The intervention in Iraq 2003 raised concerns in three major areas of public international law. In the context of the conflict, these issues became politically charged, with different stakeholders pursuing different aims. It can not be excluded that political actors used legal arguments to support their claim in such a way that it benefited their own cause. This also means that both propaganda and counter-propaganda most likely was disseminated in the media.

The purpose of this article is to analyse how the print media portrayed international law during an international conflict. The research analysed which concerns of international law where present in the media discourse, as well as which concerns where missing but arguably should have been present. The research further aimed at identifying which themes constituted the context to the legal concerns raised. Finally, the analysis highlighted the orders of discourse, that is the ideological mechanisms, that could be identified in the analysed material.

The analysed material consisted of a sample of articles covering the intervention in Iraq 2003, selected 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. The material was selected from the time period 20 March to 10 June 2003. 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.

The Media and International Law

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 role in a democratic society. 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. 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. 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. 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 ma-
nipulation, it becomes important to examine the media discourse, in order to highlight how and where this manipulation takes place.

Customary law consists of two elements: ‘a general practice,’ an objective element, and ‘accepted by law,’ a subjective element. General practice of a state includes its actions and its non-actions in the fields of diplomacy, politics and military activities. 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…’.3 Thus, the media can be part of the process that creates 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.

Critical Discourse Analysis Applied

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. According to van Dijk, CDA ‘should deal primarily with the discourse dimensions of power abuse and the injustice and inequality that result from it’.7 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 by bringing up the issue in the first place.

In the process of CDA the text is treated as social action and not merely as a piece of information.8 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. 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’.9 The orders of discourse become the arena where power plays take place and manifest themselves.10 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.’11 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.

Legal Bodies Represented in the Media Discourse

In the analysed material, issues relating to three legal bodies were noted. Firstly the question as to whether or not an intervention in Iraq was lawful in accordance with the UN Charter was most frequent. In an attempt to legitimise the intervention, the United Kingdom (UK) and US alliance alleged that Iraq had 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…’.12
The UN Charter only leaves room for individual or collective self-defence ‘if an armed attack occurs’. But even then, this right to self-defence only lasts ‘until the Security Council has taken measures necessary to maintain international peace and security’. 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, arguing 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’ 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. 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. This research focuses on the part of the laws of war that are concerned with humanitarian aspects, that is the Geneva Conventions and its Additional Protocols. They are applicable when an armed conflict has broken out, and apply equally to all involved parties. The Geneva Conventions are beyond doubt part of customary international law. The two Additional Protocols have a more disputed status with regard to whether or not they are customary law. Suffice it to note that even if there are considerable disagreements among 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’. The violence in war ‘shrinks language and damages communication: this diminishment of discourse (arguments, pleas, justification, appeals for sympathy) in turn enables further violence’. 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’. Dawes claims that this capacity of the laws to ‘render the chaos of war susceptible to the control of language’ 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]’. 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 international law in general in an accurate manner when reporting during conflict.

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 a clear 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 appeared most frequently in the media discourse. Largely it appeared at the *more abstract* level. There were no noted articles containing international human rights law on the *most concrete* level, and the articles with reference to this legal body were rather evenly distributed 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 *most abstract*, e.g. ‘undemocratic countries, not far behind Iraq when it comes to human rights violations’. The UN Charter on the other hand appeared most frequently at the level of *more abstract*.

Table 1. *The Table Shows at what Level the Various Legal Bodies Were Represented in the Analysed Articles*

<table>
<thead>
<tr>
<th>Levels</th>
<th>UN Charter</th>
<th>International human rights law</th>
<th>International humanitarian law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most concrete</td>
<td>3</td>
<td>–</td>
<td>3</td>
</tr>
<tr>
<td>More abstract</td>
<td>37</td>
<td>21</td>
<td>5</td>
</tr>
<tr>
<td>Most abstract</td>
<td>3</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
<td>39</td>
<td>9</td>
</tr>
</tbody>
</table>

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).’ The conclusion is that the media generally provides the public with a predominantly abstract representation of the UN Charter and international human rights law. In this regard, the media makes a very limited contribution to developing an informed public opinion. The exception is seen in the few cases when the laws of war are represented in the discourse, the media is seen to represent this legal body with a significantly higher degree of accuracy.

**Questions about Legitimacy and Legality in Relation to the UN Charter**

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 handled the crucial distinction between the laws of war and the regulations on resorting to force.

A pattern distinguishable in the analysed material was that topics relating to the laws of war were often re-contextualised to become a background element in the debate concerning the legality of the intervention. This is seen 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 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 entitlements. 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.’ 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, misrepresent, and indeed, undermine the UN Charter.

**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.’

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.’

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.

**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. 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.’

The text does not provide any definition or explanation of what it refers to as universal human rights. Due to the high level of abstraction the public fails to learn about human rights as specific entitlements that are legally enforceable. Rather, human rights are perceived 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 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 regime’s actions can no longer be tolerated – and that this behaviour can be stopped by, and only by, force.’

The journalist remains 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 made concrete suggestions for dealing with Iraq, arguing it should be done ‘by police through law and order’ (polislärt). 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. Unfortunately, the abstract level at which human rights appeared in the media discourse impedes the controlling function of international human rights law.

**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 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 condi-
tions, as well as how. This undoubtedly hampers the regulating powers of the Geneva Conventions envisaged by Dawes as discussed above.

Additionally, 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. Thus such reporting poses a threat to the aspect of reciprocity, which is the basis of the laws of war. Another journalist referred to the ‘Iraqis being massacred’ purposely blurring the distinction between soldiers and civilians. Again the journalist ignored the fundamental principles of the laws of war; namely, that soldiers have to be distinguished from civilians to protect the latter. 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 pertaining to the representation of the laws of war is quite the opposite of its non-existence or underplaying as described above. Namely, the laws of war were identified at a concrete level with extensive details. For instance, one article 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 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.

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. Elements of legal bodies were represented throughout the analysed material, and were found to be working ideologically through the orders of discourse in at least two distinctive ways.

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’. 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. 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. 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.

Another article provided a subtle but interesting example of claiming that there was no alternative. The author described a fast and sharp examination to establish which individuals amongst the former Iraqi bureaucrats should be ousted from office. This proposition, as well as 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.” The allusion to the successful ‘short, sharp shock’ presupposed that the conflict is as good as over. Several articles were written entirely 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, almost two years after President Bush declared the ‘end of major combat operations’, it is beyond doubt that peace has not yet been successfully restored in Iraq.
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’ illustrates one aspect 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 as either a perpetrator or a victim. 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 amongst states as equals.

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. Additionally, when this theme is endowed with perceptions of national law, the way is paved for the public to conclude that, at the international level, not everyone has legislative powers; rather, only the powerful states can create or change the laws.

Furthermore, it is here argued that as long as the discourse remains focused on applying perceptions of national law to the three identified bodies of international law the misrepresentation 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 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 ensuring that misrepresentations are minimized and allowing the public to learn about the distinctions between national and international law.

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 fundamental to the protective potential of the former. It was found that this vital separation 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, 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). In this context, it should also be kept in mind that a large part of the laws of war are 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 the laws of war further reinforce the fact that UN Charter issues get priority over the latter in the media discourse.

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 respect of 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 were to get a thorough understanding of their human rights entitlements, they might very well decide to challenge the powerful elite and claim more access, more space and more influence in political life. Thus, from this perspective, it benefits the elite if ‘human rights’ are represented abstractly in the media discourse.

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 also scope for a clearer representation in the media discourse concerning the characteristic differences between international and national law. 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. It would also increase the chances that the representations of international law are not misrepresented. 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. Slightly adapted, the concept constitutes 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 include accurate references in their articles. This enhances 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 should 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. 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 on the principle of non-discrimination. The principle of non-discrimination has to be actively implemented: A passive assumption that no discrimination is taking place, therefore no action is required, would not have taken the element of non-discrimination sufficiently into account.

Conclusion

This research has revealed that the media discourse had a preference for discussing legal issues from a moral perspective and at an abstract level. Two explanations have been found as to why the media was incapable of shifting the focus from abstract moral issues to factual legal concerns. 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 as well as 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 argued that the abstract appearance of human rights in the media discourse in practice mis-represents the human rights obligations that states have. In contrast, the few instances where humanitarian law was represented in the articles, it was to a large extent done concretely and with explicit reference to the legal provisions. Four main contextual themes which encircle the legal bodies were identified and it was noted that all the themes in various ways re-enforced the ideological mechanisms underpinning the media discourse. In other words, the themes that constituted the context to the legal issues raised, where arguably all supportive of the cause of the elite.

Finally, it was suggested that journalists might be able to contribute to deepening the public debate on human rights issues by using rights-based journalism as outlined in this article. In addition, journalists may also decrease the risk of being used for propaganda purposes, serving the ambitions of the elite on issues pertaining to international law.

Notes

1. 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.


5. Ibid., 39.


7. Ibid.


15. Ibid.

16. Aftonbladet, 21 Mar. 2003, ‘Då ville USA också få bort en obekväm 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.


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35. The distinction between civilians and combatants is defined as a civilian, s/he has legal protection by 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. 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 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.


21. Ibid., 237.

22. Ibid., 240.

23. Ibid., 241.

24. Ibid., 235.


34. Dagens Nyheter, 3 Apr. 2003, ‘Soldater utan människovärde’.

35. 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. Guelf, n. 19 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.’