong feeling of reality, of truth.<sup>3</sup> This pattern of reporting with a lack of contextual information seems to have been repeated in the war in Iraq in 2003. In an analysis of what the American public was shown during the first three weeks of the war, the Project for Excellence in Journalism found that the coverage was very anecdotal and instead of providing context it was rich in detail. In eight out of ten stories, the reporters were only providing battle coverage, mainly consisting of descriptive technicalities.<sup>4</sup> Research has shown that journalists are sometimes capable of finding original material and presenting stories not orchestrated by the warring factions. Nevertheless, in a study on the coverage regarding the NATO intervention in Kosovo, for instance, the overall impression was that at central points NATO won the propaganda war.<sup>5</sup> Given the fact that the media has a central role in a democratic society, and bearing in mind that during international conflict the media can be susceptible to manipulation, it becomes important to examine the media discourse, in order to highlight how and where this manipulation takes place.

Teun van Dijk has pointed out that the topic of major concern for critical discourse analysts is the collision between those who control the dominant discourse, and those who challenge it.<sup>6</sup> According to van Dijk, CDA 'should deal primarily with the discourse dimensions of power abuse and the injustice and inequality that result from it'.<sup>7</sup> This makes CDA a suitable method for examining the media discourse in general, but even more so when the subject of interest is international law. One of the leading scholars of CDA, Norman Fairclough, underlines that the relationship between discourse and the society is anything but mechanical. Instead, he describes it as dialectical. A continuous interaction takes place, where society is shaped by discourse as well as setting the boundaries for it. Discourse simultaneously influences and shapes the society. As a text, a news article is firstly determined by the actual interview situation. Yet, media institutions also define it, through the working conditions that prevail within the media. Finally, the dominant ideology of the society has an impact on the text, either through the perspective chosen, or through bringing up the issue in an article in the first place.

In the process of CDA the text is treated as social action and not merely as a piece of information.<sup>8</sup> Apart from transmitting information, the text is considered: a) to be the result of the dominant ideology, and b) to manifest and reinforce this dominant ideology within itself. In every society where social action takes place, several discourses operate at the same time.

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<sup>2</sup> The Human Rights Committee, the Committee on Social, Economic, and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child, have in their respective General Comments all touched on the central role of the media in relation to the implementation of human rights. Furthermore, courts both at the international and the regional level have addressed various aspects of the role of media.

<sup>3</sup> J. Johnsen, and T. Mathiesen (eds.), *Mediekrigen. Søkelys på massemediens dekning av Golfkrigen*, (Oslo: Cappelens Forlag, 1991), at 137.

<sup>4</sup> Project for Excellence in Journalism, *Embedded Reporters: What are Americans getting?*, for text see: <http://www.journalism.org/resources/research/reports/war/embed/numbers.asp>, last visited 2 Feb. 2005.

<sup>5</sup> For a detailed analysis of the role of the media in the Kosovo War see: Stig-Arne Nohrstedt, B. Höijer, and R. Ottosen, (eds.), *Kosovokonflikten, Medierna och Medlidandet* (Stockholm: SPF, 2002).

<sup>6</sup> T. van Dijk, 'Principles of Critical Discourse Analysis' in M. Toolan (ed.) *Critical Discourse Analysis Critical Concepts in Linguistics*, (London: Routledge, 2002), at 109.

<sup>7</sup> Ibid.

<sup>8</sup> P. Berglez, 'Kritisk diskursanalys', in M. Ekström and Lars-Åke Larsson (eds.), *Metoder i kommunikationsvetenskap*, (Lund: Studentlitteratur, 2000) at 195.

Sometimes discourses reinforce each other; at other times they might conflict with each other. Scholars refer to this network of discourses as ‘orders of discourse’.<sup>9</sup> The orders of discourse become the arena where power plays take place and manifest themselves.<sup>10</sup> When Fairclough elaborates on the relationship between social structures, social practices and social events, he points out that: ‘Events are not in any simple or direct way the effects of abstract social structures. Their relationship is mediated – there are intermediate organizational entities between structures and events.’<sup>11</sup> This point of departure is very useful for the task ahead: The process that precedes the creation of international treaties is in itself a social event; the drafts are discussed and negotiated at international conferences where delegates of the states are present and the end result is a text in the form of a legal document. When looking at treaties, it seems clear that international law, which is partly constituted through the legal documents, is both a social structure (defining what is possible) and a social event (constituting what is actual). And as Fairclough notes, the relation between structure and event is mediated. Thus the media’s handling of international law is a fertile field for examination.

## 1.2 Customary Law and the Media Discourse

Historically, the main source of international law was customary law, which evolved from the practice of states. Significantly, international customary law is not written down in documents. Customary law consists of two elements: ‘a general practice,’ an objective element, and ‘accepted by law,’ a subjective element. This means that an action by a state or states does not constitute customary law unless this action is taken because it is assumed to be legal (*opinio juris*). General practice of a state includes its actions and its non-actions in the fields of diplomacy, politics and military activities. State practice is also found in the legislation of a state, court decisions and official statements.<sup>12</sup> To find proof of customary law can be a difficult enterprise, since one has to find a way to examine the actual practice of states. Multilateral treaties can be evidence of customary law. The Geneva Conventions, for example, are seen to be codifying already existing practices of customary law. Other written materials can also contain proof of customary law, such as judgements of national and international tribunals, documents of the United Nations (UN) as well as state correspondence. Rather interestingly, Malanczuk further suggests that evidence of customary law can be found in ‘newspaper reports of actions taken by states, and from statements made by government spokesmen to Parliament, to the press, at international conferences and at meetings of international organizations...’<sup>13</sup> It has already been noted that the media has a central role in a democratic society and that people in general learn about legal materials through media representations. Thus, the media can have a role in the creation of customary law, at least as a source of *evidence* of customary law. More research is needed to identify the parameters and limits of the role media has in relation to the shaping of customary law. Nevertheless, for the time being it remains clear that it is important to scrutinize how issues of international law are represented in media discourses during armed conflict.

## 2. Legal Bodies Represented in the Media Discourse

A common theme in the analysed material was the question as to whether or not an intervention in Iraq was lawful in accordance with the UN Charter. In the run up to the intervention there was a stated need for the United Kingdom (UK) and US alliance to find grounds for the intervention in adherence with the UN Charter. The argument they settled for was the allegation that Iraq had

<sup>9</sup> N. Fairclough, ‘Discourse as Social Practice’, in M. Toolan (ed.) *Critical Discourse Analysis Critical Concepts in Linguistics*, (London: Routledge, 2002), at 10.

<sup>10</sup> N. Fairclough, *The Dialects of Discourse*, available at: <http://www.ling.lancs.ac.uk/staff/norman/norman/html>, last visited 2 Feb. 2005.

<sup>11</sup> N. Fairclough, *Analysing Discourse, Textual Analysis for Social Research*, (London: Routledge, 2003), at 23.

<sup>12</sup> P. Malanczuk, *Akehurst’s Modern Introduction to International Law* (London: Routledge 1997), at 7.

<sup>13</sup> *Ibid.*, 39.

weapons of mass destruction. With this argument, the UK and US claimed self-defence in accordance with the UN Charter. However, it should be noted that to be in full compliance with the UN Charter, it is the Security Council who should ‘determine the existence of any threat to the peace...’.<sup>14</sup> The UN Charter only leaves room for individual or collective self-defence ‘if an *armed attack occurs*’<sup>15</sup> against a member of the United Nations...’.<sup>16</sup> But even then, this right to self-defence only lasts ‘until the Security Council has taken measures necessary to maintain international peace and security’.<sup>17</sup> Discussions for and against the UN Charter, as well as debates regarding how to interpret it, were very common in the analysed discourse.

Secondly, references to human rights were frequently noted in the media discourse. There is no doubt that Iraq has a tainted human rights record; the excavation of numerous mass graves bears grim proof of this. However, a history of human rights violations in a state alone is no ground for an intervention by a foreign power under the UN Charter. Thus, the argument saying that ‘*even though there were no weapons of mass destruction in Iraq, it is still a good thing that President Hussein was overthrown*’ has no bearing under international law. Moreover, the topic of international human rights law is not as simple as it at times appears in the media discourse. For example the phrase ‘all the crimes that Saddam has committed and which breach international human rights treaties’<sup>18</sup> implies that Saddam is solely responsible for all Iraqi violations of international conventions. Furthermore, not all misbehaviours of a state automatically constitute violations of human rights; legally speaking, a state is only bound by the human rights provisions contained in the documents they have chosen to sign and ratify, unless, of course, the provision can be proven to be part of customary law.

Thirdly, as the war continued, issues relating to the Geneva Conventions appeared in the media discourse. The laws of war, in legal terms referred to as *ius in bello*, rest on the principle of a fundamental distinction and separation from the regulations of resorting to force, in legal terms called *ius ad bellum*. The distinction is absolute and essential; there are several reasons for this. The resort to force will always be considered controversial, with each party claiming their just cause. The victims on both sides of the conflict have the same need of protection, regardless of the justifications provided by the attacker. To achieve any respect for international humanitarian law, it is necessary that it applies equally to all involved parties, regardless of, and separated from, issues relating to the resort to force.<sup>19</sup> In modern international law, the principal sources for the regulations of resorting to force are articles 2(4), 39 and 51 of the UN Charter and the state practice that relates to it.<sup>20</sup> Broadly speaking, the laws of war consist of two categories. This research focuses on the Geneva Conventions and its Additional Protocols, applicable when an armed conflict has broken out, and applying equally to all involved parties. The Geneva Conventions are beyond doubt part of customary international law.<sup>21</sup> The two Additional Protocols have a more disputed status with regard to whether or not they are customary law. It is not the purpose of this article to analyse the customary status of the provisions contained in the Protocols; rather, it is sufficient to note that even if there are considerable disagreements among

<sup>14</sup> *Charter of the United Nations*, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, Article 39. Available at: <http://www1.umn.edu/humanrts/instree/aunchart.htm>, last visited 2 Feb. 2005.

<sup>15</sup> Emphasis added.

<sup>16</sup> Charter of the United Nations, n. 14 above, Article 51.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Aftonbladet*, 21 Mar. 2003, ‘Då ville USA också få brott en obekvämlig regim’. Wording in original text: ‘...alla de brott som Saddam begått och som står i strid med internationella konventionerna för mänskliga rättigheter.’ For the convenience of the reader, translations of examples are given in the text, with the original Swedish appearing in the footnotes.

<sup>19</sup> M. Sassòli, *Legitimate Target of Attacks under International Humanitarian Law*, Harvard Program on Humanitarian Policy and Conflict Research (HPCR) Policy Brief Jan. 2003, 4. Available at: <http://www.hsph.harvard.edu/hpccr>, last visited 2 Feb. 2005.

<sup>20</sup> C. Greenwood, ‘The relationship between *ius ad bellum* and *ius in bello*’ (1983) 9 *Review of International Studies* 221 at 222.

<sup>21</sup> A. Roberts, and R. Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition, (Oxford University Press, 2001) at 8.

the states regarding some of the provisions, there is also consensus regarding large parts of the Protocols.

In his essay, James R. Dawes theorised on the relation between language and conflict. His interest is not in media *per se*; rather his focus is on broad language use. He discusses if and how the language of international humanitarian law can have an impact on the acts of hostilities. His point of departure is that a conflict is a situation where ‘previously shared meanings have become so derealized and confused that they can no longer be resolved through argument and negotiation.’<sup>22</sup> The violence in war ‘shrinks language and damages communication: this diminishment of discourse (arguments, pleas, justification, appeals for sympathy) in turn enables further violence’.<sup>23</sup> The laws of war, Dawes argues, are through their detailed definitions and repetitive language capable of being a counterweight to the confusion of war. International humanitarian law has the power to be made equivalent to force, in that the laws ‘set themselves up against arbitrary or unprincipled power: in other words, against power unconstrained by the limits of definitions’.<sup>24</sup> Dawes claims that this capacity of the laws to ‘render the chaos of war susceptible to the control of language’<sup>25</sup> is evidenced by the ‘tortured lengths to which state governments go in order to argue that they are not in violation of [international humanitarian law]’.<sup>26</sup> It is enticing to think that the media, through a correct use of the limiting definitions found in the Geneva Conventions, could bring the chaos of war under the control of language as opposed to force. Should Dawes be right in his assumption, then journalists have a responsibility to refer to the Geneva Conventions and other parts of international law in an accurate manner when reporting during conflict.

### 3. Main Representations of Law in the Media Discourse

After having defined the three areas of law (UN Charter, international human rights law, and international humanitarian law) appearing in the material, the media discourse was examined as to how these legal areas were represented. For a representation to be coded as *most concrete*, explicit reference to the legal content had to be present; ideally this also included an explicit reference to the relevant article of a convention. A representation was coded as *more abstract* if there was a general reference to the conventions, while failing to explicitly define the relevant instrument and/or article. A representation was coded as *most abstract* if it referred to the bodies of law in broad sweeping language, failing to indicate the relevant legal body and thus not acknowledging that this is in fact a legal entitlement.

The analysis revealed a significant difference as to how the legal bodies were represented. The UN Charter appears most frequently in the media discourse. Largely it appears at the *more abstract* level. In comparison with how international human rights law appeared in the discourse, a different pattern was found. There were no noted articles containing international human rights law on the *most concrete* level, and the articles with reference to international human rights law were distributed rather evenly between *more abstract*, e.g. ‘Particularly the US is now convinced that most of its opponents are not soldiers in the conventional sense, but illegal combatants - people who are not protected by the Geneva Conventions’, and at the *most abstract* level, e.g. ‘undemocratic countries, not far behind Iraq when it comes to human rights violations’. Taken together, international human rights law was much more frequently represented at the *most abstract* level than the UN Charter, and none of the representations of international human rights law were at the level of *most concrete*.

<sup>22</sup> J. R. Dawes, ‘Language, Violence, and Human Rights Law’ (1999) 11 *Yale Journal of Law & the Humanities*, 215 at 226.

<sup>23</sup> *Ibid.*, 237.

<sup>24</sup> *Ibid.*, 240.

<sup>25</sup> *Ibid.*, 241.

<sup>26</sup> *Ibid.*, 235.

Levels	<i>UN Charter</i>	<i>International human rights law</i>	<i>International humanitarian law</i>
Most concrete	3	-	3
More abstract	37	21	5
Most abstract	3	18	1
Total	43	39	9

Table 1. The table shows at what level the various legal bodies were represented in the analysed articles.

In comparison, IHL was represented *most abstractly* only once, and from the nine representations of international humanitarian law, as many as three were found to be *most concrete*, with detailed and/or explicit reference to the Geneva Conventions. For example, ‘if it is unclear whether or not a captured person has the right to the protective status of Prisoner of War (POW), this person should be given POW protection in awaiting the determination of his status by a competent court (Article 5, Third Geneva Convention).’<sup>27</sup> The conclusion is that the media generally provides the public with a predominantly abstract representation of the UN Charter and international human rights law. So far, the analysis brings to the forefront that the media makes a very limited contribution to developing informed public opinion on the concrete aspects of the examined legal bodies, which is highly problematic from a democratic point of view. This will be discussed further as the analysis progresses.

### 3.1 Questions about Legitimacy and Legality in Relation to the UN Charter

The references to international law mainly appeared in relation to three themes. The issue of whether the intervention was lawful or not was the principal concern in a majority of the analysed articles. This theme is most frequently encountered in *Aftonbladet*. One factor to look for when examining how the newspapers presented the issue of legality is how the media handles the crucial distinction between the laws of war and the regulations on resorting to force.

A pattern distinguishable in the analysed material was a movement from issues that concern laws of war towards focusing on issues relating to the UN Charter and its regulations on resorting to force. Topics relating to the laws of war were often re-contextualised to become a background element to the debate concerning the legality of the intervention. This seems to correspond with the shift from *legality* to *legitimacy*. The issues relating to the UN Charter have a strong moral element, and thus relate more easily to claims of legitimacy. The claim of legitimacy seems to override concerns that actions could be unlawful under a different legal regime, in this case the laws of war. It should be re-emphasised here that from a legal point of view, the legality is what matters. It remains a concern when the media discourse focuses on issues of legitimacy at the expense of demanding accountability for legal concerns. For instance, it was argued in one piece that: ‘The formal legitimacy of a war (UN approval) is one thing, not unimportant, but not decisive. The moral legitimacy of a war is another, and more important, matter.’<sup>28</sup> By arguing for the moral justification of the war, this journalist is in fact ignoring the UN Charter and its provisions concerning the resort to force. It should be kept in mind that one reason for the states to develop the regulations in the UN Charter was the need to agree on reciprocal and objective regulations, so that subjective interpretations by states could be avoided. Against this background, discourses arguing for moral legitimacy, rather than the agreed regulations of resorting to force, undermine the UN Charter.

<sup>27</sup> *Aftonbladet*, 9 Apr. 2003, ‘Följ folkrätten själva, USA’.

<sup>28</sup> *Expressen*, 20 Mar. 2003, ‘Krigets fantomer’. Wording in original text: ‘Ett krigs formella legitimitet (FN-godkännande) är en sak, inte oviktig, men inte avgörande. Ett krigs moraliska legitimitet är en annan - och viktigare.’

### 3.2 Debating the Need to Reform the UN

A second common theme in the media discourse was the question of the need to reorganise the UN and/or reinterpret the UN Charter. The theme was most frequently encountered in *Svenska Dagbladet*. Discussion of UN reform was often put in relation to arguments about how customary law develops, as implicitly noted in this example: ‘Sweden, which often perceives itself as world champion of human rights, should here be able to take the lead in a more fundamental revision of the UN statute. Time has come to weed out the [bad] members.’<sup>29</sup>

The argument in the article is that instead of condemning the intervention as a breach of the UN Charter, the UN Charter should be changed or at least interpreted in a different way. In another example, the Swedish Secretary of Cabinet reportedly explained that: ‘It is important to state both that we think it is positive that Saddam Hussein is gone, and that we think this was a violation of international law. Because if the Swedish Foreign Minister and others did not say this, then customary law could change through what has happened.’<sup>30</sup> Clearly, this builds on the presupposition of how customary law works, but the journalist does not explain this further.

The conclusion here is that the media discourse grapples with, perhaps even confuses, the issues of UN reform and change in customary law. Throughout the examined discourse, these issues are never fully resolved. A possible explanation for this is that the issue, apart from being complex, is secondary to the discussion about the legality and legitimacy of the intervention. The function of the theme of UN reform is primarily used to support the positions taken for or against the intervention.

### 3.3 Human Rights Legitimise the Intervention

Luostarinen has pointed out that it is an element of war propaganda to aim to connect everything sacred with one’s own warfare and everything that is profane to the enemy.<sup>31</sup> Human rights can easily be used to portray the self in good light, and the enemy in bad light. In the discourse this was done either by a reference to past human rights violations by Saddam Hussein’s regime, or by a promise of a society that respects international human rights law. Human rights are referred to in genuinely positive terms, but as pointed out above, always at a *more* or *most abstract level*, as in the following example: ‘In reality there is an inherent contradiction between international law and universal human rights.’<sup>32</sup> The article does not provide any definition or explanation of what it refers to as universal human rights. Due to the high level of abstraction there is an apparent risk that the public will not learn about human rights as specific entitlements that are legally enforceable. Rather, human rights are represented as positive values. The interplay between legitimacy and legality noted in relation to the representations of the UN Charter was also noted in relation to international human rights law.

Examples were also found in the discourse where references to human rights were used to legitimise the intervention. For instance, one journalist suggests that if democracies find that regimes are guilty of flagrant violations of international law, then it is morally legitimate to intervene. This is suggested without any reflection as to *who* judges what is considered to be a flagrant violation: ‘It should appear self-evident to the “international community” that a state or

<sup>29</sup> *Svenska Dagbladet*, 3 Apr. 2003, ‘Diktaturer bryter mot FN-stadgan’. Wording in original text: ‘Sverige, som i många fall i egna ögon ser sig som världsmästare i mänskliga rättigheter, borde här kunna ta täten till en mera grundläggande revision av stadgarna för FN. Det är dags att gallra bland medlemmarna.’

<sup>30</sup> *Dagens Nyheter*, 11 Apr. 2003, ‘Kriget i Irak: Folkkrätten ger inte allians rätt att styra’. Wording in original text: ‘Det är viktigt att säga både att vi tycker det är skönt att Saddam Hussein har försvunnit och att detta var folkrättsligt fel. För om Sveriges utrikesminister och andra inte skulle säga detta kan folkkrätten förändras genom det som ägt rum.’

<sup>31</sup> H. Luostarinen, ‘Propaganda Analysis’, in W. Kempf & H. Luostarinen (eds.) *Journalism and the New World Order, Vol. II, Studying war and the media* (Göteborg: Nordicom, 2002), 17 – 38 at 37.

<sup>32</sup> *Expressen*, 13 Apr. 2003, ‘Fredsruelen’. Wording in original text: ‘I själva verket finns det en inbyggd motsättning mellan ”folkrätt” och ”universella mänskliga rättigheter”’.

regime's actions can no longer be tolerated - and that this behaviour can be stopped by, and only by, force.<sup>33</sup>

The journalist is silent regarding who constitutes world opinion. The only criterion he gives is that NATO membership has fewer dictatorships than the UN membership, and that democracies, by definition, should bring with them higher moral standards.

A subtler misrepresentation of the legal bodies is shown in the following example where the journalist<sup>34</sup> made concrete suggestions for dealing with Iraq, arguing it should be done 'by police/through law and order' (*polisjärn*). This construction gives the misleading impression that the intervention in Iraq was of a civilian nature – when in fact it was of a military nature. From the analysis conducted, it seems clear that for international human rights law to be an element supporting the legitimacy claim of the intervention, it is necessary that these human rights remain vague and abstract. Unfortunately, the abstract level at which human rights appear in the media discourse impedes the controlling function of international human rights law.

### 3.4 Humanitarian Law: Concrete, or Not at All

The appearance of international humanitarian law in the media discourse was moderate and could not therefore be said to constitute a major theme. Nevertheless, the manner in which it appeared in the discourse is worth analysing. Two trends were clearly distinguishable in relation to the representations of international humanitarian law. Firstly, there were several examples where the legal body of humanitarian law was completely ignored or silenced in articles, although the content focused on the ongoing hostilities. For instance, a journalist<sup>35</sup> referred to the intervention of the US and UK alliance as a 'one-sided attack against a weak and mostly undefended people'. From a legal perspective, particularly pertaining to international humanitarian law, this statement raises serious concerns. Indicating that the attack is targeting 'undefended people' is such a broad and unspecified allegation that it risks jeopardising the whole set of detailed rules under the Geneva Conventions that regulate who can lawfully be attacked, under what conditions, as well as how. This undoubtedly hampers the regulating powers of the Geneva Conventions envisaged by Dawes as discussed above.

Additionally, from the perspective of international humanitarian law, it is questionable to portray the parties as unequal, even if such an image aims to arouse the compassion of the public. Legally speaking, it risks undermining a fundamental principle of the Geneva Conventions; namely, that all parties to the conflict are equals and therefore they should abide by the same rules. Having portrayed one side as weak and mostly undefended might provide moral support for this side to start fighting without adherence to the laws of war. It threatens the whole aspect of reciprocity, which is the basis of international humanitarian law.

Another journalist<sup>36</sup> referred to the 'Iraqis being massacred' without distinguishing between soldiers and civilians. In this way the journalist ignored the fundamental principles of international humanitarian law; namely, that soldiers have to be distinguished from civilians<sup>37</sup> to

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<sup>33</sup> *Expressen*, 20 Mar. 2003, 'Krigets fantomer'. Wording in original text: 'Det bör framstå som uppenbart för "världssamfundet" att en stats eller regims agerande inte längre kan tolereras - och att detta agerande är möjligt att stoppa med, och enbart med, våld.'

<sup>34</sup> *Expressen*, 20 Mar. 2003, 'Krigets fantomer'.

<sup>35</sup> *Aftonbladet*, 15 Apr. 2003, 'Och detta kallar de befrielse'.

<sup>36</sup> *Dagens Nyheter*, 3 Apr. 2003, 'Soldater utan människovärde'.

<sup>37</sup> The distinction between civilians and combatants is complete under the Geneva Conventions. If a person is defined as a civilian, s/he has legal protection by Article 51, Protocol I, in A. Roberts and R. Guelff, n. 21 above, Article 51:1 reads 'The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.' However, this protection rests totally and strictly on the premise that the person does not take direct part in hostilities. Thus, Article 51:3 further states 'Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities'. At the time a civilian takes up

protect the latter, and furthermore, that international humanitarian law applies equally to all warring parties. The fact that the Iraqi soldiers could kill enemy soldiers was thoroughly underplayed in the article; rather, it was described as a situation wherein the Iraqi soldiers were forced to fight at gunpoint.

The second identified trend in the media discourse pertaining to international humanitarian law is quite the opposite of its non-existence or underplaying as described above. Namely, international humanitarian law was noted in the media discourse at a concrete level including extensive details. For instance, one article<sup>38</sup> discussed the public display of Prisoners of War (POWs) and the legal concerns this raised. Before venturing into an explanation of the legal regulations, the author gave a narration of the events that had taken place. In the analysed article, the display of the POWs was re-contextualised into the national media discourse through letters to the Press Ombudsman. Thus, the article was not primarily concerned with the publishing of the pictures as such, but rather the focus of the article was on the behaviour of the Swedish media in relation to this incident. The article ends by discussing what is considered newsworthy, and concludes that authorisation is taken from the American press. Since they decided to publish the pictures, Swedish editors concluded that the event was newsworthy, and that the pictures of the captured American soldiers could be published.

#### 4. Legal Elements within Orders of Discourse

This far, the analysis has provided distinguishable impressions of the main themes in the media discourse. In this section, the findings will be put in relation to Critical Discourse Analysis by examining the orders of discourse that were present in the material under survey. The analysis will focus on the ideological mechanisms that are present in the discourse. Elements of legal bodies were represented throughout the media discourse in the analysed material, and were found to be working ideologically through the orders of discourse in at least two distinctive ways.

##### 4.1 There Is No Alternative

The first ideological mechanism that will be discussed is the claim in the discourse that ‘there is no alternative’. At times, this claim is referred to as ‘TINA. Fairclough has described this ideological mechanism as being formulated as the ‘simple “fact of life”, which we must respond to’.<sup>39</sup> For instance, in one article it was claimed that there is no alternative to human rights and civil liberties being more important than the sovereignty of states in international law.<sup>40</sup> Another example where no alternative was given, was an article with the story of how people outside Iraq were preparing to change the constitution of the country.<sup>41</sup> No alternative was given which provided the people *in* the country access to the process of drafting a constitution. And again, in another article it was claimed that the Iraqi people should have ousted President Hussein from office themselves, but now there was no other solution than for the US and its allies to take responsibility for securing peaceful and democratic development in the country.<sup>42</sup>

One article provided a subtle but interesting example of claiming there was no alternative.<sup>43</sup> The author described a fast and sharp examination to establish which individuals amongst the former Iraqi bureaucrats should be ousted from office. This description, as well as

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arms, s/he loses the protective status as a civilian and the regulations regarding combatants apply. Article 45 of Protocol I provides the right to POW status to any person who has taken part in hostilities.

<sup>38</sup> *Dagens Nyheter*, 27 Mar. 2003, ‘Läsarnas Ombudsman: Samma krigsbilder väcker olika reaktioner’.

<sup>39</sup> N. Fairclough, ‘Critical Discourse Analysis as a Method in Social Scientific Research’, in R. Wodak, and M. Meyer (eds.) *Methods of Critical Discourse Analysis* (London: Sage, 2001), at 129.

<sup>40</sup> *Dagens Nyheter*, 23 Mar. 2003, ‘Ny utformning av folkkrätten i utspel från centern’.

<sup>41</sup> *Dagens Nyheter*, 22 Apr. 2003, ‘Svensk skriver Iraks nya konstitution’.

<sup>42</sup> *Svenska Dagbladet*, 10 Apr. 2003, ‘Scenerna från Bagdad gläder Göran Persson’.

<sup>43</sup> *Dagens Nyheter*, 11 Apr. 2003, ‘Vem dömer Saddamiterna?’.

the statements that dealing with the history should be done fast and thoroughly, are re-contextualized claims originating from the 1991 Gulf War. Fairclough has noted that the image of a 'short, sharp shock' [...] evokes the expression used by the British Conservative government in the 1980s, when it tried to develop the policy of delivering a 'short, sharp shock' (in the form of incarceration in highly disciplined quasi-military institutions) to juvenile offenders.<sup>44</sup> The allusion to the successful 'short, sharp shock' presupposes that the conflict is as good as over. Other articles<sup>45</sup> were entirely written based on the assumption that the war was more or less over and that the work on the new constitution and the new government could start soon. At the time of writing, more than a year after President Bush declared the 'end of major combat operations', it is beyond doubt that this is unfortunately not the case.

#### 4.2 Legitimising Power through Discursive Orders

The paternalistic and authoritative elements identified in the discourse are seen to operate in favour of the powerful states when the elements are related to the three examined legal bodies. To better understand how this works, there is first a need to recall the differing characteristics between international and national law. National law is a hierarchical system, with separations of legislative, judicial and executive powers. The subjects of the law are largely the citizens of the state. International law on the other hand is primarily based on consensus and reciprocity. Under international law, states are the primary subjects of law and notably, there is no separation of powers. The statement 'you cannot send a state to jail' illustratively describes the core of the difference between national and international law. It is reasonable to assume that the average citizen conceptualizes national law much better than international law, due to the simple fact that they themselves are subjects of national law. Many people are likely to have had first hand experience of the national law<sup>46</sup> as either a perpetrator or a victim. Even if a person has not had experiences of his or her own, hearsay is provided by friends and neighbours. The media entertainment industry also contributes with numerous stories containing elements of national criminal law. Clearly, criminal law is seen as a corrective tool in the hands of the state. Therefore, when the familiar paternalistic and authoritative elements appear in the media discourse, but now in relation to international law, the public can easily perceive international law as a corrective tool in the hands of the powerful states, irrespective of the fact that international law is supposedly based on consensus and reciprocity.

One of the major themes identified in the analysis was the debate about the need to reform the UN. It should be noted that instead of accepting the UN Charter as it is and abiding by its regulations, some stakeholders argued that the system was unfit and needed to be reformed. In this way, the theme of reforming the UN was in fact used to legitimise the unlawful intervention. In the same way as was argued above concerning international law as a corrective tool, this theme becomes operational when the public confers this particular theme with national perceptions of law. This paves the way for the public to conclude that, at the international level, not everyone has legislative powers; thus, only the powerful states can create or change the laws.

Furthermore, it could be argued that as long as the discourse remains focused on applying perceptions of national law to the UN Charter, international humanitarian law and international human rights law, the misrepresentation that results remains hidden due to the abstract level of representation. Therefore, these misinterpretations can stay unchallenged and continue to mislead the public. With authoritarian and paternalistic elements in the discourse and occasionally misrepresentations of the three legal bodies examined, the international legal system provides the

<sup>44</sup> N. Fairclough *Media Discourse* (London: Oxford University Press, 1995), at 96.

<sup>45</sup> Illustrations are for instance found in *Expressen* 11 Apr. 2003, 'Sverige kan straffas för krigskritiken' and *Dagens Nyheter*, 22 Apr. 2003, 'Svensk skriver Iraks nya konstitution'.

<sup>46</sup> National law is here referred to in very general terms. It consists of several distinguishable entities, e.g. criminal law and civil law. It is assumed here that when they encounter national law in the media discourse, the public predominantly has criminal law in mind.

power holders with a useful tool to legitimise their own power. It is submitted here that journalists have a responsibility to write about international law in a manner which allows the public to learn about the distinctions between national and international law, and which ensures that misrepresentations are minimized.

## 5. Does the Elite Need the Problem?

Throughout this research, it has been emphasised that, from a legal point of view, the separation between the laws of war and the regulations of resorting to force is very important in a conflict. It was found that the legal distinction between the laws of war and the regulations of resorting to force is not reflected in the media discourse. This observation requires further analysis. With the guidance of Fairclough, the question 'Does the elite need this problem?' should be posed. Is there an advantage for the elite when the media discourse is unable to maintain and uphold this legal distinction? Bearing in mind that a charismatic leader could have the power to turn the attention of the audience from his deeds to his motives,<sup>47</sup> it has to be concluded that the blurring of the distinction as well as a focus on the regulations in the UN Charter is convenient for the elite, when the discussion on a moral level assures that attention is kept away from actual conduct on the ground.

In addition to this, the structures regulating social practice for war correspondents, and the fact that it can be difficult for journalists to cover what actually happens on the ground, indirectly support the emphasis on the UN Charter perspective. A moral issue is freed from situating elements (both temporal and spatial).<sup>48</sup> In this context, it should also be kept in mind that a large part of the laws of war is about what actually happens on the ground, consisting of threshold tests and the objective of balancing military necessity with humanitarian concerns. The lack of context common in war correspondence and the need for situating elements to deal with issues relating to international humanitarian law further reinforce the fact that UN Charter issues get priority over issues relating to laws of war in the media discourse. Furthermore, the dichotomy constructed between the UN Charter and international human rights law also keeps attention away from attempts to understand human rights by raising issues such as the situation on the ground.

The abstract manner in which human rights are represented allows the stakeholder to use it rather flexibly as a legitimising element of an argument, for instance by claiming the intention to stop human rights violations. But human rights can also be used to refer to a utopian society, promising to create a better life in adherence with human rights obligations. For a state to promise citizens of another state a utopian society that respects human rights can be seen as a misrepresentation of human rights. International human rights law primarily consists of commitments made by the state vis-à-vis its own citizens, and legal as well as social changes to improve the human rights situation in a country have to be initiated by the state. When it can be assumed that human rights are misrepresented, it should also be assumed that this serves an ideological purpose, and that this results in a balance that benefits those in power. Lastly, it can be assumed that if marginalised citizens (not only people in occupied territories) were to get a thorough understanding of their human rights entitlements, they might very well turn to challenge the powerful elite and claim more space, more influence and more access in political life. Thus, from this perspective, it benefits the elite if 'human rights' are represented abstractly in the media discourse.

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<sup>47</sup> Østerud, quoted in J. Johnsen and T. Mathiesen (eds.), *Mediekriegen. Søkevis på massemedienes dekning av Golfkrigen* (Oslo: Cappelen Forlag, 1991), at 34.

<sup>48</sup> N. Fairclough, *Media Discourse*, n. 44 above, at 92.

## 6. Possible Ways Past the Obstacle

There is scope for improvement in newspaper reporting on international law issues in general, and on topics that include representations of the three examined legal bodies in particular. There is scope for a clearer representation in the media discourse concerning the characteristic differences between international and national law. As the analysis has shown, there are indications that characteristics of national law are applied to international law in the media discourse. For instance, when it comes to legislative powers, the public is led to believe that powerful states have a stronger say. This perception could possibly be somewhat adjusted if journalists increasingly explained the difference between international and national law. Additionally, when the discourse largely focuses on customary law or interpretations, journalists might be in a position to ensure that existing treaty law is explained in the articles. This could be done by using *human rights-based journalism*. It is here submitted that by familiarising themselves with the five elements of rights-based journalism presented below, the writers could improve their reporting on legal issues at large and particularly on international human rights law. It would also increase the chances that the representations of international law are not misrepresentations. In addition, the issues of international law within the media discourse would be *more concrete*. This would in turn enhance the capacity of the media to provide the public with facts and knowledge that would significantly contribute to the process of making informed decisions on matters of international politics. A development like this could possibly contribute to the creation of alternative discourses at a time when 'human rights' are an integrated element in the rhetoric of the elite, or when abstract reference to human rights is part of war propaganda.

The concept of a rights-based approach has been elaborated in relation to development work.<sup>49</sup> This concept could play a substantial role in developing human rights-based reporting or journalism. For the purpose of this paper, it will constitute the scope of what I term *rights-based journalism*. The following five elements are included:

- Express linkage to rights,
- Accountability,
- Empowerment,
- Participation, and
- Non-discrimination and attention to vulnerable groups.

First of all, an express linkage to rights defined in the main conventions is an essential ingredient of a rights-based approach. The express linkage to a right stipulates that it is a particular right, with legally enforceable entitlements. In addition, this approach highlights the fact that civil, cultural, economic, political and social rights are all indivisible, interdependent and interrelated. There is no room for 'trade-offs'. Therefore, journalists writing about human rights should commit themselves to including accurate references in their articles. The element of accountability will facilitate the demand for accountability by identifying claim-holders and duty-holders, and their obligations. Both positive duties (to protect, promote, and provide) are covered as well as negative obligations (to abstain from violations). The media could be a key player in this process.

The element of empowerment is necessary to ensure that the rights-based focus is maintained and not reduced to a charitable response. Empowerment serves to give people the power, capacities, capabilities and access needed to change their own lives, improve their own communities and influence their own destinies. The media could contribute to this. The element of participation further distinguishes a rights-based approach from a charitable approach. Participation has to be active, free and meaningful. This means that mere formal or ceremonial participation of those who are affected is not sufficient. The whole human rights movement rests

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<sup>49</sup> The following presentation of the elements included in a human rights approach are adapted from: United Nations Office of the High Commissioner of Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*. Available at <http://www.unhcr.ch/development/povertyfinal.html>, last visited 2 Feb. 2005.

on the principle of non-discrimination. This concern is to be taken actively: The assessment of who is vulnerable here and now should be done actively and continuously. A passive assumption that no discrimination is taking place, therefore no assessment is needed, would not have taken the element of non-discrimination sufficiently into account.

This research has revealed that the media discourse had a preference for discussing issues from a moral perspective and at an abstract level. For instance, when the acts of hostility had started on the ground, the media discourse continued to discuss regulations on resorting to force. It is argued here that it would have been more appropriate for the media to direct its attention to how the warring factions adhered to humanitarian law. Two explanations have been found as to why the media was incapable of shifting the focus appropriately. The first reason is structural and relates to the working conditions for journalists during armed conflict. An armed conflict is a situation characterised by limited access, and even if journalists find the resources and access to see what is happening, they are confronted with lack of context and chaos. This inevitably affects possibilities of creating comprehensive reports about the ongoing situation. The second reason is that the stakeholders, in this case the US and UK alliance, benefited from the media's focus on the UN Charter. In this way, the structural limitations and the desire of those in power reinforce each other.

It was found that human rights appear in the media discourse abstractly, and thus often misrepresent the human rights obligations that states have. In contrast, the few instances where humanitarian law is represented in the articles, it is to a large extent done concretely and with explicit reference to the legal provisions. Journalists might be able to contribute to deepening the public debate on human rights issues by using rights-based journalism as outlined above. In addition, in this way, journalists may also decrease their chances of being used for propaganda purposes, serving the ambitions of the elite on issues pertaining to international law.